



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV**

CP No.: IB 492(PB)/2021

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

IN THE MATTER OF:

M/s IFCI Limited

...Financial Creditor / Applicant

VERSUS

M/s ACCIL Hospitality Private Limited

...Corporate Debtor / Respondent

Pronounced on: 15.07.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant : Mr. S.S. Ahluwalia, Ms. Saniya Zehra, Advs.

For Respondent : Mr. P. Nagesh, Sr. Adv., Mr. Tanuj Sud, Mr.
Ajay Kumar, Ms. Stuti Vatsa, Mr. Akshya
Sharma, Mr. Vijayant Goel, Advs.

ORDER

PER: BENCH

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by IFCI Limited ("**Financial Creditor/ Applicant**"), seeking initiation of the corporate insolvency resolution process ("**CIRP**") in respect of M/s ACCIL Hospitality



Private Limited ("**Corporate Debtor/ Corporate Guarantor/ Respondent**") U55101DL2003PTC121747.

2. The Corporate Debtor was incorporated on 11.08.2003, under the Companies Act, 1956. Its registered office is at 204, Nirmal Tower, 26 Barakhamba Road, Cannaught Place New Delhi-110001, India. Therefore, this Bench has jurisdiction to deal with this petition.

Factual Background:

3. The Applicant extended a financial facility to the Principal Borrower, M/s Asian Colour Coated Ispat Limited, by way of a Corporate Loan Agreement dated 22.08.2014, amounting to a sanctioned sum of ₹150,00,00,000/- (Annexure 4, Page 32). The repayment obligations under the said loan agreement were secured by a Deed of Corporate Guarantee of even date, i.e., 22.08.2014, executed by the Corporate Debtor/Corporate Guarantor, namely ACCIL Hospitality Private Limited (Annexure 5, Page 69). Pursuant thereto, disbursement of the loan amount was made in two tranches — ₹35,07,00,000/- on 28.08.2014 and ₹114,93,00,000/- on 29.09.2014 — in favour of the Principal Borrower.
4. The Principal Borrower defaulted in the repayment of the said financial assistance, resulting in an outstanding debt of ₹390,54,33,312.15 as on 13.04.2021. The loan account was classified as a Non-Performing Asset (NPA) on 30.09.2016. Consequent to the default, a loan recall notice was issued to the Principal Borrower on 16.12.2016 (Annexure 7, Page 85). Further, the Financial Creditor invoked the Corporate Guarantee by issuing a notice dated 11.01.2017 (Annexure 8, Page 92) addressed to the Corporate Guarantor, ACCIL Hospitality Private Limited.



5. In addition to the foregoing, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated 03.05.2017 (Annexure 9, Page 109), was served upon both the Principal Borrower and the Corporate Guarantor in respect of the defaulted amount. The Financial Creditor also furnished a certificate under Section 2A(a) of the Bankers' Books Evidence Act, 1891, along with a Statement of Account for the period 01.08.2014 to 13.04.2021 (Annexure 10, Page 113).
6. The Financial Creditor thereafter initiated proceedings by filing Original Application No. 367 of 2017 before the Learned Debt Recovery Tribunal. Meanwhile, the State Bank of India approached this Adjudicating Authority seeking commencement of Corporate Insolvency Resolution Process (CIRP) against the Principal Borrower under the provisions of the Insolvency and Bankruptcy Code, 2016. This Adjudicating Authority, vide order dated 20.07.2018, admitted the petition and appointed an Interim Resolution Professional. The Resolution Plan in respect of the Principal Borrower was subsequently approved vide order dated 19.10.2020, wherein the Financial Creditor, IFCI, received an amount of ₹5,02,31,436/-.
7. The Financial Creditor, thereafter, filed Company Petition IB No.1167(PB)/2019 before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Guarantor. However, vide order dated 21.10.2019 (Annexure 18, Page 210), the Hon'ble Principal Bench of NCLT dismissed the petition in light of the decision rendered by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Dr. Vishnu Kumar Agarwal v. M/s Piramal Enterprises Ltd.*, Company



Appeal (AT) (Insolvency) No. 346 of 2018, decided on 18.01.2019. Nonetheless, in paragraph 14 of the said order, the Hon'ble Principal Bench of NCLT observed as follows:

"14. However, there is a change in law, the present order will not prejudice the right of the petitioner."

