



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

CP(IBC)/51/KOB/2022

(Under Section 7 of the IBC, 2016)

Date of Institution: .10.10.2022

***Order quashed by the Hon'ble NCLAT
and matter remanded back: 03.07.2026.***

Order Delivered on: 30.09.2026

In the matter of: -

M/s. Cherupushpam Films Private Limited

Memo of parties:

**Phoenix ARC Private Limited Trustee of
Phoenix Trust FY17-8**

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Kalina, Santacruz (E), Mumbai - 400 098

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...Petitioner/Financial Creditor

-Vs.-

M/s. Cherupushpam Films Private Limited

4th Floor, Cherupushapam Building,
Shanmugham Road, Ernakulam - 682031.

... Respondent/Corporate Debtor

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY

Appearances:

For the Petitioners : Mr. Suresh Dobhal, Advocate
Mr. Kevin Thomas, Advocate

For the Corporate Debtor : Mr. Pradeep Joy, Advocate



ORDER

Per Coram

1. The present Petition has been filed by Phoenix ARC Private Limited Trustee of Phoenix Trust FY17-8 (hereinafter referred to as the “Financial Creditor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016, (the Code), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against M/s Cherupushpam Films Private Limited (hereinafter referred to as the “Corporate Debtor”).
2. Part-I of the Form I sets out the particulars of the Financial Creditor, namely, Phoenix ARC Private Limited Trustee of Phoenix Trust FY17-8, a Body Corporate incorporated on 02.03.2007, acting through its Authorised Signatory, Mr. Suresh Mangattu Variyam, and being the assignee of The South Indian Bank Limited pursuant to the Assignment Deed dated 17.03.2017.
3. Part-II of the Form I contains the particulars of the Corporate Debtor, namely, M/s. Cherupushpam Films Private Limited, bearing Corporate Identification Number (CIN) U92111KL1975PTC002687, incorporated on 26.04.1975, having its registered office 4th Floor, Cherupushapam Building, Shanmugham Road, Ernakulam - 682031.
4. Part-III of Form-1 reveals that the Applicant has proposed Mr. Parameswaran Nair, bearing Registration No. IBBI/IPA-001/IP-P01773 as the IRP in this matter.



5. Part-IV of the Form-1 indicates that the date of default as claimed by the Financial Creditor is 30.09.2013, and the date of classification of the account of the Corporate Debtor as NPA is 30.09.2013. The amount in default as claimed in the Petition is Rs.14,50,78,158/-.

BRIEF FACTS OF THE CASE:

6. The Petitioner submitted that the South Indian Bank Limited, the Original Lender, had sanctioned various credit facilities aggregating to Rs.8,60,00,000/- to M/s. Kerala Chamber of Commerce and Industry, the Principal Borrower, for construction of a commercial building known as “Kerala Trade Centre” on the land belonging to the Corporate Debtor. The said facilities comprised FSL(M) of Rs.1.10 Crores sanctioned on 15.09.2010, FSL(O) of Rs.5 Crores sanctioned on 30.12.2010 and FSL(M) of Rs.2.50 Crores sanctioned on 01.01.2013. The Corporate Debtor had executed guarantee agreements in respect of the said facilities and had created an equitable mortgage over 43.95 cents of land together with the building thereon in Survey No.843 of Ernakulam Village, Kanayannur Taluk, Ernakulam District, as security for the repayment of the facilities.
7. The Petitioner stated that the Principal Borrower committed defaults in repayment and the loan accounts were classified as Non-Performing Assets (NPA) on 30.09.2013. Thereafter, the entire debt, together with all rights, title, interest and security interests of the Original Lender, was assigned in favour of the Petitioner pursuant to the Assignment Deed dated 17.03.2017, whereby the Petitioner stepped into the shoes of the Original Lender and became entitled to enforce the debt and securities against the Principal Borrower and the Corporate Debtor.



8. The Petitioner further submitted that CIRP was initiated against the Principal Borrower by order dated 22.02.2022 passed by this Adjudicating Authority in CP(IB)/33/KOB/2021. Since the only substantial asset of the Principal Borrower is the building constructed on the land belonging to the Corporate Debtor, the resolution of the Principal Borrower is affected by the Corporate Debtor's interest in the underlying property. The Petitioner therefore contended that initiation of CIRP against the Corporate Debtor is necessary for an effective resolution of the debt and the connected assets.
9. The Petitioner stated that, as on 05.10.2022, a sum of Rs.14,50,78,158/- (Rupees Fourteen Crores Fifty Lakhs Seventy-Eight Thousand One Hundred Fifty-Eight Only), inclusive of interest and other charges, is due and payable, comprising outstanding amounts under the three aforesaid credit facilities, with further interest and applicable charges until realisation. The Corporate Debtor is liable to discharge the said financial debt in terms of the guarantees executed by it in favour of the Original Lender.
10. With regard to limitation, the Petitioner submitted that the liability was duly acknowledged by the Principal Borrower in its Annual Financial Statements for the years ended 31.03.2015, 31.03.2017 and 31.03.2018, and the Corporate Debtor had also reflected the said liability as a contingent liability in its Annual Financial Statements. The Petitioner further relied upon the orders of the *Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020*, including the order dated 10.01.2022, whereby the period from 15.03.2020 to 28.02.2022 was directed to be excluded for computation of limitation. The Petitioner accordingly contends that the present Petition has been filed within the period of limitation.



