

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH,  
PRAYAGRAJ**

**CP (IB) NO.59/ALD/2022**

**IN THE MATTER OF:**

**(An application under Section 7 of the Insolvency & Bankruptcy Code)**

**IN THE MATTER OF:**

Piramal Capital and Housing Finance Limited  
(Erstwhile Dewan Housing Finance Corporate Limited)

Having its registered office at:

601, 6<sup>th</sup> Floor, Amiti Building, Agastya Corporate Park Kamini Junction, Opp. Fire Station, LBS Marg, Kuria (W) Mumbai- 400070 through its authorized signatory Ms. Mariam Zaidi

**...Financial Creditor**

*Versus*

Earthbuild Greencity Private Limited

Having its registered office at:

Plot No.108 A, 108 B, Railway Colony,  
Balaganj, Lucknow, Uttar Pradesh - 226003

**...Corporate Debtor**

Order pronounced on 11.07.2023

**CORAM:**

Sh. Ashok Kumar Bhardwaj

: Member (Judicial)

Sh. Ashish Verma

: Member (Technical)

**PRESENT-**

Sh. Kunal Ravi Singh, Adv.

: For the Financial Creditor

Respondent/ Corporate Debtor

: Ex-parte v.o.d. 16.05.2023

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## ORDER

**PER : SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)**

1. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) for initiation of the Corporate Insolvency Resolution Process (*hereinafter referred to as "CIRP"*) against the Corporate Debtor namely Earthbuild Greencity Private Limited.
2. The total debt sanctioned by the Financial Creditor to the Crystal Facilities Management Private Limited (CFMPL) was Rs.35 Crore. Out of the said amount, the amount of Rs.28 Crore 10 Lakh was disbursed. The Corporate Debtor executed a deed of guarantee for the said amount.
3. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of real estate maintenance. The Corporate Debtor *herein* stood as guarantor qua the Corporate Debtor to pay the aforementioned amount. The guarantee deed was executed by the Corporate Debtor on 29.03.2018 and in terms of the same, the Corporate Debtor (corporate guarantor) *herein* and CFMPL

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were jointly and severally liable to repay the amount of loan. The relevant part i.e. para no.1 of the corporate guarantee deed executed by the Corporate Debtor on 29.03.2018 which is annexed as Annexure-8 of the present application, reads thus:-

*1. If at any time default shall be made by the Borrower in repayment of the said loan of Rs.35,00,00,000/- (Rupees Thirty Five Crore Only) lent and advanced/agreed to be lent and advanced by DHFL to the borrower or any part thereof or interest thereon @5.70% p.a. below DHFL's RPLR (which is at present 18.20% p.a.) i.e. 12.5% p.a. at monthly rests, payable monthly or any other moneys for the time being due and owing by the borrower to DHFL under the said sanction letter/various security documents, the Guarantor will without demur pay to DHFL on demand the said loan together with interest thereon and all other moneys which shall then be due to DHFL as aforesaid and all costs, charges and expenses whatsoever which DHFL may incur by reason of any default on the part of the Borrower.*



4. Despite opportunities, there was no appearance on behalf of the Corporate Debtor. Ld. Counsel appearing for the petitioner submitted that the principal borrower namely Crystal Facilities Management Private Limited has already been admitted to CIRP in terms of the order dated 19.01.2023.
5. We have heard the counsels for the parties and perused the record.

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6. Apparently, the petitioner *herein* sanctioned the loan to the extent of Rs.35 Crore to the principal borrower, for which the Corporate Debtor *herein* stood as one of the guarantors. Indubitably the Corporate Debtor stood as guarantor qua the entire amount of loan, jointly with the other guarantors.
7. In terms of order dated 19.01.2023, the principal borrower has been admitted to CIRP. The relevant excerpt i.e. para 7 & 8 of the order passed in IB-439/(ND)/2022 on 19.01.2023, reads thus:-

*7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.*

*8. In the light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect. Further, for the purpose of CIRP of the Corporate Debtor, the name of the Corporate Debtor is deemed to be restored in the register of companies maintained by the ROC. The ROC is directed to take appropriate steps in this regard.*

8. As has been ruled by the Hon'ble Supreme Court in the matter of Laxmi Pat Surana v/s Union of India and another, 2021 (8) SCC 481, the corporate guarantor is liable for the proceedings

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U/s 7 of the Code. Relevant para no.23 of the judgment, reads

thus:-

23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3 (8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or installment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.



9. The aforementioned judgment was followed by Hon'ble NCLAT in the matter of Naresh Kumar Aggarwal v/s CFM Asset Reconstruction Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.470/2023. The relevant para no.14 & 15 of the said judgment, reads thus :-

14. Now, we come to last submission of learned counsel for the Appellant that application under Section 7 having admitted against the Principal Borrower, it was not open for the Respondent No.1 to file

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application against the Corporate Guarantor since two simultaneous proceedings under Section 7 cannot be proceeded with. Learned counsel for the Appellant has placed reliance on judgment of this Tribunal in "2019 SCC OnLine NCLAT 542, Dr. Vishnu Kumar Agarwal vs. Piramal Enterprises Ltd.", where in Para 32 following observations have been made by this Tribunal:

"32. There is no bar in the 'I & B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company."

