

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 211/MB/2023**

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*

**Assets Care & Reconstruction Enterprise Limited**, Having registered office at: - 02<sup>nd</sup> Floor, 13, Mohan Dev Building, Tolstoy Marg, New Delhi-110 001.

**..... Applicant/ Financial  
Creditor**

**Versus**

**Rajesh Cityspaces Private Limited**  
Having registered office at: - 139, Seksaria Chambers, 02<sup>nd</sup> Floor, Nagindas Master Road, Fort, Mumbai-400 023.

**..... Corporate Debtor**

**Order Delivered on :- 15.01.2024.**

*Coram:*

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances (Hearing in Hybrid Mode):*

For the Financial Creditor: Counsel Mr. Nimay Dave (appeared virtually)  
a/w Sugyata Choudhary.

For the Corporate Debtor: Counsel Mr. Viraj Parikh a/w Mr. Mustafa N.

**ORDER**

*Per: - Shri. Kuldip Kumar Kareer, Member (Judicial).*

1. This Company Petition is an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed by **Assets Care & Reconstruction Enterprise Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. **Rajesh Cityspaces Private Limited**. (hereinafter referred to as "Corporate Debtor") for having committed a default in repayment of outstanding debt of **INR 37,46,19,798/-** (Rupees Thirty-Seven Crores, Forty-Six Lakhs, Nineteen Thousand, Seven Hundred and Ninety-Eight only) as on 30<sup>th</sup> June, 2022.

**Facts of the Case as pleaded by the Financial Creditor in its Application u/s 7 are briefly stated hereunder:**

2. On 01<sup>st</sup> March 2018, the Corporate Debtor along with its other group entities executed a Debt Term Sheet with Altico Capital India Limited

("Altico") for the purpose of financing various projects of the Corporate Debtor's group including the project Kailash Niwas situated at Ghatkopar East, Mumbai. The Loan Facility of Rs. 1,135 crores was to be availed by the Corporate Debtor through issue of Non-Convertible Debentures to the Financial Creditor. It was mutually agreed between the Corporate Debtor and Altico that Vistra ITCL (India) Limited ("Vistra ITCL") would be appointed as their Trustee.

3. Debenture Trust Deed dated 19<sup>th</sup> March, 2018 was executed by and between Corporate Debtor as "Issuer" and one of the security providers along with i) Rajesh Estates and Nirman Private Limited (RENPL) and (ii) Rajguru Developers Private Limited (RDPL) as Security Providers and Vistra ITCL as Debenture Trustee whereby Debentures of Rs. 1 Crore each aggregating to Rs. 36 crores were to be issued through private placement offer letters (Debenture Trust Deed). The debt is secured by mortgage of various properties in the real estate projects undertaken by the Corporate Debtor, the details of which have been more particularly described by the Applicant in Schedules A to E to the instant application. Corporate Guarantee was executed by Rajesh Construction Company Private Limited and Personal Guarantees by Rajesh Patel, Pratik Patel, Priyal Patel and Harish Patel in favour of Vistra ITCL.
4. Letter dated 17<sup>th</sup> March, 2018 was addressed by the Corporate Debtor to Vistra ITCL pursuant to the execution of the Debenture Trust Deed enclosing 5 (Five) undated blank cheques in the name of Altico to be utilized in the event of default only and not otherwise. First Supplemental Debenture Trust Deed dated 19<sup>th</sup> March 2018 was

executed by and between the Corporate Debtor and Vistra ITCL for recording additional representations, covenants and undertakings in relation to the debentures described therein. Letter dated 19<sup>th</sup> March, 2018 was addressed by the Corporate Debtor to Vistra ITCL undertaking to repay the amount of Rs.36 crores along with the interest at the rate of 15.35% per annum. On 19<sup>th</sup> July 2018, a Second Supplemental Trust Deed was executed by and between Corporate Debtor as "Issuer", (i) Rajesh Estates and Nirman Private Limited (RLNPL), (ii) Rajesh Landmark Projects Pvt. Ltd. (RCPL), (iii) Rajesh Buildspaces Private Limited (RBPL), and iv) Rajguru Developers Private Limited (RDPL) as Security Providers, and Vistra ITCL as Debenture Trustee to create additional collateral to secure the secured obligations contained in the Debenture Trust Deed.

