



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/581/MB/2025

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

M/S. Q WEST INFRASTRUCTURE PRIVATE LIMITED

(erstwhile Karanja Logistics Pvt. Ltd.)

[CIN No.: U43299MH2014PTC252734]

ONE BKC, Unit No. 501, C Wing

Plot No.66, G Block, BKC

Bandra (East), Mumbai – 400051.

...Financial Creditor

V/s

M/S. GUJARAT POSITRA STEEL COMPANY LIMITED

[CIN No.: U27100MH2005PLC152813]

13/198, J. Tata Road, Khetan Bhavan

Churchgate, Mumbai – 400020.

...Corporate Debtor

Pronounced: 04.12.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Akshay Doctor, Adv. Aniruddha Lad i/b KLT Law Associates

For Respondent: None (*ex-parte*)



ORDER

[PER: CORAM]

1. **BACKGROUND**

1.1 This C.P. (IB) No.581/MB/2025 (Application) was filed on 22.01.2025 by M/s Q West Infrastructure Private Limited, the Financial Creditor (FC), having CIN No.: U43299MH2014PTC252734 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s Gujarat Positra Steel Co. Limited, the Corporate Debtor (CD) having CIN No.: U27100MH2005PLC152813.

1.2 This Application has been affirmed by one Mr. Jigar Doshi, authorised signatory of the Applicant. As per Part IV of the Application, the amount claimed to be in default is Rs.20,01,69,863/- (Twenty Crores One Lakh Sixty-Nine Thousand Eight-Hundred Sixty-Three Rupees) and the date of default is 24.10.2024.

1.3 The Applicant has proposed NPV Insolvency Professional Private Limited (Formerly known as Mantrah Insolvency Private Limited), having Registration No. -IBBI/IPE-0040/IPA-2/2022-23/50021, to act as the Interim Resolution Professional (IRP).

2. **CONTENTIONS OF APPLICANT (FC)**

2.1 The Financial Creditor and one M/s Starwort Engineers Pvt. Ltd. (the Borrower) had entered and executed an Inter-Corporate Deposit Agreement



(ICD Agreement) dated 10.11.2020 for Rs.11,00,00,000/- (“ICD Amount”) with 15% p.a. interest, repayable on or before 10.11.2021 (the Due Date). Disbursement was made on 11.11.2020 *via* cheque no. 000336. Unpaid interest attracted an additional interest at 5% p.a. for the continuing period of default.

2.2 The Borrower issued a Demand Promissory Note dated 10.11.2020 for repayment of the ICD Amount along with the interest on demand by the Applicant.

2.3 As security, various security providers issued irrevocable and unconditional corporate guarantees on 10.11.2020.

2.4 An addendum dated 12.11.2020 to the ICD Agreement added the CD (a wholly owned subsidiary of the Borrower) as Corporate Guarantor, which accordingly executed an irrevocable and unconditional corporate guarantee.

2.5 Security for ICD amount of Rs. 11,00,00,000/- included:

(1) Demand Promissory Note dated 10.11.2020 by the Borrower.

(2) Individual irrevocable and unconditional corporate guarantee of various security providers dated 10.11.2020.

(3) Irrevocable and unconditional Corporate Guarantee dated 12.11.2020 of the CD.

2.6 Relevant clauses of the Deed of Corporate Guarantee in brief:

(i) Clause 3 ~ In the event of any default of the Borrower in payment/repayment of any of the monies referred to above or in the event of any default on the part of the Borrower to comply with or



perform any of the terms, conditions and covenants contained in the ICD Agreement and the Addendum, the Corporate Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts due and payable by the Borrower under the ICD Agreement and the Addendum.

- (ii) Clause 6 ~ The Corporate Guarantor hereby agrees that without the concurrence of the Corporate Guarantor, the Borrower and the Lender shall be at liberty to vary, alter or modify the terms and conditions of the ICD Agreement and the Addendum thereto and of the security created and of the security documents executed by the Borrower in favor of the Lender and in particular to defer, postpone or revise the repayment of the ICD and/or payment of interest and other moneys payable by the Borrower to the Lender on such terms and conditions as may be considered necessary by the Lender including any increase in the rate of interest in accordance with the ICD Agreement. The Lender shall also be at liberty to absolutely dispense with or release all or any of the security/ securities furnished or required to be furnished by the Borrower to the Lender to secure the ICD. The Corporate Guarantor agrees that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security, and that no further consent of the Corporate Guarantor is required for giving effect to any such variation, modification, alteration, waiver dispensation with or release of security.



