

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**I.A/2828/2023**

**IN**

**COMPANY PETITION NO. (IB) 513 OF 2022**

**AND**

**COMPANY PETITION NO. (IB) 513 OF 2022**

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 R/W Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.]

**COMPANY PETITION NO. (IB) 513 OF 2022**

**IN THE MATTER OF:**

**IDBI TRUSTEESHIP SERVICES LIMITED**

**...APPLICANT/FINANCIAL CREDITOR**

**VERSUS**

**SHIPRA ESTATE LIMITED**

**...RESPONDENT/CORPORATE DEBTOR**

**I.A/2828/2023 IN COMPANY PETITION NO. (IB) 513 OF 2022**

**SHIPRA ESTATE LIMITED**

**...APPLICANT**

**VERSUS**

**IDBI TRUSTEESHIP SERVICES LIMITED**

**... RESPONDENT**

**Order Delivered on: 24.01.2024**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant :** Mr. Sumesh Dhawan, Mr. Abhirup Dasgupta, Mr. Ishaan Duggal, Ms. Ruchi Goyal, Mr. Shaurya. Advs.

**For the Respondent :** Mr. Karan Kohli, Mr. Tushar Randhawa, Shreni Taran, Mr. Sajal Jain, Advs.

**COMMON ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

1. The instant Company Application (C.P.(IB) No. 513/2022) is filed by M/s. IDBI Trusteeship Services Limited ('Applicant') bearing CIN: U65991MH2001GOI131154 in its capacity of a Debenture Trustee of M/s. IIFL Finance Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Shipra Estate Limited (Respondent Company), referred to as the Corporate Debtor.
2. The Respondent Company M/s. Shipra Estate Limited (CIN No. U70101DL1987PLC029594) is a public limited company having its registered office situated at Flat No. 502, 502-A, 5<sup>th</sup> Floor, 23 Barakhamba Road, Narain Manzil, New Delhi - 110001. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for

**2**

**C.P. NO. (IB) 513 OF 2022  
&  
I.A/2828/2023  
Date of Order: 24.01.2024**

initiation of Corporate Insolvency Resolution Process in respect of Respondent/Corporate Debtor under sub-section (1) of Section 60 of the Code.

**AVERMENTS OF THE APPLICANT IN C.P.(IB)/513/2022**

3. Succinctly stated, the facts of the present case as averred by the applicant in the present application are that the Corporate Debtor i.e., M/s. Shipra Esate Limited is the Corporate Guarantor in terms of a Debenture Trustee Deed entered into between M/s. Just About Movies Private Limited ('JAMPL'), the applicant and the Corporate Debtor (as the Corporate Guarantor and Promoter). Further, the Debt Amount was agreed to be disbursed by IIFL to JAMPL by contributing to subscription amount of the Debentures, in one or more tranches. Accordingly, a total amount of INR 229,13,00,000/- (Indian Rupees Two Hundred and Twenty-Nine Crores and Thirteen Lakh Only) was disbursed by IIFL Finance Limited. The first disbursement was made on 30.03.2019 and the last disbursement was made on 12.05.2021
4. The Applicant submitted that JAMPL made an express admission in its audited balance sheets as on 31.03.2021 that it has availed financial assistance from IIFL Finance Limited, however, JAMPL had started default in repayment since 01.07.2021. Pursuant, to the continuing default, the Applicant (acting under instructions and for the benefit of IIFL) had issued a loan recall notice to JAMPL, Corporate Debtor (as corporate guarantor under the Debenture Trust Deed) and Mr. Mohit Singh (as personal guarantor under the Debenture Trust Deed)
5. The Applicant further submitted that a notice specifically invoking the Corporate Guarantee extended by M/s. Shipra Estates Limited was issued on 02.08.2021. In terms of Clause 1.1.1 of the Corporate Guarantee Deed, the Corporate Debtor was required to discharge its payment obligations within 1 day from the date of receipt of the invocation notice and as such, the first default on part of M/s. Shipra Estate Limited had occurred on 02.08.2021.

