

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT-III

I. A. No. 2285/2022

IN

C. P. No. 27/IB/C-III/2019

Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

J. C. Flowers Asset Reconstruction)

Private Limited)

Acting in its capacity as trustee of JCF)

YES Trust 2022-23/5)

12th Floor, Crompton Greaves House, Dr.)

Annie Besant Road, Worli, Mumbai,)

Maharashtra – 400030)

... Applicant

Vs

Mr. Abhay Narayan Manudhane & Ors.)

Resolution Professional of Housing)

Development and Infrastructure Ltd .)

1204, Maker Chamber V, Jamnalal Bajaj)

Road, Nariman Point, Mumbai - 400021)

... Respondent

IN THE MATTER OF

Bank of India

... Financial Creditor

Vs

Housing Development and Infrastructure Limited

... Corporate Debtor

Order pronounced on: 24.10.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant : Adv. Rohit Gupta a/w Adv. Ayush Kothari a/w Adv. Chinmay Bhojane i/b Apex Law Partners

For the RP : Adv. Shadab S. Jan a/w Adv. Prerana Wagh a/w Ms. Prangana Barua a/w Mr. Mufaddal Paperwala i/b M/s Crawford Bayley & Co.

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

1. This Interlocutory Application (IA) is filed by Yes Bank (**erstwhile Applicant**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 11 of National Company Law Tribunal (NCLT) Rules, 2016 seeking the following reliefs:
 - a) *Declare the decision of the Resolution Professional/Respondent to reject the claim of the Applicant as null and void;*
 - b) *The Respondent be ordered and directed to admit the entire claim of the Applicant for Rs. 43,80,05,244/- (Rupees Forty-Three Crores Eighty Lakhs Five Thousand Two Hundred and Forty-Four Only) as on the Insolvency Commencement Date i.e. August 20,2019 against the Corporate Debtor with respect to the Term Loan provided to the Corporate Debtor as a Financial Debt and the Applicant be treated as a Financial Creditor for the same.*
 - c) *Pending the hearing and final disposal of the present Application the Respondent be restrained from taking any further steps in the CIRP of the Corporate Debtor;*
 - d) *Pass other and further such orders as may be necessary in the facts and circumstances of the present case.*
 - e) *Pending the hearing and final disposal of the present Application the Respondent be restrained from dealing with the Mortgaged Property in any manner.*
 - f) *For the costs of the present case.*

2. **Facts relevant to the present case, in brief:**

- 2.1 Yes Bank (**erstwhile Applicant**) had sanctioned a Term Loan of Rs. 70 Crores to Panasia Commodity Trading Pvt. Ltd. (**Principal Borrower**), on the terms and conditions, contained in Facility Letter no. YBL/SELHI/CF/FL/0454/ 20117-18 dated 22.03.2018. Subsequently, a Loan Agreement dated 27.03.2018 was executed between the Principal Borrower and erstwhile Applicant.
- 2.2 The said term loan was secured by a Deed of Mortgage dated 27.03.2018 executed by and between the Principal Borrower, erstwhile Applicant and Housing Development and Infrastructure Limited (**Corporate Debtor**) by which the erstwhile Applicant created a charge on three multiplex properties owned by the Corporate Debtor.
- 2.3 The Principal Borrower failed to repay the principal amount and/or interest accrued therein, and consequently, the loan account of the Principal Borrower was classified as a Non-Performing Asset (NPA) on 01.11.2020 and the loan was recalled by the erstwhile Applicant vide Notice bearing no. YBL/ARM/2021-22/228.
- 2.4 In the meantime, Corporate Insolvency Resolution Process (**CIRP**) was initiated against the Corporate Debtor vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (**Respondent 1**) was appointed as the Interim Resolution Professional (**IRP**) and was subsequently confirmed as the Resolution Professional (**RP**).
- 2.5 The erstwhile Applicant submitted its claim of Rs. 43,80,05,244/- on 04.04.2022 in the capacity of a financial creditor. However, the RP, vide his email dated 19.04.2022, rejected the claim of the erstwhile Applicant on the ground that the RP did not have the authority to accept the claims submitted after 90 days from the insolvency commencement date and that various Resolution Plans are being considered by the Committee of Creditors (CoC).



