IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V

C.P. (I.B) No. 444/MB/2020

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule, 2016]

In the matter of

Assets Care & Reconstruction Enterprise Ltd.
Registered Office at 2nd Floor, 13, Mohan Dev Building, Tolstoy Marg, New Delhi - 110001

…Petitioner/Financial Creditor

Vs

Rajesh Buildspace Private Limited
Registered Office at 139, Seksaria Chambers, 2nd Floor, Nagindas Master Road, Fort, Mumbai, Maharashtra - 400023

... Respondent/Corporate Debtor

Order Dated: 18.02.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Pulkit Sharma (PH)

For the Respondent: None

ORDER

Per: Reeta Kohli, Member (Judicial)

I. This Company Petition is filed by **Asset Care and Reconstruction Enterprise Ltd.** (hereinafter referred as "**Petitioner/Financial Creditor**") on 18.12.2019 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against **Rajesh Buildspace Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

II. Facts and submissions of the Financial Creditor:

1. The case of the Financial Creditor is that Vistra ITCL (India) Limited ("Debenture Trustee") entered into a Debenture Trust Deed dated 19.03.2018 ("DTD") with the Corporate Debtor for the issuance of non-convertible debentures of INR 144 crores by the Corporate Debtor, of which, Altico Capital India Limited ("Altico") subscribed to debentures to the tune of INR 11 crores. Altico disbursed a total amount of INR 11,27,72,500/- to the Corporate Debtor under the DTD.

2. As submitted by the Financial Creditor, simultaneously, four similar DTDs were executed between the Debenture Trustee and four other entities of the Rajesh group i.e., Rajguru Developers Private Limited ("RDPL"), Rajesh Estates and Nirman Private Limited ("RENPL"), Rajesh Landmark Projects Private Limited ("RLPPL"), and Rajesh Cityspaces Private Limited ("RCPL"), for issuing aggregate debentures of INR 1135 crores.

3. As stated by the Financial Creditor, under Clause 4.3.2 of the said DTD, the interest period commenced from the date of the allotment of the debentures and ended on 30.06.2018. Further, as per Clause 4.3.4, the Corporate Debtor was liable pay default interest upon occurrence of a default under the DTD. As alleged, since, the Corporate Debtor failed to make such interest payments to Altico (Former Financial Creditor), Altico issued a notice of payment default dated 07.11.2019 and a guarantee invocation notice dated 11.11.2019 and thereafter, filed the present Company Petition in December 2019.

4. The Ld. Counsel for the Financial Creditor contended that the date of default qua the total default interest is 07.11.2019 as no amount has been paid by the Corporate Debtor towards the interest since the date of default. To substantiate his contentions, the Ld. Counsel for the Petitioner has drawn our attention to various clauses of DTD i.e. Debenture Trust Deed dated 19.03.2019. The total amount due towards the group companies of the Corporate Debtor is stated to be Rs. 144 Crores each of the Group Companies have stood by the Corporate Debtor to discharge their obligations upon demand. The relevant **Clause 3.7** undertaking to pay is reproduced hereunder: -

> *"Subject to paragraphs (c) below, each Security Provider (other than the Issuer) irrevocably and unconditionally and severally covenants, undertakes and agrees that it has the obligation to, and shall promptly upon a demand from the Debenture Trustee, pay all the monies payable by the Issuer (including but not limited to the Debenture Amount, Interest, any Default Interest, Prepayment Premium, fees and costs and expenses and other Secured Obligations) to the Debenture Trustee and the Debenture Holders in accordance with the terms of the Debenture Documents (to the extent such Secured Obligations has not already been irrevocably paid by any other Obligor)."*

5. **Clause 4.3.2** is regarding interest period which is as under: -

a) First Interest Period: The first Interest Period for the Debentures shall start from the relevant Deemed Date of Allotment and shall end on June 30, 2018.

b) Subsequent Interest Periods: All subsequent Interest Periods, after the first Interest Period, shall start on the first day of the calendar quarter and shall end on the last day of that calendar quarter.

c) Last Interest Period: The last Interest Period for the Debentures shall start from the first day of the calendar quarter and shall end on the Final Settlement Date.

6. Event of default is **Clause 9.1** which is reproduced as under: -

A) Non payment

Failure of the Issuer or any other Obligor or any Land Owner to make payments of the Secured Obligations on any Due Date or otherwise, when due of any amounts in relation to the Debentures or under any of the Transaction Documents in accordance with the terms thereof on the relevant due date at the place and in the currency in which it is express to be payable.

