



ntc industries limited

(AN ISO 9001-2015 COMPANY)

REGD. OFFICE : 149 B. T. ROAD, P.O. KAMARHATI, KOLKATA - 700 058, PH : +91 75950 46807 / 13

19th October, 2023

To,
BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street,
Mumbai- 400 001
Scrip Code: 526723

To,
The Calcutta Stock Exchange Ltd.
7, Lyons Range,
Kolkata- 700 001
Scrip Code: 28044

Dear Sir/Madam,

Sub: Disclosure under Regulation 30 and other applicable provisions of the Securities and Exchange Board of India (Listing Obligations & Disclosure Requirements) Regulations, 2015

Pursuant to Regulation 30 read with Schedule III of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations') and the SEBI Circular No. SEBI/HO/CFD/CFD-PoD1/P/CIR/2023/123 dated July 13, 2023, we wish to inform that:

1. The **IFCI Limited**, ('Petitioner/Financial Creditor') has filed an application to National Company Law Tribunal ('NCLT') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') against the company **NTCIL Infrastructure Private Limited**, ('Respondent'/ 'Corporate Debtor/ Corporate Guarantor'), one of the wholly owned subsidiary of the listed entity, for initiation of corporate insolvency resolution process ('CIRP') due to invoking of Corporate Guarantee issued to EMC LTD ('Principal Borrower') towards financial assistance and default thereof.

2. Further vide order dated 17th October, 2023, Smt. Bidisha Banerjee, Hon'ble Member (Judicial) of National Company Law Tribunal, Kolkata Bench, has admitted the above application submitted by the petitioner (vide Petition (IB) No. 24/KB/2023) under Section 7 of the IBC against the Respondent/ Corporate Debtor, to initiate the CIRP in terms of the IBC and Moratorium Order was passed for a public announcement as stated in Section 13 of the IBC.

The copy of the order has been served by email upon the Subsidiary Company by the NCLT on 18th October, 2023 and the same is enclosed herewith for your reference and record as **Annexure**.

Further, the details of the above order, as required under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with Schedule III and the SEBI Circular No. SEBI/HO/CFD/CFD-PoD1/P/CIR/2023/123 dated July 13, 2023, are given hereunder:-

a) brief details of litigation viz. name(s) of the opposing party, court/ tribunal/agency where litigation is filed, brief details of dispute/litigation;

Brief details of Dispute / Litigation: EMC Limited (Principal Borrower) in the usual course of business, approached the Financial Creditor i.e., IFCI Limited for sanction of loan



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| | |
|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>aggregating to Rs. 200,00,00,000/- (Rupees Two Hundred Crore only) (hereinafter referred to as 'Loan – II') which was sanctioned vide sanction letter dated 29/01/2015 (as may be modified from time to time). The repayment of Loan II was guaranteed by the Corporate Guarantor NTCIL Infrastructure Private Limited, the respondent herein under the Deed of Corporate Guarantee dated 18/06/2015 executed between the Financial Creditor and the Guarantor Debtor. Since the Corporate Guarantee dated 18/06/2015 was furnished by the Corporate Debtor securing the Loan II availed by the Principal Borrower, the outstanding dues against the Loan II only is claimed.</p> <p>Name of the Opposing Party : IFCI Limited Court: NCLT, Kolkata</p> |
| b) expected financial implications, if any, due to compensation, penalty etc.; | Not ascertainable as of now |
| c) quantum of claims, if any; | Since the Corporate Guarantee dated 18/06/2015 was furnished by the Corporate Debtor securing the Loan II availed by the Principal Borrower, the outstanding dues against the Loan II only is claimed i.e., Rs. 200 Crore. |

This is for your kind information and record.

This may be treated as disclosure under applicable provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Thanking you,

Yours faithfully,

For **ntc industries limited**

Anushree Chowdhury
Company Secretary
& Compliance Officer



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

IN THE MATTER OF:

Company Petition (IB) No. 24/KB/2023

*A Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with
Rule 4 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority)
Rules, 2016.*

IN THE MATTER OF:

IFCI LIMITED,

registered office at
Tower 61, Nehru Place,
New Delhi – 110019.

... **Financial Creditor/ Petitioner**

Verses

NTCIL Infrastructure Private Limited,

Registered office at 149, BT Road,
Kamarhati, Kolkata, North 24 PGS,
West Bengal – 700058.

... **Corporate Debtor/ Respondent**

And

IN THE MATTER OF:

I.A. (IB) No. 996/KB/2023

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

NTCIL Infrastructure Private Limited.

