IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP (IB) 51/MB/2024

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

In the matter of:

IDBI Trusteeship Services Limited,

Having its Registered Office at: - Universal Insurance Building, Ground Floor, Sir P.M. Road, Fort, Mumbai-400 001.

..... Applicant/ Financial Creditor

Versus

Advantage Raheja Hotels Private Limited,

Having its Registered Office at: - 4th Floor, Raheja Chambers, Linking Road, Santacruz West, Mumbai-400054.

..... Corporate Debtor

Order Delivered on :- 17.12.2024.

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (in Hybrid mode):

For the Financial Creditor: Adv. Ryan D'Souza a/w Zaid Mansuri appeared through Video Conference.

For the Corporate Debtor: Adv. Ajesh Kumar Shankar a/w Pranav D.K. a/w Srihari.

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial).

1. The is an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **IDBI Trusteeship Services Limited** (hereinafter referred to as "**Financial Creditor**" or **"Petitioner"**) seeking initiation of Corporate Insolvency Resolution Process (CIRP) of **Advantage Raheja Hotels Private Limited** (hereinafter called as **"Corporate Debtor"**) as according to the Applicant, the Corporate Debtor has committed a default of INR 6,26,75,49,034/- (Rupees Six Crores, Twenty-Six Lakhs, Seventy-Five Lakhs, Fourty-Nine Thousand and Thirty-Four Only) in repaying the financial debt to the Financial Creditor.

Facts of the case are briefly stated hereinbelow:

2. On December 26, 2017, Piramal Capital and Housing Finance Limited ('PCHFL') (Piramal Finance Limited as it was then known) as lender, entered into a Loan Agreement with Gstaad Hotels Private Limited ("Gstaad") and Neo Capricorn Plaza Private Limited ("Neo") as borrowers.

The said Loan Agreement was also executed by Mr. Deepak Raheja, Mrs. Anita Raheja, Mr. Aditya Raheja, Mr. Shiv Raheja, Pebble Bay Developers Private Limited and the Corporate Debtor as "Obligors". Under the Loan Agreement dated 26.12.2017, PCHFL agreed to extend a rupee term loan facility amounting to INR 600 crores to Gstaad and Neo on the terms and conditions more particularly mentioned therein.

3. On December 26, 2017, a Security Trustee Agreement was entered into between Gstaad, Neo, PCHFL and the Financial Creditor herein as the Security Trustee in respect of the loan. On December 26, 2017, Mr. Deepak Raheja, Mrs. Anita Raheja, Mr. Aditya Raheja, Mr. Shiv Raheja executed a Deed of Guarantee in favour of the Financial Creditor, guaranteeing the repayment of the loan.

4. On December 26, 2017, a Deed of Guarantee ("Corporate Guarantee") was also executed by the Corporate Debtor in favour of the Financial Creditor guaranteeing the repayment of the loan. Some of the material terms and conditions of the Corporate Guarantee are capitulated below:

(a) Under clause 1 (a) of the Corporate Guarantee, the Corporate Debtor has guaranteed the due and punctual performance of the obligations of Gstaad and Neo under the Loan Agreement. The Corporate Debtor has further agreed to pay on demand all sums of money to the Financial Creditor which Gstaad and Neo are liable to pay to the lender and which have become due and payable but have not been paid at such time when the demand is made.

(b) Under clause 2 of the Corporate Guarantee, the Corporate Debtor has, *inter-alia*, guaranteed that any shortfall of any amounts payable by Gstaad

and Neo under the Loan Agreement will be made good by the Corporate Guarantor.

(c) Under clause 3.1 of the Corporate Guarantee, the obligation of the Corporate Debtor arises on the issuance of a demand/invocation notice in writing by the Financial Creditor to the Corporate Debtor.

(d) As per clauses 3 .2 and 4.1 of the Corporate Guarantee, the Corporate Debtor agreed that it shall be considered as a principal debtor to the Lender/Financial Creditor for the payment of all the outstanding amounts as per the Loan Agreement and further that the liability of the Corporate Debtor is considered as co-extensive with that of Gstaad and Neo i.e. the principal borrowers.

