

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.574/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

IDBI Bank Limited

[L65190MH2004GOI148838]

...Financial Creditor/Applicant

V/s

**M/s Coronet Properties & Investments
Pvt. Ltd.**

[CIN: U45200MH1995PTC088863]

...Corporate Debtor/Respondent

Order pronounced on : 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Omkar Kelkar, Advocate

For the Respondent(s) : Mr. Amir Arsiwala a/w Kavisha
Shah, Advocates i/b India Law
Alliance

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 574/NCLT/MB/C-IV/2021 filed by IDBI Bank Limited, the Financial Creditor/Applicant, under

section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s Coronet Properties & Investments Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mrs. Sushma Ramaraju, authorized by the Financial Creditor vide Authorization Letter dated 12.05.2021, claiming default amount of Rs.80,62,61,990.21 (Rupees Eighty Crore, Sixty Two Lakhs, Sixty One Thousand, Nine Hundred Ninety and Twenty One Paise only) as on 01.04.2021.
3. The date of Default is 12.08.2016. The petition is filed on 05.06.2021.
4. The case of the Financial Creditor is as under:
 - a) It is submitted that M/s Zicom Electronic Security Systems Limited, the Principal Borrower (hereinafter referred as 'ZESSL') approached the Financial Creditor for grant/sanction of Working Capital Facilities aggregating to Rs.76.00 Crores. The Financial Creditor considered the request of the Borrower and granted/sanctioned Working Capital Facilities vide Sanction Letter (ref no. 21/IDBI/CBG-Andheri/15-16) dated 05.10.2015, the terms and conditions of the sanction letter were modified on 06.10.2015. To secure the aforesaid credit facility, the ZESSL alongwith Corporate Debtor herein executed various loan and security documents.
 - b) Thereafter, the Corporate Debtor once again approached the Financial Creditor and other Bank's for grant/sanction of additional working capital facilities aggregating to Rs. 195.00 Crores. The Financial Creditor considered the requested of the Corporate Debtor and being the lead Bank granted/sanctioned Working Capital Facility to the extent of Rs.195.00 Crores. To secure the aforesaid

Credit facility, the ZESSL and the Corporate Debtor executed loan documents. The details reproduced hereinunder: -

- i. Working Capital Consortium Agreement;
 - ii. Joint Deed of Hypothecation;
 - iii. Omnibus Counter Guarantee and etc.
- c) To further secure the aforesaid credit facilities, the Corporate Debtor as Corporate Guarantor has pledged its 5,00,000/- shares of face value of Rs.10/- each in favour of the Financial Creditor and other consortium lenders Bank i.e. Bank of Baroda, Union Bank of India, Central Bank of India, Saraswat Co-operative Bank and Allahabad Bank by executed irrevocable and unconditional Deed of Guarantee on 06.02.2016. The aforesaid facilities were disbursed on the date of each disbursement carried out by Bank.
- d) The Deed of Guarantee dated 06.02.2016 stipulates that in the event of default on the part of ZESSL in repayment of credit facilities, the Guarantor (Corporate Debtor) herein shall forthwith on demand make the payment of all the outstanding dues under the said credit facilities.
- e) The Corporate Debtor requested the Consortium Members for restructuring of aforesaid credit facilities. The Consortium Members considered the request of the Corporate Debtor and approved strategic debt restructuring of the Corporate Debtor.
- f) The ZESSL and the Corporate Debtor availed and enjoyed the working capital facilities but defaulted in repayment from 12.08.2016 as a result of which the loan accounts of the Borrower and the

Corporate Debtor were classified as Non-Performing Assets on 10.12.2016 as per Reserve Bank of India prudential norms.

- g) The Financial Creditor issued letter dated 20.04.2018 (ref no. 448/IDBI/MCG/ZESSL/2018-19) recalling the outstanding dues from the Borrower as well as the Corporate Guarantor i.e. Corporate Debtor herein. Further, on 10.05.2018, the Financial Creditor issued recall notice addressed to the Corporate Debtor thereby recalling the outstanding dues to the tune of Rs.48,09,76,320.81 and it was stated that in case of failure to make the payments, the Bank shall be constrained to take such steps as may be necessary against the Corporate Debtor for enforcing the guarantees and realising the dues at their own risk as to the costs and consequences thereof.
- h) The Financial Creditor submits that the Corporate Debtor on 15.01.2019 executed Revival Letter/Letter of Acknowledgement of Debt in favour of the Financial Creditor.
- i) The Financial Creditor has enclosed the Statement of Accounts for the aforesaid credit facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account. The Petitioner has also enclosed CIBIL Report and Certificate under the Banker Book Evidence Act, 1891. Hence this Petition.