5. Under the Second Supplemental Deed, the parties agreed to create additional collateral to secure the secured obligation by way of mortgage over i) the mortgaged properties Lower Parel (including the development rights of RBPL under Joint Development Agreement with Surya Landmark Developers Private Limited) and ii) Mortgaged Properties -Versova (including the development rights of Rajesh Landmark Projects Private Limited under Joint Development Agreement for Versova Property) and also to amend and restate certain terms of Original Debenture Trust Deed and First Supplemental Deed dated 19<sup>th</sup> March, 2018.
6. Altico on 04<sup>th</sup> January, 2019 addressed a letter to the Corporate Debtor to confirm the debt of Rs. 19,45,22,893/- (Rupees Nineteen Crores, Fourty-Five Lakhs, Twenty-Two Thousand, Eight Hundred and

Ninety-Three only) and forwarded the duly acknowledged copy to Altico's Auditors, Price Waterhouse Chartered Accountants LLP.

7. On 07<sup>th</sup> November 2019, Altico issued a Notice of Payment Default to the Corporate Debtor calling upon them to make payment of the overdue amount of Rs.1,18,97,478/- (Rupees One Crore, Eighteen Lakhs, Ninety-Seven Thousand, Four Hundred and Seventy-Eight Only) along with the default interest compounded upto the date of payment/realisation. On 11<sup>th</sup> November 2019, Altico Capital issued another Notice of Payment Default to the persons acting as promoter/director/guarantor/pledgor/mortgagor/security provider in relation to the Debenture Trust Deed, calling upon such persons to forthwith arrange to make payment of overdue amount of Rs.1,18,97,478/- as on 22<sup>nd</sup> October, 2019.
8. On 16<sup>th</sup> March 2020, a notice was issued on behalf of Corporate Debtor and its group companies to Vistra ITCL, Altico and its shareholders seeking to terminate all the transaction documents under Debenture Trust Deed and other credit facilities in other Rajesh group entities and claiming a purported amount of Rs. 4260 crores approximately towards damages. Altico denied that the Debenture Trust Deed and all other financial documents thereunder stand terminated. On 20<sup>th</sup> March 2020, Altico, through its Advocates P & A Law Offices, issued an email as a response to the aforesaid notice stating that there is no such provision under the Transaction Documents for the Borrowers/Security Providers/Obligors to unilaterally terminate the Transaction Documents and further requested them to withdraw the notice.

9. On 4<sup>th</sup> March 2021, Altico and the Financial Creditor entered into an Assignment Agreement wherein Altico assigned the credit facilities extended by Altico to Corporate Debtor and its associate companies under the Debenture Trust Deed in favour of the Financial Creditor/Petitioner. On 31<sup>st</sup> May 2021, the Petitioner addressed a Facility Acceleration Notice to the Corporate Debtor and the Corporate Guarantor and the Personal Guarantors and Mortgagors of the Corporate Debtor, and Trustee calling upon them to pay the entire outstanding amount of Rs.31,22,55,252/- under the Debenture Trust Deed. The Financial Creditor also issued a Guarantee Invocation notice dated 02<sup>nd</sup> June, 2021 and demand certificate under the Debenture Trust Deed to the Corporate and Personal Guarantors of the Corporate Debtor calling upon the Guarantors to pay an amount of Rs.31,22,55,252/-.
10. The Financial Creditor issued a demand letter dated 9th August 2021 to the Security Providers, the Issuer, the Corporate Guarantors and the Personal Guarantors in respect of the undertaking to pay provided by the Security Providers in terms or Debenture Trust Deed, Supplemental Agreement and Second Supplemental Agreement demanding the payment of Rs.31,22,55,252/-. The total amount due and payable by the Corporate Debtor under the aforesaid documents as on 30th June 2022 is Rs.37,46,19,798/- being Principal outstanding of Rs.20,57,80,000/- along with unpaid interest of Rs.14,85, 74,487 /- and default interest of Rs.2,02,65,331/-. Since the Corporate Debtor did not pay the amounts, this necessitated the filing of the present petition.

