

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/399(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **04.09.2025**

NAME OF THE PARTIES: **JM FINANCIAL CREDIT SOLUTIONS LIMITED**

Vs

R.M. BHUTHER AND COMPANY LIMITED

Under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate sheet. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SVG//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 399/MB/2025

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4(1) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

In the matter of M/s. R.M. BHUTHER AND COMPANY LIMITED.

JM FINANCIAL CREDIT SOLUTIONS LIMITED,

07th Floor, Cnergy, Appasaheb Marathe Marg,

Prabhadevi, Mumbai-400 025.

...Applicant/Financial Creditor/Petitioner

Vs.

R.M. BHUTHER AND COMPANY LIMITED

[CIN: U45201MH2001PLC132232]

Registered Office: 104, Bajaj Bhawan,

Nariman Point, Mumbai-400021.

...Respondent/Corporate Debtor

Pronounced On: 04.09.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Physical.

Appearances:

For the Financial Creditor: Adv. Mr. Shyam Kapadia a/w Adv. Ms. Ravites
Chilumuri, Adv. Mihika Jalan, Adv. Ms. Aafreen
Noor and Adv. Muskan Arora i/b Khaitan & Co.

For the Corporate Debtor: Mr. Rohit Gupta a/w Mr. Raghav Dharmadhikari
i/b Rashmikant and Partners.

ORDER

[PER: CORAM]

1. This is an application filed by the **Applicant- JM Financial Credit Solutions Limited** (hereinafter also referred to as “Financial Creditor” or “the Petitioner”), on 19.02.2025 against the **Respondent- R.M. Bhuther and Company Limited** (hereinafter also referred to as “Corporate Debtor”), under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, ‘the Code’) r/w Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, seeking commencement of the Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor, appointment of Interim Resolution Professional (‘IRP) and declaration of moratorium.
2. **The amount claimed to be in default is INR 332,80,53,230/-** (Rupees Three Hundred and Thirty-Two Crores, Eighty Lakhs, Fifty-Three Thousand, Two Hundred and Thirty Only). **The date of default is stated to be 17th August, 2023.**
3. On perusal of Part-I of Form 1, it is seen that the present application is signed by one Ms. Reshma Davane in her capacity as Associate - Loan Risk and Controls. Further, an affidavit in support of the application is affirmed by the above-named signatory, who is authorised by the resolution passed by the Board of Directors of the Applicant Company at its meeting held on October 27, 2023.
4. A perusal of Part II of the application in Form 1 reveals that the Respondent/Corporate Debtor i.e. RM Bhuther and Company Limited, is a body corporate having its registered office at 104, Bajaj Bhawan, Nariman Point, Mumbai, Maharashtra 400021. The date of incorporation of the Corporate Debtor is 04th June, 2001. The Authorised Share Capital and the Paid-Up Share Capital of the Corporate Debtor, both, are INR 1,00,00,000/- (Rupees One Crore Only).

5. On perusal of Part-III of Form 1, it appears that the Applicant has proposed the name of Mr. Gajesh L. Jain to be appointed as the IRP of the Corporate Debtor in the event that the petition gets admitted. The Applicant has also obtained the Written Consent in Form 2 from the proposed IRP above-named, the Certificate of Registration and the Authorisation for Assignment ('AFA'), the copies of which have been collectively annexed to this application as Annexure-F (Colly). Perusal of AFA shows that the authorisation is valid from 23.08.2024 to 31.12.2025.
6. A perusal of Part IV of the application vide Form 1 reveals that the amount claimed to be in default is INR 332,80,53,230/- and the date of default is stated to be 17th August, 2023.
7. The facts as pleaded by the Applicant in the Application are stated hereinbelow:
- i. The Applicant i.e. JM Financial Credit Solutions Limited is a Non-Banking Financial Company incorporated on 15.05.1980. The Borrower i.e. M/s. HEM Bhattad, is an association of persons constituted by and under an Agreement dated 06th September, 2006 executed between (i) M.B. Development Corporation, (ii) M.B. Construction, (iii) R.M. Bhuther and Company Ltd (i.e. the Corporate Debtor herein), and (iv) HEM Infrastructure and Property Developers Pvt. Ltd.
 - ii. The Financial Creditor has entered into six Loan Agreements and sanctioned six Loan Facilities aggregating to INR 288.20 crores to the Borrower (i.e. M/s. HEM Bhattad, an Association of Persons ('AOP') acting through its members which includes the Corporate Debtor). Out of the total sanctioned amount, a

sum of INR 288,16,11,075/- was disbursed by the Financial Creditor to the Borrower. The details of the sanctioned loan facilities is as under:

<u>Facility No.</u>	<u>Date of the Loan Agreement</u>	<u>Amount (INR)</u>
1.	16.12.2017	100,00,00,000
2.	14.08.2018	50,00,00,000
3.	28.11.2019	25,00,00,000
4.	29.05.2021	21,00,00,000
5.	27.12.2021	68,00,00,000
6.	29.08.2022	24,20,00,000
	TOTAL	288,20,00,000

