

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA(IBC)/520(CHE)/2021& IA(IBC)/521(CHE)/2021

IN

CP(IB)/889(CHE)/2019

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

In the matter of SHEL TREX DEVELOPERS PRIVATE LIMITED

**MEMORANDUM OF PARTIES
(IA(IBC)/520(CHE)/2021)**

CATALYST TRUSTEESHIP LIMITED

Reg Office:

GDA House, First Floor, Plot No. 85,
S. No.94 & 95, Bhusari Colony (Right),
Kothurd, Pune,
Maharashtra – 411 038.

... Applicant / Claimant

-Vs-

MR.N. KUMAR

[IBBI/IPA/001/IP-P00724/2017-18/11254]

Resolution Professional of

M/s. Sheltrex Developers Private Limited,
Old No. 8, New No. 3, Third Street,
Race View Colony Guindy,
Chennai – 600 032.

... Respondent/ Resolution Professional

**MEMORANDUM OF PARTIES
(IA(IBC)/521(CHE)/2021)**

1. PRUDENT ARC LIMITED

Reg Office:

611, D Mall,
Netaji Subhash Place,
Pitampura, New Delhi – 110 034.

2. ASSET CARE & RECONSTRUCTION ENTERPRISE LIMITED

Reg Office:

2nd Floor, 13,

Mohan Dev Building, Tolstoy Marg,

New Delhi – 110 001.

... Applicants / Claimants

-Vs-

MR .N. KUMAR

[IBBI/IPA/001/IP-P00724/2017-18/11254]

Resolution Professional of

M/s. Sheltrex Developers Private Limited,

Old No. 8, New No. 3, Third Street,

Race View Colony Guindy,

Chennai – 600 032.

... Respondent / Resolution Professional

Order Pronounced on 28th April, 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant(s): Virender Ganda, Senior Advocate

R. Nagasundaram, Advocate

R. Srinivasan, Advocate

For Respondent: Avinash Krishnan Ravi, Advocate

Jerin Sojan Asher, Advocate

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

The above applications have been filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code')
read with Rule 11 of the National Company Law Tribunal Rules, 2016



against the Resolution Professional of M/s. Sheltrex Developers Private Limited (hereinafter referred to as the 'Corporate Debtor'). The first application (IA(IBC)/520(IBC)/2021) has been filed by CATALYST TRUSTEESHIP LIMITED (hereinafter referred to as the 'CTL') through its Senior Manager. The second application (IA(IBC)/521(IBC)/2021) has been commonly filed by two Asset Reconstruction Companies (ARCs), namely., PRUDENT ARC LIMITED (hereinafter referred to as the 'PAL') and ASSET CARE & RECONSTRUCTION ENTERPRISE LIMITED (hereinafter referred to as the 'ACREL') through their respective Trustee. Being aggrieved by the rejection of the respective claims, i.e. , CTL, PAL & ACREL (commonly referred to as 'applicants') have sought for directions against the Resolution Professional (hereinafter referred to as the 'RP') to admit their respective claims.

2. Since the facts and reliefs under both the applications are substantially identical, the applications are being commonly dealt with by way of this order.

3. The claim of the applicants against the Corporate Debtor arose on account of the liabilities and obligations of the Corporate Debtor from three 'Guarantee Agreements' wherein Corporate Debtor assumed to be a 'Corporate Guarantor'.



4. In relation to the claim of the CTL, it is stated that the Corporate Debtor had furnished unconditional and irrevocable corporate guarantee by way of a 'Guarantee Agreement' dated 13.04.2017 entered into by the Corporate Debtor for one 'Sheltrex Karjat Pvt Ltd', who is the recipient of a debenture subscription. The 'Guarantee Agreement' is at page 195 - 207 of the application.

5. In relation to the claim of the PAL and ACREL, it is stated that the Corporate Debtor had furnished corporate guarantee by way of two 'Guarantee Agreements' dated 28.03.2017 and 21.02.2018 in respect of term loans availed by one 'Sheltrex Karjat Pvt Ltd'. The 'Guarantee Agreements' are at page 107 - 151 and 237- 281 of the application.