**Reply on Behalf of the Corporate Debtor:**

11. The Respondent states and submits that the application in the present form is not maintainable as the Applicant herein has a claim against the Respondents as an assignee of the one ALTICO Capital India Limited ('Altico'). The Respondents herein have a claim against Altico as Altico failed in its obligations. The assignment of Altico in favour of the Applicant is only in respect of its asset and does not include the obligations of Altico towards the Respondents. The obligations of Altico towards the Respondents in respect of its default continues. Therefore, the Respondents state and submit that Altico is required to be impleaded being a necessary party to the present application.
  
12. Altico represented to the Respondent that that they were previously known as Clear Water Capital. After induction of new shareholders, it was renamed as Altico Capital. Vistra ITCL (India) Ltd is a company primarily engaged in providing trusteeship services in respect of debts raised by the companies by issue of debt instruments. After various rounds of negotiations, by and under a writing dated March 01, 2018 ('the Principal Agreement') executed by and between Altico and Rajesh Group, Altico agreed to partner with Rajesh Group by rendering financial assistance to the tune of Rs. 1,135 crores which was to spread across 5 projects managed by the Rajesh Group including the Respondent herein. Thereafter, for the purposes of transaction, there were several documents which were executed between the parties such as Debenture Trust Deeds, Mortgage Deeds, Pledge Agreements, Demand Promissory Notes, etc. more particularly set out in Exhibit 'C' and referred to as "Transaction Documents".

13. In consonance with the Transaction Documents, Altico subscribed to all the series of debentures issued by Rajesh Group by paying an aggregate sum of INR 559.98 crores. As on date, Rajesh group issued NCDs worth INR 1100 crores in various tranches. Out of the total subscribed amount of over Rs. 1,100 crores, INR 972 crores were subscribed by Altico, Rs. 110 crores were subscribed by Clearwater Partners and Rs. 18 crores were subscribed by IREP Credit Capital. Clearwater Partners and IREP Credit Capital paid all the amounts due under the NCDs allotted to them. However, Altico despite being allotted entire Series 1, Series 2 and Series 3 Debentures, only partly paid monies under the Series 2 and Series 3 Debentures. Rajesh Group of Companies includes the following companies: a) Rajesh Buildspaces Private Limited, b) Rajesh Cityspaces Private Limited (i.e. the Respondent herein) and c) Rajesh Estates and Nirman Pvt Ltd.
14. As per the Debenture Trust Deeds, Altico was obligated to pay the subscription amount to Rajesh Group within 5 days from the entity of Rajesh Group making a Draw Down request. Altico partly rendered its financial assistance which was to be utilised towards construction finance. Despite Rajesh Group's draw down requests made through emails dated 14.06.2019, 30.09.2019 and 02.12.2019, Altico failed and neglected to honour their financial obligation under the transaction documents.
15. The default by Altico had far reaching consequences on the Rajesh Group/Respondents. Around August 2018, Rajesh Group approached Aventus Capital for refinancing part of transaction. One of the conditions precedent to the transaction was to obtain a no objection

certificate from Altico. However, in spite of repeated requests, Altico failed to provide the NOC. Due to delay in providing NOC, Avendus did not consummate the transaction with Rajesh Group, thereby causing further damage, delay and losses to Rajesh Group. Altico mischievously only partly paid the Subscription Amounts, however, caused Rajesh Group to issue entire 2 series of NCDs. This resulted in precluding the Rajesh Group from raising any further debt to meet its construction finance requirement.

16. Altico is a registered Non- Banking Financial Company and has its roots in India for over a decade. Altico is cognizant of and regulated by various circulars issued by the Reserve Bank of India ("the RBI"). Over the years, Altico has invested in various other entities in the real estate sector. The RBI circular, directive 24 thereof, clearly sets out the prohibition of having exposure in a particular entity more than what is prescribed. During the year 2017, books of accounts of Altico recorded aggregate lending of about INR 2,866 Crores, which drastically increased to INR 5,645 Crores in the year March 2018. During similar period, Altico was also soliciting investments from various financial investors and in order to procure these investments, it was necessary for Altico to project lucrative valuation by inflating their balance sheets. In its pursuit to inflate its balance sheet, Altico induced Rajesh Group to enter into the Transaction Documents to the tune of INR 1,135 Crores. However, Altico had no intention from inception to honor their financial obligation which is apparent from their conduct post execution of the Transaction Documents.