11. The Petitioner further submitted that the aforesaid debt is fully secured by the mortgage over the property measuring 17.79 Ares equivalent to 43.95 cents, together with the building known as “Kerala Trade Centre”, having an approximate built-up area of 15,138.22 sq. metres, situated in Sy. No.843/17 of Ernakulam Village, Kanayannur Taluk, Ernakulam District, belonging to the Corporate Debtor. The creation and continuation of the security interest are evidenced by the Letters Confirming Deposit of Title Deeds and the charges registered with the Registrar of Companies. It is stated that the said property was valued at approximately Rs.64.55 Crores as on 30.07.2019.
12. In the circumstances, the Petitioner submitted that the Corporate Debtor, being the guarantor for the financial facilities availed by the Principal Borrower and being liable for the debt and default thereunder, is liable to be proceeded against under the provisions of the Code, and the present Petition has accordingly been preferred seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

The reply affidavit filed by the Respondent states as follows: -

13. The Respondent/Corporate Debtor submitted that M/s Cherupushpam Films Pvt. Ltd. is the owner of approximately 43 cents of land at Marine Drive, Kochi, upon which the commercial complex known as “Kerala Trade Centre” (KTC) was proposed to be constructed pursuant to Joint Venture Agreements dated 09.03.2001 and 08.12.2003 entered into with Kerala Chamber of Commerce and Industry (KCCI). The Respondent contended that it was a party only to the loan facility sanctioned on 24.04.2005, which was subsequently closed, and that it had not availed or consented to the subsequent loan facilities relied upon by the Petitioner.



14. The Respondent further submitted that the subsequent credit facilities of Rs.1.10 Crores, Rs.5 Crores and Rs.2.50 Crores, sanctioned on 16.09.2010, 30.12.2010 and 01.01.2013, respectively, were allegedly availed by KCCI by forging the signature of the then Managing Director of the Respondent Company, and that the proceeds were diverted towards activities of India Middle East Broadcasting Network Pvt. Ltd. The Respondent stated that the alleged irregularities and diversion of funds were brought to the notice of the Reserve Bank of India, and relies upon the proceedings initiated pursuant thereto.
15. The Respondent submitted that disputes between the Respondent and KCCI arising out of the Joint Venture Agreement were referred to arbitration and that the learned Sole Arbitrator, Justice R. Bhaskaran (Retd.), after considering the audit report of Venugopal & Co., Chartered Accountants, passed an award dated 26.02.2018, holding, inter alia, that the liabilities towards the bank and statutory authorities were to be met from the common fund and KCCI's share of profits. The Respondent further stated that the challenge to the arbitral award by KCCI in OP (Arb.) No.129/2018 was dismissed by the District Court, Ernakulam by judgment dated 10.01.2022.
16. The Respondent further contended that the Directorate of Enforcement (ED) is investigating the alleged diversion and misappropriation of funds under the Prevention of Money Laundering Act, 2002,(PMLA) and that a Provisional Attachment Order dated 03.10.2022 was issued in the said proceedings. It is the specific case of the Respondent that neither the arbitral proceedings nor the materials relied upon in the attachment proceedings establish that the Respondent received, possessed, diverted or dealt with



any proceeds of crime, and that the alleged diversion was attributable to KCCI and its office bearers.

17. The Respondent submitted that it had also approached the Hon'ble High Court of Kerala by filing W.P.(C) No.13546 of 2022 seeking investigation into the alleged irregularities in the sanction and utilisation of the loan facilities and verification of the signatures allegedly executed on behalf of the Respondent, and the said proceedings are pending consideration.
18. The Respondent contended that the debt claimed by the Petitioner is barred by limitation and that the proceedings under the Code cannot be permitted to prejudice or supersede the ongoing investigation under the PMLA. It is further contended that the Directorate of Enforcement is a necessary party, as the outcome of the present proceedings would have a direct bearing on the properties and transactions under investigation.
19. In the circumstances, the Respondent submitted that it cannot be held liable for the alleged financial defaults of KCCI, particularly when it disputes the execution of the subsequent guarantee documents and alleges forgery and diversion of the loan proceeds. The Respondent accordingly contends that the Section 7 application is premature, not maintainable and liable to be dismissed, inter alia, on the grounds of limitation, pendency of investigation and violation of the principles of natural justice.

The Rejoinder filed by the Petitioner states as follows: -

20. In Rejoinder, the Financial Creditor submitted that the present petition has been filed against the Corporate Debtor in its capacity as guarantor for the credit facilities availed by Kerala Chamber of Commerce, the Principal Borrower, for construction of a building under a joint venture arrangement. The total sanctioned debt was Rs. 8.60 Crores under the sanction letters dated 15.09.2010, 30.12.2010 and 01.01.2013. Upon default, the account



was classified as NPA and CIRP was initiated against the Principal Borrower by order dated 22.02.2022 in CP(IB)/33/KOB/2021. The Financial Creditor submitted that the CIRP of the Principal Borrower is impeded as the land on which the project is situated stands in the name of the Corporate Debtor, who is also the guarantor.