7. The parties also entered into supplemental deed dated 19.03.2018 which contains various recitals and definitions as well as interpretations. The relevant definitions for the issue at hand are reproduced hereunder: -

"*Due Date*" *means the relevant date on which any Secured Obligations becomes due and payable to the Debenture Holders, including but not limited to any interest payment date, Scheduled Redemption Date or any such date on which any other amount is payable by the Issuer to the Debenture Holders under the Debentures or the Transaction Documents.*

8. Secured Obligations are reproduced as under: -

"Secured Obligations" *means, in relation to the Debentures, at any time all the amounts payable by the Issuer and any other Obligor to the Secured Parties, pursuant to the terms of the Transaction Documents (in each case, whether alone or jointly, or jointly and severally, with any other Person, whether actually or contingently, and whether as Principal, surety or otherwise), including the following amounts:*

(i) The aggregate Redemption Amount and Interest, in each case, in accordance with the Debenture Trust Deed;

(ii) All Prepayment Premium, Default Interest, indemnity payments, fees, costs, expenses and all other monies and payments to be made to the Secured Parties under, or pursuant to, the Transaction Documents……………".

9. Therefore, the Ld. Counsel for the Applicant submitted that in view of the fact that the Respondent/Corporate Debtor defaulted in payment of interest and the event of default happened, thus, giving liberty to the Petitioner to proceed against the Respondent/Corporate Debtor for initiation of CIRP.

10. The Ld. Counsel submitted that in view of the default having been committed by the Respondent/Corporate Debtor, a default notice dated 07.11.2019 was served upon the Corporate Debtor which was received by them on 23.09.2024. Ultimately, guarantee against the Corporate Debtor was invoked on 11.11.2019.

11. Further, as stated, during the pendency of the present Company Petition, Altico assigned the debt due from the Corporate Debtor to the Financial Creditor by way of the Assignment Agreement dated 04.03.2021 and filed IA No. 836 of 2021 in the present Company Petition for substituting the Financial Creditor. As contended by the Ld. Counsel of the Applicant, the said Assignment was upheld by this Hon'ble Tribunal and IA No. 836 of 2021 was allowed vide Order dated 31.01.2022. As stated by the Financial

Creditor, the said Order dated 31.01.2022 has not been challenged in appeal till date by the Corporate Debtor and has attained finality.

12. As stated, though the present Petition has been preferred for default of payment of Rs. 63,34,981/- towards interest and Rs. 32,79,44,776/- in respect of guarantee invocation, the Financial Creditor is presently confining itself only to the non-payment of interest amount of Rs. **63,34,981/-.**

III. <u>Facts and submissions of the Corporate Debtor:</u>

1. The Corporate Debtor is a company engaged in the business of real estate development since 2006. As submitted, together with its group companies, it has successfully completed construction of several projects in Mumbai.

2. As stated by the Corporate Debtor, the Financial Creditor, in the present Company Petition, has claimed defaults under two separate debts, that is, Default under Debenture Trust Deed dated 19.03.2018 ("Subject DTD") amounting to Rs. 63,34,981/- and Default as guarantor for debentures issued by sister concerns amounting to Rs. 32,79,44,776/-

3. Further, as stated, the Corporate Debtor sought finance through issuance of non-convertible debentures. After due diligence, the Financial Creditor executed the Subject DTD, along with identical agreements with other sister concerns of the Rajesh Group. Subsequently, Supplemental Debenture Trust Deeds dated 19.03.2018, and 10.07.2019 were executed. As alleged, between the Corporate Debtor and its group companies, non-convertible debentures worth Rs. 1,100 Crore were issued in various tranches:

i) Rs. 972 Crore to Altico Capital Limited ("Altico")

ii) Rs. 110 Crore to Clearwater Partners ("Clearwater")

iii) Rs. 18 Crore to IREP Credit Capital ("IREP")

While Clearwater and IREP fulfilled their payment obligations, Altico only partly completed its payment obligations for subscription. As contended by the Corporate Debtor, as per the Subject DTD, Altico was required to pay the subscription amount within 5 days of the Corporate Debtor's draw-down request.

4. As contended by the corporate Debtor, Altico regularly provided financial assistance until September 2018, after which it began defaulting in making payments towards the Corporate Debtor's ongoing projects. Between April 2019 and December 2019, despite multiple drawdown requests from the Corporate Debtor, Altico failed to make any payments. Further, vide email dated 16.08.2018, Altico recorded its inability to further finance the Corporate Debtor, citing restrictions under the NBFC Prudential Norms. However, as stated by the Corporate Debtor, vide a letter dated 07.11.2019, Altico issued a default notice to the Corporate Debtor. The Corporate Debtor terminated the Subject DTD through notice dated 16.03.2020, citing Altico's defaults in payment obligations.