Reply by the Corporate Debtor: -

5. The Corporate Debtor filed affidavit in reply thereby denying each and every statement, averments and contentions levelled in the Petition and also submits Petition is an abuse of process of this Hon'ble Tribunal therefore it required to be rejected.

-
6. The Corporate Debtor submits that it is an admitted fact that the Financial Creditor alongwith other Consortium Lenders Bank sanctioned the working capital facilities in favour of ZESSL wherein the Corporate Debtor stood as Corporate Guarantor executed Deed of Guarantee on 06.02.2016. However, the Corporate Debtor further submits that they are having a limited role in the transactions as they have only pledged its 5,00,000 shares of face value of Rs.10/- each as a security for repayment of debt on first paripassu charge basis. The same has also been admitted by the Financial Creditor in the petition. Further, on 06.02.2016, the Corporate Debtor executed an Agreement of Pledge of Shares in favour of the Financial Creditor and has not acted as a Corporate Debtor in the said Facility Agreement.
 7. The Corporate Debtor also submits that vide purported letter dated 10.05.2018, the Financial Creditor called upon the Corporate Debtor to pay the outstanding dues which in fact was to be paid by the ZESSL towards the facilities availed in 2016. They denied the contents of the said letter in toto as the same is without any basis and instead of addressing the said letter to the ZESSL, the Financial Creditor has purported to address the said letter to the Corporate Debtor herein in order to arm-twist. The ZESSL vide revival letter dated 15.01.2019 acknowledged the liabilities towards facilities availed. The Revival Letter dated 15.01.2019 was also signed by them envisaging a limited liability to the pledge of shares in view of the pledge agreement which shows that the Corporate Debtor has not conditionally admitted the liability of any kind of guarantee which is in fact the liability of the ZESSL.
 8. Because the ZESSL failed to pay the outstanding amounts towards the facilities availed, the Financial Creditor has wrongly approached this Tribunal to initiate CIRP against them.

-
9. The Corporate Debtor further submits that the CIRP proceedings cannot be initiated against the Corporate Guarantor for default of ZESSL. It is a settled principal of law and in accordance with the judgments of the Hon'ble Supreme Court, where a principal borrower fails to repay the Financial Creditor for the facilities availed, the Financial Creditor cannot initiate proceedings against the person who has acted in good faith to limited extent of pledging his shares.
10. The Financial Creditor is not a Financial Creditor of any nature whatsoever to the Corporate Debtor and that the Financial Creditor has no right of recovery of any debt from the Corporate Debtor and has a limited right of enforcing and realizing the value of pledged shares in Civil Court.
11. The Corporate Debtor further relied in the case of ***Phoenix Arc Pvt. Ltd. Vs Ketulbhai Ramubhai Patel*** (Civil Appeal No. 5146 of 2019) wherein it is held that pledge is not in any manner a guarantee under the Contract Act. Section 5(8)(i) of the Code takes within its sweep only on liability arising out of a guarantee for any of the items referred to in sub-clauses (a) to (h) of Section 5(8) of the Code, and not any other instrument in the nature of guarantee.

“23. As clear from the definition a contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The present is not a case where the corporate debtor has entered into a contract to perform the promise, or discharge the liability of borrower in case of his default. The Pledge Agreement is limited to pledge 40,160 shares as security. The corporate debtor has never promised to discharge the liability of borrower. The Facility Agreement under which the borrower was bound by the terms and conditions and containing his obligation to repay the loan security for performance are all contained in the Facility Agreement.