- iii. Further, in terms of the respective Loan Agreements, the Loan Facilities together with all the outstanding thereunder were required to be secured by Security, *inter-alia*, including an unconditional and irrevocable corporate guarantee of the Corporate Debtor in favour of the Financial Creditor. Accordingly, the Corporate Debtor executed the following guarantees for securing the respective facilities:
- a. Deed of Corporate Guarantee dated 16th December, 2017 for Facility No.01;
 - b. Deed of Corporate Guarantee dated 21st September, 2018 for Facility No.02;
 - c. Deed of Corporate Guarantee dated 09th December, 2019 for Facility No.03;
 - d. Deed of Corporate Guarantee dated 02nd June, 2021 for Facility No.04;
 - e. Deed of Corporate Guarantee dated 27th December, 2021 for Facility No.05;
 - f. Deed of Corporate Guarantee dated 17th September, 2022 for Facility No.06.
- iv. The Borrower had committed the following defaults in terms of the Loan Agreements:

- a. Failure in paying instalments in accordance with the Repayment Schedules of Loan Agreements for Facility No. 1 to Facility No. 3 due from January 2023 to March 2023.
 - b. Failure in paying instalments towards Facility No. 4 due from June 2023 to November 2023.
 - c. Failure in paying instalments towards Facility No. 6 due from September 2024 onwards.
 - d. Failure to pay Interest for all the Facilities on the Interest Payment Date as per the respective Loan Agreements since January 2023.
 - e. Failure to pay Default Interest for all the Facilities levied as per the terms of the Loan Agreements, upon the occurrence of an Event of Default.
 - f. Failure to deposit adequate amounts of TDS for Financial Years 2019- 2020, 2020-2021 and 2022-2023.
- v. On account of irregular and delayed payments of the principal instalments and interest by the Borrower, the Financial Creditor has, *inter-alia*, taken the following steps:
- a. Loan accounts of the Borrower were classified as a Non-Performing Asset ('NPA') on 01st May, 2023.
 - b. Demand Notice dated 24th May, 2023 u/s 13(2) of the SARFAESI Act, 2002 recalling the entire outstanding amount which on the said date was INR 231,63,05,803/- under all the Loan Agreements, was issued to the Borrower and the Corporate Debtor.

- c. the Financial Creditor attempted to take peaceful possession of the properties mortgaged in its favour by the Borrower but faced resistance and thus, it could not take possession of the same.
- d. the Financial Creditor (through its Advocates) issued an Event of Default Notice dated 29th September, 2023 to the Borrower and Corporate Debtor inter alia setting out in detail all the defaults committed by the Borrower and the Corporate Debtor and calling upon them to pay the total outstanding amount under the Facility Documents, i.e., INR 2,48,97,64,270/- being the outstanding amount as of 28th September, 2023.
- e. The Financial Creditor filed an Application under Section 14 of the SARFAESI Act, 2002 in relation to properties mortgaged in its favour by inter alia the Borrower.
- vi. Further, in terms of the Loan Agreements and the Corporate Guarantees, by an email dated 10.08.2023, the Financial Creditor issued a Letter dated 10th August, 2023 to the Corporate Debtor enclosing six notices of demand dated 10.08.2023 with respect to each respective facility, calling upon the Corporate Debtor to forthwith and in any event not later than seven days, make payment of unpaid outstanding amounts under the Loan Agreements aggregating to INR 242,82,00,969/- accrued as on the date preceding the date of the said notice, in accordance with the terms of the Guarantees executed by the Corporate Debtor. In terms of the Guarantees, the Letter dated 10.08.2023 along with the Notices of Demand dated 10.08.2023, were also served by email and registered post acknowledgment due upon the Corporate Debtor.

- vii. The amounts outstanding and payable by the Borrower and the Corporate Debtor under the Guarantees as of 09.08.2023 i.e. the date preceding the date of the Notices of Demand, were as follows:

Facility No.	Date of the Corporate Guarantee	Amount (INR)
1.	16.12.2017	67,34,54,129
2.	21.09.2018	32,45,32,651
3.	09.12.2019	15,79,45,543
4.	02.06.2021	23,71,57,581
5.	27.12.2021	76,59,96,686
6.	17.09.2022	26,91,14,379
	TOTAL	242,82,00,969

- viii. The Applicant pleads that despite Notices of Demand being issued pursuant to the Guarantees, no monies have been received from the Corporate Debtor towards the outstanding amounts payable by it under the Guarantees. Since the Corporate Debtor was required to pay the Outstanding within 7 days of Notice of Demand dated 10.08.2023, the date of default as such is 17.08.2023.
- ix. Subsequently, an application dated 25.01.2024 was filed to initiate CIRP of the Corporate Debtor u/s 7 of the Code before this Tribunal vide CP(IB) No. 86(MB)/2024. During the course of hearing held on 30.07.2024 in the said CP, it was pointed out by the Adjudicating Authority that the petition was defective and therefore, the Ld. Counsel for the Petitioner withdrew the said CP with a request to file a fresh company petition after rectifying the defects. The relevant extracts of the Order dated 30.07.2024, is reproduced hereinbelow:

“3. Ld. Counsel for the Financial Creditor submits that the Deed of Corporate Guarantees are executed and annexed with the petition. After perusal of the records, this Bench finds that on

Page No-128 onwards, the Deed of Corporate Guarantees are filed by the Financial Creditor. These deeds do not have enclosing the name of the Corporate Debtor or Signatures of the Guarantors. This Bench feels that, without Name and Signatures of the Corporate Debtor, the deeds of guarantees are defective, not enforceable in the eye of law, and are hence invalid documents. The Financial Creditor cannot seek any reliefs relying on these documents. This Bench is not inclined to adjudicate the matter. This Bench is of the considered view that in the absence of legally valid documents the CP is defective for establishing their claim.