8. Aggrieved by the dismissal, the Financial Creditor, preferred an appeal before the Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No. 1422 of 2019, which was also dismissed by the Hon'ble Appellate Tribunal vide order dated 17.02.2020 (Annexure 19, Page 216). It is pertinent to note that the legal position concerning initiation of proceedings under Section 7 of the Code against a corporate guarantor underwent a significant change pursuant to the judgment of the Hon'ble NCLAT in *State Bank of India v. Athena Energy Ventures Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 633 of 2020, wherein, vide judgment dated 24.11.2020, it was unequivocally held that CIRP can be initiated against both the Principal Borrower and the Corporate Guarantor simultaneously.
9. In light of the aforesaid pronouncement and the consequent change in legal position concerning maintainability of proceedings under Section 7 of the Code against a corporate guarantor, the Financial Creditor, IFCI, filed the present petition before this Adjudicating Authority on 09.09.2021.
10. The Learned Counsel for the Applicant has put forth the following submissions:
 - a. The present petition is well within the prescribed period of limitation. It is contended that the Applicant had earlier instituted a petition under Section 7 of the Insolvency and



Bankruptcy Code, 2016, vide C.P. (IB) No. 1167/2019 before this Adjudicating Authority. However, the said petition came to be dismissed by this Tribunal vide order dated 21.10.2019. Crucially, in paragraph 14 of the said order (Annexure 18, Page No. 210), this Tribunal had specifically observed that the said dismissal would not prejudice the rights of the petitioner in the event of a change in law.

- b. Pursuant to the aforementioned order, the Hon'ble NCLAT, in *State Bank of India v. Athena Energy Ventures Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 633 of 2020, vide judgment dated 24.11.2020 (Annexure 20, Page No. 223), held that proceedings under Section 7 of the Code may be initiated simultaneously against both the Principal Borrower and the Corporate Guarantor. Thus, the legal position underwent a material change with the pronouncement of the said judgment.
- c. It is accordingly submitted that a fresh cause of action accrued in favour of the Financial Creditor on 24.11.2020, being the date when the legal bar, if any, against initiation of CIRP against a corporate guarantor stood removed. The present petition was filed on 09.09.2021, i.e., within three years from the date of the change in law and is therefore within limitation.
- d. The Applicant further submitted that the reliance placed by the Respondent on the decisions in *Ram Das Datta v. IDBI Bank Ltd.* and *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. and Another* is misplaced and inapplicable to the present case. The limitation in the instant matter is to be reckoned from 24.11.2020, the date on which the Hon'ble



NCLAT rendered its judgment in *Athena Energy* (supra), and in light of the observations in the order dated 21.10.2019 in C.P. (IB) No. 1167/2019, which expressly protected the petitioner's rights upon a change in law.

- e. The Respondents have contended that the Resolution Plan pertaining to the Principal Borrower, Asian Colour Coated Ispat Limited, did not reserve any right to pursue proceedings against the Corporate Guarantor, and therefore, no action under Section 7 of the Code can be initiated post-approval of the said Resolution Plan. However, the Applicant submits that such contention is misconceived and contrary to the express terms of the Resolution Plan.
- f. It is submitted that the Resolution Plan explicitly carved out "Excluded Rights," which include the right of the Financial Creditors to enforce third-party securities, including mortgages and guarantees provided by third parties such as ACCIL Hospitality Private Limited, the Corporate Guarantor herein. The Resolution Plan clearly provides that the mortgage, hypothecation, and corporate guarantees extended by ACCIL Hospitality Pvt. Ltd. shall fall within the ambit of "Excluded Rights," thereby preserving the right of the Financial Creditor to proceed independently against the Corporate Guarantor for recovery of the balance dues.
- g. The definition of "Excluded Rights" as set out in the approved Resolution Plan specifically includes:
 - (A) personal guarantees provided by persons other than Mr. Pradeep Aggarwal,



(B) any mortgage provided by ACCIL Hospitality Limited, and

(C) corporate guarantees provided by AGR Steel Strips Private Limited and ACCIL Hospitality Limited.