- (iii) Clause 14 ~ The Corporate Guarantor shall not in the event of the liquidation of the Borrower prove in competition with the Lender in the liquidation proceedings.
- (iv) Clause 18 ~ This Corporate Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lender by the Borrower and shall be valid and binding on the Corporate Guarantor and operative until repayment in full of all monies due to the Lender under the ICD Agreement and the Addendum thereto or until such time the Borrower creates and perfects the securities in terms of Article II of the ICD Agreement and Addendum thereto, whichever is earlier.
- (v) Clause 19 ~ This Corporate Guarantee shall be irrevocable and the obligations of the Corporate Guarantor hereunder shall not be conditional.
- (vi) Clause 21- This Corporate Guarantee shall be a continuing one and shall remain in full force and effect until such time the Borrower repays in full the ICD together with all interest, costs, charges and all other monies or that may from time to time become due and payable and remain unpaid to the Lender under the ICD Agreement, whichever is earlier.
- (vii) Clause 22 ~ The liability of the Corporate Guarantor hereunder shall not exceed Rs.11 Crores plus all interest, costs, charges, and other monies payable by the Borrower to the Lender under the ICD Agreement and the Addendum thereto.



(viii) Clause 23 ~ Any demand for payment or notice under this Corporate Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Corporate Guarantor and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Corporate Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post, it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted, shall be conclusive as against Corporate Guarantor, even though it was returned unserved on account of refusal of the Corporate Guarantor or otherwise.

2.7 On the due date, Rs.12,65,00,000/- (ICD Amount + 15% interest) became payable. Borrower sought a 1-year extension *via* letter dated 05.11.2021, in consonance with Clause 1.5 of the ICD Agreement. On 08.11.2021, the said extension request was approved, and the due date was revised to 10.11.2022 (“Extended Due Date”). However, the Borrower failed to make payment and did not adhere to the Extended Due Date, citing financial constraints, and sought relief from the Financial Creditor regarding the repayment amount and the time to repay the same.

2.8 Thereafter, the Applicant and the Borrower later entered into a settlement agreement dated 15.02.2023 (“the Settlement Agreement”) to amicably



settle the outstanding debt. Under this agreement, the Borrower had to pay only the ICD Amount in the following manner: -

- a) Rs.5,50,00,000/- on or before 30.06.2023.
- b) Rs.5,50,00,000/- on or before 31.12.2023.

2.9 The Borrower once again failed to follow the repayment schedule as agreed under the Settlement Agreement. Because of this default, the Applicant initiated CIRP against the Borrower by filing the Application bearing Company Petition No.229/MB/2024 before this Hon'ble Tribunal. The said Petition was admitted on 16.07.2024, and the Borrower was admitted under CIRP.

2.10 On 21.10.2024, the Applicant issued a Demand-cum-Invocation Notice to the CD, in its role as the Corporate Guarantor for the Borrower, demanding repayment of Rs.19,55,89,041/-. This amount consisted of:

- a) Rs.11,00,00,000/- towards the ICD Amount, and
- b) Rs.8,55,89,041/- towards interest calculated up to 30.09.2024.

2.11 After receiving this notice, the CD approached the Applicant to negotiate a settlement and assured that it would submit a payment proposal after the Diwali festival in November 2024. However, it failed to do so. As a result, the Applicant sent a reminder email on 11.11.2024.

2.12 In its email dated 14.11.2024, the CD informed the Applicant that it was working on a payment proposal and needed more time to prepare a workable schedule, considering its business and financial constraints. It requested time until 19.11.2024 and also requested that no legal or recovery actions be taken in the meantime.



2.13 On 19.11.2024, the CD submitted a proposal to pay the total amount of Rs.19,55,89,041/- in the following instalments:

- a) Rs.1,50,00,000/- on or before 15.12.2024;
- b) Rs.2,50,00,000/- on or before 31.01.2025;
- c) Rs.4,00,00,000/- on or before 31.03.2025;
- d) Rs.4,00,00,000/- on or before 31.05.2025;
- e) Rs.2,00,00,000/- on or before 30.06.2025; and
- f) Rs.5,55,89,041/- on or before 31.07.2025.