2.6 Thereafter, Yes Bank/erstwhile Applicant had once again requested the RP to reconsider its claim pointing out that the claims of some creditors and home buyers were admitted by the RP even after the expire of the said 90 days. In response to the same, the RP sent another email dated 30.04.2022 once again rejecting the claim of Yes Bank on the following grounds:

a) There was no disbursement made to the Corporate Debtor against the time value of money;

b) No Corporate Guarantee was issued by the CD in this regard;

c) CD has mortgaged its property as 'Third Party' collateral for the facility sanctioned to M/s. Panasia Commodity Trading P. Ltd.;

d) Original Borrowers loan account was standard on the insolvency commencement date of HDIL i.e.20th August, 2019 and was declared NPA on 1st November,2020;

e) Loan recall notice to the original borrower was sent on 29th June, 2021;

f) Corporate Guarantee was invoked on 13th July, 2021;

g) As per the sanction there was a moratorium of 27 months on principal repayment i.e. repayment was to start from June, 2020 onwards. As is clear from the bank statements submitted, interest was regularly serviced as the ICD. hence, default if any, could have arisen only after the end of moratorium.

2.7 Aggrieved by the rejection of the claim of Rs. 43,80,05,244/- on the reasons aforementioned, the erstwhile Applicant has moved the present application.

2.8 While the application was pending adjudication, the erstwhile Applicant i.e. Yes Bank, vide Assignment Agreement dated 16.12.2022, assigned the financial assets pertaining to the Principal Borrower, along with all rights, titles and interests in the financial documents and the security interest created therefor, in favour of J. C. Flowers Asset Reconstruction Private Limited (acting in its capacity as trustee of JCF YES Trust 2022-

23/5) (**Applicant**). The Applicant filed IA/3451/2023 seeking substitution of its name in place of Yes Bank, and the said IA was allowed on 08.08.2023.

3. **Submissions of Yes Bank**

- 3.1 The RP had initially rejected Yes Bank's claim on 19.04.2022 for the sole reason that the claim was filed beyond 90 days from the ICD. However, it is submitted that the Hon'ble Supreme Court has clarified that the 90 days period for submission of claims is merely directory and not mandatory and admittedly, the CoC was only at the stage of considering the Resolutions Plans and no Plan was approved as on the date of submission of claim by Yes Bank.
- 3.2 When this was pointed out to the RP, the RP vide another email dated 30.04.2022 again rejected the claim but on merits. In this regard, it is submitted that on a bare perusal of the provisions of the I&B Code read with the provisions of Indian Contract Act, 1872, it is clear that the liability of the guarantor is co-extensive with that of the principal debtor and a financial creditor under section 5(8) of the Code includes a guarantor.
- 3.3 The RP stated that no Corporate Guarantee was issued by the Corporate Debtor in favour of Yes Bank and that the Corporate Debtor has merely mortgaged its property as 'Third Party' collateral. It is submitted that the Deed of Mortgage and the obligations of the Mortgagor therein i.e. the Corporate Debtor, constitutes guarantee for repayment of the outstanding dues of the Principal Borrower. More particularly, Clause 25 of the Mortgage Deed states that the Mortgagor i.e. the Corporate Debtor shall remain liable to the secured parties i.e. Yes Bank for any deficiency in relation to the Mortgage Debt. Admittedly, the Principal Borrower failed to repay the loan amount and therefore, the Corporate Debtor is liable to pay the debt.



- 3.4 The RP contended that the account of the Principal Borrower was standard as on the date of initiation of CIRP in respect of the Corporate Debtor and further submitted that there is no default. In this regard, reliance is placed on **Export Import Bank of India vs. Resolution Professional JEKPL Private Limited [(2018) SCC OnLine NCLAT 465]** wherein Hon'ble NCLAT observed that *“any person who has the right to claim payment, as defined under section 3(6), is supposed to file the claim whether matured or unmatured. The question as to whether there is default or not is not to be seen.”*
- 3.5 It is duty of the RP to only collate the claims and not adjudicate upon them. The RP has misinterpreted the law which states that amount of claim submitted should be as on date of insolvency commencement date and not that default should have occurred before the ICD.
- 3.6 Without prejudice to the above, it is submitted that on a perusal of clause 'D' of the Deed of Mortgage in question, it can be perceived that the said Deed of Mortgage is an English Mortgage which is defined under Section 58(e) of the Transfer of Property Act, 1882 (**TPA Act**) as follows: *“Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English Mortgage.* Further Section 68 of TPA Act states that where the mortgagor binds himself to repay the mortgage money, the mortgagee has a right to sue for the same. Thus, in the present case, under the Deed of Mortgage, Yes Bank has the right to sue for the mortgage money from the Corporate Debtor.
- 3.7 Reliance is further placed on **Rajeev R. Jain vs. Aasan Corporate Solutions Private Limited & Ors.**, to contend that a mortgagee is entitled to file an application under section 7 of the I&B Code.