h. Furthermore, the Addendum dated 31.05.2019 reaffirmed this position, clarifying at clause 1.12 that “Excluded Rights” shall mean:

(A) personal guarantees provided by persons other than Mr. Pradeep Aggarwal,

(B) any mortgage and/or hypothecation provided by ACCIL Hospitality Limited, and

(C) corporate guarantees provided by AGR Steel Strips Pvt. Ltd. and ACCIL Hospitality Limited.

i. It is further submitted that the Resolution Plan, as approved by this Tribunal, was subsequently challenged before the Hon’ble NCLAT by personal guarantors on similar grounds. However, the Hon’ble NCLAT was pleased to dismiss the said appeal vide *Company Appeal (AT) (Insolvency) No. 1104/2020*. Therefore, the right of the Financial Creditor to initiate proceedings against the Corporate Guarantor remains unaffected and unextinguished.

j. The Respondent has further argued that the date of default by the Corporate Debtor has not been specifically stated in the present petition. In response, it is submitted that the petition explicitly mentions the defaulted amount as ₹390,54,33,312.15/- as on 13.04.2021. The date of classification of the account as a Non-Performing Asset, i.e., 30.09.2016, is also clearly indicated in the pleadings.



- k. Furthermore, the petition makes specific reference to the issuance of a loan recall notice dated 16.12.2016 and the invocation of the corporate guarantee vide notice dated 11.01.2017 addressed to the Corporate Guarantor. It is thus submitted that the relevant dates evidencing default are adequately and explicitly mentioned in the petition.
- l. The Respondents have relied on certain judicial precedents; however, it is submitted that such authorities are inapplicable to the present factual matrix as they pertain to proceedings against principal borrowers. In contrast, the present proceedings are directed against the Corporate Guarantor, with the basis of claim being the invocation of the corporate guarantee.
- m. In light of the above submissions, the Applicant prays that this Tribunal be pleased to admit the present petition and pass orders in terms of the reliefs sought therein.
11. The Learned Counsel appearing on behalf of the Respondent has advanced the following submissions in an effort to resist the admission of the present Petition and to defend the Respondent's position:
- a. **Limitation and Bar to Initiation of Proceedings:**
- The Respondent submits that the Company Petition instituted by the Financial Creditor is ex facie barred by limitation. It is submitted that the loan account of the Principal Borrower, Asian Colour Coated Ispat Limited, was classified as a Non-Performing Asset (NPA) on 30.09.2016. The present petition was filed only



on 07.06.2021. Part IV of the Company Petition does not disclose any specific date of default. Further, there has been no acknowledgment of debt by the Corporate Debtor in the interregnum period, nor has any fresh demand notice been issued subsequent to the invocation of the Corporate Guarantee on 11.01.2017. In the absence of any document evidencing acknowledgment or revival of liability, the claim is clearly barred by the limitation period under Article 137 of the Limitation Act.

b. Assignment of Entire Debt & Binding Nature of Resolution Plan:

The Respondent contends that the entirety of the debt owed by the Principal Borrower to its financial creditors, including the Applicant herein, has been assigned to Hasaud Steels Limited, a special purpose vehicle of the Resolution Applicant, JSW Steel Coated Products Ltd., in accordance with the approved Resolution Plan. The said Resolution Plan was approved by the Committee of Creditors (CoC) with 79.3% voting share and subsequently by this Tribunal vide order dated 19.10.2020. It is submitted that, as per Section 31(1) of the Code, the approved Resolution Plan is binding on all stakeholders, including guarantors.

The Respondent relies upon the decision in *Prashant S. Ruia v. State Bank of India*, 2021 SCC OnLine Guj 3056, to assert that once the debt has been assigned, the Financial Creditor cannot initiate fresh or parallel proceedings against the Corporate Guarantor based on the same underlying obligation. The debt, having been voluntarily assigned, cannot now be treated as subsisting so as to pursue enforcement of a corporate guarantee in isolation.



c. Discharge of Debt by Voluntary Act of the Creditor:

It is further argued that the Financial Creditor, through its own volitional act of assignment of debt pursuant to multiple rounds of negotiation, has discharged the Corporate Debtor of its liability. The Financial Creditor did not challenge the approval of the Resolution Plan. Thus, it cannot now transform the corporate guarantee into an independent and surviving debt obligation.

