

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH-VI

IB- 676/(ND)/2022

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

Through its Authorized Signatory Mr. Ashutosh Mishra

Edelweiss House, Off CST Road, Kalina, Mumbai-400098, Maharashtra, India
(acting in its capacity as Trustee of EARC Trust- SC 393)

[CIN: U67100MH2007PLC174475]

...Petitioner/Financial Creditor

versus

M/s Anusha Engineering Consultants and Construction Private Limited

Having its registered Office at:

1/7098, 2nd Floor, Gali No. 5, Shivaji Park, Shahdara, Delhi- 110032

[CIN: U70101DL2004PTC126755]

... Respondent/Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner:

Adv. Reema Mishra

Counsel for Respondent:

Adv. Abhishek Anand and Adv. Ishaan Dhingra

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 14.06.2024

1. This petition has been filed by Edelweiss Asset Reconstruction Company Limited (EARCL), through its authorised signatory Mr. Ashutosh Mishra, to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Anusha Engineering Consultants and Construction Private Limited (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 1,41,19,72,517/- (Rupees One Hundred and Forty-One Crores Nineteen Lakhs Seventy-Two Thousand Five Hundred and Seventeen) as on 31.05.2022 post adjustment of receipts from the Corporate Debtor, if any and along with further contractual interest @18.75% per annum quarterly payable till actual payment or realisation with all other costs, penal interest, charges and incidental expenses due and payable thereon under loan and the security documents.
2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows: -

 - (i) Initially, ECL Finance Limited (“Assignor Financial Institution”) vide its sanction letter dated 07.08.2017 had sanctioned loan for Rs. 40,00,00,000/- (Rupees Forty Crores Only) jointly to the following 2 entities namely: -

 - a. M/s Gayatri Infra Planner Private Limited (GIPPL) being the co-borrower.
 - b. M/s Anusha Engineering Consultants and Construction Private Limited

(AECCPL) being the Corporate Debtor.

- (ii) That the Corporate Debtor had passed a resolution in its meeting of Board of Directors held on 25.08.2017 for availing the said loan of Rs. 40 crores from the assignor financial institution.
- (iii) It is contended that various security documents were executed by the aforesaid borrowers and the entire loan amount was to be repaid in 6 quarterly installments as per the schedule mentioned below: -

Repayment Dates from the date of 1st disbursement	% of Loan Amount
End of 21st Month	16.67% (Rs. 6.667 Cr)
End of 24th Month	16.67% (Rs. 6.667 Cr)
End of 27th Month	16.67% (Rs. 6.667 Cr)
End of 30th Month	16.67% (Rs. 6.667 Cr)
End of 33rd Month	16.67% (Rs. 6.667 Cr)
End of 36th Month	16.67% (Rs. 6.667 Cr)
TOTAL	100% (Rs 40.00 Cr.)

- (iv) That loan amounts were disbursed by the assignor Financial Institution to the Corporate Debtor from time to time, as per terms and conditions mentioned in the loan documents. In accordance thereof, the Corporate Debtor and GIPPL were also required to pay a part of the Principal Amount of the loan on or before expiry of 21 months of the first tranche being disbursed to them, that is on or before 10th July 2019.
- (v) Thereafter, the Corporate Debtor herein and GIPPL defaulted in timely payment of interest and repayment of loan amounts, and thus due to continuous defaults, the loan account of the Corporate Debtor was classified

as a Non-Performing Asset in the books of the Assignor Financial Institution (ECL Finance Limited) on 09.10.2019 in accordance with guidelines issued by the Reserve Bank of India.