The CD stated that this was the best it could offer given its financial position.

2.14 On 21.11.2024, the Applicant responded that the proposal was unacceptable because it stretched payments over seven months. It asked the CD to make an upfront payment of Rs.50,00,000/- by 30.11.2024 to demonstrate its genuine intention to pay the dues. However, the CD neither replied to the Applicant's email dated 21.11.2024 nor made the upfront payment or the first instalment promised in its own proposal.

2.15 Given the above facts, it is clear that the CD has failed to repay the financial debt owed to the Applicant. There is a clear default. Even after guaranteeing the repayment of the ICD Amount and acknowledging its liability to pay both principal and interest, the CD has not made the payments.

2.16 The Applicant has attached the following documents along with the Application and Additional Affidavit dated 10.07.2025:

- a) Copy of the master data of the Applicant and the CD.
- b) Copy of the Board Resolution of the Financial Creditor, duly authorising Mr. Jigar Doshi.



- c) An executed Form II under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 along with the Certificate of Registration of the proposed Interim Resolution Professional.
- d) Copy of the Inter Corporate Deposit Agreement.
- e) Copy of Demand Promissory Note.
- f) Copy of Bank confirmation of disbursement of ICD Amount.
- g) Copy of the Addendum to the ICD Agreement.
- h) Copy of the Corporate Guarantee.
- i) Copies of letters dated 05.11.2021 and 08.11.2021.
- j) Copy of the Settlement Agreement dated 15.02.2023.
- k) Copy of the Admission Order dated 16.07.2024 passed by the Hon'ble NCLT against the Principal Borrower.
- l) Copy of the Demand cum Invocation Notice dated 21.10.2024.
- m) Copy of emails dated 11.11.2024, 14.11.2024, 19.11.2024 and 21.11.2024.
- n) Record of Default (NeSL Form-C)
- o) Statement of Computation.
- p) Resolution Plan submitted for Starwort Engineers Private Limited.
- q) Order passed in I.A.No.24 of 2025 in Company Petition (IB) No.229 of 2024 by the Hon'ble NCLT Mumbai (Bench-I).

2.17 The date of default is mentioned as 24.10.2024.

3. ADDITIONAL AFFIDAVIT (FC) dated 21.06.2025



3.1 Additional Affidavit dated 21.06.2025 was filed by the Applicant through Mr. Jigar Doshi, who is stated to be an authorized signatory of the Applicant.

3.2 This Tribunal, *vide* order dated 04.06.2025, directed the Applicant to prove the maintainability of this Application since the guarantee against the CD was invoked only after the principal borrower was admitted to the CIRP and thus moratorium. Here is the relevant extract of the said Interim Order dated 04.06.2025:

“... 4. The guarantee was invoked on 21.10.2024. It is seen that the main borrower is already under insolvency vide an order dated 16.07.2024 in CP(IB)/229/2024 issued by a coordinate Bench of this Tribunal.

5. The invocation of guarantee is post the admission order of the main borrower to insolvency. Upon being asked, Ld. Counsel appearing for the Applicant states that he is not aware whether any claim has been filed by the Applicant herein before the IRP/RP of the main borrower.

6. Ld. Counsel is directed to satisfy this Bench regarding maintainability of this Application since the invocation of guarantee is post the main borrower being admitted to CIRP and under moratorium.

7. Ld. Counsel for the Applicant is directed to file additional affidavit clarifying the above...”



- 3.3 The Applicant submits that the terms of the Guarantee clearly show that the CD has an independent and binding obligation to fulfil the payment commitments under the ICD Agreement. In any case, and without affecting these terms, the law also treats a Guarantee as a separate and independent agreement between the guarantor (the CD) and the creditor (the Applicant).
- 3.4 The Principal Borrower failed to repay the amounts owed under the ICD Agreement and the Settlement Agreement. Therefore, the Financial Creditor filed a petition under Section 7 of the IBC, 2016, before the Hon'ble NCLT, Mumbai, being Company Petition No. (MB)/229 of 2024, which was admitted on 16.07.2024.
- 3.5 After the CIRP began, the Financial Creditor submitted its claim of Rs.19,10,08,219/- to the IRP of the Principal Borrower, and the IRP admitted the entire claim.
- 3.6 The CIRP of the Principal Borrower concluded with a Resolution Plan dated 24.12.2024, submitted by M/s Hexen Engineering, which was approved by the Hon'ble NCLT on 29.04.2025. Two important facts must be noted:
- (i) The Resolution Plan provides only Rs.22,50,000/- to the Financial Creditor, against its admitted claim of Rs.19,10,08,219/-; and
 - (ii) The Financial Creditor has not received this amount or any other payment as of the date of filing this Affidavit.
- 3.7 Under the Guarantee, the CD's payment obligation exists alongside that of the Borrower. The Guarantee also explicitly states that even if the Borrower is discharged, the CD's liability does not get discharged.