6. In the above transactions, the common substance of the relationship of the Corporate Debtor with the applicants / claimants is that the Corporate Debtor had extended 'Corporate Guarantees' in favour of the applicants at the behest of loan facilities and debenture subscriptions benefitted by the 'Sheltrex Karjat Pvt Ltd'. It is relevant to state to that that this 'Sheltrex Karjat Pvt Ltd' (hereinafter referred to as 'SKPL') has presently undergoing CIRP at the Mumbai Bench of this Tribunal.



Background of the 'Corporate Guarantee' extended in favour of CTL:

7. It is stated that one 'ECL Finance Limited', a Non-Banking Financial Company (NBFC), on the request of the principal borrower, i.e., SKPL, had agreed to subscribe Non-Convertible Debentures (NCDs) of aggregate face value of Rs. 90 Crore (Rupees Ninety Crores Only). The proceeds from which was to be utilized by the said principal borrower towards its general corporate purpose including the construction of residential and commercial project namely, 'Sheltrex Smart Phone City' in Karjat, Maharashtra.

8. It is in the said backdrop, for the benefit of the debenture holders and pursuant to the SEBI (Issue and Listing of debt Securities) Regulations, 2008, the principal borrower company i.e., SKPL approached CTL to act as the 'Debenture Trustee' and the same was accepted. The terms regarding the appointment of the CTL as the 'Debenture Trustee' for the benefit of the holders of NCDs were duly recorded in 'Debenture Trustee Agreement' dated 27.03.2017 entered into between the (i) Principal Borrower/ SKPL / Issuer of NCDs and (ii) Debenture Trustee / CTL. The terms and conditions of the said NCDs were also recorded in the 'Debenture Trust Deed'.

9. It is stated that that as per the financial covenants and conditions of the 'Debenture Trust Deed', repayment of all amounts / obligations in respect of the said NCDs of aggregate face value of Rs. 90 Crores was to be



secured *interalia* by execution of unconditional and irrevocable Corporate Guarantee by the Corporate Debtor in favour of CTL, and accordingly, the Corporate Debtor executed the 'Guarantee Agreement' dated 13.04.2017 in favour of the CTL.

10. Pursuant to the above, the principal borrower issued NCDs of aggregate face value of Rs. 90 Crores and these NCDs were subscribed in full. In terms of the corporate guarantee executed by the Corporate Debtor to secure the due repayment, redemption and discharge of the aforementioned NCDs, the Corporate Debtor *interalia* agreed that the debenture trustee, i.e. CTL would act as though the Corporate Debtor were the Principal Borrower.

11. Subsequently, the principal borrower, i.e. SKPL failed to adhere to the terms and conditions of the aforesaid 'Debenture Trust Deed' and committed defaults in payment / repayment of dues in respect of the NCDs.

12. Presently, (i) Assets Care & Reconstruction Enterprise Limited, (ii) EW RE Fund Pte Ltd. and (iii) Edelweiss Alternative Solutions Trust-EREF Onshore Fund are the holders of these NCDs of aggregate face value of Rs. 90 Crores.

Background of the 'Corporate Guarantee' extended in favour of PAL & ACREL:



13. It is stated that one 'ECL Finance Limited', a Non-Banking Financial Company (NBFC), on request of the principal borrower, namely, SKPL, sanctioned a term loan of Rs. 60 Crores for funding the development / construction of its residential and commercial project namely, 'Sheltrex Smart Phone City' in Karjat, Maharashtra. Consequently, 'Loan Agreement' dated 28.03.2017 was executed between the (i) principal borrower / SKPL and (ii) lender / 'ECL Finance Limited'.

14. It is stated that that as per the terms and conditions of the aforesaid 'Loan Agreement', the repayment for the facility was to be secured by way of executing an unconditional and irrevocable 'Corporate Guarantee' by the Corporate Debtor in favour of 'ECL Finance Limited', and accordingly, the Corporate Debtor executed the 'Guarantee Agreement' dated 28.03.2017 in favour of 'ECL Finance Limited' to an extent of the actual borrowing, i.e., Rs. 60 Crores.