3.8 Moreover, the term loan availed by the Principal Borrower is to cover the expenses incurred towards servicing the multiplexes owned by the Corporate Debtor. Thus, the Corporate Debtor is the ultimate beneficiary of the said facility, and therefore, Yes Bank is undoubtedly a financial creditor of the Corporate Debtor as elaborated by Hon'ble Supreme Court in **Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. [2021 SCC OnLine SC 513]** and **Anuj Jain, IRP of Jaypee Infratech Ltd vs. Axis Bank [2019 SCC OnLine SC 1775]**.

4. **Submissions of the Resolution Professional**

4.1 Regulation 13 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 provides that the RP shall verify each claim with due diligence in terms of the correctness of the claims. Thus, the Applicant has erred in suggesting that the RP has to merely collate the claims and proceed to admit it regardless of its veracity. In the present case, the determination that the claim of the Applicant is not a financial debt did not amount to adjudication of the claim. Reliance is placed on **Vistra ITCL (India) Limited v. Mr. Vithal Madhukar Dahake, RP of Radius Estate Projects Private Limited.**

4.2 The Applicant is not a financial creditor of the Corporate Debtor since no money was disbursed to the Corporate Debtor and the Applicant i.e. Yes Bank is merely a mortgagee/ holder of security interest pursuant to Deed of Mortgage dated 27.03.2018 whereby certain immovable assets of the Corporate Debtor were mortgaged in favour of the Applicant to secure the loans availed by the Principal Borrower.

4.3 The Hon'ble Supreme Court in **Anuj Jain, IRP of Jaypee Infratech Limited vs. Axis Bank** has held that *"the essential element of disbursement, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of section 5(8) of the Code."* In view of the same, in the present case, when the essential ingredient i.e. disbursement is

not there, the Applicant cannot contend that its claim would constitute a 'financial debt'.

4.4 The obligation of the Corporate Debtor under the Mortgage Deed cannot be construed as a 'guarantee' or 'indemnity' in order to bring the claim of the Applicant under section 5(8)(i) of the I&B Code, and the mortgage debt under the Mortgage Deed is not a 'financial debt'. Reference is once again made to **Anuj Jain, IRP of Jaypee Infratech Limited vs. Axis Bank** wherein it was held that *"if a corporate debtor has given its property in mortgage to secure the debts of a third party, it may lead to a mortgage debt and therefore, it may fall within the definition of 'debt' under section 3(10) of the Code.*

4.5 The Applicant has contended that in view of the Mortgage being an English Mortgage, the Mortgagee has a right to sue the mortgagor in case of non-payment of mortgage debt. In this regard, it is submitted that the obligation to repay the debt of the primary obligor is a necessary ingredient in any mortgage transaction regardless of whether it is an English mortgage or any other type of mortgage including a simple mortgage. However, as already submitted, an obligation to repay the debt under the Mortgage Deed cannot be characterized as a guarantee.

ANALYSIS & FINDINGS

5. Heard Ld. Counsel for the parties and perused the records.
6. Going by the factual matrix, it is observed that Yes Bank had disbursed a loan amount of Rs. 70 crores to M/s Pansia Commodity Trading Pvt. Ltd (**Principal Borrower**) vide a facility letter dated 22.03.2018. The said facility letter states that the purpose of the facility is towards expenses related to service agreement for the multiplexes including advance payment, reimbursement of expenses incurred and towards business advance.



7. Note 1 of the facility letter enlists the securities created to secure the loan amount. More particularly, Note 1(b) of the facility letter mentions about the security provided by the Corporate Debtor in the following terms:

“Note 1

b) Priority Charge on the 3 multiplexes at Annexe Mall (Kandivali), Harmony Mall (Goregaon), and Kulraj Broadway (Vasai), operated by Carnivals Films Entertainment Pvt. Ltd., already mortgaged to YBL- and owned by Housing Development & Infrastructure Limited.”