17. On scrutinizing the Transaction, it came to the notice of Rajesh Group that INR 972 Crores were subscribed but were only partially paid by Altico. NCDs which were subscribed but partially paid by Altico in the year 2018, along with the prior exposure of Altico, already exceeded the RBI borrowing limit. Further, as on March 27, 2018, Altico's net worth was INR 2,292 Crores and, therefore, the maximum exposure they could have had in Rajesh Group was to the tune of INR 575 Crores (including term loan worth INR 100 Crores). Therefore, Altico could not have entered into the Transaction which contemplated an exposure aggregating to about INR 972 Crores. In view of the aforesaid, it is abundantly clear that Altico was well aware of the restrictions under the RBI Circular, however, as stated above, only with an aim and intent of soliciting investments from potential investors and to earn revenue by charging fees on such higher sanction limit in the year end, they executed the transaction with Rajesh Group.
18. All these facts had been brought to the notice of Altico and its shareholders vide Letter dated 16/03/2020 by the Advocates of Rajesh Group. The Rajesh Group through their Advocate's Letter referred-to-above had called upon Altico informing it that the Transaction Documents are vitiated by fraud and misrepresentations and as such voidable at their instance.
19. The conduct of Altico is quite preposterous, as set out herein above and summarized hereinafter, and is an epitome of Altico's planned stratagem to (i) cheat Rajesh Group by giving false promises which they neither intended nor had any intention to fulfil and (ii) under the pretext of promises induce Rajesh Group in parting with their valuable

properties as security which they intended to usurp. Altico's sole aim and intention appears to take over complete control and charge of Rajesh Group valuable properties which they achieved by giving false promises under the Principal Agreement that they would invest aggregate INR 1,135 crores and got Transaction Documents executed recording their sole charge over the assets.

20. The collective loan assets sought to be assigned by Altico to the Petitioner herein is INR 1,135 crores. Admittedly, Altico has not disbursed Rs. 1135 crores to Rajesh Group. Therefore, to that extent even the deed of assignment is vitiated by fraud and misrepresentation and no rights whatsoever accrue in favour of the Petitioners herein under such assignment. Though there is existence of debt, there cannot be default attributable to the Respondent herein. Hence, the Respondent prays for dismissal of this petition.

### **ANALYSIS AND FINDINGS**

21. We have heard the Counsel for the parties and have gone through the records.
22. During the course of arguments, the Counsel for the Petitioner has argued that the existence of financial debt and its default on the part of the Corporate Debtor stands proved on record and further that the Petition has been filed within the period of limitation and, therefore, it deserves to be admitted and CIRP be initiated against the Corporate Debtor.

23. On the other hand, the Counsel for the Corporate Debtor has argued that the Petitioner has failed to make out a case for admission of the Petition u/s 7 of the IB Code, 2016. In this regard, it has been pointed out by the Counsel for the Corporate Debtor that the original lender namely Altico approached the Rajesh Group of Companies including the Corporate Debtor with a representation that it was willing and capable to advance a loan of Rs. 1,135 crores to the Rajesh Group with a view to expand its exposure to the real estate sector in India. At that time, Altico was backed by private equity firms namely Clear Water Capital Partners, Abu Dhabi Investment Council and Varde Partners. A revised term sheet was entered into between the Rajesh Group and Altico in order to provide facility of Rs. 1,135 crores to the group including the Corporate Debtor through NCDs.

24. The Counsel for the Corporate Debtor has further argued that contrary to the representations made by Altico, it could not fulfill its promise to lend the aforesaid amount of Rs. 1,135 crores on the pretext that as per RBI's Master Circular dated 01.07.2015, an NBFC cannot lend to any single group of borrowers exceeding 25% of its net own funds. As the net owned funds by Altico were only to the tune of Rs. 2,292 crores, it could not have lent more than Rs. 575 crores to the Rajesh Group. Accordingly, the Altico suggested in the month of

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August 2018 that Rajesh Group should find other lenders for its financing requirements. Consequently, in August 2018, Rajesh Group entered into a term sheet with Avendus Finance Private Limited for a loan of Rs. 50 crores and in March 2019, the group further approached Shapoorji Pallonji Finance Limited for Rs. 25 crores. However, the said transactions could not be finalized for want of NoC from Altico resulting in acute business loss to the group.