15. It is stated that on request of the principal borrower, namely, SKPL, 'ECL Finance Limited' further sanctioned another term loan of Rs. 55 Crores towards general corporate purposes and construction finance relating to the same project of the principal borrower. Consequently, another 'Loan Agreement' dated 21.02.2018 was executed between the (i) principal borrower / SKPL and (ii) lender / 'ECL Finance Limited'. Similarly, another



'Guarantee Agreement' in favour of 'ECL Finance Limited' to an extent of the actual borrowing, i.e., Rs.55 Crores came to be executed.

16. Subsequently, based on the said documents and securities inter alia executed and furnished by the Corporate Debtor, the aforementioned loans to an extent of Rs.1,01,10,00,000/- (Rupees One Hundred One Crore and Ten Lakh only) were disbursed and availed by the Principal Borrower. In course of the discharge of the dues, the principal borrower, i.e. SKPL, failed to adhere to the terms and conditions of the aforesaid loan agreements and committed defaults in payment / repayment of dues in respect of the entire financial assistance.

CIRP of the Corporate Debtor

17. It is stated that this Tribunal vide order dated 10.12.2019, admitted the Corporate Debtor into Corporate Insolvency Resolution Process on an application (CP(IB)/889(CHE)/2019) filed by one Mr. S. Balasubramanian & anr., under Section 7 of the Code. Consequently, moratorium was declared and the respondent (Mr. N. Kumar) was appointed as the IRP of the Corporate Debtor. It is stated that respondent was subsequently appointed as the RP of the Corporate Debtor.



18. It is stated that pursuant to the initiation of CIRP against the Corporate Debtor in terms of the order dated 10.12.2019 passed by this Hon'ble Tribunal, and in response to the 'Public Announcement' dated 14.12.2019 effected by the respondent, the applicants had filed their respective claims in 'Form-C' as 'Financial Creditors' along with relevant details and copies of documents vide E-mail(s) dated 07.03.2020, within the prescribed period. Details of the claims filed by the claimants under the two applications for consideration are tabulated as under:

S. NO.	PARTICULARS	IA(IBC)/520(CHE)/2021	IA(IBC)/520(CHE)/2021
1.	Name of the claimant	Catalyst Trusteeship Limited	Prudent ARC Limited
2.	Claim Form submitted and nature of claims	'Form - C' as Financial Creditor	'Form - C' as Financial Creditor
3.	Total Claim Value	Rs. 1,15,33,42,322/- as on 10.12.2019	Rs. 1,09,07,51,018/- as on 10.12.2019
4.	Document filed for substantiating the claim	Guarantee Agreement dated 13.04.2017 Along with Special Resolution dated 07.02.2017	Guarantee Agreement(s) dated 28.03.2017 and 21.02.2018 along with Board Resolutions dated 07.02.2017, 09.02.2018

19. It is stated that after submission of the above claim by PAL to the RP, the rights and entitlements of PAL were duly assigned to ACREL by way of 'Assignment Agreement' dated 30.03.2020.

20. It is stated that various representations and clarifications were made to the RP by the applicants with respect to the above tabulated claims. Finally, the RP vide emails date 25.06.2020 and 11.08.2020 rejected the claims of CTL and ACREL. The reasons for rejection of the claims by the RP are summarised as under:

Reasons for the rejection of claim by CTL	Reasons for the rejection of claim by ACREL
(A)The details with respect to execution of corporate guarantee are not reflected in the audited financial statements for the year 2017-18 of the Corporate Debtor. Further, the amount so claimed does not match with the amount as mentioned in the said audited financial statements. Moreover, the asset base of the Corporate Debtor is very small and the Applicant should pursue its claim against the principal debtor i.e. Sheltrex Karat Pvt. Ltd., which is active.	(A)The Statutory Auditors of the Corporate Debtors vide E-mail dated 24.07.2020 have denied any knowledge of Corporate Guarantees issued by the Corporate Debtor to secure the due repayment of Term Loans of Rs. 60 crore (Term Loan-1) and Rs. 55 crore (Term Loan -2) granted to the Principal Borrower/ SheltrexKarjatPvt. Ltd. Further, the Corporate Debtor having a share capital of Rs. 1 lakh only, cannot issue performance guarantee of this magnitude as per relevant provisions of the Companies Act.
(B) In terms of Section 186(2)(b) of the Companies Act 2013, "No company shall directly or indirectly - give any guarantee or provide any security in connection with a loan to any other body corporate or persons exceeding sixty percent of its paid - up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more." Therefore, the Corporate Debtor could not have executed the corporate guarantee in favour of the Applicant for securing the due repayment of the aggregate amount of Rs. 90 crores.	(B) In terms of the judgment passed by the Hon'ble Appellate Authority in the case of Flatbuyers Association Winter Hills vs Umang Realtech Put. Ltd. [Company Appeal (AT) (Ins.) No. 926 of 2019], the Claim of the Applicant arising in relation to funding of a project situated in Mumbai, cannot be accepted in the CIRP of the Corporate Debtor which is concerned with the projects in Chennai and Coimbatore, as admittedly the debts do not relate to the said projects of the Corporate Debtor.