5. The Corporate Debtor, in its reply, has raised the following substantial contentions

a) The record of default has not been registered with Information Utility as required under the Code, making the petition procedurally defective.

b) The default amount claimed by the Financial Creditor is less than Rs. 1 Crore, which is below the prescribed threshold limit for initiating CIRP under Section 4 of the Code.

c) The Corporate Debtor disputed the existence of debt and default in its capacity as a Guarantor, contending that:

i. The guarantee was not properly invoked as per the terms of the DTD
ii. The Corporate Debtor's liability as a guarantor has not crystallized
iii. The principal borrower's default has not been conclusively established

d) The default notice has not been issued by the Debenture Trustee as required under the DTD, making the entire process of declaring default procedurally invalid.

e) The Corporate Debtor contended that the Financial Creditor cannot bypass the Debenture Trustee and directly initiate proceedings against the Corporate Debtor.

f) The Corporate Debtor also contended that the assignment of debt from Altico to the Financial Creditor is not valid as the said assignment was done after the Corporate Debtor terminated the Subject DTD.

g) The Corporate Debtor contended that the calculation of interest amount is not in accordance with the terms of the DTD.

h) The Corporate Debtor alleged that the Financial Creditor cannot selectively proceed only for the interest amount while keeping the claim for guarantee liability in abeyance.

6. In view of the aforementioned contentions, the Corporate Debtor sought dismissal of the petition on the grounds that the petition is premature and not maintainable in law. However, despite raising these objections through its reply, the Corporate Debtor failed to appear and substantiate these claims during the hearings, despite being granted multiple opportunities by this Tribunal. The last opportunity was granted vide order dated 21.10.2024, wherein the Corporate Debtor was directed to ensure presence on the next date, failing which the matter would be heard ex-parte. As per order dated 21.10.2024:

"The matter has been called out twice, there is no representation on behalf respondents. Earlier also there was no appearance for the respondents on 29.08.2024 as well. On 03.10.2024 the counsel for the Respondents appeared and sought time to advance arguments and the case was adjourned to today i.e., 21.10.2024. In the absence of the counsel we are constrained to proceed ex-parte."

IV. <u>Findings</u>:

1. In view of the documents and pleadings placed on record and also in view of the submissions made by the Ld. Counsel for the Applicant, it is evident that the case of the Applicant is with respect to the non-payment of interest amount of Rs. 63,34,981/- on part of the Corporate Debtor in view of a Debenture Trust Deed dated 19.03.2018. However, the case of the Respondent is that the default amount claimed by the Financial Creditor is less than Rs. 1 Crore, which is below the prescribed threshold limit for initiating CIRP under Section 4 of the Code.

2. In order to appreciate the contentions of the Corporate Debtor, we must take notice of the fact that the present Petition was filed in the year 2019, which is prior to the increase in the amount of threshold limit as given under Section 4 of the Code from Rs. 1 Lakh to Rs. 1 Crore, it is pertinent to note that the threshold was Increased to Rs. 1 crore with effect from 24.03.2020. Thus, the present Petition is maintainable because at the time of filing of the present Petition, the threshold limit for filing the Petition before the Hon'ble Tribunal was Rs. 1 Lakh and the default being alleged by the Petitioner default of the due interest is more than Rs. 63 Lakhs which is much beyond the threshold limit. Hence, no such question of maintainability on the ground of threshold amount arises in the present case. Thus, the contention of the Corporate Debtor with respect to the same does not hold merit.

3. Further, in order to appreciate the Corporate Debtor's contention with respect to the record of default not having been registered with Information Utility, it deserved to be taken note of that the information to the NeSL/Information Utility is not mandatory for ascertainment of default of the Respondent/Corporate Debtor but only directory. The same has been held by the Hon'ble NCLAT in the matter of ***Vijay Kumar Singhania v/s Bank of Baroda & ors. Company Appeal (AT) (Insolvency) No.1058 of 2023.*** Relevant paragraphs of the said judgment are as follows-

> *"**30.** Before the Adjudicating Authority, submission on the basis of the argument which has been advanced by the Appellant before us that no information of default from the information utility have been filed, application deserves to be rejected was raised and dealt with by the Adjudicating Authority. It is useful to extract the following observations in paragraph 11 of the judgment of the Adjudicating Authority: -*
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> > *"……………As far as the plea of default being not recorded with the information utility is concerned, as can be seen from Section 7 (3)(a) of the IBC, 2016, along with the application, the Financial Creditor may furnish the record of default recorded with the information utility or such other or record or evidence of default as may be specified. Besides, as can be seen from Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons Regulations), 2016, for the purpose of Clause (a) of sub-section 3 of Section 7 of the Code (ibid), the*