- (vi) Thereafter, vide assignment agreement dated 31.10.2019 executed between ECL Finance Limited and EARCL, the loan was absolutely transferred to the applicant herein who has stepped into the shoes of assignor financial institution as a Financial Creditor.
- (vii) The Financial Creditor had issued a Recall cum Invocation of Guarantee dated 15.04.2021 to the Corporate Debtor along with GIPPL and its guarantors calling upon them to pay jointly and severally the liabilities towards the Financial Creditor of a sum of Rs. 93,74,54,027/- (Rupees Ninety-Three Crore Seventy-Four Lakh and Fifty-Four Thousand and twenty-seven only) with interest to the Financial Creditor within 7 days from the date of the receipt of the said notice failing which the Financial Creditor would proceed towards realisation of security interest for recovering its dues.
- (viii) It is contended that no response was received from the CD to the aforesaid notice.
- (ix) Further, the financial creditor had filed the Original Application, vide OA No. 887 of 2021 against the Corporate Debtor and others before the Hon'ble Debt Recovery Tribunal, New Delhi for recovery of a sum of Rs 1,07,54,38,144/- (One Hundred and Seven Crores, Fifty-Four Lakh Thirty-Eight Thousand and One Hundred and Forty-Four only) @18.75% per annum quarterly payable till actual payment or realisation with all other costs, penal interest, charges and incidental expenses due and payable thereon under loan and the security documents which is pending for adjudication.
- (x) Accordingly, the petitioner herein has prayed before this Adjudicating Authority to admit the present petition and initiate insolvency proceedings

against the Respondent herein.

3. The Corporate Debtor has filed its reply dated 21.12.2022 through its authorised representative Mr. Ashlesh Gupta and have made the following submissions therein: -

- (i) That the Corporate Debtor is engaged in the business of construction and development of immovable properties across various parts of India. Vide Lease Deed dated 28.02.2013, executed with the Greater Noida Industrial Development Authority and the Corporate Debtor, wherein land bearing Plot No. GF-01F, Sector-16, Greater Noida, admeasuring 17,775.09 sq. metres, for the purpose of undertaking a housing development project. That subsequently the Corporate Debtor and the Co-Borrower executed a Collaboration Agreement dated 20.01.2014, agreed to undertake and develop a township/group housing project on the aforementioned land. The respondent is currently constructing a residential premises, having a total residential area of 9,19,500 sq. ft. and a total commercial saleable area of 9000 sq. ft., namely 'Gyatri Life Project'.
- (ii) That the said project, under construction, initiated by Respondent herein, consists of a total five towers, wherein it was proposed to construct a total 3 of 829 units, available for sale to prospective buyers.
- (iii) That to raise funds for completion of the Project, the Corporate Debtor and the Co-Borrower, had approached ECL Finance Limited, with a view to avail credit facilities for completion of the said project. Thereafter, vide Sanction Letter dated 07.08.2017, a credit facility for an amount of Rs. 40,00,00,000/- (Rupees Forty Crores Only) in favour of the Corporate Debtor and Co-Borrower.
- (iv) That subsequently, a Loan Agreement dated 05.07.2017, was executed between the Corporate Debtor, Co-Borrower and ECL for an amount of Rs.

40,00,00,000/- (Rupees Forty Crores). It is submitted that various security documents were also executed on 05.07.2017, against the loan facility availed by the Corporate Debtor and the Co- Borrower.

- (v) That it is noteworthy, that the said Loan was to be disbursed in tranches, in accordance with the Sanction Letter dated 07.08.2017, as required to meet the project expenses.
- (vi) That from the total amount of credit facility that was availed by the borrowers, i.e. Rs. 40,00,00,000/- (Rupees Forty Crores Only), only a sum of Rs. 39,45,00,000/- (Rupees Thirty-Nine Crores and Forty-Five Lakhs Only) was disbursed in favour of the Respondent herein.
- (vii) That the account of the respondent was declared as a Non-Performing Asset (NPA) on 09.10.2019, by the ECL Finance Limited, allegedly on the account of default in payment of interest in the month of July,2019. It is submitted that the Corporate Debtor has been regularly paying the interest, in fact a sum of Rs. 46,97,567/- (Rupees Forty-Six Lakhs Ninety-Seven Thousand Five Hundred and Sixty-Seven Only) was paid on 01.10.2019 and a sum of Rs. 1,09,00,000/- (Rupees One Crore and Nine Lakhs Only) was paid on 04.10.2019, to ECL Finance Limited, even then the account had been arbitrarily declared NPA.
- (viii) That thereafter, the Financial Creditor and the ECL Finance Limited entered into and executed an Assignment Deed dated 31.10.2019. Allegedly, the loan account of the Corporate Debtor and the Co- borrower, with all its rights, title and interest in the financing documents, all agreements, deeds and documents related thereto, and all collateral and underlying security interest and/or guarantees issued in respect of the credit facility granted to the Petitioner, which were in favour of the ECL Finance Limited allegedly devolved upon Financial Creditor.