4. After completing the arguments, Ld. Counsel for the Financial Creditor intends to withdraw the present CP and file afresh company petition after rectifying the defects of the CP. In view of the above request, C.P. (IB)/86(MB)2024 is dismissed as withdrawn.”

x. Hence the present petition.

8. As stated in Part V of the Application, the Financial Creditor has relied upon the following documents which are attached to this application in order to prove the existence of Financial debt and the amount in default:

Facility No.01:

- i. Loan Agreement dated 16 December 2017.
- ii. Deed of Corporate Guarantee dated 16 December 2017 by the Corporate Debtor.
- iii. Letters dated 01st September 2020, 05th September 2020 and 01st December 2020 issued by the Financial Creditor to the Borrower for the extension of time for the repayment period of this Facility.

Facility No.02:

- iv. Loan Agreement dated 14 August 2018.
- v. Deed of corporate guarantee dated 21 September 2018 by the Corporate Debtor.

- vi. Letters dated 1 September 2020, 5 September 2020 and 1 December 2020 issued by the Financial Creditor to the Borrower for the extension of time for the repayment period of this Facility.

Facility No.03:

- vii. Loan Agreement dated 28 November 2019.
- viii. Deed of corporate guarantee dated 9 December 2019 by the Corporate Debtor.
- ix. Letters dated 1 September 2020, 5 September 2020 and 1 December 2020 issued by the Financial Creditor to the Bonower for the extension of time for the repayment period of this Facility.

Facility No. 04:

- x. Loan Agreement dated 29 May 2021.
- xi. Deed of corporate guarantee dated 2 June 2021 by the Corporate Debtor.

Facility No. 05:

- xii. Loan Agreement dated 27 December 2021.
- xiii. Deed of corporate guarantee dated 27 December 2021 by the Corporate Debtor.

Facility No. 06:

- xiv. Loan Agreement dated 29 August 2022.
- xv. Deed of corporate guarantee dated 17 September 2022 by the Corporate Debtor.

9. In response to the order dated 02.07.2025 Applicant has filed an Additional Affidavit, which is dated 04.07.2025, annexing therewith an authenticated copy of the Ledger Account of the Borrower as maintained by the Financial Creditor, running from the Page Nos. 3 to 23.

10. Reply Affidavit dated 23rd April, 2025 was filed and affirmed by one Mr. Harishkumar Bhattad, the Director who is an authorised signatory of the Corporate Debtor. The contents of the aforesaid Affidavit are briefly stated below:

- i. The Petitioner has failed to annex crucial documents such as the Loan Agreements dated 16.12.2017 and 27.12.2021. Since two Loan Agreements have not been annexed, the Petitioner has failed to establish the debt and the default as well. Accordingly, the Petition is liable to be dismissed in limine.
- ii. The Petition is barred by Res Judicata as the Petitioner had filed a Company Petition No. 86 of 2024 dated 25.01.2024 on the same cause of action, which came to be dismissed by this Tribunal vide Order dated 30.07.2024. Therefore, the Petitioner cannot now file another Company Petition which is directly and substantially similar to the earlier Company Petition which has been already disposed off by this Tribunal.
- iii. The Petitioner has suppressed that Company Petition No. 781 of 2021 filed by it against the Respondent. The Petitioner has also suppressed an Order dated 21.01.2022 passed by this Tribunal which recorded that the entire due amount as claimed in the aforesaid petition had been paid by the Respondent. Vide the said Order, the aforementioned Company Petition was dismissed as withdrawn on account of the settlement arrived between the parties.
- iv. If Petitioner continues to assert its claim as set out in the present Company Petition ignoring the suppressed Order dated 21.01.2022 in CP No. 781 of 2021, then the limitation to file the present petition would commence on May 2018 and therefore, the present petition is barred by limitation. This is further evidenced by the fact that

the default interest was charged from May, 2018 itself goes to show as per their own case, the alleged default occurred in 2018. The Petitioner sanctioned further loan facilities only to cure the alleged default which occurred in the year 2018 and now cannot take advantage of its own wrong.