A contract of guarantee contains a guarantee “to perform the promise or discharge the liability of third person in case of his default”. Thus, key words in [Section 126](#) are contract “to perform the promise”, or “discharge the liability”, of a third person. Both the expressions “perform the promise” or “discharge the liability” relate to “a third person”. The Pledge Agreement dated 10.01.2012 does not contain any contract that the promise which was made by the borrower in the Facility Agreement dated 12.05.2011 to discharge the liability of debt of Rs.40 crores is undertaken by the corporate debtor. It was the borrower who had promised to repay the loan of Rs.40 crores in Facility Agreement dated 12.05.2011 and it was borrower who had undertaken to discharge the liability towards lender. The Pledge Agreement dated 10.01.2012 does not contain any contract that corporate debtor has contracted to perform the promise, or discharge the liability of the third person. The Pledge Agreement is limited to pledge of 40,160 shares of GEL only. We have noticed above that in the Facility Agreement there is a Security Creation by way of Schedule IV in which 100% equity shares of GEL were pledged by the borrower and second pari-passu charge on all current assets of the GEL was also created as security for loan. It transpires that since some shares of GEL were also with the corporate debtor who is subsidiary Company of Doshion Ltd. the same was also pledged with the lender as additional security by a subsequent agreement dated 10.01.2012.”

24. The Pledge Agreement and undertaking given, entered between Assignor and corporate debtor cannot be termed as contract of guarantee within the meaning of Section 126.”

12. Pledge of shares cannot be equated with the guarantee as both are absolutely different in terms of their ramification and implication and that the Corporate Debtor has not entered into any contract of guarantee with the Financial Creditor to perform the promise, or discharge the liability of a third party in case of default. In the event of default by the

borrower, the Financial Creditor has limited right to realize the money by sale of shares pledged. The Corporate Debtor also states that in the code nowhere pledge is mentioned and that the Financial Creditor cannot claim their pledge agreement dated 06.02.2016 as guarantee as there is no Deed of Guarantee on the record.

13. The Corporate Debtor also relied on the judgment of Hon'ble Supreme Court in the matter of *Swiss Ribbons (P) Ltd. Vs. Union of India and Pioneer Urban Land & Infrastructure Ltd. Vs. Union of India*, wherein the court held that the root requirement for a creditor to be to become a 'financial creditor' for the purpose of Part II of the Code, there must be a 'financial debt' which is owed to that person in terms of Section 5(8) of the Code.
14. Pledge of shares is not in any manner a Financial Debt as envisaged under Section 5(8) of the Code and in view of the judgment of Phoenix Arc Pvt. Ltd. (supra).

“30. This Court held that a person having only security interest over the assets of corporate debtor, even if falling within the description of 'secured creditor' by virtue of collateral security extended by the corporate debtor, would not be covered by the financial creditors as per definitions contained in sub-section (7) and (8) of Section 5. What has been held by this Court as noted above is fully attracted in the present case where corporate debtor has only extended a security by pledging 40,160 shares of GEL. The appellant at best will be secured debtor qua above security but shall not be a financial creditor within the meaning of Section 5 sub-sections (7) and (8).”

15. In light of above, that for a person to be designated as a Financial Creditor of the Corporate Debtor, it has to be shown that the Corporate

Debtor owes 'financial debt' to such person and in light of above judgment, the Financial Creditor may be termed as Secured Creditor but not a Financial Creditor.

16. The Corporate Debtor further states that from the aforesaid judgments, it makes it clear that the Financial Creditor/Petitioner may be termed as a every secured creditor would be a creditor; and every financial creditor would also be a creditor but every secured creditor may not be a financial creditor. As noticed, the expressions "financial debt" and "financial creditor" having their specific and distinct connotations and roles in insolvency and liquidation process of corporate persons. Further the Corporate Debtor submits that they have only extended a security pledge of shares to the Financial Creditor, the Financial Creditor at best only will be secured creditor of the Corporate Debtor but shall not be a financial creditor within the meaning of Section 5 (7) & (8) of the Code.

Rejoinder by the Financial Creditor

17. The Financial Creditor filed affidavit in rejoinder thereby answering the contentions raised by the Corporate Debtor in its affidavit in reply.
18. The Financial Creditor submits that the Corporate Debtor has not only executed the Pledge Agreement dated 06.02.2016 but has also executed a Corporate Guarantee on the same day i.e. 06.02.2016 in favour of consortium Banks for securing the repayment of the said facilities sanctioned to the ZESSL. Further, the Financial Creditor inadvertently failed to file the Corporate Guarantee/Deed of Guarantee dated 06.02.2016 executed by the Corporate Debtor herein but the copy of the of the Deed of Guarantee is already filed in Additional Affidavit dated 02.03.2022.