(ix) It is alleged that the said Assignment Deed is in violation of the circulars and guidelines issued by the Reserve Bank of India mentioned in the subsequent paragraphs and hence the same is not valid in the eyes of law. That on not having the knowledge of the declaration of the loan account of the Respondent as NPA, the Answering Respondent was unable to raise any objection qua the declaration of the Loan Account as NPA and on the Assignment Agreement.

(x) The relevant paragraph of the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 (hereinafter referred to as the RBI Guidelines, 2003) are extracted hereinbelow: -

“7. Asset Reconstruction

(1) Acquisition of Financial Assets

(vi) SCs/ RCs are not permitted to acquire any non performing financial asset from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of NPA by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by the market factors.

(vii)

That further, the definition of a “sponsor bank” had been provided for in the Master Direction- Reserve Bank of India (Financial Services provided by Banks) Directions, 2016 (hereinafter referred to as the RBI Directions, 2016), which extracted as under:

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“3. Definitions:

(a) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below —

i.

*xviii. **Sponsor Bank:** means any bank that sets up a separate entity for conduct of certain financial activity.*

xix..... ”

(xi) It is emphasized that the Financial Creditor and ECL Finance Limited (Assignor Financial Institution) are sponsored and promoted by the Edelweiss Group, which is evident from their respective websites. It is submitted that vide RBI Circular, bearing no. DOR.NBFC(ARC) CC. NO. 9/26/03/001/2019-20 dated 06.12.2019, Asset Reconstruction Company shall not acquire financial assets from the following on a bilateral basis, whatever may be the consideration: -

- a. either from a bank/financial institution which is the sponsor of the ARC
- b. or a bank/financial institution which is either a lender to the ARC or a subscriber to the fund, if any raised by the ARC for its operations;
- c. or an entity in the group to which the ARC belongs.

(xii) That the present Application is liable to be dismissed on the ground that the Financial Creditor has failed to annex the Letter dated 26.08.2021, whereby a No Objection Certificate (NOC) was issued for the release of first charge/mortgage on Project “Gayatri LIFE”.

(xiii) That the Corporate Debtor has paid a sum of Rs. 12,26,90,646/-, between the period of 01.10.2017 to 15.10.2019, through the HDFC Escrow Collections and till date and no due credit has been given to the Corporate Debtor nor the Co-Borrower in the chart showing payments.

(xiv) That vide Judgment passed in Mardia Chemicals vs. Union of India [2004

(4) SCC 311], it is a well settled law that the lenders owe a duty to act fairly and reasonably while dealing with the borrower and not to act arbitrarily and in a capricious manner.

(xv) That the Financial Creditor is in clear violation of the RBI guidelines with respect to classification of accounts as NPA. It is submitted that the Respondent reserves their right to respond to the Notice u/s 13(2) of the SARFAESI Act, dated 09.06.2021 u/s 13(3A) of the Act. This issue has been clearly dealt with in the judgment of the Hon'ble High Court of Madras in Signal Apparels vs Canara Bank [II (2011) BC 124].