- v. Even though the Petitioner invoked the guarantee against the Respondent in March 2021, it continued to disburse further loans to the Principal Borrower at the same time.
- vi. Whilst the negotiations were pending with the prospective developers to develop Phase II of the Development Project, the Petitioner sought to invoke the Deeds of Corporate Guarantee through Demand Notices dated 10th August, 2023. On 06th November 2023, the Respondent replied to the Petitioner's Demand Notices invoking the Deeds of Corporate Guarantee, pointing out that the Petitioner only invoked the Deeds of Corporate Guarantee with the intent of pressurising and arm-twisting the Principal Borrower to close negotiations with a developer of its choice and on terms that were commercially unviable to the Principal Borrower.
- vii. The Respondent states and submits that as per the Development Control and Promotion Regulations, 2034 ('DCPR'), the stakeholders in Phase II of the Project including the Petitioner are aware that the total turnover of Phase II is INR 5,000 crores and the revenue expected to be generated is INR 3,000 crores. In these circumstances, it is stated the Project is extremely lucrative and the claims of the Petitioner are miniscule in comparison to the entire revenue potential of Phase II. The value of Phase II of the Project has increased substantially since the DCPR has been implemented. However, the Petitioner is hand in gloves with certain developers and is not permitting the Phase II of the Project to proceed and to allow

the repayment of alleged dues. The Petitioner has thus chosen to file the present Company Petition with a fraudulent and malicious intent and for a purpose other than insolvency resolution of the Corporate Debtor, which is evident from the facts narrated herein.

viii. The Respondent submits that in the earlier Section 7 petition, it was the case of the Petitioner that the purported default committed in repayment of interest and/or default interest is within the period of 25.03.2020 to 25.03.2021. Thus, the present petition is also barred by Section 10A of the Code if the correct date of purported default in the earlier company petition is considered.

11. **Rejoinder**: The Applicant-Financial Creditor has filed its rejoinder on affidavit sworn by Mr. Nilesh Singh on 06th June, 2025. The contents of the said rejoinder are recapitulated hereinbelow:

a) The material on record establishes debt and default. The Petitioner had granted six credit facilities to the Borrower and disbursed an amount of INR 288 crores in favour of the Borrower under the six Loan Agreements. The repayment of the aforesaid credit facilities was secured, inter-alia, by way of an unconditional and irrevocable corporate guarantee furnished by the Corporate Debtor under each of the six Loan Agreements. The Corporate Debtor has not disputed the execution and/or authenticity of the Loan Agreements, the Corporate Guarantees, Bank Statements showing the disbursement of the Total Disbursed Amount to the Borrower, the deemed to be authenticated record of default with the information utility and the commercial credit information report all of which are annexed to the Petition and the sanction letters (Exhibits C,D,F,I,J,K to the Reply) which also mention the Guarantees.

- b) The Corporate Debtor has not challenged/disputed the financial debt due and the default committed. It is settled law that once this Tribunal is satisfied about the existence of a financial debt and the occurrence of a default, an application u/s 7 of the Code ought to be admitted.
- c) The captioned Petition is not barred by Res Judicata since the Petitioner withdrew CP No. 86 of 2024 with liberty to file a fresh petition.
- d) The captioned Petition is not barred by limitation. The Corporate Debtor has contended that in view of Company Petition No. 781 of 2021 filed by the Petitioner, the limitation to file the present petition would commence in May 2018. However, the Applicant submits that the aforesaid contention of the Corporate Debtor is untenable. The above-mentioned Company Petition was filed only with respect to the outstanding dues towards interest under the Loan Agreements and Guarantees for Facility Nos. 01 to 03 for the period from March 2021 to May 2021, default interest upto May 2021 and for TDS deducted by the Corporate Debtor from September 2020 to January 2021. The Notice of Demand issued with respect to the 2021 petition was issued on 21.03.2021 and the date of default mentioned therein for the first default is 31.03.2021. Whereas, the Notice of Demand for the purposes of the present Petition was issued on 10.08.2023 and hence, the Petition mentions the date of default as 17.08.2023. Since the petition is filed within three years from the aforesaid date of default, it is within limitation.
- e) Further, the Petitioner states that the default interest amounts in the 2021 petition remain unpaid till date. Hence, the same have also been included in the present petition. Without prejudice to the above, as on 17.02.2025, the amount outstanding

under the Loan Agreements and Guarantees exceed the threshold amount for admission into CIRP. Hence the petition is liable to be admitted.

- f) In the present case, it is submitted that the defaults that form the basis of the present petition are continuing defaults that arose before and extend beyond the period specified in Section 10A of the Code. Thus, the present petition is not barred by Section 10A of the Code.

ANALYSIS AND FINDINGS

12. We have heard the Learned Counsel for the Petitioner and the Learned Counsel for the Corporate Debtor. We have perused the pleadings of the parties as well as the documents and material available on record.

13. Perusal of records indicate that HEM Bhattad AOP (“the Principal Borrower”) is an association of persons which was formed in order to develop certain parcels of land situated at Sewri, Mumbai. The Principal Borrower thereafter decided to develop the aforesaid parcels of land in phases. The Principal Borrower constructed the first phase of the project known as “Celestia Spaces”. In view of the successful development of Phase I, the Principal Borrower approached Mr. Vishal Kampani, the Managing Director of the Petitioner, sometime in 2017, with an intent to finance and jointly develop the balance portions of land in Phase II of the Development Project. After discussions between the Principal Borrower and the Petitioner, it was agreed that they would jointly develop the balance portions of land with the Petitioner funding the Principal Borrower and the proposed developer will be introduced by the Petitioner.