21. Aggrieved by the decision of the respondent, the applicants have preferred the present applications on 25.03.2021 and 05.04.2021 respectively before this Tribunal.

Reply of the respondent to the present applications:

22. In response to the applications, individual but verbatim replies were filed by the RP vide SR No. 3933, 3934 dated 07.09.2022 respectively, wherein the RP has stated that the claims were rejected since the documents relied upon by the claimants were the unaudited financial statements and unsigned directors' reports of the Corporate Debtor. Further, the RP contended that audited financial statements for the year 2017-18 did not reflect the said claim.

23. The second contention of the RP was that there is a contravention to Section 186(2)(b) of the Companies Act, 2013. According to the RP, based on the dates and documentary filings before the statutory authorities, there was sufficient suspicion for the alleged non-compliance.

24. Another contention by the RP for the rejection of the claim bears reference to the judgement of the Hon'ble NCLAT in the case *Flat Buyers Association Winter Hills Vs. Umang Realtech Pvt. Ltd* [CA(AT)(Ins) No. 926 of 2019]. In this regard, the RP contended that the claim filed by the

applicants cannot be considered since the guarantee furnished by the Corporate Debtor was not within the normal course of the business of the Corporate Debtor and that the claim is not associated with any specific real-estate projects of the Corporate Debtor. Placing reliance on the above judgement, the RP submitted that 'Reverse Insolvency' is applicable since Corporate Debtor is a real estate company, and therefore, the claim cannot be admitted.

25. It was finally contended by the RP that the claimants who have been furnished guarantee by the Corporate Debtor cannot be considered as a 'Financial Creditor' based on a portion of the judgement of the Hon'ble Supreme Court in the case *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited* [Civil Appeal No. 8512 of 2019].

26. With the leave of this Tribunal, the applicants filed their 'Rejoinder' vide SR No. 4759, 4760 dated 22.10.2022 giving their *para-wise* response to the stance taken by the RP.

27. We have heard the submissions of the applicants and the respondent at length and perused the pleadings, documents and citations placed on record.



Issues:

28. Having gone through the rival contentions, the following issues are required to be addressed for the adjudication the present applications:

- I. Whether the respondent, who has alleged contravention of Section 186(2)(b) of the Companies Act, 2013, for the purpose of execution of the 'Guarantee Agreement(s)' by the Corporate Debtor in favour of the applicants, has proved the same?
- II. Whether the claims of the applicants are valid in the eyes of law?
- III. Whether the stance of 'Reverse Insolvency' taken by the respondent for the rejection of the claims is of any substance?
- IV. Whether the contention as to the 'Asset Base' of the Corporate Debtor requires consideration in light of the ongoing CIRP proceedings before this Tribunal?

Analysis and Conclusion

29. In addressing the first issue, it is *prima facie* seen that the existence of the 'Guarantee Agreements' which are favourably held by the applicants are not disputed, however, the legality of the same has been questioned by the RP, since according to the RP, special resolutions contemplated under Section 186(3) of the Companies Act, 2013 were not passed, and therefore, the 'Guarantee Agreements' entered into by the Corporate Debtor are *void ab initio*.



30. At this juncture, it may be relevant to refer to Section 186 of the Companies Act, 2013:

186. Loan and investment by company.—

(1) ...

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

[Explanation.- For the purposes of this sub-section, the word “person” does not include any individual who is in the employment of the company]

(3) *Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:*

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).]