(xvi) That the Master Circular issued by the RBI also provides for the doubt in asset classification are to be settled through specified internal channel within a month from the date on which the account has been classified as NPA. In view of the RBI Guidelines, a Borrower is entitled to be informed if their account is declared NPA and any dispute is to be settled through specified internal channel, with a proper opportunity to be given to the Borrower to be heard and present his case. [**Stan Commodities vs Punjab and Sind Bank through its Chairman & Ors. (MANU/JH/0602/2008)**]

(xvii) That it is submitted without prejudice that the alleged delay is not solely attributable to the "Corporate Debtor" but is due to *force majeure*. That as per Article 7 Clause 7.1.9 of the Agreement dated 05.10.2017, which is stated herein below: -

"(i).....

(iv) *Any change in the Applicable Laws, which has or is likely to have Material Adverse Effect"*

(xviii) That it is submitted without prejudice that the Hon'ble National Green Tribunal in October, 2017, issued a slew of directions to deal with the

worsening air quality in Delhi and neighbouring states, banning construction and industrial activities and entry of trucks. The relevant excerpts from the said Order is reproduced herein below:

“No construction activity will be carried out on structures until further orders.....all industrial activities in Delhi NCR which are causing emissions will also not be allowed to carry on their functioning till November 14”

“That, again in 2018 and 2019, the Hon’ble Supreme Court had issued directions banning construction and industrial activities. That the said Order of the Hon’ble Supreme Court of India was operational till February, 2020 and thus the Corporate Debtor cannot be held responsible for the same in terms of the agreement.”

(xix) That thereafter, a complete lockdown was imposed by the Government of India due to the pandemic situation of Covid-19. It is submitted in the said period construction was not allowed and no construction was carried out by the Constructors/Builders.

(xx) That the Corporate Debtor has almost completed the construction of the said project and contends that insolvency proceedings are not a mere recovery mechanism at instance of creditors but are meant to facilitate revival of a business and accordingly has sought dismissal of the present application.

4. The petitioner herein vide Rejoinder dated 31.01.2023 has made the following submissions: -

(i) That the Corporate Debtor has always made delayed payments and the loan account was not declared as Non-Performing Asset arbitrarily. Reference is placed to principal amount (Rs. 6,57,50,000/-) being due on 10.07.2019 and no payment being received

on that date. However, borrower only made part-payment of Rs. 2,08,07,163/- (including Rs. 46,97,567/- paid on 01.10.2019 & Rs. 1,09,00,000/- paid on 04.10.2019) whereas Balance Principal due amount of Rs. 4,49,42,837/- is still under default.

(ii) That the Corporate Debtor was duly informed by ECL Finance Limited (Assignor Financial Institution) vide letter dated 03.12.2019 that the loan account had been declared as Non-Performing Asset on 09.10.2019 and had been consequently assigned to the petitioner herein (EARCL). The CD had not challenged such declaration of NPA or assignment to EARCL within the prescribed limitation period and therefore cannot be allowed to agitate this issue at belated stage before this AA.

(iii) It is denied that the assignment is in violation of RBI Guidelines, 2003 or SARFAESI Act, 2002. It is contended that the assignor financial institution (ECL Finance Limited) is not a bank and hence does not fall under the scope of “sponsor bank” and therefore, the RBI Guidelines, 2003 will not be applicable to it.

(iv) It is further contended that the RBI Circular bearing no. DOR.NBFC(ARC) CC. NO. 9/26/03/001/2019-20 dated 06.12.2019 referred to by the respondent in their reply is not applicable to the assignment agreement dated 31.10.2019 which was executed prior in time. Accordingly, it is emphasized that the respondent cannot seek retrospective application of the circular to the detriment of the petitioner.