6. The Applicant submitted that post issuance of the invocation and recall notices, M/s. Shipra Estate Limited (acting through its director and promoter), Mr. Mohit Singh vide its email dated 14.10.2021 assured IIFL that it will duly discharge its payment obligations in connection with the Debentures. Therefore, M/s. Shipra Estate Limited has itself admitted its liability in relation to the Debentures. Moreover, since JAMPL failed to repay its dues under the Debenture Trust Deed and the Term Sheet even till April 2022, by way of one final opportunity, the Applicant, under instructions from and on behalf of IIFL, issued a demand notice dated 28.04.2022, wherein it was mentioned that in case of failure by Shipra to discharge its payment obligations, proceedings under the IBC shall be initiated against it. Therefore, the Corporate Debtor subsequently defaulted on 29.04.2022, when it failed to make payment after receipt of the notice dated 28.04.2022. The amount in default is INR 3,32,64,83,811/- and the first date of default is 01.07.2021 and continuing. Accordingly, prays for initiation of CIRP against the Corporate Debtor.

**REPLY OF THE CORPORATE DEBTOR IN C.P.(IB)/513/2022**

7. The Corporate Debtor had filed its reply and submitted that the submitted that the Corporate Debtor had executed a Corporate Guarantee with IIFL wherein IIFL had granted a loan facility to JAMPL (“Principal Borrower”) for an amount of Rs. 250/- Crores. Thereafter JAMPL entered into a Debenture Trust Deed with IDBI Trusteeship for allotment and issuance of Rs. 25,000/- non-convertible debentures worth Rs. 1,00,000/- each. The Corporate Debtor submitted that IDBI Trusteeship is required to act only as a Trustee for the benefit of the Debenture holders and cannot in any manner be entitled to file any Section 7 Application on behalf of IIFL being the Debenture Holder.

8. Further, the Corporate Debtor submitted that the Applicant had failed to comply with Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 which requires to produce the record of Information Utility (NeSL certificate) in order to

4

**C.P. NO. (IB) 513 OF 2022**  
**&**  
**I.A/2828/2023**  
**Date of Order: 24.01.2024**

determine the debt or default (if any). Accordingly, in the absence of no certificate from any information utility, there exists no debt and default as far as the Corporate Debtor is concern. Further, it was submitted that as per Regulation 2A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant had failed to provide with relevant account in the banker's book as defined in clause (3) of Section 2 of the Bankers' Books Evidence Act, 1891.

9. The Corporate Debtor had also preferred an Interlocutory Application i.e., I.A/2828/2023 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of the present Company Petition on the ground that Original Financial Creditor namely IIFL had by way of assignment deed dated 28.06.2022 had assigned few debts to one Asset Care and Reconstruction Enterprise Ltd. ("ACRE"), however, the applicant did not seek any leave of this Hon'ble Adjudicating Authority to replace ACRE as the Financial Creditor in place of IIFL in the present Company Petition. Accordingly, the Corporate Debtor had prayed that the present petition preferred through M/s. IDBI Trusteeship Services Limited, being Applicant has no legs to stand as the same is authorised by the original financial creditor i.e. IIFL and not by ACRE to whom the debt is now assigned.

**REJOINDER BY THE APPLICANT IN C.P.(IB)/513/2022**

10. The Applicant had filed its rejoinder wherein the submissions of the Corporate Debtor are rebutted and submitted that the present Company Petition was filed by the applicant in its capacity of a Debenture Trustee of IIFL Finance Limited and as per Clause 24.1.2 of the Debenture Trust Deed dated 27.03.2019, the applicant is duly authorized to initiate enforcement action against the Corporate Debtor in respect of any claim arising in relation to the debt amount disbursed by IIFL in favour of the Corporate Debtor.
11. The Applicant further submitted that the statement of accounts annexed with the Company Petition under Section 7 of the Code, 2016 reflects the correct

position of the financial transactions between the Corporate Debtor and the Applicant. Also, on 31 July 2021, the principal borrower, i.e., JAMPL acknowledgement of its own dues had made payment of INR 8,23,94,000/-. The said amount is duly reflected in the statement of accounts annexed with the Company Petition. Moreover, vide e-mail dated 30 August 2022, JAMPL and the Corporate Debtor had acknowledged their liability in relation to the loan facility.