14. Accordingly, the Financial Creditor had entered into six Loan Agreements and sanctioned six Loan Facilities aggregating to INR 288.20 crores to the Principal Borrower (i.e. M/s. HEM Bhattad, an Association of Persons ('AOP') acting through its members which includes the Corporate Debtor). Out of the total sanctioned amount, a sum of INR 288,16,11,075/- was disbursed by the Financial Creditor to the Borrower. The details of the sanctioned loan facilities are as under:

Facility No.	Date of the Loan Agreement	Amount (INR)
1.	16.12.2017	100,00,00,000
2.	14.08.2018	50,00,00,000
3.	28.11.2019	25,00,00,000
4.	29.05.2021	21,00,00,000
5.	27.12.2021	68,00,00,000
6.	29.08.2022	24,20,00,000
	TOTAL	288,20,00,000

15. Further, in terms of the respective Loan Agreements, the Loan Facilities together with all the outstanding thereunder were required to be secured, *inter-alia*, by an unconditional and irrevocable corporate guarantee. Accordingly, the Corporate Debtor executed the following guarantees in favour of the Financial Creditor for securing the respective facilities:

- a. Deed of Corporate Guarantee dated 16th December, 2017 for Facility No.01;
- b. Deed of Corporate Guarantee dated 21st September, 2018 for Facility No.02;
- c. Deed of Corporate Guarantee dated 09th December, 2019 for Facility No.03;
- d. Deed of Corporate Guarantee dated 02nd June, 2021 for Facility No.04;
- e. Deed of Corporate Guarantee dated 27th December, 2021 for Facility No.05; and
- f. Deed of Corporate Guarantee dated 17th September, 2022 for Facility No.06.

16. As discussed in the facts narrated in Para 7(iv) of this Order, the Principal Borrower committed defaults in repayment of instalments and interest due in respect of various loan facilities due to which the loan accounts of the Principal Borrower were classified as a Non-Performing Asset on 01.05.2023. Thereafter, the Financial Creditor issued a Demand Notice dated 24.05.2023, u/s 13(2) of the SARFAESI Act, 2002 recalling the entire outstanding loan as on the said date amounting to INR 231,63,05,803/- under all the Loan Agreements. However, since the default by the Principal Borrower persisted, the Financial Creditor was constrained to invoke the Corporate Guarantees furnished by the Corporate Debtor.

17. Accordingly, in terms of the Loan Agreements and the Corporate Guarantees, by an email dated 10.08.2023, the Financial Creditor issued a Letter dated 10th August, 2023 to the Corporate Debtor enclosing six notices of demand dated 10.08.2023 with respect to each respective facility, calling upon the Corporate Debtor to forthwith and in any event not later than seven days, make payment of unpaid outstanding amounts under the Loan Agreements aggregating to INR 242,82,00,969/- accrued as on the date preceding the date of the said notice, in accordance with the terms of the Guarantees executed by the Corporate Debtor. The break-up of INR 242,82,00,969/- was given by the Applicant in the aforesaid letter, the details of which are given in the table below:

<u>Date of the Loan Agreement executed between the Principal Borrower and Petitioner</u>	<u>Date of Corporate Guarantee executed between the Petitioner and the Corporate Debtor</u>	<u>Facility Amount (INR)</u>	<u>Amounts Outstanding under the Loan Agreement.</u>
16 th December, 2017	16 th December, 2017	100,00,00,000	67,34,54,129
14 th August, 2018	21 st September, 2018	50,00,00,000	32,45,32,651
28 th November, 2019	09 th December, 2019	25,00,00,000	15,79,45,543
29 th May, 2021	02 nd June, 2021	21,00,00,000	23,71,57,581
27 th December, 2021	27 th December, 2021	68,00,00,000	76,59,96,686

29 th August, 2022	17 th September, 2022	24,20,00,000	26,91,14,379
	TOTAL	288,20,00,000/-	242,82,00,969/-

18. On 06th November, 2023, the Corporate Debtor had replied to the Letter dated 10.08.2023 along with the Notices of Demand enclosed therewith. In the said reply, the Corporate Debtor denied its liability and inter-alia, stated that the invocation of guarantee was motivated by mala fides for the reasons stated therein.

19. In view of the foregoing facts, we are of the considered view that in the instant case, the execution and invocation of the six corporate guarantees, which are referred to in the table hereinabove, are not in dispute. Further, the Respondent/Corporate Debtor has not produced any evidence to show that the guarantees were discharged or that the debt was paid in full. Thus, the existence of debt and default stand proven on record.

20. The Hon'ble National Company Law Appellate Tribunal, New Delhi ('NCLAT') in the case of **Pooja Ramesh Singh v. State Bank of India** (vide Judgment dated 28.04.2023 in Company Appeal (AT) (Insolvency) No.329 of 2023) has, *inter-alia*, held as follows:

"32. In view of the foregoing discussion, we arrive at following conclusions:

- i. The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed **and the default shall arise on the part of the Guarantor only when demand notice is issued** as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020.*
- ii.*

iii.