(v) In regard to the contention of the respondent alleging failure of the Financial Creditor to annex the letter dated 26.08.2021 whereby a No-Objection Certificate was issued for the release of first charge/mortgage on the Project “Gayatri Life”, the petitioner has clarified that the said NOC was in-principal non-binding NOC. That No Final NOC was issued as no concrete proposal was received from the Corporate Debtor as per the conditions of the NOC. Furthermore, the NOC was only for ceding first charge and the same was not for ceding complete charge. It was provided for the benefit of Corporate Debtor to obtain incentive of SBICAP. However, now the Corporate Debtor is attempting to take undue advantage of same which must not be permitted. Excerpt from the aforesaid letter is reproduced for reference: -

“We state that this letter is non-binding, subject to internal approvals and without prejudice. We are issuing this letter upon your specific request in order to furnish the same to the fund for its further evaluation of this proposal and revert with a firm offer to invest.”

(vi) That the Corporate Debtor had made the payment of Rs. 12,26,90,646/- to ECL Limited (Assignor Financial Institution) before the assignment of the loan account. The said amount has duly been credited by the assignor in the account of the Corporate Debtor. The Financial Creditor had also filed summary of its dues of the Corporate Debtor as on 15.10.2019.

(vii) That the construction is at halt and the same has not been completed despite the strict timelines contemplated under Real Estate Regulation Authority Act, 2016 [RERA]. There is no change in law per-se which is likely to have adverse effects and the contractual agreements between the parties remains unchanged. The Corporate Debtor is raising frivolous pleas in an attempt to escape due payment.

(viii) Attention is drawn towards the following judgements wherein it has been held that the borrower has no say in the process of assignment of debt: -

- a. ICICI Bank Limited vs Official Liquidator of APS Star Industries Limited & Others. [(2010) 10 SCC 1 dated 30.09.2010 passed by the Hon’ble Supreme Court of India.]
- b. Hindon River Mills s vs IFCI Ltd., [2011 SCC Online Del 5274] dated 08.12.2011 passed by the Hon’ble Delhi High Court.
- c. Lalan Kumar Singh, Executive Director (under suspension) & Shareholder of GPI Textiles Ltd. vs Phoenix ARC Private Limited & Anr., {2018 SCC OnLine NCLAT 835} dated 20.12.2018 passed by the Hon’ble NCLAT, Delhi.
- d. Edelweiss Asset Reconstruction Company Limited vs Splendid Real Estate Private Limited, [CP (IB) No.403/MB-IV/2021] dated 17.03.2023 passed by the Hon’ble NCLT, Mumbai.

5. An additional reply dated 14.08.2023 has been filed by the Corporate Debtor

wherein it has been submitted as follows: -

That this Adjudicating Authority vide its order dated 28.03.2023 in C.P (IB)-No. 675/ND/2022 had admitted the co-borrower herein namely M/s Gayatri Infra Planners Private Limited (GIPPL) into CIRP. Further, the applicant herein (EARCL) has already preferred its entire claim before the IRP appointed for GIPPL, therefore, they cannot be permitted to raise the same claim as the basis for triggering of CIRP against the Respondent herein as the same would amount to duplicity of claims. CD has relied upon the judgement of the Hon'ble National Company Law Appellate Tribunal at New Delhi in Company Appeal (AT) (Insolvency) No. 82 of 2020 titled as "Shabad Khan Vs M/s Nisus Finance and Investment Manager & Ors." in which the Hon'ble NCLAT has observed that – *"It is, therefore, contended that the case of the appellant in "**Dr. Vishnu Kumar Agarwal**" (Supra) in terms whereof two 'Corporate Insolvency Resolution Processes' proceedings could not be triggered unless it is a joint venture company which is not the case in the instant matter"*