(e) Clause 6 of the Corporate Guarantee further provides that it is in addition to all other security created to secure the obligations of Gstaad and Neo under the Loan Agreement.

5. On March 22, 2019 and June 24, 2019, a part of the Loan was assigned by PCHFL to PHL Fininvest Private Limited ("PHL"). Later, PHL was amalgamated into Piramal Enterprises Limited ("PEL"). Further, by and under a Deed of Assignment dated 27.12.2022, PCHFL and PEL assigned their rights under the Loan Agreement and the security documents in favour of one M/s. Omkara Assets Reconstruction Private Limited ("Omkara"), who is, therefore, the assignee in respect of the Loan under the aforementioned Loan Agreement and consequently, all security rights of PCHFL and PEL under the aforementioned Loan Agreement now stand assigned to Omkara.

6. Owing to the defaults committed by Gstaad and Neo under the Loan Agreement, Omkara issued the Recall Notices dated February 15, 2023, to Gstaad and Neo, calling upon them to pay an outstanding amount of INR

666,53,26,968/- and INR 119,99,23,320/- respectively within 3 days from the date of receipt of such notice. Gstaad and Neo responded to the said Recall Notices vide their letters dated February 20, 2023.

7. In pursuance of the rights under the Deed of Assignment dated 27.12.2022, Omkara issued a notice dated February 20, 2023 to the Corporate Debtor invoking the Corporate Guarantee and calling upon the Corporate Debtor to pay an amount of INR 625,14,04,390/- which was the amount due and payable as on February 15, 2023 by Gstaad and Neo under the Loan Agreement within 5 days of receipt of the said notice.

8. Subsequent to the issuance of the aforesaid notice dated February 20, 2023 by Omkara, the Creditor has received certain meagre payments into the Escrow Account amounting to INR 9,15,65,000/- under an arrangement between the Creditor and the Borrowers. However, despite the receipt of the aforesaid amounts, the default on the part of the Borrowers and the Corporate Guarantor continues.

9. Thereafter, the Financial Creditor herein issued an Invocation Notice dated March 16, 2023 to the Corporate Debtor invoking the Corporate Guarantee and calling upon the Corporate Debtor to pay to the Financial Creditor an amount of INR 625,14,04,390/- which was the amount due and payable as on February 15, 2023 by Gstaad and Neo together with interest, default interest, penalty, legal charges and other costs as per the Loan Agreement, till the date of repayment within 5 days from the date of the Invocation Notice.

10. In view of the above, the Corporate Debtor, in complete breach of the terms and its obligations under the Corporate Guarantee, has failed to repay the amounts as called upon under the Invocation Notice. The aforesaid failure

on the part of the Corporate Debtor amounts to a default and, therefore, triggers the Financial Creditor's rights, in the capacity of the security trustee of Omkara, to initiate the corporate insolvency resolution process against the Corporate Debtor. Hence this petition.

Reply of the Corporate Debtor:

11. The Corporate Debtor has filed its affidavit-in-reply dated 17.04.2024 deposed by its director Mr. Aditya Raheja. The contents of the said reply are briefly stated and summarised hereinbelow:

12. The present petition filed on the basis of guarantee invoked by the Security Trustee on 16.03.2023, is not maintainable for want of locus as the personal guarantee was already invoked by Omkara on 20.02.2023 and the Applicant herein had no prior written consent of the Lender to take such action.

13. The Applicant herein cannot be termed as a Financial Creditor to prefer an application u/s 7 of the Code since it has neither disbursed any sums nor is it owed any sums under the agreement.

14. Since 2017 the Borrowers have paid back the Lender i.e. Piramal Finance Ltd., about INR 496.98 crores including a sum of about Rs. 23 crores to Omkara under protest.

15. The Adjudicating Authority (i.e. NCLT Mumbai) on 09.01.2024 admitted the Petition in CP(IB) Nos. 290 and 291 of 2023 filed u/s 7 of the Code as against the Principal Borrowers. Thereafter, the Principal Borrowers impugned the aforesaid order before the Hon'ble NCLAT. The appeal against the impugned order is still pending before Hon'ble NCLAT and

therefore, there is no gainsaying that until the default is adjudicated by NCLAT, the present Petition ought to be stayed until the decision is rendered by the Appellate Authority.