... **Applicant**

Date of Hearing: September 27, 2023

Date of Pronouncement: October 17, 2023

CORAM

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, HON'BLE MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

Appearance:

For Petitioner/ Financial Creditor:

1. Mr. Ratnanko Banerjee, Sr. Adv.
2. Mr. Rishav Banerjee, Adv.
3. Mr. Supriyo Gole, Adv. (Advocate-on-Record)
4. Ms. Madhuj Barman, Adv.

For Respondent/ Corporate Debtor/ Applicant in I.A. 996/KB/2023:

1. Jishnu Chowdhury, Adv.
2. Ms. S. Das, Adv.
3. Mr. A. Tarafdar, Adv.

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.

Company Petition (IB) No. 24/KB/2023

2. This instant petition is filed under **Section 7 of the Insolvency and Bankruptcy Code, 2016**, for brevity “**I&B Code**” read with other provisions of law by the **IFCI Limited**, (hereinafter referred as “**Petitioner**”/ “**Financial Creditor**”/ “**FC**”) an existing company within the meaning the Companies Act, 2013, having its registered office at Tower 61, Nehru Place, New Delhi – 110019 against the **NTCIL Infrastructure Private Limited**, (hereinafter referred as “**Respondent**”/ “**Corporate Debtor**”/ “**CD**”) an existing company within the meaning the Companies Act, 2013, registered office at 149, BT Road, Kamarhati, Kolkata, North 24 PGS, West Bengal – 700058, seeking the direction from this Adjudicating Authority to initiate **Corporate Insolvency Resolution Process** (in short “**CIR Process**”).
3. The Corporate Debtor was incorporated on 27/08/2014, having Authorized Share Capital of Rs. 1,00,000/- and the Paid-up Capital of Rs. 1,00,000/-, bearing CIN: U70102WB2014PTC203292.

The Copy of the Master Index of the Corporate Debtor is **annexed at Page 23** being Annexure “**D**” to this Petition.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

4. Brief Fact of the Case:

4.1. In this instant case, Financial Creditor is seeking direction to commence the CIR Process in respect to the Corporate Debtor, being the Corporate Guarantor for the Loan sanctioned and disbursed to **EMC Limited** (hereinafter referred to as the “**Principal Borrower**”), who has committed multiple defaults on its payment obligations towards the Financial Creditor.

4.2. That, the Amount claimed to be in Default as Rs. 307,67,14,888.68/- as on **15/12/2022** with the **Date of Default occurred on 15/06/2018.**

The Copy of the Statement of Account along with Loan Ledger is **annexed at Page 37-41 being Annexure “G” to the Petition.**

4.3. That, the Principal Borrower, **EMC Limited**, is under CIR Process, vide an Order dated 12/11/2018 passed by this Tribunal (in *Beni Gopal Singhi v. EMC Limited* being, C.P. (IB) No. 1237/KB/2018), and the claim of the Financial Creditor therein aggregating to Rs. 193,64,86,786.56/- has been admitted by the IRP. However, no resolution has taken place yet.

The Copy of the list of creditors whose claims were admitted by the RP is **annexed at Pages 29-36 being Annexure “F” to this Company Petition.**

4.4. That, an aggregate **Rs. 300,00,00,000/- (Rupees Three Hundred Crore only)** was sanctioned by **IFCI Limited** the applicant herein and disbursed to the **Principal Borrower** out of which **Rs. 200,00,00,000/- (Rupees Three Hundred Crore only)** was guaranteed by the **Corporate Debtor /Guarantor** under the **Deed of Corporate Guarantee** dated **18/06/2015** executed between the **Financial Creditor and the Corporate Debtor**. Due to the default of the Borrower, the corporate guarantee was invoked vide **invocation letter dated 03/01/2019** issued by the Financial Creditor, **annexed at Page 168-172 being Annexure “Q” to this Petition.** The Corporate Debtor, being the guarantor of the loan provided to the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

Principal Borrower has failed to pay the amount demanded in the invocation notice. Hence, this petition.

5. Ld. Counsel for the Applicant submits:

5.1. That, **EMC Limited** (Principal Borrower) in the usual course of business, approached the Financial Creditor i.e., IFCI Limited for sanction of loan aggregating to **Rs. 100,00,00,000/-** (Rupees One Hundred Crore only) (hereinafter referred to as “**Loan – I**”) which was sanctioned vide sanction letter dated 25/07/2014 (as may be modified from time to time).