ANALYSIS AND FINDINGS

- 6.** We have heard the Ld. Counsels appearing for both the Petitioner and the Respondent and perused the averments made in the application and reply filed on behalf of the parties to substantiate their respective claims.
- 7.** It is an admitted and undisputed fact that credit facilities amounting to Rs. 40 crores were granted by ECL vide their sanction letter dated 07.08.2017 as per which the amount was to be disbursed in the tranches stipulated therein pursuant to which a loan agreement dated 05.10.2017 had been executed between the Corporate Debtor, Co-Borrower (M/s Gayatri Infra Planner Private Limited) and ECL Finance Limited (Lender).
- 8.** On 05.10.2017, various security documents in the nature of demand promissory notes, escrow account agreements, agreement of pledge of shares, undertaking by the Corporate Debtor, indenture of mortgage in respect of immovable property and guarantee agreements etc were executed by the Corporate Debtor and Co-Borrower (GIPPL) in favour of ECL Limited (Lender)

9. Subsequently due to untimely, non-repayment of the principal and interest amounts as per the loan agreement, the Loan Account of the Corporate Debtor was declared as Non-Performing Asset on 09.10.2019 due to non-payment and thereafter vide Assignment Agreement dated 31.10.2019, the NPA had been assigned in-toto absolutely to the applicant herein (EARCL).
10. The Financial Creditor (EARCL) had thereafter issued Recall Cum Invocation of Guarantee dated 15.04.2021 to both the Corporate Debtor and Co-Borrower (GIPPL) along-with its guarantors calling upon them to repay jointly and severally the liabilities towards the Financial Creditors amounting to Rupees 93,74,54,027.00/-.
11. The Corporate Debtor has contended that the loan assignment by ECL (Assignor Financial Institution) to EARCL is in violation of the following: -
- (i) Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 which briefly state that *SCs/ RCs are not permitted to acquire any non performing financial asset from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of NPA by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by the market factors. The aforesaid regulations have further defined **Sponsor Bank** meaning any bank that sets up a separate entity for conduct of certain financial activity.*

In response, the petitioner herein has clarified that the assignor financial institution (ECL Finance Limited) is not a bank and hence does not fall under the scope of “sponsor bank” and therefore, the aforementioned RBI Guidelines, 2003 will not be applicable to it.

This issue is conclusively settled under provisions of Section 7 of the Banking Regulation Act, 1949 which is reproduced below: -

“7. Use of words “bank”, “banker”, “banking” or “banking company”. -

(1) No company other than a banking company shall use as part of its name [or in connection with its business] any of the words “bank”, “banker” or “banking” and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words “bank”, “banking” or “banking company”.

(3) Nothing in this section shall apply to—

(a) a subsidiary of a banking company formed for one or more of the purposes

mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;

(b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956 (1 of 1956).”

(ii) RBI Circular bearing no. DOR.NBFC(ARC) CC. NO. 9/26/03/001/2019-20 dated 06.12.2019 which briefly states that Asset Reconstruction Company shall not acquire financial assets from the following on a bilateral basis, whatever may be the consideration: -

- a. either from a bank/financial institution which is the sponsor of the ARC
- b. or a bank/financial institution which is either a lender to the ARC or a subscriber to the fund, if any raised by the ARC for its operations;
- c. or an entity in the group to which the ARC belongs.

In response, EARCL has emphasised that the aforesaid circular dated 06.12.2019 referred to by the respondent in their reply is not applicable to the assignment agreement dated 31.10.2019 as the assignment agreement was executed prior in time and the aforementioned circular cannot be applied retrospectively. Moreover, the Corporate Debtor had not contested the

assignment agreement earlier within the relevant period of limitation and is agitating this issue at belated stage.

On perusal of the RBI Circular bearing no. DOR.NBFC(ARC) CC. NO. 9/26/03/001/2019-20 dated 06.12.2019, we observe that the aforesaid circular refers to para 2(A) of Circular DBNS (PD) CC.No.37/SCRC/26.03.2001/2013-14 dated March 19, 2014 which reads as follows: -

2A. "SC/RCS are not permitted to acquire any non performing financial asset from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of non-performing assets by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by market factors."