3.8 Accordingly, the Financial Creditor invoked the Guarantee by issuing a Demand-cum-Invocation Notice dated 21.10.2024, calling upon the CD to pay Rs.19,55,89,041/-, which was the amount due as of 30.09.2024.

3.9 The CD did not respond to this notice. The Applicant sent multiple reminders as mentioned in the Application, but the CD still did not make any payment. This makes it clear that the CD is unable to pay its debts, leading to the present Application.

3.10 It is well settled in law that a guarantee is an independent contract between the creditor and the guarantor, separate from the financial arrangement between the creditor and the principal borrower. The guarantor's liability is co-extensive with that of the principal borrower. In this case, the CD executed a Guarantee Agreement dated 12.11.2020, making it independently liable, though jointly with the Borrower.

3.11 Therefore, the initiation of CIRP against the Borrower and the moratorium imposed on it do not prevent the Applicant from invoking the Guarantee.

3.12 It is also well established that even after approval of a resolution plan for a corporate debtor, the guarantor's liability continues. The creditor can still proceed against the guarantor to recover its dues. Sections 60(2) and 60(3) of the IBC expressly allow simultaneous and independent proceedings against both the corporate debtor and the guarantor. Thus, merely filing a claim before the IRP of the Principal Borrower does not stop the Financial Creditor from invoking the Guarantee or taking further legal action.

4. FURTHER ADDITIONAL AFFIDAVIT (FC) dated 10.07.2025



- 4.1 This Tribunal, *vide* order dated 24.06.2025, directed the Applicant to place on record the Resolution Plan with respect to the Principal Borrower, duly approved by a co-ordinate Bench of the Hon'ble NCLT, Mumbai.
- 4.2 The said Additional Affidavit (dated 10.07.2025), affirmed by the Applicant's authorised representative, Mr. Jigar Doshi brought on record the Resolution Plan submitted for Starwort Engineers Private Limited and Order passed in I.A.No.24 of 2025 in Company Petition (IB) No.229 of 2024 by the Hon'ble NCLT Mumbai (Bench – I).

5. CONTENTIONS OF CD

- 5.1 There has been no representation of the CD on any occasion despite receiving multiple notices from this Tribunal. The CD never appeared; hence, *vide* Order dated 02.09.2025, the CD was set *ex-parte*.

6. WRITTEN SUBMISSIONS (FC)

- 6.1 Short synopsis was filed by the Applicant on 04.10.2025.
- 6.2 The terms of the ICD Agreement provide as follows:
- a) Clause 1.1 @ Pg. 47 - Financial Creditor agreed to lend a sum of Rs.11 Crores to Starwort.
 - b) Clause 1.4 @ Pg. 48 - The monies were to be repaid within a period of 1 year (i.e. by 10th November 2021)
 - c) Clause 2.1 @ Pg. 49 - The Security offered by Starwort to the Financial Creditor for the due repayment included a demand promissory note and corporate guarantees from other companies, as stated therein.



[The present Corporate Debtor was not originally a corporate guarantor named in Clause 2.1]

6.3 On 12.11.2020, an Addendum to the ICD Agreement was executed to include the Corporate Debtor as a Corporate Guarantor.