21. In response to the contention that the signatures of the Managing Director of the Corporate Debtor on the loan and guarantee documents were forged, the Financial Creditor submitted that the said contention is an afterthought. It is pointed out that the Corporate Debtor had previously acknowledged the loan documents, including the guarantee and mortgage, in S.A. No. 304/2014 before the Debt Recovery Tribunal-I, Ernakulam. The issue of alleged forgery was also raised in I.A. No. 1287/2019 in S.A. No. 210/2019 and was decided against the Corporate Debtor by order dated 20.09.2021. The Financial Creditor further relied upon the charges registered with the Registrar of Companies to contend that the Corporate Debtor had duly created and acknowledged the relevant security interests.
22. With regard to the arbitration proceedings relied upon by the Corporate Debtor, the Financial Creditor submitted that it was not a party to those proceedings and that the arbitral proceedings merely adjudicated disputes between the Principal Borrower and the Corporate Debtor inter se. According to the Financial Creditor, the arbitral award does not discharge or extinguish the Corporate Debtor's independent liability arising under the guarantee and mortgage documents.
23. On limitation, the Financial Creditor stated that the date of default is 30.09.2013. It relied upon acknowledgements of liability contained in the audited annual financial statements of the Principal Borrower for the financial years ending 31.03.2015, 31.03.2017 and 31.03.2018, contending



that such acknowledgements extend the period of limitation under Section 18 of the Limitation Act, 1963 and are binding on the guarantor in terms of Clause 6 of the respective guarantee agreements. The Financial Creditor further relied upon the exclusion of the period from 15.03.2020 to 28.02.2022 pursuant to the orders of the Hon'ble Supreme Court in the suo motu limitation proceedings and submitted that the present petition has been filed within the resultant period of limitation.

24. As regards the proceedings under the PMLA against the Principal Borrower, the Financial Creditor submitted that such proceedings do not constitute a bar to initiation of CIRP against the Corporate Debtor under the Code. Section 32A of the Code is stated to have no application at this stage, as the statutory protection contemplated therein arises upon approval of a resolution plan.
25. Accordingly, the Financial Creditor submitted that the objections raised by the Corporate Debtor regarding forgery, arbitration, limitation and PMLA proceedings are devoid of merit and that the Corporate Debtor, being the guarantor, is liable for the outstanding debt. The Financial Creditor therefore sought admission of the petition and initiation of CIRP against the Corporate Debtor.

The Additional Rejoinder filed by the Financial Creditor States as follows:

26. The Financial Creditor submitted that, at the time of final hearing of C.P.(IB)/51/KOB/2022 on 21.12.2022, the Corporate Debtor raised certain contentions regarding non-payment of stamp duty on the Assignment Agreement, non-production of the complete schedules to the Assignment Agreement and non-production of the Trust Deed, which had not been raised in its Reply. It is contended that the Financial Creditor had no



opportunity to address the said contentions, the Petition was dismissed by order dated 15.02.2023.

27. The Financial Creditor submitted that the Hon'ble NCLAT, Chennai, by order dated 03.07.2026 in C.A.(AT)(CH)(Ins) No.81 of 2023, remanded the matter to this Tribunal. Pursuant thereto, the Financial Creditor placed on record the registered Assignment Agreement, the judgment of the Hon'ble High Court of Kerala dated 07.12.2023 and the Trust Deed of Phoenix Trust FY17-8 as Annexures A46 to A48 through this additional rejoinder. It is submitted that the Assignment Agreement has since been duly registered and the requisite stamp duty paid. The Financial Creditor also produced the complete Assignment Agreement, stating that the other schedules related to 36 loan accounts not forming part of the present proceedings.
28. The Financial Creditor further submitted that the Corporate Debtor had acknowledged the debt in its audited financial statements and had not disputed its liability under the loan transaction even in response to the demand notice dated 16.12.2013 issued under Section 13(2) of the SARFAESI Act, produced as Annexure A49.
29. Accordingly, the Financial Creditor submitted that the procedural objections relating to the Assignment Agreement and Trust Deed stand addressed/rectified through this additional rejoinder and that the existence of the debt, guarantee, default and assignment remains undisputed. It therefore prayed that the objections of the Corporate Debtor be rejected and the Petition be admitted.

The Additional Reply filed by the Corporate Debtor states as follows:

30. The Corporate Debtor submitted that the Petition had earlier been dismissed by this Tribunal by order dated 15.02.2023 on the ground that the Assignment Agreement dated 17.03.2017 was not duly stamped/registered



and that the complete schedules to the Assignment Agreement and the Trust Deed of Phoenix Trust FY17-8 had not been produced. It contended that these defects affected the locus standi of the Financial Creditor and were not merely technical irregularities.

31. The Corporate Debtor submitted that, although the Hon'ble NCLAT, Chennai, by order dated 03.07.2026, remanded the matter for fresh consideration, it did not adjudicate the validity or sufficiency of the stamp duty or registration on merits. According to the Corporate Debtor, the Hon'ble NCLAT proceeded on the basis that the Assignment Agreement had subsequently been registered pursuant to the order dated 07.12.2023 of the Hon'ble High Court of Kerala in W.P.(C) No.19371/2017.
32. It is further submitted that the registration of the Assignment Agreement as Document No.202/IV/2024 and the stamp duty paid pursuant thereto are presently under challenge before the Hon'ble High Court of Kerala in W.A. No.2007 of 2024 filed by the Corporate Debtor and W.A. No.1139 of 2025 filed by the State of Kerala. The Corporate Debtor therefore contended that the validity of the assignment remains sub judice and that the Tribunal ought to consider the said subsequent development while deciding the Petition afresh.
33. With regard to the Trust Deed, the Corporate Debtor submitted that the same was produced for the first time at the appellate stage and disputed that its belated production, by itself, cured the defects earlier noticed by this Tribunal.
34. The Corporate Debtor further submitted that the Principal Borrower is undergoing CIRP in CP(IB)/33/KOB/2021 and that a resolution plan has been approved by the Committee of Creditors. It was contended that the Financial Creditor has been allocated recovery under the said resolution



plan and that proceedings in I.A. No.142 of 2026 concern registration of the very land belonging to the Corporate Debtor which had been mortgaged as security for the subject debt. On this basis, the Corporate Debtor contended that permitting the Financial Creditor to recover the same debt under the approved resolution plan of the Principal Borrower as well as through the present Section 7 proceedings against the Corporate Debtor would result in double recovery. The Respondent relied upon the principles contained in Sections 128, 140 and 141 of the Indian Contract Act, 1872, and the decision of the Hon'ble NCLAT in S2 Tech.com India Pvt. Ltd. v. Birendra Kumar Agarwal (RP) & Anr., in support of its contention that recovery from the Principal Borrower and the Corporate Guarantor must be appropriately accounted for.