5.2. That, the Principal Borrower further requested the Financial Creditor i.e., IFCI Limited for sanction of loan aggregating to **Rs. 200,00,00,000/-** (Rupees Two Hundred Crore only) (hereinafter referred to as “**Loan – II**”) which was sanctioned vide sanction letter dated 29/01/2015 (as may be modified from time to time).

The Copy of Loan Agreement dated 23/03/2015 and Supplementary Agreement dated 26/03/2015, is annexed at Page 55-61 being Annexure “I (Colly)” to this Petition.

5.3. The Ld. Counsel for the Petitioner contends that in aggregate **Rs. 300,00,00,000/- (Rupees Three Hundred Crore only)** was sanctioned and disbursed to the Principal Borrower by the Financial Creditor. The repayment of Loan II was guaranteed by the Corporate Debtor Guarantor NTCIL Infrastructure Private Limited, the respondent herein under the Deed of Corporate Guarantee dated 18/06/2015 executed between the Financial Creditor and the Corporate Debtor, **annexed at Page 103-115, being Annexure “M”.**

5.4. The Ld. Counsel further contends that the total amount of debt disbursed and dated of disbursement under the Facilities are detailed below:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

| Facility | Date of Disbursement | Amounts Disbursed (INR) |
|----------------|----------------------|-------------------------|
| Loan I | 31.10.2014 | 100,00,00,000/- |
| Loan II | 27.03.2015 | 110,00,00,000/- |
| A/c 2150003001 | 30.06.2015 | 90,00,00,000/- |

The Copy of the Bank Statement of disbursements of Loan is **annexed at Page 126-159, being Annexure “O” to this Petition**, and the Copy of the Certificate under Section 2(A) (a) of the Banker’s Books of Evidence Act, 1891, certifying the statement of account, is **annexed at Page 173-175, being Annexure “R” to this Petition**.

- 5.5. The Ld. Counsel for the Petitioner has claimed the amount to be in default is of **Rs. 307,67,14,888.68/-** as on **15/12/2022** since the Corporate Guarantee dated 18/06/2015 was furnished by the Corporate Debtor securing the Loan II availed by the Principal Borrower, the outstanding dues against the Loan II only is claimed.
6. Ld. Counsel for the Petitioner has proposed the name of **Mr. Partha Pratim Ghosh**, Address: CB 108 Salt Lake, Sector 1, Kolkata, West Bengal - 700064, being **Registration No.: IBBI/IPA-001/IP-P00554/2017-2018/10984**, Contact No. 974811022, Email ID: cappghosh@gmail.com, for appointing as **Interim Resolution Professional (IRP)**.
7. **Per contra, Ld. Counsel for the Corporate Debtor submits:**
- 7.1. That, during the pendency of CIR Process of EMC Limited, the principal debtor, the claim of the Applicant against the Corporate Debtor herein has not been crystalized and thus, the same should not be entertained.
- 7.2. Ld. Counsel submitted that, there are several sureties, which could be enforced / invoked but the Financial Creditor, without doing that has

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

initiated this proceeding. There is no cause to proceed against the Corporate Debtor. The Corporate Debtor is a going concern. If the other sureties are liquidated first, going concern would not be affected. Further, the Corporate Debtor had mortgaged a property situated under Panihati Municipality, PS – Khardah, District – 24 PGS (N) and the Petitioner has issued a notice under Section 13(2) of the SARFAESI Act, 2002, dated May 21, 2019, in respect of the said property, **annexed at Page 5 of the Reply Affidavit filed by the Corporate Debtor, being Annexure “A”**. it is pleaded that the Applicant is proceeding against assets of the Corporate Debtor (Corporate guarantor) which he is not entitled to parallelly proceed against the Corporate Debtor under the I&B Code, 2016.

- 7.3.** Further, it is alleged that the amount claimed to be a debt is disputed as the resolution process against the principal borrower (EMC Limited) is pending.

I.A. (IB) 996/KB/2023

- 8.** The Ld. Counsel appearing for NTCIL Infrastructure Private Limited, has filed an Interlocutory Application being **I.A. (IB) 996/KB/2023** praying for the following relief to stay the Company Petition being **CP (IB) No. 24/KB/2023**, as the Principal Borrower (EMC Limited) is undergoing CIR process and there is a moratorium in place under Section 14 of the I&B Code against the Principal Borrower and the Financial Creditor is attempting to invoke the corporate guarantee during the subsisting period of period of the moratorium of Principal Borrower.
- 9.** Heard the rival contentions and perused the evidence placed before us.
- 10. Analysis and Findings:**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

