NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) No.933 of 2026

(*Arising out of judgement and order dated 07.04.2026 passed by National Company Law Tribunal, New Delhi in CP(IB) No.36/2026*).

In the matter of:

Bindu Kapoor,
(Suspended Director)
Imagine Estate Private Ltd
Flat No.34, NCPA Apartments
Dr Dorabji Tata Road, Nariman Point,
Mumbai City, Mumbai
Maharashtra 400021 **Appellant**

Vs

1) **Mamta Binani**
Reg. No. – IBBI/IPA-002/IP-N00086/2017-18/10227
Interim Resolution Professional
Imagine Estate Private Limited
3rd Floor (Hare Street Entry)
Nicco House, 2 Hare Street
Kolkata, West Bengal – 700001
Email: mamtabinani@gmail.com

2) **J.C. Flowers Asset Reconstruction Pvt. Ltd.**
(Acting in its capacity as trustee of JCF ARC Trust 2024 - 2025)
CIN No. U74999MH2015PTC264081
Having its registered office at:
Unit No. 203 – 206, 2nd Floor Wing A,
Inspire BKC, Bandra (East),
Mumbai – 400051
and Branch Office at:
1st Floor, Hotel Aloft,
5B, IGI T3 Road, Aerocity,
New Delhi – 110037
Email: ayush.agarwal@jcfarc.com

3) **Imagine Estate Private Limited**
307 & 308, 3rd Floor, Midas
Sahar Plaza Andheri Kurla Road

Andheri (East) Mumbai – 400059
Email: cirp.imagineestate@gmail.com **Respondents**

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhay Chattopadhyay, Mr. Udipto Koushik Sarmah, Mr. Kumar Shubham, Mr. Harsh Gurbani, Advocates.

For Respondent: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Shubham Jaiswal, Ms. Sanya Mann, Advocates for R-1 along with Ms. Mamta Binani, RP-in person.
Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ritesh Kumar, Mr. Sidhant Kumar Marwah, Mr. Jasmeet Singh, Mr. Shivam Sharan, Mr. Pushpendra Kumar, Mr. Naman Gowda, Mr. Siddhant Ahirwal, Ms. Lahar Jain and Ms. Ekssha Kashyap, Advocates for R-2.

WITH

COMPANY APPEAL (AT)(INSOLVENCY) No.934 of 2026

(*Arising out of judgement and order dated 07.04.2026 passed by National Company Law Tribunal, New Delhi in CP(IB) No.32/2026*).

In the matter of:

Bindu Kapoor,
(Suspended Director)
Imagine Home Pvt. Ltd.
Flat No.34, NCPA Apartments
Dr Dorabji Tata Road, Nariman Point,
Mumbai City, Mumbai
Maharashtra 400021 **Appellant**

Vs

1) **Mamta Binani**
Reg. No. – IBBI/IPA-002/IP-N00086/2017-18/10227
Interim Resolution Professional
Imagine Home Pvt Ltd
3rd Floor (Hare Street Entry)
Nicco House, 2 Hare Street
Kolkata, West Bengal – 700001
Email: mamtabinani@gmail.com

2) J.C. Flowers Asset Reconstruction Pvt. Ltd.
(Acting in its capacity as trustee of JCF ARC Trust 2024 - 2025)

CIN No. U74999MH2015PTC264081
Having its registered office at:
Unit No. 203 – 206, 2nd Floor Wing A,
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Mumbai – 400051
and Branch Office at:
1st Floor, Hotel Aloft,
5B, IGI T3 Road, Aerocity,
New Delhi – 110037
Email: ayush.agarwal@jcfarc.com

3) Imagine Home Pvt. Ltd
307 & 308, 3rd Floor, Midas
Sahar Plaza Andheri Kurla Road
Andheri (East) Mumbai – 400059
Email: cirp.imagineestate@gmail.com **Respondents**

For Appellant: Mr. Abhay Chattopadhyay, Mr. Udipto Kaushik Sarmah and Mr. Kumar Shubham, Advocates.