35. The Corporate Debtor accordingly submitted that the Additional Rejoinder does not cure the defects earlier noticed by this Tribunal, that the validity of the Assignment Agreement remains under challenge, and that the proceedings against the Corporate Debtor may result in impermissible double recovery. It therefore prayed for dismissal of the Petition.

ANALYSIS AND FINDINGS: -

36. We have heard the learned Counsel appearing for both sides and have carefully gone through the pleadings, records, documents and written submissions placed on record by the parties.
37. The present Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been filed by the Financial Creditor against the Corporate Debtor, in its capacity as a guarantor in respect of the financial facilities availed by M/s. Kerala Chamber of Commerce and Industry, the Principal Borrower. It is the case of the Financial Creditor that the Principal Borrower committed default in repayment of the said financial facilities and



that, by virtue of the guarantee and security documents executed by the Corporate Debtor, the Corporate Debtor is liable for the financial debt and the consequent default.

38. It is not in dispute that the Financial Creditor had earlier initiated proceedings under Section 7 of the Code against the Principal Borrower in CP(IBC)/33/KOB/2021, which came to be admitted by this Adjudicating Authority by order dated 22.02.2022, and the CIRP of the Principal Borrower is presently at an advanced stage. It is also relevant to note that the present Company Petition filed against the Corporate Debtor was earlier dismissed by this Adjudicating Authority vide order dated 15.02.2023, inter alia, in relation to the objections concerning the Assignment Agreement, the non-production of the complete schedules thereto, the Trust Deed of Phoenix Trust FY17-8 and the issue relating to stamp duty/registration of the Assignment Agreement.
39. The said order was challenged by the Financial Creditor before the Hon'ble National Company Law Appellate Tribunal, Chennai Bench. The Hon'ble NCLAT, vide order dated 03.07.2026 in C.A.(AT)(CH)(Ins) No.81 of 2023, remanded the matter to this Adjudicating Authority for fresh consideration. In the appellate proceedings, certain additional documents, which were not available before this Adjudicating Authority at the time of the original consideration of the Petition, were also placed on record and taken into consideration by the Hon'ble NCLAT. Before proceeding further, it would be appropriate to refer to the relevant observations of the Hon'ble NCLAT in its order dated 03.07.2026, which have a bearing on the scope of the present adjudication. The relevant portion of the order is extracted hereunder:

31. The impugned decision rendered by the Ld. Tribunal rejecting the Section 7 application filed by the Appellant was solely on the ground of the aforesaid two procedural anomalies, and as of now the said anomalies stand rectified by the Appellant by supplying the registered Assignment Deed, which



ultimately got registered in compliance with orders passed by the Hon'ble High Court, and which can be read in evidence and similarly by supplying the Trust Deed.

32. Since the Ld. Tribunal had not ventured on merits of the application under Section 7 of the Code, and it has proceeded to decide the same, on these limited questions of restrictions, which now stand rectified because of satisfying the aforesaid lacunas, we are of the view that the application under Section 7 of the Code requires consideration, on merits.

33. Thus, the impugned order dated 15.02.2023 is hereby quashed. The application preferred by the Appellant under Section 7 of the I & B Code is relegated back to the Ld. Tribunal which is to be decided on merits afresh, without drawing the embargoes of the Assignment Deed having been not registered or non-presentation of the Trust Deed.

34. Subject to the above, the 'company appeal' stands 'allowed' and the matter is remitted back to the Ld. NCLT to re-decide the matter afresh.

40. Pursuant thereto, the Financial Creditor has placed the following documents on record by way of the Additional Rejoinder:

- i. The registered Assignment Agreement;
- ii. The judgment of the Hon'ble High Court of Kerala dated 07.12.2023;
- iii. The Trust Deed of Phoenix Trust FY17-8; and
- iv. The Demand Notice dated 16.12.2013, issued under Section 13(2) of the SARFAESI Act, 2002.

41. This Adjudicating Authority granted an opportunity to the Corporate Debtor to file its response/counter to the aforesaid documents placed on record by the Financial Creditor, and the Corporate Debtor has availed such opportunity by filing its Additional Counter.

42. Now, this Adjudicating Authority, pursuant to the remand by the Hon'ble NCLAT, shall proceed to consider the present Petition afresh on its merits, without being prejudiced by the findings contained in the earlier order dated 15.02.2023 and in accordance with the directions contained in the order of the Hon'ble NCLAT.