25. The Counsel for the Corporate Debtor has further argued that the transactions executed with Altico were marred and vitiated by fraud and misrepresentation as the same were based on misrepresentations made by Altico that it would advance a sum of Rs. 1,135 crores to the Corporate Debtor. Therefore, according to the Counsel for the Corporate Debtor, the Petitioner cannot be allowed to take advantage of the wrongs committed by Altico due to which the Corporate Debtor has suffered huge losses and all its projects have been derailed for want of funds. The Counsel for the Corporate Debtor has further argued that all the transactions executed by Altico with the Corporate Debtor as well as the other group companies of Rajesh Group are vitiated by fraud as per Section 17 of the Contract Act, 1872 and the same are liable to be set aside and on the basis of the said transactions, no CIRP can be initiated. According to the Counsel for the Corporate Debtor, the

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very consent of the Corporate Debtor in executing the documents of loan etc. was obtained by way of a fraud by Altico and therefore, the Corporate Debtor has right to avoid the said fraudulent transactions and further that the Corporate Debtor is entitled to sue Altico for damages and compensation. In support of his argument, the Counsel for the Corporate Debtor has relied upon *Chhanga Lal vs. Municipal Corporation of Delhi 2008 (102 DRJ 555)* whereby it was held by the Hon'ble High Court of Delhi that voidable contracts are unenforceable in law at the instance or option of the innocent party or can be rescinded by the said party. They remain a contract till the right to rescind is exercised. It is further held in very case that in case of fraudulent misrepresentation, the innocent party can rescind the contract or claim damages. Municipal Corporation of Delhi is, therefore, justified in rescinding the contract and also has a right to claim damages.

26. The Counsel for the Corporate Debtor has further argued that once an innocent party exercises the option and rescinds the contract, the contract becomes void and thereafter, right to restitution in terms of Section 64 of the Contract Act gets attracted. According to the Counsel for the Corporate Debtor, since the contract between Altico and the Corporate Debtor is liable to be rescinded on the ground of fraud and misrepresentation, as per the provisions of Section 64 of the

Contract Act, the status quo ante is liable to be restored and, therefore, on the basis of the execution of document with Altico, neither any liability can be fastened upon the Corporate Debtor nor on the basis of such documents, CIRP can be initiated.

27. In the light of the aforesaid arguments, the Counsel for the Corporate Debtor has urged that the present Company Petition be dismissed.

28. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the parties and have gone through the records.

29. In this case, the Corporate Debtor has not denied having availed of a loan of Rs. 20.57 crores by way of issuing non-convertible debentures on the basis of Debenture Trust Deed dated 19.03.2018 executed by the Corporate Debtor along with other group companies of the Rajesh Group. It has also not been denied that it was mutually agreed between the Corporate Debtor and Altico that Vistra ITCL (India) Limited would be appointed as the trustee. The Corporate Debtor has not denied the execution of the documents such as Escrow Agreement dated 17.03.2018, first Supplemental Debenture Trust Deed dated 19.03.2018, Demand Promissory Note dated 19.03.2018, Pledge Agreement dated 19.03.2018, a second Supplemental Debenture Trust Deed dated 19.07.2018 etc.

30. Primarily, the defence raised by the Corporate Debtor is that as a matter of fact, Altico, the original lender, committed a fraud with the Corporate Debtor and its group companies by misrepresenting that it would grant a loan of Rs. 1,135 crores to the Corporate Debtor as well as its groups companies i.e. Rajesh Group knowing fully well that Altico was not in a position to grant that much amount of loan in the light of the RBI's Master Circular dated 01.07.2015 which provided that an NBFC cannot lend any single group of borrowers exceeding 25% of its owned funds and as the net owned fund value of Altico was only Rs. 2292 crores, it could lend only Rs. 575 crores to the Rajesh Group. Altico kept the Corporate Debtor in the dark and despite the constraint, fraudulently promised to advance a loan of Rs. 1,135 crores knowing fully well that it could not lend more than Rs. 575 crores and in the process made the Corporate Debtor along with other group companies of Rajesh Group create mortgage of valuable properties with the result that when it was brought to the notice of the Corporate Debtor that the promised loans of Rs. 1,135 crores could not be disbursed in the light of the RBI's circular, it resulted in acute loss to the Rajesh Group of companies as all of its projects got stalled for want of funds. To add insult to injury, Altico did not even release the properties of the Corporate Debtor and its group companies from

mortgage due to which no loans could be raised from the other lenders as well. In this regard, it has also been pointed out by the Counsel for the Corporate Debtor, in the given situation, all the contracts and the documents executed with Altico were terminated by way of a notice being result of fraud and misrepresentation for which the Corporate Debtor and the other Rajesh Group of companies are entitled for damages as well as compensation and further that no CIRP can be initiated against the Corporate Debtor at the instance of the Financial Creditor.