33. In view of the foregoing discussion and conclusions, we answer Issues No. II, III and IV in following manner:

Issue No. II: *The Deed of Guarantee dated 17.05.2019 is guarantee on demand **and the limitation of Guarantor shall ensue only when demand is made to the Guarantor.***

Issue No. III.....

Issue No. IV:” (Emphasis Supplied)

21. 1. In the instant case, we refer to Clause 3 of the Deed of Corporate Guarantee, copies of which are annexed to the application at Annexure ‘J’, which states as follows:

“3. The, Guarantor agrees and undertakes that it shall without any demur or protest and on first demand within 7 (seven) days of receipt of a notice in writing from the Lender, in the form given in Schedule 1 hereto ("Notice of Demand"), demanding payment of the amount mentioned therein, make payment of such amount to the Lender as more particularly mentioned in such Notice of Demand.”

21.2. Thus, we find that all the six Corporate Guarantees referred to in the table above are the demand guarantees and as those guarantees were invoked on 10.08.2023, the amounts due therein became payable on 17.08.2023 i.e. within seven days of invocation. Since the aforesaid guarantees were not honoured by the Respondent, in our considered view, the Applicant has rightly taken 17.08.2023 as the date of default. Also, since the present application has been filed on 19.02.2025, which is within three years from the aforesaid date of default, the present application is held to be filed within limitation period, as prescribed under Article 137 of the Schedule to the Limitation Act, 1963.

22. Learned Counsel for the Respondent contends that the present application is barred by the principle of *res judicata*, on the ground that the corporate guarantee had been invoked in 2021 and a petition filed pursuant thereto had been settled. In response, the Applicant, in its rejoinder, has clarified that Company Petition No. 781 of 2021 (“2021 Petition”) was filed against the Respondent only in respect of outstanding interest under the Loan Agreements and Guarantees for Facility Nos. 01 to 03 for the period March 2021 to May 2021, together with default interest up to May 2021 and TDS amounts deducted by the Corporate Debtor from September 2020 to January 2021. The Applicant further states that the Notice of Demand forming the basis of the 2021 Petition was issued on 21.03.2021, with the date of first default mentioned therein as 31.03.2021; whereas, in the present matter, the Notice of Demand was issued on 10.08.2023, with the date of default recorded as 17.08.2023. We note that these facts, as set out in the rejoinder affidavit, have not been controverted by the Respondent by way of sur-rejoinder. The records of the 2021 Petition also substantiate that the date of default therein was 31.03.2021. Further, it is evident from the record that vide Order dated 21.01.2022, CP(IB) No. 781(MB)/2021 was dismissed as withdrawn in view of an amicable settlement arrived between the parties. Subsequently, the Principal Borrower again committed defaults in repayment, as a result of which all six loan accounts were classified as NPAs by the Financial Creditor on 01.05.2023. The continued default led to invocation of all six Corporate Guarantees vide Notices of Demand dated 10.08.2023, which form the very foundation of the present application under Section 7 of the Code. Given that the cause of action in the present petition is distinct from that in the 2021 Petition, and in any event, since the earlier petition was not adjudicated on merits, we are of the considered view that the present application is maintainable and is not barred by the

principle of *res judicata*. The plea of *res judicata* raised by the Respondent is, therefore, rejected.

23. It is further seen that the Applicant had filed yet another petition against the Corporate Debtor vide CP(IB) No. 86(MB)/2024 ('2024 Petition') before this Tribunal which was listed before Court No. IV. The aforesaid petition was dismissed vide Order dated 30.07.2024, the relevant extracts of which are reproduced hereinbelow:

"3. Ld. Counsel for the Financial Creditor submits that the Deed of Corporate Guarantees are executed and annexed with the petition. After perusal of the records, this Bench finds that on Page No-128 onwards, the Deed of Corporate Guarantees are filed by the Financial Creditor. These deeds do not have enclosing the name of the Corporate Debtor or Signatures of the Guarantors. This Bench feels that, without Name and Signatures of the Corporate Debtor, the deeds of guarantees are defective, not enforceable in the eye of law, and are hence invalid documents. The Financial Creditor cannot seek any reliefs relying on these documents. This Bench is not inclined to adjudicate the matter. This Bench is of the considered view that in the absence of legally valid documents the CP is defective for establishing their claim.

4. After completing the arguments, Ld. Counsel for the Financial Creditor intends to withdraw the present CP and file afresh company petition after rectifying the defects of the CP. In view of the above request, C.P. (IB)/86(MB)2024 is dismissed as withdrawn."