8. Pursuant thereto, a Loan Agreement dated 27.03.2018 was entered into between Yes Bank and the Principal Borrower. The clause that pertains to the repayment of the said loan of Rs. 70 crores need consideration:

“2.6 REPAYMENT

(i) Unless otherwise agreed between the Parties, the Borrower shall repay the Facilities on demand to the Bank.

*** ”

9. A Mortgage Deed dated 27.03.2018 was also executed between Yes Bank and Corporate whereby 3 (three) multiplexes owned by Corporate Debtor were secured in favour of Yes Bank to secure the payment under the Loan Agreement.
10. Yes Bank sent a notice dated 29.06.2021 calling upon the Principal Borrower to repay the loan amount. However, the Principal Borrower failed to pay the outstanding dues.
11. Since the Corporate Debtor was undergoing CIRP, Yes Bank submitted a claim of Rs. 43,80,05,244/- on 04.04.2022 in the prescribed form to the Resolution Professional (**RP**) of the Corporate Debtor. However, the RP rejected the claim on the ground that the money owed by the Corporate Debtor under the mortgage deed is not a financial debt under section 5(8) of the I&B Code and also that there was no default as on the insolvency

commencement date. Aggrieved by the same, Yes Bank has filed the present application.



12. Arguments were advanced by the parties as to whether a mortgage deed can be treated as equivalent to guarantee deed and the existence of default as on the date of admission of Corporate Debtor to CIRP. Ld. Counsel for the Applicant had also taken us through the relevant sections of the Transfer of Property Act, 1882 to contend that the Applicant is entitled to sue the Corporate Debtor for the default on the payment of the mortgage money.
13. The moot question that arises herein is *whether the Applicant being a mortgagee of the assets mortgaged in its favour by the Corporate Debtor can be considered as a financial creditor and whether the claim arising under the Deed of Mortgage is liable to be admitted considering the facts and circumstances of the present case?*
14. The issue pertaining to whether a mortgage deed can be treated as equivalent to a guarantee deed and whether on that basis a Mortgagee can be considered as a financial creditor is no more *res integra* since the same has been decided by Hon'ble Supreme Court in **Anuj Jain, RP of Jaypee Infratech Limited vs. Axis Bank** and **Phoenix Arc Pvt Ltd vs. Ketulbhai Ramubhai Patel**. The relevant observations from the two judgments are as follows:

a) Relevant extracts from Jaypee Infratech Ltd. (supra) are reproduced below:

“51. Indisputably, the debts in question are in the form of third party security; said to have been given by the corporate debtor JIL so as to secure the loans/advances/facilities obtained by JAL from the respondent-lenders. Such a ‘debt’ is not and cannot be a ‘financial debt’ within the meaning of Section 5(8) of the Code; and hence, the respondent-lenders, the

mortgagees, are not the 'financial creditors' of the corporate debtor JIL."



b) Relevant extracts from Ketulbhai Ramubhai (supra) are reproduced below:

"36. 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. The Applicant's argument that the Corporate Debtor was the ultimate beneficiary of the loan amount is not accepted since it is apparent that the Principal Borrower had utilised the amount to clear the expenses on its part and whether the money has been applied on the multiplexes of the Corporate Debtor or not is irrelevant since the ultimate aim of availing the loan assistance was to discharge the liability of the Principal Borrower and not the Corporate Debtor. We also agree with the submission of the RP that a clause containing an obligation to pay the mortgage debt is found in every form of mortgage. Therefore, the argument of the Applicant advanced in relation to the definition of 'English Mortgage' and section 68 of the Transfer of Property Act, 1882 is of no avail.
16. It is not disputed by the Applicant that there is no deed of guarantee having been executed between the parties to secure the repayment of the loan amount. However, in the present case, Ld. Counsel for the Applicant



also placed reliance on the Loan Agreement dated 27.03.2018 to argue that the Corporate Debtor had expressly promised in the Mortgage Deed to repay the amount irrespective of the security created. The clauses contained in the Mortgage Deed, according to Ld. Counsel for the Applicant, demonstrate that the Corporate Debtor has expressly promised to repay the loan amount borrowed by the Principal Borrower and therefore, the same can be treated as a guarantee provided by the Corporate Debtor.