16. In so far as Gstaad Hotels is concerned, the Lender-Piramal, the Hotel Operators and the Principal Borrower had entered into a Cash Management Agreement ("CMA"), whereby the gross revenue collections of the hotel were to be deposited to an account titled as the 'Revenue Account' and from the Revenue Account, 66% of the daily gross revenue would be transferred to a designated account titled as the 'Retention Account', which would be utilised by the Lender towards servicing of the loan advanced to the Corporate Debtor. A similar arrangement was also adopted by the Lender and the Hotel Operator in so far as Neo Capricorn Plaza Pvt. Ltd. is concerned. Therefore, Piramal was not a mere lender as it had a keen interest in the working and profitability of the hotel. The loan was to be serviced using only these amounts.

17. One of the Principal Borrowers, namely, Gstaad Hotels Pvt. Ltd. had filed a Writ Petition No. 6037/2023 before the Hon'ble Karnataka High Court at Bengaluru impugning the acts of the Lender (i.e. Piramal) and the Assignee (i.e. Omkara) with respect to the assignment of loans of the principal borrowers. The Hon'ble Karnataka High Court had dismissed the above-mentioned Writ Petition against which a Writ Appeal No. 478/2024 has been preferred before the Hon'ble Karnataka High Court. While dismissing the above Writ Petition, the Hon'ble Karnataka High Court observed as follows in the Order dated 28.02.2024:

"13. It is not in dispute that petitioner's account with Piramal Enterprises Limited was not regular. The service amounts from the scheme GECL was secured. It was only to service interest, which could clearly depict that the account of the petitioner was not

regular as is claimed and may not even be declared as a non-performing asset but undoubtedly a stressed asset in category-2, declaring it to be a special mention account. If the petitioner's account was to be declared as category-3 of a special mention account, the right of the lender to transfer the amount to asset reconstruction company does get triggered…"

Therefore, it is submitted on behalf of the Corporate Debtor that in view of the foregoing finding by the Hon'ble Karnataka High Court makes it clear that the account of the Principal Borrowers was not declared as a Non-Performing Asset and therefore, the right to transfer loans to an asset reconstruction company does not get triggered.

<u>Rejoinder by the Applicant:</u>

18. The Corporate Debtor has not made a single averment denying that it is in default of its obligations under the Corporate Guarantee dated December 26, 2017, and therefore, the other defences raised by the Corporate Debtor are wholly irrelevant for the purpose of adjudicating the instant application u/s 7 of the Code, which is confined to examining the existence of a debt and default in repayment thereof.

19. As regards the objection of locus, the Applicant submits that it was appointed as a Security Trustee under the Security Trustee Agreement dated 26.12.2017, executed between the Principal Borrowers, the Lender and the Applicant. It is, therefore, clear that the Applicant/Financial Creditor is acting on behalf of and for the benefit of Omkara being the assignee of the original lenders viz. PCHFL and PEL. The Applicant/Financial Creditor is empowered to, under the Security Trustee Agreement, to enforce and foreclose the rights and security created pursuant to the Loan Agreement and to take all actions that

are consequent to such enforcement. Hence, the objection of locus of the Applicant taken by the Corporate Debtor is baseless.

20. The Financial Creditor received written instructions from Omkara vide email on March 15, 2023 to issue notice for invocation of guarantees. Pursuant to such written instructions, the Financial Creditor invoked the guarantee furnished by the Corporate Debtor and further filed the captioned Company Petition against the Corporate Debtor.

21. Even otherwise, the Corporate Guarantee clearly states that the Corporate Debtor (Guarantor therein) absolutely, irrevocably and unconditionally guarantees to the Financial Creditor herein (Security Trustee therein) the due and punctual observance and performance by Gstaad and Neo (the Borrowers therein) of all its obligations under the Loan Agreement and agrees to pay to the Financial Creditor from time to time on demand all sums of money which Gstaad and Neo are liable to pay to Omkara. Therefore, under the Corporate Guarantee, the relationship of creditor and debtor between the Financial Creditor and the Corporate Debtor has been established beyond doubt.

