IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

C.P. (IB) No. 246/BB/2019
U/s. 7 of IBC, 2016
R/w. Rule 4 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

1. **M/s. India Asset Growth Fund**
(A Category II AIF bearing registration number IN/AIF2/12-13/0037)
601, 6th Floor, Jet Prime,
Plot No. 39-B, Suren Road,
Andheri (East),
Mumbai – 400 093 ... Financial Creditor No.1

2. **M/s. Vistra (ITCL) India Limited**
(in its capacity as the Debenture Trustee)
IL & FS Financial Centre, Plot No. C-22,
G-Block, Bandra-Kurla Complex,
Bandra East,
Mumbai – 400 051. ... Financial Creditor No.2

Versus

M/s. Vikram Structures Private Limited
No. 22, 5th A Main Road,
Near Baptist Hospital,
Bengaluru – 560 024 ... Respondent/Corporate Debtor

Order delivered on: 17th February, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Kusuma.M
For the Respondent : Sh. Abhijit Atur

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Petition is filed, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by M/s. India Asset Growth Fund and M/s. Vistra (ITCL) India Limited (hereinafter referred to as 'Petitioners/Financial Creditors') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. Vikram Structures Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor').

2. The Corporate Debtor viz., M/s. Vikram Structures Private Limited is a Company incorporated on 29.04.2008 under the provisions of Companies Act, 1956 with CIN: U45200KA2008PTC046249 having its registered office situated at No. 22, 5th A Main Road, Near Baptist Hospital, Bangalore 560 024, which falls within the territorial jurisdiction of this Adjudicating Authority. The Nominal/Authorised Share Capital of the Respondent/Corporate Debtor is Rs.117,500,000/- and the Paid-up Share Capital is Rs.41,925,000/-. The Corporate Debtor is engaged in the business of real estate development.

3. The present application has been filed by the Financial Creditors against the Corporate Debtor in respect of the default amount of Rs.31,81,30,887/- (Rupees Thirty One Crores Eighty One Lakhs Thirty Thousand Eight Hundred and Eight Seven only) as on 31.12.2016.

4. The Financial Creditor No.1 is a trust established as per the provisions of the Indian Trust Act, 1882 and registered as Category II AIF under SEBI (Alternative Investment Funds) Regulations 2012, it has a scheme 'Annuities in Senior Secured Estate Transactions-1' ("Asset-I") which has invested money into Corporate Debtor by way of issue of secured, unlisted, redeemable non-convertible debentures and Financial

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Creditor No.2 is a Debenture Trustee registered as a Debenture Trustee under SEBI Debenture Trustee Regulations, 1993 acting as trustee for debenture holders was appointed as the Trustee to the Trust.

5. It is stated that the Trustee appointed the Essel Finance Advisors and Managers LLP as the Investment Manager for the purpose of managing the assets of the Trust and all its Scheme and for the day to day administration and management of the Trust in a manner and on the terms and conditions set out in the Investment Management Agreement dated 15.01.2013.

6. M/s. VSPL Projects Private Limited (hereinafter referred to as 'the Borrower/ Investee Company') is a Company incorporated under the Companies Act, 2013 having its registered office at 2nd Floor, No. 22, 5th A Main Road, Near Baptist Hospital, Bangalore 560 024. The Borrower/Investee Company undertook the development of VSPL Metropolis II project. The Borrower Company for raising funds for its project issued 2200 senior, secured, redeemable, unlisted non-convertible debentures having a face value of Rs.1,00,000/- each aggregating up to Rs.22,00,00,000/- (Rupees Twenty Two Crores Only) in one tranche, on a private placement basis ("Debentures/NCDs"). On relying upon the representation, warranties, covenants, undertaking and indemnities provided by the Borrower Company, the Corporate Debtor and the promoters, the Financial Creditor No.1 agreed to subscribe to the NCDs.

7. Thereafter, the Financial Creditor No.1 subscribed to the aforesaid NCDs and disbursed the amount of Rs.22,00,00,000/- in favour of the Borrower Company on 21.10.2015. The Borrower Company issued the NCDs in favour of the Trust. As per the provisions of the Companies Act, 2013 the Borrower Company approached the Financial Creditor No.2 to act as the Debenture Trustee for the benefits of Financial

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Creditor No.1 and it agreed to act as the Debenture Trustee for the Debentures Holder i.e. Financial Creditor No.1 on the terms and conditions agreed upon and set out in the Debenture Trust Deed (hereinafter referred to as "DTD").

8. As per the terms of the DTD, security had to be created in favour of the Debenture Trustee acting on the written instructions of the Investment Manager for and on behalf of Debenture Holders/ Financial Creditor No.1 to secure the Debenture outstanding and accordingly, the Borrower Company had created exclusive charge by way of registered mortgage over the Mortgaged properties (as defined in the DTD), exclusive charge by way of hypothecation of all projects receivables, exclusive charge by way of pledge of 100% of the share capital of the Borrower Company. It is further stated that one of the stipulated Security was the Corporate Guarantee to be executed by the Corporate Debtor i.e., Vikram Structures Private Limited in favour of the Financial Creditors for the benefit of inter-alia the Debentures Holders/ Financial Creditor 1, guaranteeing the obligations of the Borrower Company in relation to the debentures.