### **AVERMENTS OF THE CORPORATE DEBTOR IN I.A/2828/2023**

12. The Corporate Debtor had preferred an Interlocutory Application i.e., I.A/2828/2023 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of the present Company Application on the ground that the present Company Application i.e., C.P.(IB)/513/2022 which has been filed by IIFL i.e., the Financial Creditor through its Debenture Trustee ie., IDBI Trusteeship Services Ltd. is bereft of any authority.

### **ANALYSIS & FINDINGS**

13. We have heard the Learned Counsel for the parties and perused the averments made in the Application, Reply, Rejoinder and Written submission filed by the parties. The Corporate Debtor had also preferred an Interlocutory Application i.e., I.A/2828/2023 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of the present Company Petition. Since, the issue in the Company Petition and the Interlocutory Application are interconnected with each other and the ground raised by the Corporate Debtor in the I.A/2828/2023 were already raised in the reply filed by the Corporate Debtor in C.P.(IB)/513/2022, therefore both the matters are being taken together for adjudication.
14. Adverting to the facts of the present case, there is no dispute that the Corporate Debtor i.e., M/s. Shipra Estate Limited is the Corporate Guarantor in terms of a Debenture Trustee Deed entered into between M/s. Just About Movies Private

Limited ('JAMPL'/ 'Principal Borrower') and had defaulted in repayment of its payment obligations post issuance of the invocation and recall notices dated 14.10.2021 issued by the Applicant.

15. It is settled law that in case of default in payment money due on debentures either of debenture holder or debenture Trustee can proceed against the defaulting party. Further, notification dated 27.02.2019 released by the Ministry of Corporate Affairs, provides for the provision authorising Debenture Trustee to file an application under Section 7 of the Code 2016. Therefore, the contention of the respondent with regard to the authority of the applicant cannot sustain.
16. As regard to the contention raised in the Interlocutory Application i.e. I.A/2828/2023 with regard to the assignment of debt from IIFL to ARCE, this Adjudicating Authority observe that the Applicant had placed on record the assignment agreement before this Adjudicating Authority vide Additional Affidavit dated 28.07.2022. The Applicant had submitted that by way of the Assignment Agreement dated 28.06.2022, all rights, interests, benefits and guarantees arising in relation to the financial debt in subject matter were assigned by IIFL Finance Limited to Assets Care and Reconstruction Enterprise Limited. Further, the applicant had also relied on Clause 75.12 of the Debenture Trust Deed which provides that wide powers to the Debenture Holders to assign the subject matter debt. The defence of Corporate Debtor as to validity of assignment deed between IIFL and ARCE, is not tenable in view of provisions contained in section 5(1)(b) of SARFAESI Act, 2002. Further there is no obligation on the part of the assignor either to intimate the borrower/its guarantors or to make them a party to the assignment deed. **Accordingly, the I.A/2828/2023 being devoid of merit stands dismissed.**
17. The date of default is clearly stated in part IV as 28.07.2019. The Applicant has submitted that the Principal borrower failed to make payment, in accordance with the terms of the Debenture Trust Deed and has determined date of default accordingly. There is no dispute that the Principal borrower has committed

default in payment of debt. On perusal of document annexed to the Application, it is seen that the Corporate Debtor was issued a notice 02.08.2021 recalling all loan facility extended to JAMPL, Principal Borrower, and asking it to make the default good otherwise proceedings under IBC will be initiated. JAMPL has made an express admission that it has availed financial assistance from IIFL Finance Limited in its audited balance sheet as on 31.03.2021. Moreover, Section 7 of the Code, 2016 read with the CIRP Regulations, 2016 empowers the Financial Creditor to file record of the default recorded in the information utility or such other record and default as may be specified. Therefore, the record of default recorded with the Information Utility cannot be the only document to be furnished in a Section 7 Application and the financial creditor is at liberty to submit such other record of default as may be specified which proves the existence of debt and default.