22. As the Financial Creditor is acting as a trustee on behalf of and for the benefit of Omkara, the prior invocation by Omkara on 20.02.2023 has no negative consequence on the invocation by the Financial Creditor. Even assuming that Omkara was not entitled to invoke the guarantee, the same was subsequently and validly invoked by the Financial Creditor.

23. The Corporate Debtor has alleged a violation of the Cash Management Agreement dated January 17, 2018 entered into between the Lenders, JW

Marriott and Gstaad. However, the aforesaid has no application whatsoever to the case at hand as the captioned Petition relates to default on the part of the Corporate Debtor to pay amounts pursuant to the receipt of invocation notice. While the amounts from the revenue account would be first utilised to service the loan, the Corporate Debtor's contention that the loan was to be serviced using only these amounts is incorrect. Gstaad was liable to fulfil any deficit which may have been there after appropriating amounts from the Lender's share of the revenue account. The aforesaid condition is clearly reflected in the Loan Agreement in Clause 18.39 which is reproduced hereunder:

"18.39 Service of the Loan:

The Borrowers agree and undertake that in the event the funds lying and being in the Retention Account are not sufficient for the repayment of the Loan or any part thereof, the Borrowers and/or the Obligors shall ensure that the Loan and every part thereof is repaid through such other funds as may be necessary for this purpose and acceptable to the Lender."

Therefore, the Corporate Debtor had expressly undertaken in the Corporate Guarantee that in the event, the amounts in the Escrow Accounts (which includes the revenue account) were not sufficient to service repayment of the Loan, such shortfall was to be made good by the Corporate Debtor.

24. As regards the Writ Petition before the Hon'ble Karnataka High Court, the same was summarily dismissed, being devoid of any merit. The Hon'ble Karnataka High Court had, in fact, made scathing observations against the defaults committed by Gstaad. This further damages the case of the Corporate Debtor. As Gstaad's challenge to the validity of the Assignment Agreement dated December 27, 2022 has failed and even in the Writ Appeal, Gstaad has failed to obtain any orders in the said matter.

The Master Direction — Reserve Bank of India (Transfer of Loan Exposure) Directions, 2021 dated September 24, 2021, required a loan account to be in default for more than 60 days (Special Mention Account 2) or a Non-Performing Asset in order to be transferred to an asset reconstruction company. *This Master Direction was amended on December 5, 2022, to the effect that all stressed loans which are in default in the books of the transferors are permitted to be transferred to asset reconstruction companies*. Therefore, the rights under the Loan Agreement, ECLGS Loan Agreement 1 and ECLGS Loan Agreement 2 were perfectly capable of being assigned to the Financial Creditor. Hence, there was never any impediment in law or otherwise insofar as the assignment agreement was concerned.

Analysis and Findings:-

26. We have heard the counsel for the parties and have gone through the record.

27. During the course of the arguments, it has been contended by the Counsel for the Financial Creditor that vide loan agreement dated 26.12.2017, the Original Financial Creditor i.e. Piramal Capital and Housing Finance Limited (PCHFL) advanced loans to the principal borrower namely GSTAAD Hotels Private Limited (GSTAAD) and Neo Capricorn Plaza Private Limited (Neo). It has further been pointed out that vide Security Trustee Agreement dated 26.12.2017, the Financial Creditor i.e. IDBI Trusteeship Services Limited was appointed as Security Trustee in respect of the said loan. The Corporate Debtor had executed a deed of guarantee dated 26.12.2017 in favour of Piramal Capital and Housing Finance Limited (PCHFL) undertaking to pay all sums due to the Financial Creditor in case GSTAAD and Neo committed default in payment. The Guarantee executed