For Respondent: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Shubham Jaiswal, Ms. Sanya Mann, Advocates 2 of 4 for R-1 along with Ms. Mamta Binani, RP-inperson.
Mr. Sidhant Kumar Marwah, Mr. Jasmeet Singh, Mr. Shivam Sharan, Mr. Pushpendra Kumar, Mr. Naman Gowda, Mr. Siddhant Ahirwal, Ms. Lahar Jain and Ms. Ekssha Kashyap, Ms. Heena Kocchar, Advocates for R-2.

WITH

COMPANY APPEAL (AT)(INSOLVENCY) No.935 of 2026

(*Arising out of judgement and order dated 07.04.2026 passed by National Company Law Tribunal, New Delhi in CP(IB) No.31/2026*).

In the matter of:

Bindu Kapoor,
(Suspended Director)
Imagine Residence Private Ltd.
Flat No.34, NCPA Apartments
Dr Dorabji Tata Road, Nariman Point,
Mumbai City, Mumbai
Maharashtra 400021 **Appellant**

Vs

1) Mamta Binani
Reg. No. – IBBI/IPA-002/IP-N00086/2017-18/10227
Interim Resolution Professional
Imagine Residence Pvt Ltd
3rd Floor (Hare Street Entry)
Nicco House, 2 Hare Street
Kolkata, West Bengal – 700001
Email: mamtabinani@gmail.com

2) J.C. Flowers Asset Reconstruction Pvt. Ltd.
(Acting in its capacity as trustee of JCF ARC Trust 2024 - 2025)
CIN No. U74999MH2015PTC264081
Having its registered office at:
Unit No. 203 – 206, 2nd Floor Wing A,
Inspire BKC, Bandra (East),
Mumbai – 400051
and Branch Office at:
1st Floor, Hotel Aloft,
5B, IGI T3 Road, Aerocity,
New Delhi – 110037
Email: ayush.agarwal@jcfarc.com

3) Imagine Residence Private Ltd.
307 & 308, 3rd Floor, Midas
Sahar Plaza Andheri Kurla Road
Andheri (East) Mumbai – 400059
Email: cirp.imagineestate@gmail.com **Respondents**

For Appellant: Mr. Abhay Chattopadhyay, Mr. Udipto Kaushik Sarmah and Mr. Kumar Shubham, Advocates.

For Respondent: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Shubham Jaiswal, Ms. Sanya Mann, Advocates 2 of 4 for R-1 along with Ms. Mamta Binani, RP-inperson.
Mr. Sidhant Kumar Marwah, Mr. Jasmeet Singh, Mr. Shivam Sharan, Mr. Pushpendra Kumar, Mr. Naman Gowda, Mr. Siddhant Ahirwal, Ms. Lahar Jain and Ms. Ekssha Kashyap, Ms. Heena Kocchar, Advocates for R-2.

WITH

COMPANY APPEAL (AT)(INSOLVENCY) No.943 of 2026

(*Arising out of judgement and order dated 07.04.2026 passed by National Company Law Tribunal, New Delhi in CP(IB) No.30/2026*).

In the matter of:

Bindu Kapoor,
(Suspended Director)
Imagine Habitat Private Ltd,
Flat No.34, NCPA Apartments
Dr Dorabji Tata Road, Nariman Point,
Mumbai City, Mumbai
Maharashtra 400021 **Appellant**

Vs

1) Mamta Binani
Reg. No. – IBBI/IPA-002/IP-N00086/2017-18/10227
Interim Resolution Professional
Imagine Habitate Private Limited
3rd Floor (Hare Street Entry)
Nicco House, 2 Hare Street
Kolkata, West Bengal – 700001
Email: mamtabinani@gmail.com

2) J.C. Flowers Asset Reconstruction Pvt. Ltd.
(Acting in its capacity as trustee of JCF ARC Trust 2024 - 2025)
CIN No. U74999MH2015PTC264081
Having its registered office at:
Unit No. 203 – 206, 2nd Floor Wing A,
Inspire BKC, Bandra (East),
Mumbai – 400051
and Branch Office at:
1st Floor, Hotel Aloft,
5B, IGI T3 Road, Aerocity,
New Delhi – 110037
Email: ayush.agarwal@jcfarc.com

3) Imagine Habitat Private Ltd,
307 & 308, 3rd Floor, Midas
Sahar Plaza Andheri Kurla Road
Andheri (East) Mumbai – 400059
Email: cirp.imagineestate@gmail.com **Respondents**

For Appellant: Mr. Abhay Chattopadhyay, Mr. Udipto Kaushik Sarmah and Mr. Kumar Shubham, Advocates.