31. Having thoughtfully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor, we are of the considered view that on account of the fact that instead of the promised Rs. 1,135 crores, a much lesser amount disbursed by the original Lender Altico due to the Master Circular of RBI dated 01.07.2015, it cannot be said that some fraud or wrongful mis-representation was made by Altico with some ulterior motive to cause wrongful loss to the Corporate Debtor. In case, Altico was not aware of the existence of the Master Circular dated 01.07.2015, which provided that it could not lend more than 25% of its net owned fund to a single group, the Corporate Debtor also should have been alert and vigilant before entering into any transactions with Altico and should have exercised due diligence in as

much as an enquiry should have been made to ascertain whether Altico was in a position to lend Rs. 1,135 crores as per law or not. Therefore, the Corporate Debtor cannot be heard harping that some fraud has been committed with it especially when considerable amount of loan was advanced to the Corporate Debtor and its group companies by subscribing to the NCDs issued by them. Similarly, the argument that once it was detected that Altico could not lend more than 575 crores as per the RBI circular dated 01.07.2015, the title deeds of mortgage property was also not returned to enable the Corporate Debtor to avail loans from another lenders is also not tenable. Altico or for that matter, its assignee could not have returned the title deeds or issued NoC without the refund of the entire money advanced by Altico. It is not the case of the Corporate Debtor that prior to obtaining the NoC, it had returned the outstanding amount to the Financial Creditor. Therefore, even this plea that NoC or the title deeds of the mortgaged property was wrongfully and illegally withheld by the Financial Creditor is also not tenable.

32. Similarly, the arguments advanced on behalf of the Corporate Debtor that the all the transactions carried out by Rajesh Group with Altico under which financial assistance was advanced and disbursed out of the agreed amount of Rs. 1,100 crores are hit by Section 17 of

the Contract Act, 1872, being based on fraudulent representation and are liable to be rescinded as per the provisions of Section 64 of the Contract Act are not nothing but specious and are liable to be brushed aside. Since the availment of the financial debt and its default has not been disputed in this case, there cannot be any possible hindrance in the admission of the petition u/s 7 of the Code. In this regard, a reference can be made to the law laid down by the Hon'ble Supreme Court in Innoventive Industries Ltd v/s ICICI Bank & Anr [Judgment dated August 31, 2017 in Civil Appeal Nos. 8337-8338 of 2017] while interpreting the provisions of the Code has, *inter-alia*, held as follows

*“27. That the scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.”* (Extracts of Para 27)

*“28. The moment the adjudicating authority is satisfied that a default has occurred, the application **must** be admitted unless it is incomplete,..”* (Extracts of Para 28 with Emphasis Supplied)

*“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. No other points have been raised on behalf of the Corporate Debtor. Even otherwise as per the documents relied upon by the Financial Creditor, which are annexed with the Petition, it stands amply proved on record that an amount of Rs. 20.57 crore was disbursed to the Corporate Debtor and the account of the Corporate Debtor was declared NPA on 31.12.2019 and therefore, the date of default comes to 30.09.2019 and the instant Petition having been filed on 06.08.2022 is well within the period of limitation.

34. As the factum of debt and its default by the Corporate Debtor have been established from the records and also, the instant application u/s 7 of the Code is held to have been filed within limitation, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms:

**ORDER**

(a) The petition bearing **CP(IB)-211/MB/2023** filed by **ASSETS**

**CARE & RECONSTRUCTION ENTERPRISE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. **RAJESH CITYSPACES PRIVATE LIMITED** [CIN: U70109MH2012PTC232929] is hereby **admitted**;

- (b) **Mr. Ajit Gyanchand Jain**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P00368/2017-2018/10625**, (email: [ajit@vcanca.com](mailto:ajit@vcanca.com)), is hereby appointed as **Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (c) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (d) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (e) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (f) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the

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Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of ₹ 5,00,000/- (Rupees Five Lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**