In view of the aforesaid Order, we find that the petition was defective as the deeds of guarantees which were annexed to that petition were unsigned by the guarantors and those deeds did not enclose the name of the Corporate Debtor either. Therefore, the Ld. Counsel for the Petitioner therein sought to withdraw the said petition with liberty to file a fresh company petition after rectifying the defects as noted hereinabove. Here again, we see that there was no adjudication on merits of the case. Therefore, the plea of *res judicata* is again rejected. It has also been seen that with respect to the above petition, learned Counsel appearing on behalf of the Applicant sought to withdraw the said petition with liberty to file afresh after rectifying the defects and in view of the same, the withdrawal was allowed. It is apparent that there was neither any adjudication nor anything on record to suggest that by allowing the withdrawal, the Bench had intended to bring finality to the aforesaid petition and therefore, the

Applicant is justified in making the fresh application based on complete documents. Moreover, the 2024 Petition was filed with respect to the outstanding as on 22.01.2024 amounting to INR 266.25 crores approximately and whereas the present petition has been filed with respect to the outstanding amount of INR 332.80 crores as on 17.02.2025 and as a result, the Principal Borrower has committed further default with respect to not only the principal amount in respect of Loan Facility No. 06 and continuing default in respect of all other loan facilities but also in respect of the interest accrued on all facilities between 22.01.2024 and 17.02.2025, for which the guarantor is also liable as per the deeds of guarantee executed, and even if we consider the said amount of interest and default with respect of the same, the threshold of rupees one crore is easily crossed. As such, the plea of the Respondent qua the maintainability of this petition is not sustainable.

24. The plea in regard to the default committed by the Corporate Debtor during the period covered by Section 10A of the Code is also not sustainable as even after excluding the said amount, the debt and the default is much higher than the threshold of Rs. 1 crore as prescribed u/s 4 of the Code.

25. The Respondent has opposed the application contending that, since default interest was levied from May 2018, the period of limitation ought to be reckoned from that date. This contention is misconceived. As already held hereinabove, the limitation period in the present case shall run from 17.08.2023, and cannot be retrospectively advanced to May 2018 merely on account of the levy of default interest from that month. Even if the computation from May 2018 is excluded, the principal amount of the loan facilities, in respect of which the corporate guarantees have been invoked, far exceeds the statutory threshold of Rupees One Crore prescribed u/s 4 of the Code

for initiation of CIRP against the Corporate Debtor. Consequently, this objection is untenable and cannot enure to the benefit of the Corporate Debtor. Further, it is trite to say that the Adjudicating Authority need not ascertain the exact amount of default as the same is the duty of the RP while verifying and collating the claims.

26. The issue raised by the Respondent that the petition is liable to be dismissed in limine as the Petitioner has failed to annex crucial documents such as the Loan Agreements dated 16.12.2017 and 27.12.2021, is not sustainable as the aforesaid Loan Agreements have been brought on record by the Applicant by way of the Affidavit-in-Rejoinder dated 06.06.2025.

27. During the course of oral arguments, Ld. Counsel for the Respondent has contended that the guarantee is exhausted once it is invoked and subsequent invocations cannot revive a guarantee which is already exhausted. Before we deal with the aforesaid contention, we wish to observe that the Respondent has not raised the aforesaid contention/objection in its reply. However, as the aforesaid contention is purely a submission on a point of law, in the interest of justice, we deem it appropriate to deal with it in our order.

28. In law, a “continuing guarantee” u/s 129 of the Indian Contract Act, 1872 remains in force until it is revoked or until the obligation is satisfied in full. The Hon’ble National Company Law Appellate Tribunal, New Delhi (‘NCLAT’) in **IDBI Bank Ltd. v. ARM Infra & Utilities Pvt. Ltd.** (2025 SCC OnLine NCLAT 1124) had framed issues, one of which was as follows: “Whether multiple invocations to continuing guarantees is permissible?”. In answering the above issue, Hon’ble NCLAT gave a detailed judgment, the relevant extracts of which are reproduced as under:

41. In law, a “continuing guarantee” under Section 129 of the Indian Contract Act, 1872, remains in force until revoked or until the obligation is satisfied in full. **The creditor can make successive demands under such a guarantee until full payment is received.** This principle is well supported by judicial precedents. In *Dena Bank v. C. Shivakumar Reddy* (2021) 10 SCC 330, the Hon’ble Supreme Court held that repeated defaults and acknowledgments under a continuing obligation can constitute fresh causes of action.

42. In *Kotak Mahindra Bank Ltd. v. Anuj Kumar* (supra) the Delhi High Court also explained that where a financial obligation is still unpaid, and where the contract is still in force- especially in the case of continuing guarantees or loan agreements- the creditor does not have to act only at the time of the first default. The creditor can act later, based on a new or repeated failure to pay. Each time the borrower or guarantor fails to meet their responsibility under the contract, the creditor gets a new right to sue.

44. Now applying these principles to the present case, this Tribunal finds that the factual situation clearly supports the Appellant’s argument. The guarantees issued by the Respondent were described in clear terms as continuing, irrevocable, and on-demand. **This means that they were not meant to be used only once. As long as the borrower’s dues remained unpaid, IDBI Bank was legally allowed to make a fresh demand at any time.** The first invocation made in March 2021 was only with respect to part of the dues— specifically, the Rupee Term Loan and the fund-based working capital. That invocation did not include other unpaid components of the borrower’s liabilities such as the non-fund-based exposures, unpaid treasury dues, and the shortfall in the Debt Service Reserve Account (DSRA), which were part of the same credit facility.