43. It is the case of the Financial Creditor that the Principal Borrower had availed the financial facilities from the Original Lender and that the present Corporate Debtor stood as guarantor for the said financial facilities and also mortgaged its property as security for repayment of the debt. The financial facilities were availed by the Principal Borrower pursuant to the Joint Venture arrangements for the construction of a commercial complex on the land owned by the present Corporate Debtor. It would not be out of place to mention that the said land continues to be mortgaged as security for the subject loan account. The relevant details of the financial facilities, guarantees, creation of security and the subsequent events are set out hereunder:

Date	Event
15.09.2010	Financial facility of Rs.1.10 Crores sanctioned to the Principal Borrower for construction of "Kerala Trade Centre".
16.09.2010	Credit Facility Agreement and Guarantee Agreement executed by the Principal Borrower and the Corporate Debtor, respectively.
17.09.2010	Extension of mortgage over 43.95 cents of land together with the building thereon created by the Corporate Debtor by deposit of title deeds.
30.12.2010	Financial facility of Rs.5 Crores sanctioned to the Principal Borrower.
30.12.2010	Credit Facility Agreement and Guarantee Agreement executed in respect of the said facility.
31.12.2010	Further extension of mortgage over the aforesaid property by deposit of title deeds.
01.01.2013	Financial facility of Rs.2.50 Crores sanctioned to the Principal Borrower.
01.01.2013	Credit Facility Agreement and Guarantee Agreement executed in respect of the said facility.
02.01.2013	Further extension of mortgage over the aforesaid property by deposit of title deeds.
30.09.2013	Loan accounts of the Principal Borrower classified as NPA.
17.03.2017	The financial debt, together with the underlying securities and rights of the Original Lender, was assigned in favour of Phoenix ARC Private Limited under the Assignment Deed.



44. The Principal Borrower availed the aforesaid financial facilities but failed to repay the amounts due, pursuant to which the loan accounts were classified as Non-Performing Assets on 30.09.2013. In the meantime, the financial debt, together with the underlying securities and rights of the Original Lender, was assigned in favour of the Financial Creditor under the Assignment Deed dated 17.03.2017. The South Indian Bank issued a demand notice dated 16.12.2013 under Section 13(2) of the SARFAESI Act, 2002, demanding payment of the outstanding dues of Rs. 5,79,65,417/- within the statutory period of 60 days. Against the SARFAESI action, the Corporate Debtor approached the Debt Recovery Tribunal by filing an application. It is further the case of the Financial Creditor that the Principal Borrower had, on various occasions, acknowledged its liability in respect of the aforesaid financial debt. The relevant acknowledgements and subsequent events are set out hereunder:

31.03.2015	Liability reflected/acknowledged in the Annual Financial Statements of the Principal Borrower.
31.03.2017	Liability reflected/acknowledged in the Annual Financial Statements of the Principal Borrower.
31.03.2018	Liability reflected/acknowledged in the Annual Financial Statements of the Principal Borrower.

45. Learned Counsel appearing for the Respondent, during the course of arguments, contended that the Financial Creditor has no *locus* to initiate or continue the present proceedings in view of the settlement recorded by the Hon'ble High Court of Kerala in its order dated 09.06.2026 passed in Writ Appeal No.2079 of 2025. It was further submitted that a settlement has been arrived at between the creditors in the Corporate Insolvency Resolution Process of the Principal Borrower and, pursuant thereto, the Financial



Creditor has no subsisting right to continue the present proceedings against the Corporate Debtor.

46. Learned Counsel for the Respondent further contended that the present Company Petition is barred by limitation, reckoned from the date of default, and that the Financial Creditor has misinterpreted the period of limitation by relying upon the orders passed by the Hon'ble Supreme Court in the *suo motu* proceedings during the COVID-19 pandemic. Learned Counsel further submitted that the issue relating to the alleged insufficiency of stamp duty on the Assignment Agreement is presently pending consideration before the Hon'ble High Court of Kerala and, therefore, in view of the said pending proceedings, the Financial Creditor cannot rely upon the said document to initiate or continue the present proceedings.
47. We have given our thoughtful consideration to the issues raised by the parties in their respective pleadings and submissions. The Respondent has, in its pleadings, disputed the execution of the Guarantee Agreements in respect of the subsequent loan facilities, contending that the signatures of its then Managing Director were forged by the Principal Borrower. However, it is significant to note that, during the course of arguments, learned Counsel appearing for the Respondent did not advance any substantive contention in support of the said allegation of forgery. Further, from the pleadings and materials relating to the SARFAESI proceedings, it appears that such a specific defence was not raised by the Respondent at the relevant stage. The said contention, having been raised subsequently, therefore appears to be an afterthought.
48. It is also relevant to note that the Guarantee Agreements executed in respect of the aforesaid financial facilities contain, inter alia, specific terms relating to acknowledgement of liability and compromise, waiver, variation or other



arrangements concerning the debt and the liability of the guarantor. The relevant clauses of the Guarantee Agreements are extracted hereunder:

5. The Guarantor(s) hereby agree that, without the concurrence of the Guarantor(s), the Borrower and the Bank shall be at liberty to vary, alter or modify the terms and conditions of the Loan Agreement/Documents and of the security documents executed by the Borrower in favour of the Bank and in particular to defer, postpone or revise the repayment of the Loans and/or payment of interest and other monies payable by the borrower to the Bank on such terms and conditions as may be considered necessary by the Bank including any increase in the rate of interest. The Guarantor(s) agree that the liability under the Guarantee shall in no manner be effected by such variations; alterations, modifications, waiver, and that no further consent of the Guarantor(s) is required for giving effect to any such variation, alteration, modification or waiver. The Guarantor(s) expressly agree(s) that the Bank shall have full discretionary power, without further assent or knowledge of guarantor(s) and without discharging or in any way affecting the liability of guarantor(s) under, this guarantee from time to time AND at any time to negotiate with the Borrower and settle and/or alter the terms and conditions, to promise, to grant time or indulgence to or not to sue, the Borrower or any person(s) liable with or for Borrower, whether as guarantor or otherwise or make any other arrangement with the Borrower or any person(s) so liable with or for the Borrower as the Bank may deem fit and to hold over, renew; vary, exchange. or release in whole or in part and from time to time any securities held or to be held by the Bank for or on account of the moneys and liabilities intended to be hereby secured or any part thereof: The Guarantor(s) also agree that the Guarantor(s) shall not be discharged from liability by the Bank releasing the Borrower or by any of its act or omission the legal consequences of which may be to discharge the Borrower or which would, but for this present provision, be inconsistent with Guarantor(s) rights as surety or by the Bank's omitting to do any act, which but for this present provision its duty to Guarantor(s) would have required the Bank to do so. The Guarantor(s) hereby consent to each and every of the acts mentioned above as the Bank may think fit. Moreover though as between the Borrower and the Guarantor(s) the Guarantor(s) are sureties only, the Guarantor(s) agree that as between the Bank and the Guarantor(s), the Guarantor(s) is are Principal Debtor(s) jointly with the Borrower and accordingly the Guarantor(s) shall not be entitled to any of the rights conferred on sureties: by Sections 133, 134, 135, 139 and 141. of the Indian Contract Act. And the Guarantor(s) further expressly agree that the Bank shall also have discretionary power without further assent or knowledge of Guarantor(s) or without discharging or in any way affecting the liability of Guarantor(s) under the Guarantee from time to time and at any time to agree to the variations of the terms and conditions of all or any of. the terms and conditions of credit facilities granted to be granted to the Borrower. The Guarantor(s) hereby agree and give. consent to the sale, mortgage on prior, pari-passu or second charge basis; release etc. of any of the assets by the



Borrower from time to time as may be approved by the Bank or the transfer of any of the assets of the Borrower from one unit to other or to the release or lease out by the Bank any or whole of the assets charged to the Bank on such terms and conditions as the Lenders may deem fit and this may be treated as standing and continuing consent for each and every individual act of transfer, mortgage, release or lease of any of such assets by the Borrower. The Guarantor(s) hereby declares and agrees that no separate consent for each such transfer, mortgage, release or lease of any of such assets would become necessary in future.

6. The Guarantor(s) also agree that any admission or acknowledgement in writing by the Borrower of the amount of indebtedness of the Borrower or otherwise in relation of the subject matter of this guarantee, shall be binding on the guarantor(s) and the guarantor(s) accept the correctness of any statement of account served on the Borrower by the Bank and the same shall be binding and conclusive as against the guarantor(s) also and the guarantor(s) agree that in making an acknowledgement or making a payment the, Borrower shall be treated as duly authorized agent of Guarantor(s) for the purposes of Section 18 and 19 of Indian Limitation Act, 1963.

49. Thus, the Respondent agreed to the terms of the Guarantee Agreements. Therefore, any acknowledgement of the debt or liability by the Principal Borrower under those agreements would also be binding on the Corporate Debtor as guarantor. There is also no specific factual denial by the Respondent about the acknowledgements of debt made by the Principal Borrower, as relied upon by the Financial Creditor.
50. In the case of a guarantor, the question of limitation has to be examined with reference to the invocation of the guarantee and the liability arising therefrom. In the present case, the demand notice issued under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor, as guarantor, to discharge the outstanding liability, constitutes invocation of the guarantee. The Hon'ble NCLAT has also held that a demand notice issued under Section 13(2) of the SARFAESI Act can constitute invocation of the guarantee for the purpose of computing limitation in ***Ujwal Gupta v. Union Bank of India and Anr., (2026) ibclaw.in 18 NCLAT***. The relevant portion of the order is as under:



32. Thus, what has been highlighted by the aforesaid judgment is that it would be the terms and conditions of the agreement executed between the parties with regard to the guarantee which would be relevant to assess as to whether the guarantee has been sufficiently invoked or not. Therefore, whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the content of the notice. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The facts and the wording of the notice are crucial in this determination.

33. We have already observed herein before that notice dated 29.02.2016, given by the financial creditor under Section 13(2) of the SARFAESI Act has sufficiently indicated the Appellant to discharge his liability for the amount mentioned in the notice of which the credit facilities were extended to the CD and simply by the fact that word 'director' has been suffixed after the name of the Appellant/Personal Guarantor, the same will not be sufficient to change the character of the Appellant from the guarantor of the CD and therefore, in our considered opinion, the personal guarantee has been rightly considered by the Tribunal to have been invoked by issuance of this notice given under Section 13(2) of the SARFAESI Act and we do not find any illegality therein.

51. It is relevant to examine the issue of limitation in its proper sequence. The loan accounts of the Principal Borrower were classified as NPA on 30.09.2013, which is pleaded as the date of default. The demand notice under Section 13(2) of the SARFAESI Act, 2002, i.e., invoking the guarantee of the Corporate Debtor, was issued on 16.12.2013. However, the limitation period is not to be reckoned merely with reference to the date of issuance of the said demand notice. The Respondent has relied upon certain judgments and contended that the present petition is barred by limitation. However, the material circumstance is that, subsequent to the default and within the subsisting period of limitation, the Principal Borrower acknowledged the subsisting debt and liability in its financial statements for the financial years ending 31.03.2015, 31.03.2017 and 31.03.2018. In terms of Section 18 of the Limitation Act, 1963, and the guarantee agreement, an acknowledgement of liability made in writing before expiry of the prescribed period gives rise to a fresh period of limitation from the date of such acknowledgement. Thus, the acknowledgement made on 31.03.2018 is required to be taken into



consideration for determining the subsisting period of limitation. Thereafter, the period from 15.03.2020 to 28.02.2022 stands excluded in view of the orders passed by the Hon'ble Supreme Court in **Suo Motu Writ Petition (Civil) No. 3 of 2020**, and the balance period of limitation available as on 15.03.2020 became available from 01.03.2022. The Hon'ble Supreme Court, in **Babasaheb Raosaheb Kobarne & Anr. v. Pyrotek India Private Limited & Ors., Civil Appeal arising out of SLP (C) No.2522 of 2022, 2022LiveLaw (SC) 520**, decided on 09.05.2022, has also reiterated that the period from 15.03.2020 to 28.02.2022 is liable to be excluded for the purposes of limitation in respect of proceedings governed by general or special laws. Accordingly, upon giving effect to the aforesaid acknowledgement and the statutory exclusion of the COVID-19 period, the limitation has to be computed afresh, and the present application is within the period of limitation. Accordingly, we find no merit in the contention of the Respondent that the present proceedings are barred by limitation.