6.4 Along with the Addendum, the Corporate Debtor execute a Deed of Corporate Guarantee ("Guarantee Deed") guaranteeing the repayment by Starwort of the monies disbursed under the ICD Agreement. The important terms of the Guarantee Deed are summarised below:

- a) Cl. 3 @ Pg. 59 - Unconditional, absolute, irrevocable and continuing guarantee given to secure the repayment of the ICD.
- b) Cl. 3 @ Pg. 60 - Corporate Debtor would pay on demand in the event of a default by the borrower;
- c) Cl. 11 @ Pg. 62 - Financial Creditor's rights against the Corporate Debtor are unaffected by any arrangement between the lender and other guarantors.
- d) Cl. 12 @ Pg. 62 - Guarantor to be treated as the principal debtor
- e) Cl. 17 @ Pg. 62 - A Certificate by an official of the Financial Creditor was conclusive evidence of borrowing
- f) Cl. 18 @ Pg. 62 - Corporate Guarantee would remain operational till full repayment
- g) Cl. 19 @ Pg 63 - Guarantee to be irrevocable and unconditional
- h) Cl. 20 @ Pg. 63 - Corporate Debtor not to be discharged by winding up, change in management, etc.



6.5 The term of repayment under the ICD Agreement was coming to an end on 10.11.2021. Time was extended by a period of 1 year till 10.11.2022, in the following manner:

- a) On 05.11.2021, Starwort addressed a letter seeking an extension of 1 year in terms of Clause 1.5 of the ICD Agreement for the repayment of the Financial Debt. [Exh. J @ Pg. 65]
- b) On 08.11.2021, the Financial Creditor addressed a letter acceding Starwort's request to extend time; [Exh. K @Pg.66]

6.6 Since Starwort was unable to repay the Financial Debt within the agreed period, Starwort approached the Financial Creditor for a full and final settlement. This was recorded in a Settlement Agreement dated 15.02.2023, the important terms whereof are summarised as under:

- a) Recital E to G @ Pg. 69 - Records Starwort's admitted inability to pay
- b) Cl. 2 @ PG. 71 - Records that Starwort would pay 11 Crores towards full and final settlement in two tranches of Rs. 5.5 Crores each, which would be paid on or before 30th June 2023 and 31st December 2023, respectively;
- c) Cl. 5.2 @ Pg. 72 - Records that in the event of a default by Starwort, the Financial Creditor would be entitled to enforce its securities and demand payment of the entire ICD amount with interest under the provisions of the ICD Agreement;
- d) Cl. 6 @ Pg. 73 - Records that the release of a security interest would occur only on repayment if the full amount under the Settlement Agreement.



- 6.7 However, Starwort failed to honour the terms of the Settlement Agreement and did not make any payments as contemplated therein.
- 6.8 In view thereof, the Financial Creditor filed Company Petition (IBC) No. 229 of 2024 ("Starwort CP") seeking initiation of CIRP against Starwort in terms of Section 7 of the IBC. The Starwort CP was admitted by this Hon'ble Tribunal vide order dated 16.07.2024.
- 6.9 Pursuant to the admission of Starwort into CIRP, the Applicant addressed a Demand-Cum-Invocation Notice dated 21.10.2024 ("Demand Notice") calling upon the CD to pay the Debt Amount of Rs.19,55,89,041/- (Rs.11 Crores of Principal and accrued interest Rs.9,55,89,041/- as on 30.09.2024) on or before 24.10.2024. However, since there was no response to the Demand Notice. The Applicant addressed an email dated 11.11.2024 calling upon the CD to repay the Debt Amount. The CD responded *vide* its email dated 14.11.2024, stating that they were working on a payment proposal and sought time till 19.11.2024.
- 6.10 On 19.11.2024, the CD addressed an email proposing to pay the Debt Amount in 6 tranches by 31.07.2025. The text of the email is reproduced hereinbelow:

"Dear Mr. Jigar Doshi,

With reference to our mail dated 14 November 2024, we

propose to pay Rs. 19,55,89,041/= as follows:-

Rs. 1,50,00,000/= on or before 15 Dec 2024

Rs. 2,50,00,000/= on or before 31 Jan 2025

Rs. 4,00,00,000/= on or before 31 March 2025



Rs. 4,00,00,000/= on or before 31 May 2025

Rs. 2,00,00,000/= on or before 30 June 2025

Rs. 5,55,89,041/= on or before 31 July 2025

We would also like to apprise you that considering our business and financial constraints, this is our best endeavour to resolve the matter and we hope the same will be acceptable to you.

Thanking You,

Umesh Dave

For Gujarat Positra Steel Co. Ltd”.