17. We deem it fit to reproduce the Clause 25 of the Mortgage Deed below:

“25. LIABILITY TO SECURED PARTIES FOR DEFICIENCY

*(a) In the event that the monies received by the Mortgagee or the Receiver hereunder are insufficient to discharge the Mortgage Debt. Parties shall be entitled to recover the same from the Mortgagor as provided under the Financing Document. **Nothing herein contained shall derogate from, qualify or otherwise prejudicially affect the right of the Mortgagee to demand from the Mortgagor, upon the occurrence of an Event of Default, whole or part of the Mortgage Debt notwithstanding that all or some of the Mortgaged Properties may not have been realized.***

*(b) **The Mortgagor shall remain liable to the Secured Parties for any deficiency in relation to the Mortgage Debt.**”*

18. We see that under the above Clause, the Corporate Debtor had expressly undertaken the liability to make good the deficiency in relation to the mortgage debt i.e. the loan amount notwithstanding the realisation of the mortgaged properties. However, it is also undisputed that there was neither ‘disbursement of money’ to the Corporate Debtor which is one of the essentials of a financial debt as held in **Jaypee Infratech** (supra), nor Corporate Debtor is guarantor of the loan disbursed to the Principal Borrower. Moreover, the Corporate Debtor is not signatory to the loan agreement.



19. Be that as it may be, it is also pertinent here to analyse the other contention of the RP that as on the insolvency commencement date, no default had occurred in respect of the said loan amount.
20. Perusal of the facility letter and the loan agreement shows that the repayment schedule starts after a moratorium of 27 months from the date of disbursement of the loan which loan was disbursed in or around March 2018. Accordingly, liability of the Principal Borrower to repay the amount started only i.e. after the December 2020 i.e. expiry of 27 months moratorium. Moreover, as per the Repayment Schedule in the Loan Agreement, the Borrower was obliged to repay the loan amount on demand. Accordingly, Yes Bank had sent a notice to the Principal Borrower to pay the loan amount on 29.06.2021, but the Principal Borrower did not pay the amount.
21. However, the Corporate Debtor was admitted to CIRP on 20.08.2019, thus, it was only after the initiation of CIRP in respect of the Corporate Debtor that the Principal Borrower defaulted in payment of outstanding dues. When the Principal Borrower had defaulted in paying the loan amount, the erstwhile Applicant certainly could not have enforced its security under the Mortgage Deed in view of the moratorium in force which is why the erstwhile Applicant has filed a claim before the RP.
22. The expression “debt” as defined under section 3(11) of the Code means *“a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”*, and “default” as defined under section 3(12) means *“non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not ¹[paid] by the debtor or the corporate debtor, as the case may be”*.
23. Going by the facts in the present case, it is unambiguously clear that as on the date of initiation of the CIRP of the Corporate Debtor, no default had occurred even with respect to the Principal Borrower under the



facility letter or the loan agreement. Thus, when the Principal Borrower itself had no amount due and payable under the Facility letter/loan agreement at the time when Corporate Debtor was admitted to CIRP, there could not be debt on part of the Corporate Debtor since the liability of the Corporate Debtor only would occur in case of default by the Principal Borrower despite Corporate Debtor's liability being co-extensive with that of Principal Borrower.

24. Thus, the claim of the erstwhile Applicant had become due only after the Corporate Debtor was admitted into CIRP. The Hon'ble NCLAT in **Gujarat Urja Vikas Nigam Limited vs. Mr. Udayraj Patwardhan [Company Appeal (AT) (Ins) No. 1183/2024]**, decided on 23.09.2024 has held as follows:

“53. As regard, the contention of the Appellant that even if the Code does not provide the claims not arising as on date of initiation of the CIRP, the claims do not get automatically discharged, we hold that if the Appellant has any recovery towards the Corporate Debtor, he is entitled to initiate suitable recovery proceedings, if allowed by the law and in accordance with the law, which is a different legal right then arising out of filing claims under present petition, but cannot file claims arising after CIRP date.

55. We note that this Appellate Tribunal in case of DBS Bank India Limited (Supra) have examined the issue before us in relation to the liquidation process (the present case is the CIRP process), whereas the ratio was given in para 18 & 20 of the judgement which reads as under :-

“18. In the present case, Liquidation Commencement Date is a date when the Adjudicating Authority passed the Order of Liquidation. Thus, claim has to be with reference to the liquidation commencement date. The statute pegs the claim on a particular date for a purpose and object. When a claim is filed in Form D where interest and principal have been included up to the date of liquidation commencement date, claimants cannot be allowed to claim any further amount in

addition to the amount which they have claimed in their Form D.