d. Assignment Agreement & Acknowledgment thereof:

An Agreement dated 25.03.2021 (Annexure R-5) was executed between the Principal Borrower and Hasaud, acknowledging the assignment of the entire debt of all direct financial creditors, including the Applicant herein.

e. Pending Legal Proceedings on Substantive Issues:

The Respondent submits that substantial questions of law concerning the effect of such assignment on the enforceability of corporate guarantees are sub judice before the Hon'ble High Court of Punjab and Haryana in *CWP No. 24980 of 2021 – ACCIL Hospitality Pvt. Ltd. & Ors v. Reserve Bank of India & Ors* ("First Writ Petition"), which is next listed for hearing on 02.07.2025. Vide order dated 10.12.2021 passed in the said petition, the Hon'ble High Court observed that, prima facie, the corporate guarantee could not be enforced at that stage.

f. Subsequent Proceedings and Interim Relief:

Despite the above order, a notice for assignment dated 28.12.2022 (Annexure R-8) was issued by the Financial



Creditor, which led to *CWP No. 1223 of 2023* (“Second Writ Petition”) being filed by the Corporate Debtor. The Hon’ble High Court, vide interim order dated 20.01.2023 (Annexure R-10), granted relief restraining enforcement actions against the Corporate Debtor.

g. Position Adopted Before Debt Recovery Tribunal:

The Respondent refers to proceedings before the Learned DRT, wherein Indian Bank (erstwhile Allahabad Bank), a financial creditor of the Principal Borrower, acknowledged the assignment of debt to Hasaud. Similarly, vide order dated 25.02.2021, the DRT allowed deletion of the Principal Borrower from OA No. 743/2018 on account of the Resolution Plan having been approved.

h. Lender’s Conduct and Absence of Rebuttal:

It is further submitted that the Financial Creditor continued to correspond with the Respondent under the pretext of routine lender-borrower communications, including valuation and inspection exercises. However, in its response dated 15.05.2025, the Respondent categorically stated that the Applicant is no longer a lender. No rebuttal to such a communication was issued by the Financial Creditor.

i. Dismissal of Writ Petitions of Co-Guarantors Irrelevant:

The dismissal of other personal guarantors’ writ petitions is stated to have no bearing on the present matter, as liberty was specifically granted by the Hon’ble High Court to raise available pleas in ongoing proceedings. Moreover, the Corporate Debtor’s petitions remain pending adjudication.



j. Ineligibility of Hasaud as Transferee:

The Respondent submits, without prejudice, that Hasaud does not meet the eligibility criteria for transferees under the RBI's Guidelines on Sale of Stressed Assets dated 01.09.2016. It is only in the RBI Master Directions dated 24.09.2021 that clarity was brought with respect to eligible transferees. Therefore, the assignment of debt itself suffers from legal infirmity, and no benefit ought to accrue to the lenders based on such assignment.

k. Bar of Limitation (Further Detailed):

The Respondent reiterates that the default, if any, arose on 30.09.2016 (classification as NPA), followed by loan recall on 16.12.2016 and invocation of guarantee on 11.01.2017. The earlier petition filed in 2019 was dismissed on 21.10.2019 and upheld by NCLAT on 17.02.2020. No fresh demand notice or acknowledgment was made prior to initiation of the present proceedings. It is submitted that the date of NPA, not the date of law change or assignment, triggers limitation under *Jignesh Shah v. Union of India*, (2019) 217 Comp Cas 139 (SC).

Judgments such as *Pooja Ramesh Singh v. State Bank of India*, *Mudhit Madanlal Gupta v. Supreme Constructions*, and *Piramal Capital v. Township Developers* have been relied upon to support the proposition that the date of invocation is critical in determining default in the case of a corporate guarantor.

1. No Acknowledgment of Liability by Corporate Debtor:

It is also argued that financial statements for FY 2018–2019 (Annexure A-21) do not amount to acknowledgment of liability.