15. The above judgment was delivered by this Tribunal on 08.01.2019. We may notice a subsequent judgment of Hon'ble Supreme Court in "Laxmi Pat Surana vs. Union of India & Anr., (2021) 8 SCC 481". The Hon'ble Supreme Court had occasion to consider the right to proceed against Guarantor in aforesaid case. Hon'ble Supreme Court has held in the above judgment that Section 7 is an enabling provision

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which permits the Financial Creditor to initiate CIRP against a Corporate Debtor. The Corporate Debtor can be the Principal Borrower as well as the Corporate Guarantor. The Hon'ble Supreme Court held that right or cause of action would enure to the lender to proceed against the Principal Borrower, as well as the guarantor in equal measure referred to in Para 23, which is to the following effect:

"23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be."



10. As in terms of the order dated 16.05.2023, the Corporate Debtor had already been proceeded ex-parte, there is no rebuttal of either of the contentions put forth by the petitioner.

In the proceedings U/s 7 of this application, the date of default

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in the captioned petition qua the principal borrower as alleged by the petitioner is 15.04.2018. Even if limitation for the purpose of filing the present petition is reckoned from the said date, the same would expire on 14.04.2021. The date of expiry of period of limitation being between 15.03.2020 to 28.02.2022 i.e. excluded by Hon'ble Supreme Court for the purpose of limitation in terms of the judgment dated 10.01.2022 in Suo Motu Writ Petition (Civil) No.3/2020, the petition filed within 90 days from 28.02.2022 i.e. in May, 2022 would be within limitation. Even otherwise also qua the corporate guarantor, the date of invoking the guarantee would be relevant for the purpose of reckoning the limitation. As the current petition is filed on 27.05.2022, it is considered to have been filed within the period of limitation.

11. The petition being within prescribed period of limitation, the principal borrower being under CIRP and there being non-payment of the amount of debt qua which the Corporate Debtor/ Respondent stood as a corporate guarantor, on invocation of Bank Guarantee, we have no hesitation to order admission of the captioned petition. Ordered accordingly.

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12. The Financial Creditor has proposed the name of the IRP Mr. Ankit Goel having Registration No. IBBI/IPA-001/IP-P-02671/2022-2023/14088 in the present application, and the credentials of which has been verified by Ms. Aditi Kharbanda, LRA from the IBBI portal and there is nothing adverse against him. The consent affidavit under Form 2 is at page 51 of the present application.

13. The admission of application filed u/s 7(5)(a) of IBC, 2016 would entail the following consequences:-

- i) Moratorium as per Section 14 of IBC, 2016 would be operative qua the Corporate Debtor and public announcement in accordance with Sections 13 and 15 of IBC, 2016, shall be made in this regard.
- ii) Mr. Ankit Goel having IP Registration No. IBBI/IPA-001/IP-P-02671/2022-2023/14088 registered address at AAA Insolvency Professionals LLP E-10A, Kailash Colony, Delhi- 110048, email ID- [ankitgoel@aaainsolvency.in](mailto:ankitgoel@aaainsolvency.in) and mobile no.9811133226 shall be the IRP and an amount of Rs.1,00,000/- would be paid initially to the IRP to meet the initial expenses of logistics and Publication. The IRP

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shall take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

**iii)** The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of subsection (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

**iv)** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

- a)** The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b)** Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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- 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 (54 of 2002);
- d)** The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v)** The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.



- vi)** The provisions of sub-section (1) of Section 14 of IBC, 2016 as regards the moratorium shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii)** The order of moratorium shall have effect from the date of

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admission till the completion of the Corporate Insolvency Resolution process.

**viii)** Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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

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fortnight

- x)** The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi)** The amount of Rs.1,00,000/- (Rupees One Lakh only) (ibid) shall be deposited with the IRP by the applicant, within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- xii)** Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the IRP, IBBI and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii)** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**14.** The first progress report be filed within one month from the

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date of this order.

15. List the matter on 18<sup>th</sup> August, 2023 for filing the progress report/ further proceeding.

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(Ashish Verma)  
Member (Technical)

Dated : 11.07.2023

Typed by:  
Kavya Prakash Srivastava  
(Stenographer)

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(Ashok Kumar Bhardwaj)  
Member (Judicial)



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

FREE OF COST

Compared by Me  
Mahesh Sahai  
14/07/2023

*V. K. Asthana*  
14.07.2023  
V. K. Asthana  
Deputy Registrar  
National Company Law Tribunal  
Allahabad Bench, Prayagraj (U.P.)