9. In furtherance to the terms of the DTD, the Corporate Debtor executed the Deed of Corporate Guarantee ('Deed of Guaranteed") dated 21.10.2015 in favour of the Financial Creditors. The Corporate Debtor undertook to repay the amount availed by the Borrower Company, in the event of any default committed by the Borrower Company in honouring its commitment. Clause 2 of the Deed of Guarantee is reproduced below:

"The Guarantors hereby guarantees as primary obligor and not merely as surety to, unconditionally and irrevocably pay on first demand without any demur or protest, within three Business Days of service of a notice in writing by the Debenture Trustee (acting on the written instructions of the Investment Manager) in the form given in Schedule I hereto ("Notice of Demand"), such amount forming the Debenture outstanding or any part thereof or any amounts agreed to be paid by the Guarantor in terms of this Guarantee or other Transaction Documents, to the Debenture Trustee (acting

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for and on behalf of the Finance Parties). The payment shall be made into such bank account and for such amount as mentioned in the Notice of Demand. The amounts so deposited shall be applied against the Debenture outstandings as per the provisions of the Transactions Documents."

As per the terms of the DTD and other documents, the Borrower/Investee Company was required to repay the amount as per Schedule 10 of the DTD along with applicable coupon rate. However, the Borrower Company defaulted in making the payments as per the terms of the Transaction Documents.

10. It is stated that for redemption of the Debenture, the Borrower Company agreed to pay the principal amount in 8 equal instalments in respect of NCD held by the Debenture Holder /Financial Creditor No.1 as per the Schedule 10 of the DTD. The Corporate Debtor also Covenanted to pay default interest at the rate of 28% per annum compounded monthly on the entire debenture outstandings, for the period commencing from the date on which such payment was due and expiring on the date on which such payment is actually paid by the Borrower Company on the NCDs ("Default Interest") upon the occurrence of any event of default, which is over and above the coupon of 21.25% per annum. The Borrower Company started defaulting in payment from 31.12.2016. Thereafter, a principal default notice dated 03.01.2017 was sent by the Debenture Trustee to the Borrower Company, Corporate Debtor Company and all other Personal Guarantors.

11. It is further stated that owing to the default committed by the Borrower Company, the Trustee invoked the Corporate Guarantee executed by the Corporate Debtor and issued a Demand Notice dated 17.12.2018 calling upon the Corporate Debtor to make the payment of Rs.31,81,30,887/-. Further, the Borrower Company continued to default in the payment of the due amount in respect of the NCDs and the Corporate Debtor failed to discharge its liability as per the terms of

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the Deed of Guarantee, in spite of repetitive reminder and Demand Notice by the Investment Manager and the Financial Creditors.

12. Notice was issued to the Corporate Debtor as to why this petition not be admitted on 17.07.2019. In response thereto, an affidavit by Corporate Debtor dated 21.11.2019 has been filed. Thereafter, a joint memo reporting settlement terms dated 27.11.2019 was filed by the Parties and in terms of the joint memo dated 27.11.2019, the CP (IB) No. 246 /BB/2019 was disposed of as withdrawn vide order dated 29.11.2019 with a liberty to file fresh C.P upon failure of agreed terms. Since the Respondent failed to comply with the same, the Petitioner filed I.A No. 302 of 2021, seeking restoration of the instant C.P., and the same was restored vide order dated 28.01.2022. Further, the learned Counsel for the Respondent/Corporate Debtor submits that they have no objection, if the C.P is admitted and the CIRP is initiated against the Corporate Debtor.

13. Though the petitioner proposed for the appointment of Ms.Ramanathan Bhuvaneshwari as the Interim Resolution Professional initially, but later vide memo date 05.09.2019 the Financial creditor proposed Mr.Surender Devasani as the Interim Resolution Professional.

14. We have heard the learned Counsel for both the parties and have also perused the records carefully.

15. *Section7(5)(a) of the Code is as follows:-*

> *"5) Where the Adjudicating Authority is satisfied that-*
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

16. In the present case, the occurrence of default is evidenced by the details furnished by the applicants including the record of financial

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information (Form -C) issued by NESL in respect of the debt of the Corporate Debtor is filed at 418-422 of this petition.

17. The other issue for consideration is whether present application is filed within limitation. The transaction involving the defaulted amount dates back to 31.12.2016 (as shown as Annexure 4) and the application was filed on 21.11.2019. Therefore, the Petition has been filed within the period of limitation.

18. The respondent corporate debtor have made certain payments to the petitioner, in terms of the Joint Settlement Agreement, however since they failed to comply with all the terms of the Joint Settlement Agreement and that they have no means to pay the balance debt which is more than the required threshold limit as on the relevant date, the respondent corporate debtor states that it has no objection if the C.P is admitted. Accordingly, the Corporate Debtor admitted the debt and its inability to pay the same to the petitioner.

19. The application filed in the prescribed Form No.1 is found to be complete.

20. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Financial Debt for the default amount is above Rs.1,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in

(b) any court of law, tribunal, arbitration panel or other authority;

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(c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(d) 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;

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

21. Mr.Surender Devasani, Registration No. IBBI/IPA-001/IP-P00775/2017-18/11348 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 28.08.2019 has been filed along with a memo. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order. The Law Research Associate of this Tribunal has checked the

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credentials of Mr. Surender Devasani, and there is nothing adverse against him. In view of the above, we appoint Mr. Surender Devasani, bearing Registration No. IBBI/IPA-001/IP-N00775/2017-18/113481436, Anasuya Nilaya, 2nd Floor, 8th Cross, 10th Main, BTM 2nd stage, Bengaluru – 560 076, e-mail: surenderdevasani@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

22. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

23. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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