The mere presence of contingent liabilities in audit reports signed by independent auditors does not constitute a valid acknowledgment under Section 18 of the Limitation Act. Reliance is placed on *Spackman v. Evans* (1868), *Asset Reconstruction Company v. Bishal Jaiswal*, and *Asset Reconstruction Company v. Uniworth Textiles*.

m. Effect of Assignment – No Debt Survives with Applicant:

The Respondent submits that upon assignment of the entire debt to Hasaud, no debt remains in the books of the Applicant. The Resolution Plan (para 1.10, 1.12, and 1.13) defines “Remaining Debt” as the entire liability owed to financial creditors, now extinguished by assignment. “Excluded Rights” merely allow enforcement of security in absence of debt, which is impermissible in law. Reference is drawn to Clause I(C)(16) of the RBI Prudential Framework dated 07.06.2019, which mandates complete extinguishment of exposure for effective implementation of resolution.

n. Writ Petitions Challenging Validity of Debt Retention Despite Assignment are Pending Adjudication

It is submitted that the entire debt extended by the Financial Creditor to the Principal Borrower stood fully assigned to Hasaud Steels Limited, in terms of the duly approved Resolution Plan. Accordingly, the Financial Creditor is left with no subsisting right, title, or interest in the said debt, thereby extinguishing its exposure as per the Reserve Bank of India (RBI) guidelines which stipulate that a resolution shall be deemed implemented only upon full extinguishment of lender exposure.



- o. Despite such assignment and extinguishment, the Financial Creditor continued initiating coercive recovery proceedings against the Corporate Debtor. Aggrieved by the same, the Corporate Debtor preferred **CWP No. 24980 of 2021** (hereinafter referred to as “First Writ Petition”) before the Hon’ble High Court of Punjab & Haryana at Chandigarh, challenging the Auction Sale Notice dated 17.11.2021 issued under Rule 8(6) read with Rule 6(2) of the Security Interest (Enforcement) Rules, 2002.
- p. The interim prayer sought in the said Writ Petition, inter alia, was for a stay on the impugned auction notice and all coercive measures initiated by the Financial Creditor in light of the assignment of debt and its consequent extinguishment post approval of the Resolution Plan.
- q. Despite the clear restraint imposed by the Hon’ble High Court, the Financial Creditor issued a fresh notice of assignment dated 28.12.2022, thereby triggering further proceedings, which were again challenged by the Corporate Debtor in **CWP No. 1223 of 2023** (“Second Writ Petition”).
- r. The Second Writ Petition impugned the said notice on the ground that it constituted a non-est and contemptuous action in view of the subsisting restraint order of the Hon’ble High Court in the First Writ Petition. The Hon’ble High Court, vide Order dated 20.01.2023, while issuing notice, directed that although the scheduled e-auction may proceed, the finalisation thereof shall not take place without leave of the Court.



- s. It was contended that the validity of the Financial Creditor's right to enforce any remedy in the absence of debt retention is a matter engaging the attention of the Hon'ble High Court and, further, involves the RBI which is not a party before this Tribunal.
- t. It was further submitted that in *CWP Nos. 1156/2022* and *1160/2022*, filed by personal guarantors against the same assignment, the Hon'ble High Court, while disposing of the petitions, granted liberty to raise all pleas before the appropriate forum. Hence, issues already engaging the Hon'ble High Court's attention ought not to be reopened or prejudged by this Tribunal.
- u. **Status of Writ Petitions Filed by Personal Guarantors**
For the sake of full disclosure, the following Writ Petitions were filed before the Hon'ble High Court by personal guarantors of the Principal Borrower:
- i. *CWP No. 1156 of 2022 – Pradeep Aggarwal v. RBI & Ors.*
 - ii. *CWP No. 1160 of 2022 – Vikas Aggarwal v. RBI & Ors.*
 - iii. *CWP No. 26276 of 2021 – Kamlesh Devi Aggarwal v. RBI & Ors.*
 - iv. *CWP No. 26715 of 2021 – Sapna Aggarwal v. RBI & Ors.*
 - v. *CWP No. 26668 of 2021 – Archana Aggarwal v. RBI & Ors.*
- These petitions were disposed of on 01.07.2024 with liberty granted to the Petitioners to raise all relevant pleas in accordance with law before the appropriate forum.