52. The next contention raised by the Respondent is based on the order passed by the Hon'ble High Court of Kerala in Writ Appeal No.2079 of 2025. The relevant portion of the said order is extracted hereunder:

It is submitted by the learned counsel on either side that the issue between the parties has been settled and the terms of settlement have been reduced to writing. The said terms of settlement read as under:

"1. Writ Appeal No.2079 of 2025 is concerned with Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of Kerala Chambers of Commerce & Industries under the Insolvency and Bankruptcy Code, 2016. The Appellant, as well as Respondents Nos.1, 4, 5 and 6 were creditors of the company and members of the Committee of Creditors (hereinafter referred to as "CoC") in the CIRP.

2. Writ Appeal No.2079 of 2025 has been filed against the judgment dated 17.07.2025 in W.P.(C) No.15670 of 2024 of the Learned Single Judge of this Hon'ble Court, wherein the order dated 09.04.2024 of the Hon'ble National Company Law Tribunal, Kochi in



IA(IBC)/310KOB/2023 in CP/IBC/33/KOB/2021 was set aside and the matter was remanded for fresh consideration.

3. During the pendency of present appeal, the Appellant and the members of COC including Respondents herein, have in the 47th CoC meeting decided to amicably settle the disputes so that the CIRP proceedings of corporate debtor can be taken to a logical end which will be beneficial for every stakeholder.

4. The COC members including Respondent Nos.1, 4 to 6 have agreed to ensure that under every eventuality, Appellant's admitted claim shall be paid immediately and upfront. For this purpose, the members of the CoC, including the home buyers, have undertaken to ensure that any resolution plan which may be considered by the CoC, shall necessarily contain a condition that the entire admitted claim of Appellant shall be paid in full, upfront, and immediately i.e. it has been unanimously agreed that only such resolution plan will ever be considered by the COC, which necessarily contains the aforesaid condition.

5. On consideration and approval of such resolution plan, the Appellant shall immediately on such approval, receive the entire admitted claim and thereafter, there will be no grievance left.

6. Without prejudice to the contention and right of the Appellant, the Appellant has agreed to resolve the disputes with the respondents and other members of the CoC, and to support the Committee of Creditors in their endeavor to conclude the CIRP proceedings by passing the resolution plan, subject to the above conditions. Without prejudice to the contention and right of the Appellant, the Appellant has agreed to resolve the disputes with the respondents and other members of the CoC, and to support the Committee of Creditors in their endeavor to conclude the CIRP proceedings by passing the resolution plan, subject to the above conditions.

7. Without prejudice to the contention and right of the Appellant, similar terms of compromise shall be jointly filed by the CoC Members before the Hon'ble National Company Appellate Tribunal, Chennai in Company Appeal (AT) (Insolvency) No.179 of 2024 and also before the Hon'ble National Company Tribunal, Kochi in C.P. (I.B.) NO. 33/KOB/2021.

8. Appellant shall also have the rights to exercise all the rights as mentioned in Writ Appeal No.2079 of 2025 and / or revive the present proceedings, in case the terms of our settlement are not complied with in their letter and spirit, for any reason, whatsoever. The Appellant shall also have the right to exercise all its rights/options as available under Insolvency and Bankruptcy Code, 2026 and / or any other law for time being in force, if no resolution plan as mentioned above is passed or is available in the CIRP.



9. Parties agree that Writ Appeal No.2079 of 2025 can be disposed off in terms of the above. "

The Writ Appeal is accordingly disposed of in accordance with the terms of settlement agreed upon between the parties.

53. It is pertinent to note that the aforesaid proceedings before the Hon'ble High Court of Kerala arose out of disputes between the members of the Committee of Creditors in the CIRP of the Principal Borrower. The settlement arrived at between the members of the Committee of Creditors in relation to such disputes, therefore, cannot, by itself, have any bearing on the merits of the present proceedings, particularly when the very same property which is the subject matter of the CIRP of the Principal Borrower continues to remain mortgaged with the Financial Creditor as security for the financial debt, the said property being owned by the present Corporate Debtor.
54. Any order or finding which has the effect of relieving the present Corporate Debtor from its obligations under the Guarantee Agreements, in the absence of any specific term to that effect in the settlement, would give rise to legal and factual complications and may result in a conflict with the rights of the Financial Creditor to enforce the guarantee and security furnished by the Corporate Debtor. Therefore, where the Financial Creditor otherwise satisfies the requisite ingredients and requirements for admission of a Petition under Section 7 of the Code, the settlement referred to above, which pertains to the CIRP of the Principal Borrower, cannot by itself constitute a bar to the present proceedings against the Corporate Debtor. Accordingly, we find no merit in the contention raised by the Respondent on the aforesaid ground.
55. It is also pertinent to note that there is no legal bar to initiation or continuation of insolvency proceedings against a Corporate Debtor in its



capacity as a guarantor merely because the CIRP of the Principal Borrower is pending. The liability of the guarantor arises from the contract of guarantee and is co-extensive with that of the Principal Borrower. The pendency of the CIRP of the Principal Borrower, by itself, does not extinguish or suspend the liability of the Corporate Debtor under the Guarantee Agreements.