by the Corporate Debtor was unconditional, irrevocable and continuing. It has further been pointed out by the Counsel for the Financial Creditor that vide assignment dated 22.03.2019, the debt was assigned in favour of Piramal Capital and Housing Finance Limited (PCHFL) after Piramal Capital and Housing Finance Limited (PCHFL) and PHL Fininvest Private Limited amalgamated into Piramal Enterprises Limited. Subsequently, vide Assignment Agreement dated 27.12.2022, Piramal Capital and Housing Finance Limited and Piramal Enterprises Limited assigned their rights under the Loan Agreement and the security documents in favour of Omkara Assets Reconstruction Private Limited which included the rights under the guarantee. Subsequent to the assignment, Omkara Assets Reconstruction Private Limited issued recall notices dated 15.02.2023 calling upon GSTAAD and Neo to repay the outstanding amounts of Rs. 666,53,26,968/- and Rs. 119,99,23,320/- respectively. As the GSTAAD and Neo failed to pay the outstanding amounts after the notice dated 15.02.2023, Omkara Assets Reconstruction Private Limited invoked the guarantee through a letter dated 20.02.2023. Subsequent to this, the guarantee was invoked by the Financial Creditor as well vide letter dated 16.03.2023.

28. It has further been pointed out that both GSTAAD and Neo committed default in repayments and the Company Petition was filed against them by the IDBI Trusteeship Services Limited. According to the Counsel for the Financial Creditor separate Petition against GSTAAD and Neo have already been admitted vide separate orders dated 09.01.2024. As the Corporate Debtor, being the corporate guarantor of GSTAAD and Neo has failed to repay the outstanding dues, the present Petition deserves to be admitted as the factum of debt and default stands proved on record.

On the other hand, Counsel for the Corporate Debtor has argued that as per the Assignment Agreement dated 27.12.2022 only the assignee i.e. Omkara Assets Reconstruction Private Limited has the right to recover the outstanding dues from the debtors/guarantors. Counsel for the Corporate Debtor has further referred to clauses 2.1.1 and 2.1.2 of the Assignment Agreement dated 27.12.2022. In the light of the terms and conditions of the Assignment Agreement dated 27.12.2022, it has been argued by the Counsel for the Corporate Debtor that only Omkara Assets Reconstruction Private Limited has a right to proceed against the Corporate Debtor whereas the present Petition has been filed by the trustee of the erstwhile lenders which is not maintainable, especially in the absence of any document showing that the Financial Creditor continues to be the trustee. It has further been pointed out by the Counsel for the Corporate Debtor that even otherwise as per clauses 2.3 and 2.7 of the Security Trustee Agreement dated 26.12.2017, prior consent of the lender is required before filling any such Petition by the Trustee and in the absence of the same, the present Petition is liable to be dismissed on this ground alone as the Financial Creditor has no locus to file the present Petition.

30. It has further been argued by the Counsel for the Corporate Debtor that the Financial Creditor has failed to establish any valid event of default. In this regard, it has been argued by the Counsel for the Corporate Debtor that as per the Loan Agreement dated 26.12.2017, whereby the loans were advanced to the GSTAAD and Neo, a sum of Rs. 10 crores was kept as Debt Service Reserve Account (DSRA). Apart from that, a further repayment mechanism under a cash management agreement was also executed between the parties whereby out of the total collection of 100%, a sum to the tune of 34% was to be transferred to the retention account of the lender to service the debt while

the remaining 65% was to be transferred to the expense account for running the hotel. It was further provided that in case, there was any shortfall, the lender was to call upon the obligors to make good such shortfall. Counsel for the Corporate Debtor has further argued that surprisingly there is no notice of default pursuant to the Debt Service Reserve Account (DSRA). Thus, even the default as against the principal borrower has not been established and on this ground alone also, the Petition deserves to fail.