10.1. In this case, the aggregate amount of **Rs. 300,00,00,000/- (Rupees Three Hundred Crore only)** was sanctioned and disbursed to the **Principal Borrower** by the **Financial Creditor** out of which **Rs. 200,00,00,000/- (Rupees Three Hundred Crore only)** was guaranteed by the **Corporate Debtor /Guarantor** under the **Deed of Corporate Guarantee** dated **18/06/2015** executed between the **Financial Creditor** and the **Corporate Debtor**. Due to the default of the Borrower, the corporate guarantee was invoked vide **invocation letter** dated **03/01/2019** issued by the **Financial Creditor**. Thus, the **Guarantor/ Surety** and the **Principal Debtor** both shall remain jointly liable to the money due.

10.2. We find the key issue is as follows:

Whether the CIR Process can simultaneously be initiated against the Corporate Guarantor when the Principal Borrower itself is under the CIR Process.

10.3. The Statutory Provisions:

10.3.1. The **Sections 127** and **128 of the Contract Act, 1872**, enjoin as under:

“127. Consideration for guarantee. — Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.”

“128. Surety’s liability. — The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

10.3.2. It would also be useful to refer to **Section 60(2) of the I&B Code, 2016**, which is reproduced verbatim, herein below for clarity; it reads:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

“Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, **where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.**”

10.4. Further, we would refer to the observation of the **Insolvency Law Committee in its Report, dated February 20, 2020**, at Pages 30-31 in Para 7 that:

“7. ISSUES RELATED TO GUARANTORS’

“7.1. Under Section 128 of the Indian Contract Act, 1872, the liability of a surety towards a creditor is coextensive with that of the principal borrower. When a default is committed, the principal borrower and the surety are jointly and severally liable to the creditor, and the creditor has the right to recover its dues from either of them or from both of them simultaneously. (Pollock and Mulla, Indian Contract and Specific Relief Acts vol. II (12th edn., LexisNexis Butterworks 2006) p. 1814-1816) **The Committee discussed whether in light of this rule of co-extensive liability of the surety and the principal borrower, a creditor should be permitted to initiate CIRP against both the principal borrower and its surety and whether it should be permitted to file its claims in the CIRPs of both the principal borrower and its surety.**”

xxx

xxx

xxx

xxx

“7.8. However, as discussed above, **the principal borrower and the surety being jointly and severally liable to the creditor is a key feature of a contract of guarantee. Therefore, the very object of a contract of guarantee would be prejudiced if the creditor is prohibited from filing claims in the CIRP of both the principal borrower and the surety.** (Bank of Bihar Ltd v Damodar Prasad & Another AIR 1969 SC 297) Even in the First ILC Report, this Committee, while discussing the scope of moratorium under Section 14 vis-à-vis the assets of a surety of the corporate debtor, had observed that the “characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.” (Ministry of Corporate Affairs, Report of the Insolvency Law Committee (2018) para 5.9, <www.mca.gov.in/Ministry/pdf/ReportInsolvencyLawCommittee_12042019.pdf> accessed 26 November 2019) If a creditor is denied the contractual right to proceed simultaneously against the corporate debtor and the surety, the ability of the creditor to recover its debt may be seriously impaired.”

10.5. Judicial Precedents:

10.5.1. We rely upon the judgment passed by the Hon’ble Supreme Court of India in *Laxmi Pat Surana v. Union Bank of India* reported in **(2021) 8 SCC 481: MANU/SC/0221/2021** at Para 37 held as under:

“Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt.”

(Emphasis Added)

10.5.2. The Hon’ble Apex Court in *State Bank of India v. V. Ramakrishnan* reported in **(2018) 17 SCC 394: MANU/SC/0849/2018** while explaining the true import of Section 14 of the I&B Code, whether the same moratorium would apply to Personal Guarantor of the Corporate Debtor, observed as under:

“21. The scheme of Section 60(2) and (3) is thus clear - the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal.

(Emphasis Added)

10.5.3. The Hon'ble NCLAT in the case of *Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 346 of 2018* reported in [2019] ibclaw.in 16 NCLAT, held that:

“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’.”

But sounded a word of caution that,

“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.”

(Emphasis Added)

In the case at hand, it is evident that claim against the Principal Borrower and the Corporate Guarantor are different. Hence, the *Piramal* (Supra) judgment will have no application in this present matter.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

10.5.4. The Hon'ble NCLAT in *State Bank of India v. Athena Energy Ventures Private Limited* reported in MANU/NL/0436/2020: (2020) [ibclaw.in 344](#) NCLAT, reiterated that:

“19. 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 Judgment as passed by the Adjudicating Authority.”