v. Judicial Precedents Relied Upon

- i. Reliance is placed on *Hutchens v. Deauville Investments Pty Ltd* [1986] HCA 85, wherein the Australian High Court held that splitting a debt post-assignment to create separate causes of action is impermissible in law.
- ii. In *Prashant Shashi Ruia v. State Bank of India*, 2021 SCC Online Guj 3056, the Hon'ble Gujarat High Court held that once the entire debt is assigned, the assignor cannot seek recovery under guarantees.
- iii. The DRT in *State Bank of India v. Prashant S. Ruia & Ors*, 2022 SCC Online DRT 5, reinforced that no recovery can be pursued from guarantors when the principal debt stands fully assigned and extinguished.
- iv. In *Kurnool Chit Funds Ltd. v. P. Narasimha*, AIR 2008 AP 38, the Hon'ble Andhra Pradesh High Court held that extinguishment of the principal debtor's liability also extinguishes the surety's liability.
- v. The Hon'ble Supreme Court in *UV Asset Reconstruction Co. Ltd. v. Electrosteel Castings Ltd.*, C.A. No. 9701 of 2024, issued notice to examine whether a financial creditor may enforce an excluded security absent the underlying debt, thereby indicating the importance and unsettled nature of the issue.

Finding & Analysis

12. We have heard the Learned Counsels appearing for the Applicant and the Respondent and perused the documents on record. In adjudicating upon the present Company Petition that has been



filed by the Applicant–Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, “the Code”), seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against the Respondent–Corporate Debtor for default in repayment of financial debt, **the first question that arises before us is whether the Applicant qualifies as a Financial Creditor and whether a financial debt exists within the meaning of Section 5(8) of the Code.**

13. There is no denial that the Financial Creditor extended certain credit facilities to the Principal Borrower, for which the Corporate Debtor executed a Deed of Guarantee. The Corporate Debtor’s liability stems from this Contract of Guarantee, which, under Section 126 of the Indian Contract Act, 1872, establishes an independent and co-extensive obligation of the guarantor with that of the principal debtor. The fact that a guarantee was executed, and default thereof occurred, is admitted and supported by documentary evidence, including the guarantee agreement, the loan documentation, and the certificate of default.
14. The Corporate Debtor has, however, raised a plea that the principal debt has allegedly been assigned to a third party—Hasaud Steels Limited—pursuant to a Resolution Plan approved in respect of the Principal Borrower. It has been contended that this assignment extinguished the debt and, consequently, the Corporate Debtor’s obligation under the guarantee.
15. In order to resolve this issue we rely upon the judgment passed by the Hon’ble NCLAT in the matter of Comp. App. (AT) (Ins) No.1104 of 2020 & other connected appeals in the matter of **Mr. Vikas**



Aggarwal v/s Asian Colour Coated Ispat Limited & others, arising out of the Order dated 26.10.2020 passed by the National Company Law Tribunal, New Delhi, Principal Bench in CA No. 1393 (PB)/2019 in C.P. No. (IB)- 50(PB)/2018. The relevant paragraphs of this judgment is extracted below:

“68. We are of the opinion that the intent of the legislature behind the provisions of the Code is for resolution of the Corporate Debtor and not of the Personal Guarantors of the Corporate Debtor. The financial creditors have a right to proceed against the personal guarantors of the Corporate Debtor, and further, that the personal guarantors, in terms of section 31 of the Code are duty bound by the terms of the Resolution Plan approved by the Adjudicating Authority. We also feel that a Resolution Plan itself can vary and modify the rights of the creditors and guarantors of the corporate debtor and provide for continuation of personal guarantees which do not need any confirmation from Personal Guarantor to the Corporate Debtor. We carefully note that there is a categorical right carved out in favour of the Financial Creditors, through the specific term i.e., the 'Excluded Rights' which have not been assigned to the SPV. The Resolution Plan defined the term 'Remaining Debt' which has been assigned to the SPV of the Respondent No. 2 and perusal of the relevant provisions clearly reveal that such 'Remaining Debt' assigned to the SPV of the i.e. Respondent No. 2 explicitly preclude the "Excluded Rights".