For Respondent: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Shubham Jaiswal, Ms. Sanya Mann, Advocates 2 of 4 for R-1 along with Ms. Mamta Binani, RP-inperson.
Mr. Sidhant Kumar Marwah, Mr. Jasmeet Singh, Mr. Shivam Sharan, Mr. Pushpendra Kumar, Mr. Naman Gowda, Mr. Siddhant Ahirwal, Ms. Lahar Jain and Ms. Ekssha Kashyap, Ms. Heena Kocchar, Advocates for R-2.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present four appeals being Company Appeal (AT)(Insolvency) Nos. *933*, *934*, *935* and *943* of *2026* have been filed by Mrs. Bindu Kapoor (Appellant) in her capacity as suspended director of four corporate debtors. All the four appeals have been filed against common impugned order dated 07.04.2026 passed by Ld. NCLT, New Delhi Bench in CP(IB) Nos. 36, 32, 31 and 30 of 2026. These four petitions were filed against four different Corporate Debtors, namely, Imagine Estate Private Ltd (CP(IB) No.36 of 2026), Imagine Home Private Ltd. (CP(IB) No.32 of 2026), Imagine Residence Private Ltd. (CP (IB) No.31 of 2026) and Imagine Habitat Private Ltd. (CP(IB) No.30/2026). The common issues are raised in these appeals and the facts of Company Appeal(AT)(Insolvency) No.933 of 2026 of Ld. NCLT, New Delhi Bench in CP(IB) No.36 of 2026 titled J.C. Flowers Asset Reconstruction Pvt. Ltd Vs. Imagine Estate Private Limited are taken up while deciding these appeals. The petition CP(IB) NO.36 of 2026 was filed by M/s J.C. Flowers Asset Reconstruction Ltd (i.e. "Respondent No. 2 / JCF") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor ("CD"). It is argued Ld. NCLT has *vide* the Impugned Order

passed an entirely unreasoned order and proceeded to admit the Corporate Debtor into CIRP, appointing Ms. Mamta Binani as an Interim Resolution Professional ("IRP / Respondent No.1") of the Corporate Debtor.

2. Section 7 Petition was filed by M/s JCF against the Corporate Debtor, *inter-alia*, based on the following financial arrangements: *(i)* the CD's hypothecation against a loan of Rs. *105* crore availed by M/s Bliss House Private Limited ("BHPL") from M/s Indiabulls Housing Finance Limited ("IHFL"), pursuant to a Loan Agreement dated 29.03.2019 ("Rs. *105* crore loan" and "Hypothecation Deed"); and *(ii)* two loans worth Rs. *160* crore and Rs. *90* crore availed by the CD from IHFL under Loan Agreements dated 05.09.2018, aggregating to Rs. *250* crore ("Rs. *250* crore loans"), and; *(iii)* two loans worth Rs. *172* crore and Rs. *174* crore availed by the Corporate Debtor from Indiabulls Commercial Credit Limited ("ICCL") under Loan Agreements dated 07.10.2019, aggregating to Rs. *346* crore ("Rs. *346* crore loans", collectively referred to along with the Rs. *250* crore loans as the "Rs. 596 crore loans"). It was alleged while BHPL as well as the CD had duly complied with their obligations, on 09.03.2020, IHFL issued the Loan Recall Notices ("2020 LRNs"), recalling the loan facilities alleging an 'Event of Default' had occurred as a result of 'Material Adverse Effect' under the aforesaid Loan Agreements, without any justification or elaboration of the alleged 'Event of Default'.