31. It has also been argued by the Counsel for the Corporate Debtor that the Financial Creditor in the capacity of security trustee issued a notice of default to the principal borrower on 04.03.2021. On the basis of the said default, the Financial Creditor filed two applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the principal borrowers before NCLT, Mumbai Bench. Since the same were barred under 10 A of the Insolvency and Bankruptcy Code, 2016, the said Petitions were withdrawn unconditionally by the Security Trustee on 13.12.2022 and 23.12.2022. After the withdrawal of the said Petition, the original lender assigned the loans to Omkara Assets Reconstruction Private Limited on 27.12.2022 which, in turn, issued a recall notice dated 15.02.2023 recalling the entire loan on the premise that there was a purported default. Based on the recall notice, Omkara Assets Reconstruction Private Limited further invoked the corporate guarantee on 20.02.2023 and the present Financial Creditor also invoked the guarantee on 16.03.2023. According to the Counsel for the Corporate Debtor, it is evident from these circumstances that the present Petition has been wrongly filed despite the fact that the Petition filed against the principal borrowers was barred under 10A of the Insolvency and Bankruptcy Code, 2016 and the subsequent invocation of the guarantee post assignment by Omkara Assets

Reconstruction Private Limited or the Financial Creditor is absolutely illegal and on this ground also, the Petition deserves to be dismissed.

32. We have weighed the contentions raised by the Counsel for the parties and have also gone through the record.

33. So far as the first contentions raised on behalf of the Corporate Debtor with regard to the competency of the Financial Creditor to file the present Petition in the capacity of Security Trustee is concerned, as per clause 5.2 of the Security Trustee Agreement dated 26.12.2017, the Financial Creditor is authorised to act upon the receipt of the written instructions from the lender. The Financial Creditor received written instructions from Omkara Assets Reconstruction Private Limited vide email dated 15.03.2023 which is annexed as Exhibit (B) to the affidavit in rejoinder filed by the Petitioner. It, therefore, cannot be argued with conviction that the present Petition has been filed by the Security Trustee without any authorisation from the lender. Even otherwise, it cannot be said by any stretch of imagination that merely on account of the assignment of loan by the original lender in favour of Omkara Assets Reconstruction Private Limited, the Security Trustee Agreement would come to an end. Rather with the assignment of the loan, Omkara Assets Reconstruction Private Limited stood replaced in place of the original lender whereas the Financial Creditor continued to act as Security Trustee. No evidence has been brought on record by the Corporate Debtor to support the contentions that the Security Trustee Agreement came to an end with the assignment of the loan in favour of Omkara Assets Reconstruction Private Limited. Even otherwise through the very deed of guarantee that was executed between the Corporate Debtor and the Financial Creditor i.e. IDBI Trusteeship Services Limited, the latter was appointed as Security Trustee.

Having voluntarily executed the guarantee deed in favour of the Financial Creditor, the Corporate Debtor cannot be heard harping that the Petitioner in the capacity of trustee is not authorised or competent to file the present Petition.

34. Secondly, it has been argued on behalf of the Corporate Debtor that the default on the part of the corporate guarantor arises only when it is established that the principal borrowers have committed a default. It has also been pointed out that under the cash management agreement, the principal borrower has been paying everything and there has been no default as the debt was being serviced regularly to the extent of 30% of the revenue generated. Even this contention raised on behalf of the Corporate Debtor does not seem to be tenable. The liability of the Corporate Guarantor arises when the guarantee is invoked and upon invocation of the guarantee, the payment is not made by the guarantor. The default on the part of the Corporate Guarantor has nothing to do with the default on the part of the principal borrower. Even otherwise, it is an admitted fact that both the principal borrowers have already been admitted into insolvency vide order dated 09.01.2024. It is the definite case of the Financial Creditor that guarantee as against the Corporate Guarantor was invoked by the Financial Creditor vide Invocation Notice dated 16.03.2023 which is Exhibit (O) on the file. Prior to this, Omkara Assets Reconstruction Private Limited also issued a guarantee invocation notice dated 20.02.2023 which is Exhibit (N) on record. Thus, the cause of action to proceed against the Corporate Debtor arose subsequent to issuing these notices when the Corporate Debtor failed to comply with the demand raised in the said notices. Even otherwise, in the NeSL report, the date of default is mentioned as 09.02.2023. Therefore, there is absolutely no confusion with regard to the date of defaults so far as the

Corporate Guarantor is concerned and it cannot be said with conviction that the date of default is not established or that the present Petition has been filed without an appropriate date of default.