69. We have noted that the approved Resolution Plan categorically provides that nothing in the Resolution Plan



shall operate or have the effect of assigning, revoking, cancelling or extinguishing the "Excluded Rights" and the Direct Financial Creditors are free to pursue such remedies and exercise such rights as they may have under applicable laws in respect of the "Excluded Rights". We have taken into consideration of the fact that it is the Remaining Debt, as defined in the Resolution Plan including the Addendum that has been assigned to Respondent No.2 in terms of the Resolution Plan, but precluding the "Excluded Rights". There are clear and express provisions and stipulations under the Resolution Plan safeguarding the right of the Financial Creditors to pursue legal remedies against the personal guarantors, including the Appellants.

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91. In light of such "Excluded Rights" continuing to exist with the Financial Creditors under the terms of the approved Resolution Plan, transfer of "mere right to sue" under the provisions of the Transfer of Property Act, 1882 Section 6(e) is not applicable. We observe that when the Resolution Plan provides for specific provisions, whereby the Financial Creditors exclusively retain the rights to proceed against the Personal Guarantors and provisions stating that nothing in the Resolution Plan shall have the effect of assigning such rights to the Resolution Applicant, it is clear that the CoC in its commercial wisdom has approved such provisos for continued rights of the Financial Creditors against the



Personal Guarantors and that there has been no assignment of such rights to proceed against the Personal Guarantors to the SPV of the Successful Resolution Applicant/ Respondent No. 2. This was in fact proposed by the SRA in finally approved Resolution Plan and seems to be have done after due deliberations with the CoC. In such eventuality there is no applicability of transfer of "mere rights to sue", as the said rights were never assigned and have been retained by the Financial Creditors all along. The Appellants cannot seek undue benefits on account of the Resolution Plan and avoid their huge financial liabilities accrued based on the Personal Guarantees given by the Personal Guarantors to the Corporate Debtor.

92. We are of clear opinion that the financial creditors have reserved the rights to proceed against the personal guarantors like the Appellant herein in terms of the "Excluded Rights" in approved Resolution Plan. There is no question of transfer of a "mere right to sue" and in such circumstances, we feel that it is a structured financial deal in form of Resolution Plan exercised based on the commercial wisdom, with aim of resolution of a corporate debtor, as well as to ensure that financial creditors are able to recover their outstanding debts as guaranteed by the Personal Guarantors, the Appellants herein. We endorse the views that resolution of debts cannot be misconstrued as full satisfaction of debts payable to the creditors and Resolution of debts under the Resolution Plan is only to the extent of the obligations against and this will not take away the rights of the Financial Creditors to proceed against the Appellants as



Promoters who stood as guarantors and the assets mortgaged by others against the loan availed by the principal debtor.”

16. The above judgment of the Hon’ble NCLAT decisively settles the position of law with respect to the rights of Financial Creditors vis-à-vis Personal Guarantors in the context of the approved Resolution Plan of the Principal Borrower. The Hon’ble NCLAT has clearly held that the Resolution Plan can, and often does, carve out specific "Excluded Rights" that remain with the Financial Creditors and are not transferred to the Resolution Applicant or any Special Purpose Vehicle (SPV) set up thereunder.
17. Applying the same rationale to the facts of the present case, it is evident that the debt owed by the Principal Borrower may have been assigned to a third-party SPV in terms of a resolution plan. However, it has been repeatedly clarified in the said judgment that such assignment, by itself, does not extinguish the rights of the Financial Creditor to proceed against the guarantor—**unless such rights were explicitly assigned or extinguished, which is not the case here**. The concept of “Remaining Debt” being assigned while retaining “Excluded Rights” with the original lender, enables the Financial Creditor to continue to proceed against the guarantor on the basis of the underlying guarantee contract.
18. The Corporate Debtor, in the instant case, seeks to rely upon the argument that since the debt has been assigned pursuant to a Resolution Plan, no enforceable debt remains in the hands of the Financial Creditor. This contention is wholly untenable in light of the settled position discussed above. The rights retained under the



heading of “Excluded Rights” specifically entitle the Financial Creditor to continue pursuing remedies, including initiating proceedings under Section 7 of the IBC against the Corporate Guarantor.