20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.”

(Emphasis Supplied)


56. We consciously note that this judgement was w.r.t liquidation process where as present case is w.r.t. CIRP, but the issue remains the same i.e., whether the Resolution Professional or liquidator can consider claim not due or not filed on the date of commencement of such CIRP or liquidation proceedings.

57. We hold that there is a clear law that Resolution Professional can only entertain claims due and filed w.r.t. CIRP commencement date and not due to subsequent event, for which claimant might have other legal remedy”

(Emphasis Provided)

25. We further refer to Hon’ble NCLAT in **IDBI Trusteeship Services Limited vs. Mr. Abhinav Mukherji & Ors. [Company Appeal (AT) (Ins) No. 356 and 358 of 2022]** wherein it was held as follows:

27. It is seen from the aforementioned Judgement that an uninvoiced Corporate Guarantee cannot be considered as a ‘Matured Claim’. In para 133 of the aforementioned Judgement the Hon’ble Supreme Court has upheld the finding of the Adjudicating Authority that once the moratorium was applied under Section 14 of the Code, a Corporate Guarantee cannot be invoked. Though this is a case




where the Resolution Plan has been approved, the fact remains that the Corporate Guarantee cannot be invoked once the CIRP has commenced and that an uninvoked Corporate Guarantee as on date of filing of the Claim, cannot be considered as 'Matured Claim' has been laid down by the Hon'ble Supreme Court.

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29. It is clear from the observations made by the Hon'ble Supreme Court in the aforementioned Judgement 'Swiss Ribbons Pvt. Ltd. & Anr.' (Supra) that a 'Claim' gives rise to a debt only when it becomes due. A 'Claim' is wider in its scope than debt. A claim may be due or may not be due, but a debt must be a claim which is due. A complete mechanism has been provided in IBC, 2016 as to how and when claims become 'due and payable' and debt owed. In the instant case, the CIRP commencement date of the 'Corporate Debtor' is 27/01/2020 and the Appellant had recalled the entire redemption amount with respect to debentures on 25/03/2020 subsequent to the initiation of CIRP. The Adjudicating Authority recorded that the Corporate Guarantee was invoked on 07/04/2020. The claims were filed by the Appellants on 10/02/2020. This Tribunal is of the earnest view that the Appellants cannot Claim the amounts in the CIRP of the 'Corporate Debtor' who is a 'Corporate Guarantor' on the basis of the Deed of Guarantee which was never invoked as on the date of filing of the Claims.

30. The Corporate Guarantee executed by the 'Corporate Debtor' was in favour of IIFCL, which assigned its rights to the Applicant, who filed their Form C but have not invoked the Corporate Guarantee. The Adjudicating Authority has categorically held that the Applicant was prevented from invoking Corporate Guarantee during Moratorium and that RP has rightly rejected the Claim as the Corporate Guarantee was not invoked. In an Appeal preferred by Edelweiss Asset Reconstruction Company



Ltd. (EARC), NCLAT reversed its decision passed in 'Axis Bank' (Supra) and has held that on declaration of moratorium, it was not open to EARC to invoke the Corporate Guarantee and held that the IRP has rightly not accepted the claim of the Appellant/EARC. As the Resolution Plan was already approved in that case, the Hon'ble Supreme Court in 'Ghanshyam Mishra and Sons Private Limited' (Supra) in paragraph 133 has also closed the right of EARC in terms of taking any further action. Therefore, we are of the view that the ratio of the Hon'ble Supreme Court in 'Ghanshyam Mishra and Sons Private Limited' (Supra), is squarely applicable to the facts of this case and hence we are of the considered view that when the 'Corporate Debtor' is a 'Guarantor' and when the 'Corporate Guarantee' has never been invoked prior to the commencement of the CIRP, as on the date of filing of the Claims, the 'Right to Payment' has not accrued.

26. Adhering to the above observations of Hon'ble NCLAT, we hold that the claim of Rs. 43,80,05,244/- of the Applicant having not arisen as on the date of the commencement of insolvency proceedings in respect of the Corporate Debtor, the same cannot be claimed before the RP.
27. Thus, considering the facts and the discussions made above, the present application is **dismissed** and **disposed of**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Sd/-

Ms. Lakshmi Gurung
Member (Judicial)

Uma, LRA