Financial Creditor may furnish a certified copy of entries in the relevant account in Banker's Book as evidence of default. In the present case, the Petitioner has enclosed the copies of the statement of account in respect of Account Nos. 05860600004851 and 05860500000127 along with the interest calculation sheet and Certificate under Section 2(A) of Banker's Book Evidence Act, 1891, as Annexure-7 to the Petition, which is valid evidence in terms of the provisions of Regulation 2A(a) of IBBI (CIRP) Regulations, 2016. As far as the plea of Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 is concerned, in terms of the said provision, before filing an application to initiate CIRP the creditor should file the information of default with the Information Utility and the IU shall process the information for the purpose of issuing record of default in accordance with Regulation 21 of the Regulations. The Regulation nowhere provides that the information of default recorded by IU can be the only evidence to be relied on while taking a decision regarding the admission of a Petition under Section 7 of IBC, 2016. Even otherwise also, neither the IBBI (IU) Regulations, 2017 nor the order issued by the Registrar, NCLT can have overriding effect qua the provisions of Regulation 7(3)(a) of the IBC, 2016. In the wake, we are unable to countenance the plea raised by the Respondent i.e., in the absence of a record of default recorded by IU, an application filed under Section 7 of IBC, 2016 may not be admitted."

***31.** Thus, we are of the view that the Adjudicating Authority has correctly repelled the contention of the Appellant that in absence of a record of default recorded by information utility, the application filed under Section 7 may not be admitted.”*

4. Therefore, in view of the aforementioned judgment, it stands established that the information to the NeSL/Information Utility is not mandatory for ascertainment of default of the Respondent/Corporate Debtor and thus, the Corporate Debtor’s contention with respect to the same does not hold merit.

5. Furthermore, the Corporate Debtor’s contention that the default notice has not been issued by the Debenture Trustee. It deserves to be appreciated that the Financial Creditor as the Debenture Holder is entitled to issue notices as per Clause 9.8 of DTDs, and the same can be substantiated by the judgment of the Hon’ble NCLAT in the matter of ***T. Prabhakar Vs. S Krishnan, Company Appeal (AT) (CH) (Ins.) No. 217 of 2021,*** wherein it has been held *“there is no fetter in law for a debenture holder to act against the debtor.”* Therefore, it stands established that the Financial Creditor as the Debenture Holder is entitled to all such actions as available to them under the provisions of the applicable laws including the issuance of notices in terms of Clause 9.8 of DTDs. Further, it is pertinent to note that apparently there is no denial with respect to the interest due on part of the Corporate Debtor and no other substantial objection having been raised by the Respondent/Corporate Debtor.

6. It deserves to be taken note of that the subscription of the Corporate Debtor's debentures by the Financial Creditor has been acknowledged/admitted by the Corporate Debtor in:

a) Its Balance Sheet as on 31.03.2019

b) Its Form No. PAS-3 dated 13.04.2018 and 10.07.2018

c) Certificates of the Corporate Debtor's Chartered Accountant dated 21.05.2019 and 04.09.2019

7. Furthermore, it has been brought to attention that there were various Petitions filed against other Group Companies of the Corporate Debtor whereto similar defaults had occurred and in view of the said defaults all the Group Companies have already been admitted. The said Petitions are as under-

a. CP 211 of 2023 admitted vide order dated 15.01.2024 (*Assets Care & Reconstruction Enterprise Ltd Vs Rajesh Cityspaces Pvt Ltd)*

b. CP 910 of 2022 admitted vide order dated 24.04.2024 *(Assets Care & Reconstruction Enterprise Ltd Vs Rajguru Developers Pvt Ltd)*

c. CP 1029 of 2021 admitted vide order dated 10.10.2022 *(IREP Creditor Capital Private Limited Vs Rajesh Landmark Projects Pvt Ltd)*

d. CP 560 of 2022 admitted vide order dated 24.03.2023 *(Clearwater Capital Partners Singapore Fund IV Pvt Ltd Vs Rajesh Estates and Nirman Private Limited)*

e. CP 293 of 2020 against Personal Guarantors admitted vide order dated 26.09.2024 *(Altico Capital India Ltd Vs Rajesh Raghavji Patel)*

8. Therefore, keeping in view of the fate of all the Group Companies and also of the Petitions preferred by the present Petitioner/Financial Creditor against the Group Companies of the Respondent/Corporate Debtor, we are left with no other option but to admit the present Company Petition No. 444 of 2020. Therefore, the present petition is **admitted** to CIRP by passing the following order:

ORDER

a. The above Company Petition No.444 /IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Rajesh Buildspace Private Limited.**

b. This Bench is hereby appointed **Mr. Vinod Tarachand Agrawal** having registration IBBI/IPA-001/IP-P00641/2017-2018/11090, having email Id: ca.vinod@gmail.com as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, C.P. No. 444/IBC/MB/2020 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
MADHU SINHA	**REETA KOHLI**
Member (Technical)	**Member (Judicial)**

/Jhanvi/