By the language of Section 186(2) of the Act, it is abundantly clear that the provision is prohibitive, where there is a restriction on a company to furnish a guarantee / security in connection with a loan given to any other



corporate person. However, in terms of sub-section 3, if such a decision of a company is backed by a special resolution passed in a general meeting, then, the furnishing of a guarantee / security by the company is permissible.

31. It appears that in the present case, the RP, in the absence of sufficient records in his possession, has presumed non-compliance of the above extracted provision. However, in contrast, apart from the 'Guarantee Agreements', the applicant has furnished the following along with the application to substantiate their claims:

- I. Board Resolution approving the execution of the 'Guarantee Agreement' (at page nos. 22 & 23 of the application)
- II. Special Resolution approving the execution of the 'Guarantee Agreement' (at page nos. 24 of the application)
- III. Chartered Accountants certificate to the extent that the shareholder of the Corporate Debtor by way of a special resolution, have approved the execution of the 'Guarantee Agreement' (at page no. 25 & 26 of the application.)
- IV. 'Directors Report' of the Corporate Debtor for the year ended 31.03.2018 wherein the guarantee furnished by the Corporate Debtor is clearly reflected. (at page no. 214 - 230 of the application.)

32. While dealing with the issue of presumption of validity of a document, the Hon'ble Supreme Court in the case *Prem Singh and Others v. Birbal and Ors* [(2006) 5 SCC 353] has held as below:

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the



presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.

Applying the above ratio and the principle, there is a *prima facie* presumption that the special resolution of the Corporate Debtor is validly executed and to negate the said presumption, the onus of proof, would be on the RP.

33. In the absence of records in his possession, the RP has presumed non-compliance on the part of the Corporate Debtor. In this regard, this Tribunal feels that the mere suspicion without substance on the part of the RP is not sufficient to defeat the presumption of compliance by the Corporate Debtor, specifically when the applicants have furnished sufficient corroboration for their claims.

34. Since the allegations of non-compliance of Section 186(2)(b) the RP are not proved, the first issue is answered in the negative and against the respondent.

35. It may also be relevant to note that applicants, who are not related to the Corporate Debtor, cannot possibly be concerned with the internal administration of the Corporate Debtor, especially, when the above resolutions were furnished to them apart from executing the 'Guarantee Agreements'. In this regard, the doctrine of 'Indoor Management' comes to



the rescue of the applicants. This doctrine has also been applied by the division bench Hon'ble High Court of Delhi in the case *M/s. Renaissance Buildcon Co. Pvt. Ltd. & Ors v. M/s. S.E. Investments Ltd. & Ors* [2018 SCC OnLine Del 12731] where the decision of the Hon'ble Supreme Court in the case of *MRF Ltd. v. Manohar Parrikar* [(2010) 11 SCC 374] was referred. The relevant portion of the judgement is extracted below:

"67. The doctrine of indoor management is also known as the Turquand rule after the case of Royal British Bank v. Turquand [1856] 6 E. & B. 327. In this case, the directors of a company had issued a bond to Turquand. They had the power under the articles to issue such bond provided they were authorized by a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed, therefore doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry."

36. By applying the above doctrine, it can be seen that the law enables presumption for the applicants that the Corporate Debtor has duly complied



with the internal requirements. In that case, it is only reasonable for the applicants to presume due compliance of statutory requirements as well. The duty cast under Section 186(3) of the Companies Act, 2013 is only on the Corporate Debtor. In no circumstance, the guarantee holder must be affected for no fault on its part.

37. While dealing with the second issue with respect to the validity of the claim, it is relevant to refer to the definition of 'Claim' and under Section 3(6) of the Code which are extracted as under:

3(6) "claim" means—

*

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

38. In the present case, the instrument which gives a right to the claim of the applicants are the 'Guarantee Agreements', specifically, clause 3 of the said agreements wherein the Corporate Debtor has undertaken to indemnify the applicants against their claims.