-
19. The Financial Creditor also states that the Corporate Debtor is trying to mislead the Tribunal by not only denying the execution of any irrevocable and unconditional guarantee by also denying the document annexed by the Financial Creditor. The Corporate Debtor is very well aware of the Corporate Guarantee executed by it in favour of the Consortium Members for securing the repayment of the facilities sanctioned to the Corporate Debtor. The Corporate Debtor in its Board Meeting held on 04.02.2016 (*Exhibit-A*) were duly authorized Mr. Manohar Bidaye & Mr. Pramoud Rao, Directors, to execute and furnish the Corporate Guarantee in favour of Consortium Members. The Financial Creditor denied that contentions that they have to pay the stamp duty towards the guarantee Agreement. The Financial Creditor further submits that the issue of stamp duty is not relevant to decide this company petition filed under Section 7.

Findings: -

20. We have prudently heard the Ld. Counsel for both sides and perused the materials available on records.
21. The Financial Creditor sanctioned the working capital facility aggregating to Rs. 75.00 Crores in favour of ZESSL, the principal borrower on 06.10.2015 which was further enhanced to Rs.195.00 Crores. To secure the aforesaid credit facility, the ZESSL and Corporate Debtor executed various loan and security documents. The Corporate Debtor stood as Corporate Guarantor and executed Agreement of Pledge as well as Deed of Guarantee on 06.02.2016. The Corporate Debtor pledged its 5,00,000 shares face value of Rs.10/- each in favour of the Financial Creditor. The ZESSL availed and enjoyed the credit facility but failed to repay the outstanding dues as a result of which the Loan

Account of the Corporate Debtor was classified as Non-Performing Assets on 10.11.2016. On 20.04.2018 and 10.05.2018, the Financial Creditor issued letters recalling the outstanding dues and also giving intimation that they will revoke guarantee unconditionally.

22. The contention of the Corporate Debtor herein that CIRP cannot be initiated against the Corporate Guarantor as they have only executed guarantee agreement only to limited extent and only to pledge its shares. Further, the Financial creditor can recover the money by sale of pledged shares. On perusal of Board Resolution dated 04.02.2016, it is clear that the Corporate Debtor has authorized Mr. Manohar Bidaye and Pramaud Rao, Directors to execute or cause to be executed all deeds, instruments and other writings pertaining to creditor facilities in favour of the Consortium Bankers.
23. Also on perusal of Deed of Guarantee dated 06.02.2016 (*Exhibit-A of Additional Affidavit*), executed by the Corporate Debtor in favour of the Financial Creditor and other consortium lenders Bank, it is seen that the Corporate Guarantor also undertook and agreed that in case at any time default is made by the Borrower in payment of the principal sum not exceeding Rs.195.00 Crores together with interest, costs, charges, expenses and/or other money for the time being due to the said Banks in respect or under the said credit facilities or any of them the Corporate Guarantor shall forthwith on demand pay the said Bank's the whole of such principal sum not exceeding Rs. 195.00 Crores together with interests, costs, charges, expenses and/or any other money as may be then due to the Consortium lenders Banks.
24. The Corporate Debtor herein also declared that the no commission is paid by the Borrower i.e. ZESSL for issuing the guarantee and the

Corporate Guarantor further agreed and undertook not to accept or take any commission or other amount from the said borrower for guaranteeing the credit facilities sanctioned by the Consortium Banks to the ZESSL.

25. In light of the above, it is clearly seen that the Corporate Debtor have already undertaken in case of default by the principal borrower i.e. ZESSL, the Consortium Lenders Bank can initiate any legal proceedings against them. Further, the Corporate Debtor also executed Revival Letter dated 15.01.2019 acknowledging the outstanding dues to the extent of Rs. 53,57,11,249.51 as on 01.12.2018.
26. In view of above, this Adjudicating Authority is of the considered view that there is clear default on the part of the Corporate Debtor. Thus, this Petition is liable to be admitted.
27. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
28. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
29. The Financial Creditor has proposed the name of Mr. Huzefa Fakhri Sitabkhan, a registered insolvency resolution professional having

Registration Number [IBBI/IPA-001/IP-P0031/2017-2018/10115] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- a) This Application being C.P. (IB) No. 574/NCLT/MB/C-IV/2021 filed by IDBI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Coronet Properties & Investments Pvt. Ltd. Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 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 provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Huzefa Fakhri Sitabkhan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P0031/2017-18/10115] as Interim Resolution Professional to carry out the functions as mentioned under I&B

Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Manoj Kumar Dubey
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

/NP/