35. Lastly, it has been argued that the Petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016. Even this contention raised on behalf of the Corporate Debtor does not seem to be tenable at all. It has been claimed on behalf of the Corporate Debtor that two Petitions with the date of default falling within 10A period filed against the principal borrowers were dismissed as withdrawn by the previous lender and, therefore, the present Petition could also not be filed. As has been observed in the foregoing part of the judgment that, so far as the Corporate Guarantor is concerned, the default arises when the guarantee is invoked and the outstanding dues are not paid. Since the guarantee, in this case, was invoked in the year 2023 itself, it cannot be said that the present Petition would be barred under Section 10A of the Insolvency and Bankruptcy Code, 2016 merely because previously some Petitions were filed against the principal borrowers with a date of default falling within 10A period. Therefore, even this contention raised on behalf of the Corporate Debtor is devoid of any merit and is hereby rejected.

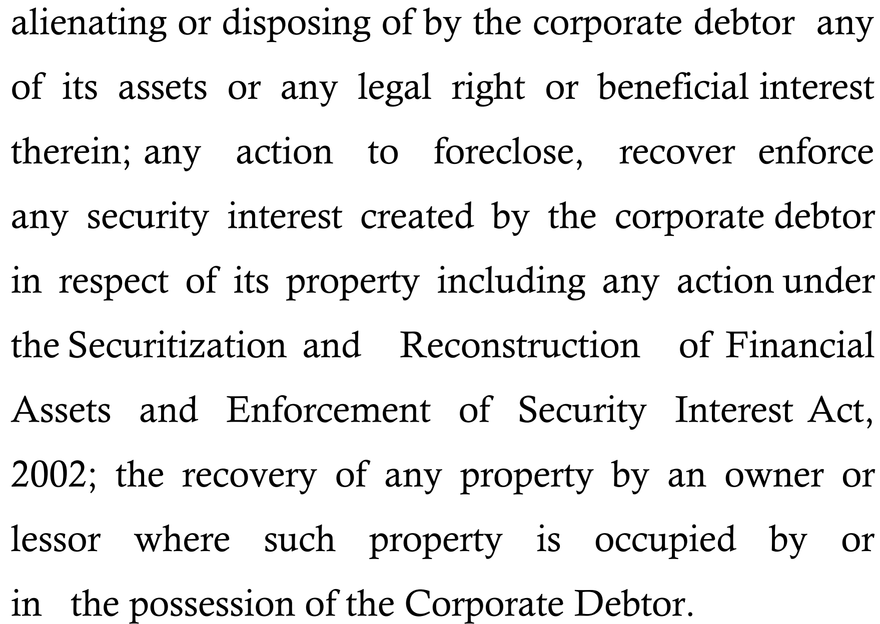
36. No other points have been raised on behalf of the Corporate Debtor. Even otherwise, on the basis of the documents placed on record by the Petitioner, it is evident that the Corporate Debtor stood guarantor and failed to pay the outstanding dues despite invocation of guarantee and, therefore, the existence of debt and default stands established on record and further that Petition has also been filed within the period of limitation. Therefore, we find it to be a fit case for admission under Section 7 of the Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:-

a. **The above Company Petition No. (IB) 51/(MB)/2024 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Advantage Raheja Hotels Private Limited.**

b. This Bench hereby **appoints Mr. Jayesh Natvarlal Sanghrajka,** Registration No: **IBBI/IPA-001/IP-P00216/2017-2018/10416 as the Interim Resolution Professional** having his address at 405-407 Hind Rajasthan Building Dadar, Maharashtra ,400014 Email id:- jayesh@jsandco.in **;** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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

f. 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.

g. 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.

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 the Corporate Debtor will vest in the IRP/RP. The suspended directors and 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

37. **Accordingly, this Petition is admitted.**

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

Sd/- **ANIL RAJ CHELLAN** **(MEMBER TECHNICAL)**	**Sd/-** **KULDIP KUMAR KAREER** **(MEMBER JUDICIAL)**