39. It may also be relevant to refer to the judgement of the Hon'ble NCLAT in the case *Export Import Bank of India Vs. Resolution Professional, JEKPL Private Limited* [Company Appeal (AT) (Insolvency) 304 of 2017] wherein it was held asunder:



51. Whether claim, means the claim matured or not is one of the question raised.

52. While declaring moratorium under Section 13 in terms of 13(1)(b), the Adjudicating Authority is required to cause a public announcement for initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 15. As per Section 15 when public announcement is made, in terms of sub-section (1)(c) of Section 15, the claim as on the last date of submission is required to be shown.

53. Duties of Interim Resolution Professional have been prescribed under Section 18 and as per clause (b) therein the Interim Resolution Professional is required to receive and collate all the claims submitted by creditors to him pursuant to the public announcement made under Section 13 r/w Section 15. The claim of the parties should be as on the date of initiation of the Corporate Insolvency Resolution Process (date of order of admission and moratorium). **Any person who has right to claim payment, as defined under Section 3(6), is supposed to file the claim whether matured or unmatured. The question as to whether there is a default or not is not to be seen.**

54. Therefore, stand taken by the respondents that the claim has not been matured cannot be ground to reject the claim.

55. Section 25 provides the duties of Resolution Professional. As per Section 25(2)(e), the Resolution Professional is required to maintain an updated list of all the claims. Aforesaid fact also suggests that the maturity of a claim or default of debt are not the guiding factors to be noticed for collating or updating the claims. The matter can be looked from another angle. **It is only in case of 'debt' and 'default', a 'Financial Creditor' or 'Operational Creditor', may file applications under Section 7 or 9. The 'Corporate Applicant' has also right to file application under Section 10 for initiation of Corporate Insolvency Resolution Process against itself, if it has defaulted to pay the 'debt'. It does not mean that the persons whose debt has not been matured cannot file claim. The 'Financial Creditors' or 'Operational Creditors' or 'secured or unsecured creditors' all are entitled to file claim.**

56. Therefore, we hold that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). For the purpose of collating information relating to assets, finances and operations of Corporate Debtor or financial position of the Corporate Debtor, including the liabilities as on the date of initiation of the Resolution Process as per Section 18(1), it is the duty of the Resolution Professional to collate all the claims and to verify the same from the records of assets and liabilities maintained by the Corporate Debtor.



A perusal of the judgement makes it clear that the maturity / invocation of guarantee has no relevance for the purpose of verification and collation of claims against the Corporate Debtor.

40. For considering the second limb of the issue as to whether the nature of the claim of the applicants who are the guarantee holders constitute 'Financial Creditor', it is pertinent to note that the nature of the claims of the applicants as 'Financial Creditors' are expressly covered under Section 5(8) of the Code which is extracted as under:

5(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

41. It is also relevant to refer to the judgement of the Hon'ble NCLAT in the case of *Ascot Realty Private Limited Vs. Ajay Kumar Agarwal and Ors* [2020 SCC Online NCLAT 732] where it was held as under:

30. The third party was advanced debt which was admittedly given by the Financial Creditor to the said third party. Even if Corporate Debtor issued guarantee in recovery proceeding for the financial debt of third party and in default the said guarantee/s have been invoked by the Financial Creditor, the Corporate Debtor is liable to pay the amount being amount of liability in respect of guarantee issued which falls in the definition of Section 5(8)(i) of IBC.

Perusal of the above judgement would indicate that a guarantee given for the debt of a third party would constitute as a liability of the Corporate Debtor.

42. It is seen that at the time of rejection of the claims, the RP has redirected the applicants to file their claims before the Company which had benefitted from the term loans as well as the debenture subscription. In this regard, it is relevant to refer the judgement of the Hon'ble NCLAT in the case *State Bank of India Vs. Athena Energy* [2020 SCC Online NCLAT 774] wherein it was observed as under:



16. We find substance in the arguments being made by the learned Counsel for Appellant which are in tune with the Report of ILC. The ILC in para – 7.5 rightly referred to subsequent Judgement of “Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Ltd. and Ors.” dated 20th September, 2019 which permitted simultaneously initiation of CIRPs against Principal Borrower and its Corporate Guarantors. In that matter Judgment in the matter of Pirmal was relied on but the larger Bench mooted the idea of group Corporate Insolvency Resolution Process in para – 34 of the Judgement. The ILC thus rightly observed that provisions are there in the form of Section 60(2) and (3) and no amendment or legal changes were required at the moment. We are also of the view that **simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this.** We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise. It would be a matter of adjustment when the Creditor receives debt due from the Borrower/Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. This can be conveniently done, more so when IRP/RP in both the CIRP is same. Insolvency and Bankruptcy Board of India may have to lay down regulations to guide IRP/RPs in this regard.