3. Considering the dispute resolution scheme under the aforesaid loans, arbitral proceedings were initiated by IHFL and it finally concluded on

08.05.2021, wherein, the Ld. Sole Arbitrator reserved the matter for the purpose of passing the awards ("IHFL Arbitration"). After a significant delay of one *(1)* year, nine *(9)* months and twenty *(20)* days, the Ld. Sole Arbitrator proceeded to issue similarly – worded Awards on 28.02.2023. Aggrieved by the aforesaid Awards rendered by the Ld. Sole Arbitrator in the IHFL Arbitration, BHPL as well as the CD, preferred petitions under Section 34 of the Arbitration Act before the Hon'ble High Court of Delhi in September 2023 (collectively referred to as "Section 34 Petitions")

4. On 29.03.2025, IHFL executed an Assignment Agreement in favour of M/s JCF whereby all of IHFL's rights in relation to the Rs. *105* crore loan as well as the Rs. *596* crore loans were assigned to M/s JCF. It is alleged subsequently, on 24.10.2025, M/s JCF, with an alleged malafide intent to circumvent the aforesaid Section *34* Petitions, filed a Petition under Section *7* of IBC before the Ld. NCLT, New Delhi seeking initiation of CIRP against BHPL which was admitted by the Ld. NCLT, vide Order dated 21.01.2026 ("PL Admission Order"). Thereafter, notwithstanding the fact the registered office of the CD is in Mumbai; on 04.12.2025, M/s JCF filed the Section 7 Petition against the CD before Ld. NCLT, New Delhi. JCF alleged the CD was an 'obligor' under the Rs. *105* crore loan, and the Hypothecation Deed to secure Rs. *105* crore loan would amount to a 'guarantee' enabling the Ld. NCLT to exercise its jurisdiction under Section *60(2)* of IBC. Despite the CD's vehement submissions on 07.04.2026, the Ld. NCLT proceeded to pass the Impugned Order.

5. The learned senior counsel for the appellant rather admitted the CIRP proceedings have been initiated against the principal borrower and the judgment of the Ld. NCLT was confirmed till the Hon'ble Supreme Court. The impugned order admits petitions against four different companies who had allegedly hypothecated their assets for the loans granted to the principal borrower. It was argued the facts of these cases are wholly different than that of the principal borrower and the Ld. NCLT, New Delhi has no jurisdiction to deal with the insolvency *qua* the guarantor(s).

6. It was argued ***(a)*** all these four companies on whose behalf the appeals have been filed by the suspended director had its registered office(s) at Mumbai and hence petition(s) ought to have been filed at Mumbai and ***(b)*** all these companies are not the corporate guarantors of the loans granted to the principal borrowers and at best these companies can be termed as *hypothecators* and thus does not fall within ambit of the sub-section *(2)* of Section *60* of the IBC. Section 60(1) and (2) are as under: -

> "*60. Adjudicating Authority for corporate persons.*
>
> *(1)The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*
>
> *(2)Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or*

> *[liquidation or bankruptcy of a **corporate guarantor** or **personal guarantor,** as the case may be, of such corporate debtor] [Substituted 'bankruptcy of a personal guarantor of such corporate debtor' by Act No. 26 of 2018, dated 17.8.2018.] shall be filed before such National Company Law Tribunal."*

7. The main issue is whether these four companies are the corporate guarantors of the principal borrower. It was argued the Respondent filed the company petition, *primarily*, on the ground these four companies were the Corporate Guarantors of the principal borrower as is shown in the pleadings. Reference was made to the following paras of the company petition filed before the Ld. NCLT:

> *"4. On the strength of the financial wherewithal and repayment capacity of the RAB Promoters, SCL and its subsidiary Indiabulls Commercial Creditor Limited ("ICCL"), sanctioned and disbursed various loan facilities in favour of RAB Group of Companies, including the following:*
>
> *(i) Bliss House Private Limited ("Principal Borrower")*
>
> *(ii) Imagine Estate Private Limited (the "Corporate Debtor")*
>
> *(iii) Bliss Agri and Eco Tourism Private Limited*
>
> *(iv) Bliss Villa Private Limited*
>
> *(v) Bliss Abode Private Limited*
>
> *(vi) Imagine Home Private Limited*
>
> *(vii) Imagine Habitat Private Limited*
>
> *(viii) Imagine Residence Private Limited*
>
> *5. Among the RAB Group of Companies, the loan facilities sanctioned and disbursed by SCL in favour of the Corporate Debtor are set out below:*

a. Loan Agreement dated 05 September 2018 of INR 70 Crores.

*b. Loan Agreement dated 29 March 2019 of INR 105 Crores. (**"Subject Loan Agreement"**)*

A copy of the Loan Agreement dated 29 March 2019 is annexed herewith and marked as Annexure P-3.