19. Thus, the judgment fortifies the Applicant’s case in the present proceedings. The retention of actionable rights by the Financial Creditor—arising from the guarantee executed by the Corporate Debtor—entitles the Applicant to initiate CIRP under Section 7. The existence and enforceability of such rights, as preserved under the terms of the Resolution Plan, cannot be nullified by merely pointing to assignment of “Remaining Debt” when “Excluded Rights” remain untouched. In light of the Judgment passed by the Hon’ble NCLAT, the Respondent’s contention that the debt stands extinguished or that the Financial Creditor is left with no enforceable right is misconceived and is hereby rejected.

20. **The next question that needs our attention is whether the approval of a resolution plan and the subsequent assignment of debt extinguish the liability of a corporate guarantor.**

The law is well settled that the liability of a guarantor is not discharged merely by operation of a resolution plan in relation to the principal borrower. The Hon’ble Supreme Court in *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321, has categorically held that the approval of a resolution plan does not ipso facto discharge the guarantor of their liability. The liability of the guarantor is co-extensive and survives unless explicitly extinguished in the resolution plan or by the creditor.



21. In the present case, there is no evidence placed on record to show that the Corporate Debtor's liability under the guarantee was extinguished by the resolution plan, infact it was carved out in the definition of "Excluded Rights". Further, the very basis of any guarantee is to provide an additional cushion to the lender, enforceable independent of the fate of the Principal Borrower.

22. **The next issue that emerges is whether the pendency of writ petitions before the Hon'ble High Court warrants a stay of proceedings before this Tribunal.**

It is the considered view of this Adjudicating Authority that the pendency of civil proceedings in a constitutional court does not, by itself, operate as a bar to the exercise of statutory jurisdiction by the Adjudicating Authority under the Code. The Hon'ble Supreme Court in *Embassy Property Developments Pvt. Ltd. v. State of Karnataka*, (2020) 13 SCC 308, recognized the limited grounds upon which the jurisdiction of this Authority may be ousted. Unless and until there is a specific stay on the proceedings, or the Hon'ble High Court expressly injuncts continuation of the matter, mere pendency cannot be a ground to withhold statutory adjudication. Nowhere does it prohibit initiation of proceedings under the Code, nor is there an embargo on this Adjudicating Authority's jurisdiction under Section 7 of the IBC, 2016.

23. It is equally noteworthy that while the Corporate Debtor asserts judicial propriety in light of Hon'ble High Court proceedings, it simultaneously seeks to draw strength from judgments delivered by this Adjudicating Authority and the Hon'ble NCLAT to contend that the debt has been extinguished. This dual stance undermines



the very position it wishes to project—if the issue is sub judice and undecided, the Respondent cannot claim its absolute discharge.

24. The next point of contention raised relates to limitation.

Upon consideration of the documents placed on record and the rival submissions advanced by the parties, it is observed that the guarantee in question was admittedly invoked on **11.01.2017**. Consequently, in accordance with the mandate of Article 137 of the Limitation Act, 1963, the period of limitation for initiating proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 would ordinarily expire on **10.01.2020**. The Applicant has sought to contend that the period of limitation ought to be reckoned from the date of the change in law, i.e., **24.11.2020**. However, it is pertinent to note that the statutory period of limitation had already lapsed prior to the said date. The present petition, having been instituted only on **09.09.2021**, is ex facie barred by limitation, being filed well beyond the prescribed statutory period. Accordingly, the instant proceedings are rendered non-maintainable on the ground of limitation.

25. This Adjudicating Authority, having analysed the pleadings, documents, and legal submissions of both parties, hereby arrives at the conclusion that the Financial Creditor has succeeded in demonstrating the existence of a financial debt and a corresponding default committed by the Corporate Debtor. However, the initiation of the Corporate Insolvency Resolution Process (CIRP) is subject to the fulfilment of jurisdictional thresholds under the Code, including adherence to the prescribed limitation period. As this Tribunal is not vested with any power to condone delay in filing of petitions under Section 7 of the



Insolvency and Bankruptcy Code, 2016, the petition, being barred by limitation, is not maintainable.

Accordingly, the present petition bearing CP No. **IB 492 (PB)/2021** stands **dismissed**. The Applicant, however, shall be at liberty to pursue such other remedies as may be available to it under law, in accordance with the applicable legal framework.

Sd/-

(ATUL CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)