As per the above decision, the claimants have the right to simultaneously pursue their claims. Thus, in the present case, the pursuit of claim against the principal borrower is of no relevance since there exists a contract of guarantee entered by the Corporate Debtor.

43. In light of the above discussions, this Tribunal has no hesitation to answer the second issue in favour of the applicants.

44. While dealing with the third issue, i.e., the argument on ‘Reverse Insolvency’, it is relevant to note that this Tribunal, while dealing with the very same Corporate Debtor, had rejected the application



(IA(IBC)/1245(CHE)/2020) filed under Section 60(5) of the Code by the applicant RP, seeking directions for conducting 'Reverse Insolvency' vide order dated 25.04.2022. Relevant extracts are reproduced as under:

...As far as the case laws relied on by the Applicant is concerned, this Adjudicating Authority is of the view that, the mechanism adopted by the Hon'ble NCLAT is too peculiar to the facts and circumstances of the Winter Hills judgement and cannot be used as a precedent in the present scenario. Moreover, in the present case, as no promoters have put forward any funds to avoid CIRP, the process of project -wise CIRP cannot be followed here as how it was followed in the Winter Hills judgement and the decision in Rajesh Goyal.

10. Therefore, since the reliefs sought by the Applicant are well outside the purview of the IBC, 2016 and the relevant regulations, and by reason that the view taken by Hon'ble NCLAT in the decisions as relied on by the Applicant does not apply in the present case, this Application is not maintainable and is liable to be dismissed.

Accordingly, this IA viz., IA(IBC)/1245(CHE)/2020 stands Dismissed; however without cost.

The above order of this Tribunal has achieved finality and hence cannot be revisited at this stage. Thus, we are constrained to answer the third issue against the respondent.

45. The last issue for consideration is the relevancy of 'Asset Base' of the Corporate Debtor. Before dealing with the same, it may be relevant to understand the fundamentals and relevance of the 'Asset Base' in light of Corporate Guarantee furnished by a Company.

46. When a Company provides a guarantee, it is essentially agreeing to assume financial responsibility for the debt or obligation of another party.



This means that if the other party defaults on their obligation, the company will be responsible for fulfilling it. The strength of a Company's 'Asset Base' is a key factor that lenders consider while assessing the Company's ability to fulfil its obligations. A strong 'Asset Base' indicates that the Company has valuable assets that can be used to generate income, which in turn can be used to meet its financial obligations, including those arising from Corporate Guarantee. On the other hand, a weak 'Asset Base' indicates that the Company may not have sufficient resources to meet its financial obligations. This can make lenders hesitant to rely on the Company's guarantees, as there is a higher risk that the company may default on its obligations. A strong 'Asset Base' can provide confidence to lenders and other stakeholders, while a weak asset base may raise concerns and increase the risk associated with relying on the Corporate Guarantee.

47. Nonetheless, while it may be a relevant business / commercial factor for consideration by the lenders, the law does not prohibit the same. It is also relevant to state that the Code, at no place necessitate the consideration of 'Asset Base' of a Corporate Debtor in any proceedings. Therefore, the fourth issue is answered against the respondent.



48. After dealing with all the issues framed in the present matter, this Tribunal deems it fit to pass the following orders:

- I. The Respondent is directed to admit the claims of the Applicants; namely CATALYST TRUSTEESHIP LIMITED (CTL) and ASSET CARE & RECONSTRUCTION ENTERPRISE LIMITED (ACREL) within a period of ten days from the date of this order and the same be informed to the Applicants..
- II. Consequent to the admission of the above claims, the Respondent is directed to modify the 'List of Claims' prescribed under the regulations, let the COC be reconstituted, if required.

49. Accordingly, IA(IBC)/520(CHE)/2021 and IA(IBC)/521(CHE)/2021 stands **allowed** and are **disposed of**.



SÁMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

V.Shreekumar