46. **The argument raised by the Respondent that the first invocation exhausted the right of the Appellant to proceed again is not supported either by contract or law. The guarantees do not provide for single enforcement, and the conduct of parties indicates a subsisting liability. We are**

satisfied that the guarantees in question are continuing guarantees, and the Appellant was legally entitled to issue a second invocation on 9 December 2022.

53. **We, therefore, hold that the Corporate Guarantee could be invoked successively, if the guarantee was a continuing guarantee**, loan default continues post Section 10A period, and the debt obligation were not fully met by the Principal Borrower. **Accordingly, this issue is also decided in affirmative.**

54. Thus, both the issues are decided in favour of Appellants. The appeal is allowed. The impugned order is set aside and CP (IB) No. 144/MB/2023 is restored. The parties to approach the Ld. NCLT on 17.07.2025. There is no order as to costs. Pending I.A.s if any are closed.” (Emphasis Supplied)

29. Clause 5 of the Deed of Corporate Guarantee is reproduced hereinbelow:

*“This Guarantee shall be valid until such time as the Borrower repays in full and discharges the Borrower’s Dues and discharges all its obligations under the Loan Agreement, regardless of any intermediate payment or discharge in whole or in part (“Guarantee Termination Date”) and shall be a **continuing**, irrevocable and unconditional obligation of the Guarantor until the Guarantee Termination Date, **and can be invoked in parts**. Upon the Guarantee Termination Date, this Guarantee shall be treated as duly cancelled and discharged in all respects, and the Lender shall return this Guarantee to the Guarantor within 1 (one) month thereof.”* (Emphasis Supplied)

30. Therefore, in view of Clause 5 of the Corporate Guarantee Deed (supra), we conclude that the corporate guarantees executed by the Corporate Debtor in favour of the Financial Creditor are continuing in nature and can be invoked in parts. We are also of the view that the ratio of the Hon’ble NCLAT in IDBI Bank v. ARM Infra & Utilities Pvt. Ltd. (supra), as relied upon by the Ld. Counsel for the Applicant, is directly applicable to the present case. Thus, the argument of the Ld. Counsel for the

Corporate Debtor-that the guarantee can be that the guarantee is exhausted once it is invoked-cannot be sustained in facts as well as in law.

31. The Respondent has alleged mala fides on the part of the Applicant, contending in its reply that the Applicant is acting in concert with certain developers with the ulterior motive of retaining control over Phase II of the Development Project owing to its substantial commercial value. It is alleged that the Applicant is deliberately obstructing the commencement of Phase II so as to prevent repayment of the alleged dues, and is adopting dilatory tactics by refusing to issue even a conditional No Objection Certificate to facilitate negotiations with prospective developers. According to the Respondent, the objective behind such conduct is to ensure that the valuable Phase II becomes the subject matter of insolvency proceedings, thereby rendering it unavailable for development by the Principal Borrower.

32. The Hon'ble Supreme Court in M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr. (vide Judgment dated August 31, 2017 in Civil Appeal Nos. 8337-8338 of 2017) has *inter-alia*, held as follows:

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

33. In the instant case, since the Applicant has been able to establish from the records that the financial debt is due and payable by the Respondent, the disputes raised by the Respondent qua the debt, which have been discussed in the foregoing paragraph, cannot be considered in view of the law laid down by the Hon'ble Apex Court in Innoventive Industries Ltd (supra). Accordingly, we reject the imputation of oblique motives, ascribing mala fides or any extraneous consideration, as alleged by the Respondent against the Applicant in invoking the Corporate Guarantees, as irrelevant.

34. In view of the foregoing findings and discussion, we are satisfied that the Corporate Debtor has defaulted in repayment of financial debt to the Applicant and such default is well over the minimum threshold of Rs. 1 crore, as prescribed u/s 4 of the Code. We are also satisfied that the application filed u/s 7 of the Code is complete and there are no disciplinary proceedings pending against the proposed resolution professional. Therefore, applying the law laid down by the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank (supra), we are of the firm view that the instant application **deserves to be admitted** u/s 7(5)(a) of the Code. Accordingly, we pass the following orders:

ORDER

- i. The Corporate Debtor, namely, **R M BHUTHER AND COMPANY LIMITED** [CIN: U45201MH2001PLC132232], is hereby **admitted** into the Corporate Insolvency Resolution Process under Section 7(5)(a) of the Code.

- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
 - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. We hereby appoint **Mr. Gajesh Labhchand Jain**, an Insolvency Professional having (Email: gajeshjain@gmail.com) registration no. IBBI/IPA-001/IP-P-01697/2019 -2020/12588, as the Interim Resolution Professional ('IRP') of the Corporate Debtor.
- vi. The Financial Creditor is directed to pay an advance of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) to the above-named IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- vii. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- viii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
- ix. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- x. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
- xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, on the same day and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

- xiv. **Accordingly, CP (IB)/399(MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)
SVG-LRA VI.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)