18. The Corporate Debtor had contended that the original borrower had repaid an amount of Rs.1,15,58,25,064.9/- to IIFL dated 30.03.2019 in the form of RTGS. To buttress the submission, the Corporate Debtor had placed reliance on an authenticated statement of accounts of the Principal Borrower related to the period 01.04.2018 to 31.03.2019. In fact, the Ld. Counsel for the Corporate Debtor had undertaken to produce the certified copy of the statement, however, the same have not been produced. Be that as it may, this Adjudicating Authority observe that the original borrower namely Just About Movies Private Limited in its Audited Balance sheet for the Year March, 2021 had duly admitted its liability of Rs.22,43,000,000/- outstanding as on 31.03.2020 and liability of Rs.22,89,100,000/- outstanding as on 31.03.2021 towards the Financial Creditor under the head 'Long Term Borrowings'. The said outstanding amount as admitted by the Principal Borrower's in its audited Financial Statement for the year ended 31.03.2021 stands corroborated from the Statement of Accounts as annexed by the applicant in the present Company Application. Also, the Corporate Debtor had duly acknowledged its liability and acknowledged the outstanding debt in default towards the Financial Creditor in the e-mail(s)

dated 17.05.2022 and 30.08.2022 sent by the Corporate Debtor to the Financial Creditor. Moreover, the Corporate Debtor through its director and promoter, Mr. Mohit Singh had vide email dated 14.10.2021 had acknowledged its liability and assured IIFL that the Corporate Debtor will duly discharge its payment obligations in connection with the Debentures. Accordingly, in view of the acknowledgement of debt by the original borrower in its Audited Financial Statement for the year ended 31.03.2021 and subsequent acknowledgement in the e-mail correspondences by the principal borrower and Corporate Debtor, the contention of the Corporate Debtor cannot be sustained.

19. The Corporate Debtor had placed reliance on **Hon'ble NCLAT judgement in the matter of Ocean Deity Investment Holdings Ltd., PCC V. Suraksha Asset Reconstruction Ltd. & Anr. Company Appeal (AT) (Ins.) No. 795 of 2021.** On perusal of the judgement relied upon, this Adjudicating Authority observe that the facts of the case relied upon are distinguishable from the present case. In the case relied upon the issue involved relates to the circular transaction whereas the case before us, relates to the default by the Corporate Guarantor in repayment of its obligations after the invocation of the guarantee. Therefore, the case relied by the Corporate Debtor is not helpful.
20. This Adjudicating Authority is further persuaded by the decision of the Hon'ble Supreme Court in the matter of **Laxmi Pat Surana v. Union Bank of India and Another [(2021) 8 SCC 481]** wherein it was held that Liability of a guarantor is co-extensive with the liability of the principal, the creditor has the power to proceed against either of the two. The relevant extract of the judgement is reproduced herein below:-

“23. Indubitably, a right or cause of action would ensure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and

coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC.”

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21. The material placed on record as stated above further confirms that the debt is due and the Corporate Debtor has committed default in repayment of the outstanding financial debt. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant is entitled to move the application against the Corporate Debtor in view of outstanding Financial Debt in default which is above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant **Petition I.B./513/ND/2022 stands admitted and CIRP of M/s. Shipra Estate Limited shall commence.**
  
22. The petitioner in Part-III of the petition has proposed the name of Mr. Dhanshyam Kantilal Patel as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P01373/2018-2019/12155. Mr. Dhanshyam Kantilal Patel, having registration number IBBI/IPA-001/IP-P01373/2018-2019/12155 and email – id [dpatel@ckpate.com](mailto:dpatel@ckpate.com) is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.
  
23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
  - (a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment,

decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
- (e) The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

26. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Dhanshyam

Kantilal Patel to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

27. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
28. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
29. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
30. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the

ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

31. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./513(ND)/2022 stands admitted and the Interlocutory Application i.e., I.A/2828/ND/2023 stands dismissed.**

**Sd/-**

**(DR. SANJEEV RANJAN)  
MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**