6.11 On 21.11.2024, the Applicant addressed an email to the CD calling upon it to pay an amount of Rs. 50 Lakhs on or before 30.11.2024 to show its *bona fides*. However, neither did the CD deposit the said amount and nor did it respond to the aforesaid email. Hence, it is clear that there has been a default.

6.12 On 04.06.2025, this Hon'ble Court was pleased to approve the Resolution Plan for Starwort. However, even the terms of the Resolution Plan do not provide for recovery of the Debt Amount.

6.13 Clause 7 of the Resolution Plan records that under the Resolution Plan, only an amount of Rs. 25 Lakhs was going to be repaid. However, Clause 16(vii) of the Resolution Plan categorically stipulates that existing guarantors and third parties shall not be relieved or discharged from their liabilities, and financial creditors will have the right to recover the residual amount from them.



6.14 Therefore, the approval of the Resolution Plan does not provide for recovery of the Debt Amount, and neither does it extinguish the Applicant's right to proceed against the CD.

6.15 Section 128 of the Indian Contract Act stipulates that the liability of the Guarantor is co-extensive with that of the principal debtor. Therefore, the Financial Creditor can proceed against the CD in the present case for the recovery of the entire amount due.

6.16 Section 60(2) of the IBC itself recognises simultaneous CIRP proceedings against the principal debtor and corporate guarantors. For ease of reference, S. 60(2) of the IBC is reproduced hereinbelow:

"Section 60(2): Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal."

6.17 Furthermore, various rulings of the Hon'ble Supreme Court have also laid down that even for the purpose of the IBC, the liability would be co-extensive and the CIRP of one would not discharge the other from its obligations. In this regard, reliance is placed on the following:



- a) Lalit Kumar Jain v/s UOI [(2021) 9 SCC 321] -Paras 122 to 124
- b) BRS Ventures Investments Ltd. v/s SREI Infrastructure Finance Ltd. & Anr. [(2025) 1 SCC 456] - Paras 1, 4, 14(ii), 16,17,20,22,24,26 and 37.

6.18 Thus, the present Petition deserves to be admitted, and appropriate direction for commencement of CIRP against the CD ought to be passed by this Hon'ble Tribunal.

7. ANALYSIS AND FINDINGS

7.1 We have perused the documents as placed before us and heard the Ld. Counsels for the Applicant.

7.2 The present Application under Section 7 of the IBC is founded upon the Applicant's assertion that the CD has committed a default in discharging its liability arising under an unconditional and irrevocable corporate guarantee executed in respect of the financial facilities extended to the Principal Borrower. The evidentiary record placed before us consists of the ICD Agreement dated 10.11.2020, the Demand Promissory Note issued by the Principal Borrower, the Addendum dated 12.11.2020 bringing the CD on board as a guarantor, and the Deed of Corporate Guarantee executed on the same day. These documents, accompanied by proof of disbursement of the ICD Amount, correspondence evidencing extension of repayment timelines, the Settlement Agreement dated 15.02.2023, and subsequent communications exchanged between the parties, constitute the unchallenged material on record.



7.3 From the material brought on record, it appears that the Principal Borrower repeatedly failed to honour its repayment obligations under the ICD Agreement, despite extension of the due date by a year and despite entering into a Settlement Agreement whereby it undertook to repay only the principal ICD Amount in two instalments. Upon the Principal Borrower's continued default, the Applicant initiated and successfully obtained admission of a CIRP against the Principal Borrower *vide* order dated 16.07.2024. After the commencement of the CIRP, the Applicant invoked the Corporate Guarantee by issuing a Demand-cum-Invocation Notice dated 21.10.2024 to the CD, calling upon it to discharge its liability of Rs.19,55,89,041/-, being the principal amount together with accrued interest. The CD sought time on the pretext of preparing a payment proposal, and by email dated 19.09.2024, itself proposed a structured repayment schedule extending up to 31.07.2025. However, neither the CD acted upon its own proposal nor did it respond to the Applicant's subsequent communication. The CD has, at no point, disputed the execution of the Corporate Guarantee, the invocation thereof, or the quantum of outstanding financial debt. In such circumstances, the default stands *prima facie* established based on documentary evidence, supported further by the NeSL Record of Default placed before us.