56. The Respondents have mainly argued in their written submissions that the settlement reached by the Committee of Creditors in the CIRP of the Principal Borrower affects the maintainability of the present petition, in view of the order passed by the Hon'ble High Court of Kerala in Writ Appeal No. 2079 of 2025. However, any arrangement or settlement among the members of the Committee of Creditors concerning their inter se rights and obligations cannot, by itself, affect the rights of the Financial Creditor or extinguish the obligations of the Respondent under the Guarantee Agreements. Unless the settlement expressly releases the Corporate Debtor from its guarantee obligations, it cannot bar the present proceedings.
57. The defence taken by the Respondents that the present proceedings would result in double recovery of the same dues is not tenable. Firstly, proceedings under the Insolvency and Bankruptcy Code are not in the nature of recovery proceedings. It is settled law that proceedings against the Principal Borrower and the Guarantor can proceed simultaneously. Any amount recovered in the CIRP of the Principal Borrower would, of course, be duly accounted for and given effect to while determining the liability in the present proceedings. Accordingly, we find no merit in the contentions raised by the Respondent in this regard.
58. It is argued on behalf of the Financial Creditor that, pursuant to the orders passed by the Hon'ble High Court of Kerala and upon payment of the



requisite amount, the Assignment Deed was duly presented and registered. Having considered the relevant facts and circumstances, the Hon'ble NCLAT remanded the matter to this Adjudicating Authority for fresh consideration on merits. It is further submitted that, in the proceedings initiated by the Respondent challenging the stamp duty, there is no interim order or stay operating against the validity or enforcement of the Assignment Deed. Therefore, the Financial Creditor, being the assignee, has stepped into the shoes of the Original Lender and is entitled to pursue all remedies available to the Original Lender in accordance with law.

59. Having considered all the issues, we find that the amount of financial debt involved is more than Rs.1 Crore and, therefore, there is no bar under Section 4 of the Code to entertain the present Company Petition. The relationship of creditor and debtor between the Financial Creditor and the Corporate Debtor stands established, and the date of default is also evident from the documents placed on record. We further find that there is no legal impediment to the Financial Creditor maintaining the present application and that the Financial Creditor has satisfied the requirements of Section 7 of the Code for seeking appropriate relief against the Corporate Debtor.
60. The Hon'ble Supreme Court, in ***Catalyst Trusteeship Ltd. v. Ecstasy Realty Pvt. Ltd.***, [2026] ibclaw.in 104 SC, reiterated that, while considering an application under Section 7 of the Code, the Adjudicating Authority is required to examine the existence of financial debt and occurrence of default. In the present case, the Respondent has failed to establish any cogent or legally sustainable defence which would disentitle the Financial Creditor from seeking initiation of the insolvency resolution process against the Corporate Debtor. Accordingly, this Adjudicating Authority is satisfied



that the requirements under Section 7 of the Code stand duly fulfilled and the Petition is liable to be admitted.

61. Accordingly, CP(IBC)/51/KOB/2022 is allowed with the following directions:

- A. The Petition bearing no. CP(IBC)/51/KOB/2022 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of the Corporate Insolvency Resolution Process is **ADMITTED**.
- B. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016. The necessary consequences of imposing the moratorium shall follow.
- C. The Financial Creditor had proposed the name of Mr. K. Parameswaran Nair, bearing Registration No. IBBI/IPA-001/IP-P01773/2019-2020/12702, as the Interim Resolution Professional (IRP) in the Petition. However, the Authorisation for Assignment of the proposed IRP has since expired. Subsequently, the Financial Creditor has proposed the name of Mr. Jossy Steephen Kattur as the Interim Resolution Professional vide memo dated 25.08.2026, and the written consent and the valid Authorisation for Assignment of Mr. Jossy Steephen Kattur have been placed along with the memo. Accordingly, this Adjudicating Authority appoints **Mr. Jossy Steephen Kattur** bearing **Registration No. IBBI/IPA-002/IP-N01056/2021-2022/13627**, having address at **Barons 16 C, Skyline Imperial Gardens, Next to IMA House, Behind JLN Stadium, Kaloor, Stadium Link Road, Behind Jawaharlal Nehru Stadium, Kaloor, Ernakulam, Kerala, 682025. Email ID: jossysk@gmail.com**, as the Interim Resolution Professional (IRP) to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The



designated IRP shall perform all his functions as contemplated under the Code and must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code.

- D. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 7 of the Code. The expression immediately means within three days from the date of appointment as clarified by the explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/Resolution Professional (RP), as the case may be, in terms of Section 17 of the Code. The Powers of the Board of Directors of the Corporate Debtor shall stand suspended and be exercised by the IRP/RP. 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 one week from the date of receipt of this order.
- E. The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever. He is also free to take police assistance, and this Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- F. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the



Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

G. The Financial Creditor shall deposit a sum of **Rs. 2,00,000/-** (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

H. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this Order.

62. The present Company Petition bearing No. **CP(IBC)/51/KOB/2022** is **admitted** accordingly.

63. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.

64. Let the certified copy of this order be issued upon compliance with the requisite formalities.

65. File be consigned to records

Sd /-

RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd /-

VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 30th day of September, 2026.

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