(Emphasis Added)

10.5.5. Further, we would also rely upon the recent judgment passed by the Hon'ble NCLAT in the case of *Mohan Kumar Garg v. Omkara Assets Reconstruction Pvt. Ltd. Company Appeal (AT) (Insolvency) No.993 of 2023* reported in (2023) [ibclaw.in 547](#) NCLAT that:

“8. Insofar as submission of the Appellant that simultaneous proceeding cannot be initiated against the Principal Borrower and the Corporate Guarantee, the Adjudicating Authority has adequately answered the said issue and referred to relevant judgments. Learned counsel for the Respondent has relied on subsequent judgment of this Tribunal in “Edelweiss Asset Reconstruction Co. Ltd. vs. Gwalior Bypass Projects Ltd., Company Appeal (AT) (Ins.) No. 1186 of 2019”, “State Bank of India vs. Mr. Animesh Mukhopadhyay, Company Appeal (AT) (Ins.) No. 186 of 2021” and “Kanwar Raj Bhagat vs. Gujarat Hydrocarbons and Power SEZ Ltd. & Anr., Company Appeal (AT) (Ins.) No. 1096 of 2020” taking the view that simultaneous proceedings against the Principal Borrower and the Corporate Guarantor can be initiated.”

“9. We are of the view that law is well settled that proceeding under Section 7 can be initiated against both the Principal

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

Borrower and Corporate Guarantor and there is no inhibition in proceeding against the Corporate Guarantor although proceeding against Principal Borrower under Section 7 was admitted. We are of the view that no error has been committed by the Adjudicating Authority in admitting Section 7 application against the Corporate Guarantor. There is no merit in the Appeal. Appeal is dismissed.

(Emphasis Added)

It is therefore trite, axiomatic and settled law that simultaneous proceedings under Section 7 of the I&B Code, can be initiated and continued against both the Principal Borrower as well as the Corporate Guarantor.

10.5.6. This Tribunal in the matter of *Hi-Tech Designs Pvt. Ltd. v. Sri Sai Car Sales Pvt. Ltd.* Company Petition No. (IB)/278(KB)2022 reported in (2023) ibclaw.in 338 NCLT, at Para 8.8.4, noted that:

“Further it is evident that ... the Corporate Debtor, had provided corporate guarantee in favour of the Financial Creditor No. 2, to secure the dues of Union Motors, the Petition filed under Section 7 of I&B Code, 2016 by the Financial Creditor No. 2 is maintainable against the Corporate Debtor. We rely upon the decision in the case of K. Paramasivam v. The Karur Vysya Bank Ltd. 2022 SCC Online SC 1163: MANU/SC/1108/2022, that:

“13. Under Section 7 of the IBC, CIRP can be initiated against a corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor.”

(Emphasis Added)

11. In the light of the enumerations supra, having noted that the claim against the Principal Borrower and the Corporate Guarantor are different, and we have no hesitation to admit this petition filed under **Section 7 of the I&B Code, 2016.**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

Accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **IFCI LIMITED (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **NTCIL Infrastructure Private Limited (Corporate Debtor)**.
- ii.** Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- iii.** The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional (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 sub-section (1) 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 asset 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 (54 of 2002);

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) 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 affect the date of 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 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. Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
- x. Proposed by the Financial Creditor, **Mr. Partha Pratim Ghosh**, Address: CB 108 Salt Lake, Sector 1, Kolkata, West Bengal - 700064, being **Registration No.: IBBI/IPA-001/IP-P00554/2017-2018/10984**, Contact No. 974811022, Email ID: cappghosh@gmail.com, is appointed as the **Interim Resolution Professional** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI) and shall be said without asking. The IRP shall carry out its functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- xi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within Seven Days from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- xii.** The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xiii.** In terms of section 7(5)(a) of the Code, **the Court Officer** of this Court is hereby directed to communicate this Order to the **Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.**
- xiv.** Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the **Registrar of Companies, West Bengal**, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xv.** The Financial Creditors shall be liable to pay to IRP a sum of Rs. **3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**



Company Petition (IB) No. 24/KB/2023

And

I.A. (IB) No. 996/KB/2023

Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

- xvi.** The Resolution Professional shall conduct CIRP in time time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

12. In terms of order above, **I.A. (IB) No. 996/KB/2023** is **dismissed** accordingly.

13. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

14. Post the matter on **28/11/2023** for filing the Periodical Progress Report.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 17th Day of October, 2023.

Bose, R. K. [LRA]