The aforementioned circular dated 19th March, 2014 as well as the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 do not include "Financial Institutions" (which is an assignor in the present case). However, the term "Financial Institutions" were subsequently added in the circular dated 06.12.2019. It is observed that since the assignment agreement took place on 31.10.2019 which was executed prior in time to the RBI Circular dated 06.12.2019, the assignment agreement does not fall under the scope of the RBI Circular dated 06.12.2019. Accordingly, the contentions of the Corporate Debtor in this regard do not hold ground and are therefore not maintainable.

12. With respect to the contention raised by the Corporate Debtor in the additional reply dated 14.08.2023, it is clarified as below: -

- (i) The Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 82 of 2020 titled as "Shabad Khan Vs M/s Nisus Finance and Investment Manager & Ors." has merely referred to a judgement in "Dr. Vishnu Aggarwal vs M/s Piramal Enterprises" [Company Appeal (AT) Insolvency 346 of 2018] ; but had finally remanded the matter back to the adjudicating authority for reconsideration of application u/s 60(5) of the

IBC, 2016.

- (ii) Moreover, this proposition of law had been discussed subsequently by the Hon'ble National Company Law Appellate Tribunal in the matter of [State Bank of India vs Athena Energy Joint Ventures Private Limited (Company Appeal (AT) (Ins) No.633 of 2020] which held as follows: - *“It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal “interpreted” the law. Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal. For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority.”*
- (iii) Accordingly, the contentions of the Corporate Debtor in this regard do not hold ground.
- (iv) Despite the Financial Creditor having preferred their entire claim against the respondent herein before the IRP appointed in C.P(IB) No. 765/ND/2022 pertaining to CIRP Proceedings of M/s GIPPL (Co-Borrower) ; the relief sought in the present matter (to initiate CIRP of respondent) is different from the relief sought by filing a claim (seeking recovery of outstanding amount). Therefore, the question of duplicity of claims does not arise.

13. It is observed that the Corporate Debtor had paid certain sums of money in part-payment to ECL (Assignor Financial Institution) and has defaulted on payment of the Balance Amount due and payable as per the loan agreement.

14. Such part-payment shall classify as an acknowledgement of debt on part of the Corporate Debtor. Therefore, we see no reason why the Corporate Debtor should be discharged from its remaining liability,

- 15.** We have gone through the contentions raised by the CD in the foregoing paragraphs No. 3 (xii) ; 3(xiii) ; 3(xv) and 3(vi) which are related to the classification of loan account as Non-Performing Asset ; NOC with respect to 1st charge mortgage and the providing of due adjustment entries for money already repaid. We are satisfied with the response of the petitioner to the contentions raised and do not find merit in these contentions.
- 16.** A plain reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application. The material on record clearly shows that there was a debt, and the CD has committed a default in the repayment of the outstanding debt amount which was admitted by the Corporate Debtor.
- 17.** We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in re-payment of the financial debt.
- 18.** In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
- 19.** Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Ankit Goel [IBBI/IPA-001/IP-P-02671/2022-2023/14088] to act as Interim Resolution Professional. The said Interim resolution Professional has valid Authorisation for Assignment up to 30.06.2025 as displayed on the website of IBBI. Written consent has been obtained from the proposed IRP vide his letter dated 07.07.2022 also certifying that no disciplinary

proceedings are pending against him with the Board of Institute of Insolvency professionals of Institute of Chartered Accountants of India.

- 20.** Accordingly, this Adjudicating Authority appoints Mr. Ankit Goel (Email – ankitgoel@aaainsolvency.in] to act as Interim Resolution professional in the matter. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.
- 21.** We direct the Applicant (EARCL) to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ankit Goel to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor.
- 22.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
- 23.** We also declare moratorium in terms of Section 14 of the Code.
The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(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;

- (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;
- (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.”

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

25. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property

of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

26. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

27. Accordingly, CP.(IB) No. – 676/2022 stands **admitted** by this Adjudicating Authority.

-SD/-

RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)