7.4 The central legal issue for consideration is whether the invocation of the Corporate Guarantee after the admission of the Principal Borrower into CIRP affects the maintainability of the present Application. It is well-settled that a contract of guarantee is an independent and autonomous contract



between the creditor and the guarantor. Section 128 of the Indian Contract Act, 1872, unequivocally stipulates that the liability of the guarantor is co-extensive with that of the principal debtor, unless otherwise provided by the contract. The Deed of Corporate Guarantee placed on record expressly characterises the guarantee as absolute, irrevocable, unconditional, and continuing. It further provides that the liability of the CD as guarantor shall not be discharged by reason of any variation in the principal contract, by the insolvency or liquidation of the Principal Borrower, or by the release of any other security. Clauses 3, 18, 19, and 21 of the Guarantee Deed leave no ambiguity that the CD remains bound to honour the invoked guarantee until full repayment of all sums due under the ICD Agreement.

7.5 The jurisprudence of the Hon'ble Supreme Court reinforces this position. In ***Lalit Kumar Jain v. Union of India***, (2021) 9 SCC 321, the Hon'ble Supreme Court authoritatively held that the moratorium imposed under Section 14 of the IBC does not extend to guarantors, and that the commencement of CIRP or the approval of a resolution plan in respect of the principal borrower does not extinguish the liability of the guarantor. The Court reiterated that the guarantor's liability survives independently and may be enforced concurrently with proceedings against the principal borrower. In ***BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.***, (2025) 1 SCC 456, the Hon'ble Supreme Court reaffirmed that the creditor is entitled to pursue insolvency proceedings against a corporate guarantor irrespective of the stage of proceedings involving the principal borrower. It further held that approval of a resolution plan concerning the principal



borrower does not operate to discharge or impair the liability of guarantors unless the plan expressly provides otherwise. The present record demonstrates that the Resolution Plan approved in the CIRP of the Principal Borrower not only does not discharge guarantors but expressly preserves the rights of financial creditors to proceed against them.

7.6 The statutory framework under the IBC also approves parallel and independent proceedings against guarantors. Section 60(2) mandates that insolvency proceedings relating to corporate guarantors shall be instituted before the same NCLT where proceedings against the principal borrower are pending, thereby facilitating simultaneous adjudication. The existence of a moratorium in the CIRP of the Principal Borrower does not, therefore, in any manner curtail or bar the present proceeding. The Applicant was legally entitled to invoke the guarantee at any time upon occurrence of default, and the timing of invocation (whether before or after the Principal Borrower's admission into CIRP) doesn't affect the enforceability of the Corporate Guarantee or the maintainability of this Application.

7.7 The present Application has been proceeded *ex-parte* as the CD failed to enter an appearance or contest the proceedings. The Applicant has placed on record sufficient documentary evidence to establish the existence of a financial debt, the occurrence of default on the part of the CD. In the absence of any rebuttal or contrary evidence, the claim of the Applicant remains uncontroverted.

7.8 In light of the foregoing analysis, it is evident that the CD remains liable under an independent and unconditional Corporate Guarantee; that the



moratorium under Section 14 applicable to the Principal Borrower does not shield the guarantor; that Section 60 of the IBC expressly permits simultaneous proceedings against guarantors; that the approval of the Resolution Plan for the Principal Borrower does not discharge or dilute the CD's liability; and that the existence of a financial debt and default is firmly established through uncontroverted documentary evidence. The Section 7 Application, therefore, is maintainable, and the CD's continued non-payment unmistakably demonstrates its inability to discharge its financial obligations, warranting the initiation of CIRP.

7.9 The Applicant has also proposed the name of an IPE, NPV Insolvency Professional Private Limited (Formerly known as Mantrah Insolvency Private Limited), and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against it. Further, this Application is complete as all the required documents have been attached along with the Application.

7.10 We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 581/MB/2025 filed under Section 7 of IBC, 2016, by M/s. Q West Infrastructure Pvt. Ltd., the Applicant (FC) for initiating CIRP in respect of M/s Gujarat Positra Steel Co. Ltd., the CD, is **admitted**.



We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the 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, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That 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.
- III. That the order of 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 Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.



- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **NPV Insolvency Professional Private Limited (Formerly known as Mantrah Insolvency Private Limited)**, having **Registration No. as IBBI/IPE-0040/IPA-2/2022-23/50021**, and **e-mail address ipe@npvca.in**, having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That 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 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of



issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//AS//