6. In order to secure the repayment of the above sums, the following securities were furnished:

(a) Personal Guarantees by Mr. Rana Kapoor and Mrs Bindu Kapoor (Personal Guarantors) to stand as guarantors for both the Loan Agreement dated 05 September, 2018 and the Subject Loan Agreement, and assuring repayment of the above sum upon failure by the Corporate Debtor to repay the same. To this end, two joint Deeds of Guarantee were executed by the Personal Guarantors in favour of SCI, with both the Deeds of Guarantee executed on 05.09.2018.

A copy of the two Deeds of Guarantee executed by Mr. Rana Kapoor and Mrs Bindu Kapoor in favour of Sammaan Capital Ltd are annexed herewith and marked as Annexure P-4(Colly).

(b) To further secure the Subject Loan Agreement the Corporate Debtor, by way of a Deed of Hypothecation dated 22 Marcy, 2019 (Subject Hypothecation Deed), hypothecated the receivables arising from the properties mentioned therein, in favour of the lender i.e. SCI. Resultantly, the Corporate Debtor is a hypothecator under the Subject Loan Agreement as defined therein and detailed hereinbelow.

A copy of the Deed of Hypothecation dated 22 March, 2019 is annexed herewith and marked as Annexure P-5.

*12. Therefore, the Corporate Debtor **consciously undertook to repay the dues payable under Subject Loan Agreement.** Accordingly, the Corporate Debtor is jointly liable as a guarantor of the debt owed by Bliss House Pvt Ltd in terms of Subject Loan Agreement.*

> *77. Clearly, the debt under the Subject Loan Agreement forms part of both the Principal Borrower Petition (as the Principal Borrower) and this Petition (as the Corporte Guarantee).*
>
> *78. Section 60(2) of the Code prescribes that any proceeding against the corporate guarantor of a corporate debtor shall be filed before the Adjudicating Authority where the CIRP proceedings of the corporate debtor is pending. In the facts of the present matter, (i) the Principal Borrower Petition is pending adjudication before this Hon'ble Tribunal; (ii)* ***the Corporate Debtor in this Petition is an Obligor of the Principal Borrwer and thus a corporate guarantor (iii) the debt underlying the Principal Borrower Petition and the instant Petition are overlapping.*** *Therefore, in accordance with Section 60(2) of the Code and to prevent conflicting decisions in respect of the same debt, this Petition under Section 7 of the Code has been instituted before this Hon'ble Tribunal."*

8. Thus it was argued the pleadings show these four companies were treated as the Corporate Guarantors by the creditors but neither of these companies have ever executed any Corporate Deed of Guarantee or Personal Deed of Guarantee and despite the same, the impugned order was passed on the premise the appellants were Corporate Guarantors as is evident from paras *21*, *22* and *26* of the impugned order: -

> *"21. In the wake of the aforementioned, we are left with no doubt that the Corporate Debtors before us have the* ***liability as Corporate Guarantors*** *towards the lender.*
>
> *22. To meet the plea of jurisdiction of this Bench, raised on behalf of the Corporate Debtors, the Petitioner explained that in terms of the provisions of Section 60(2) of the Code, an application related with CIRP of a Corporate Guarantor is required to be filed before the same Tribunal before which the Principal Debtor is undergoing CIRP.*

> *26. Thus, we are left with no doubt that the captioned petitions are amenable to the jurisdiction of this Bench where CIRP qua the Principal Debtor viz. Bliss House Pvt. Ltd., commenced in terms of order dated 21.01.2026 passed in CP (IB)-585/ND/2025 is pending. One may say that in respect of the part of the debt mentioned in the petitions, the Corporate Debtors are also Principal Debtors, but the same would not be a ground to take a view that the Corporate Debtors before us are not Corporate Guarantors in respect of part of the debt qua which the CIRP in respect of Principal Debtor is pending before this Bench.* ***Ergo, the plea of territorial jurisdiction raised on behalf of the Corporate Debtors is rejected."***

9. It was argued the above paras do show the plea on territorial jurisdiction was rejected by the Ld. NCLT and the documents viz the loan agreements and the hypothecation deeds were treated as the Corporate Guarantee(s). Reference was made to Section *126* of the India Contract Act which defines Guarantee as under: -

> *"126.'Contract of guarantee', 'surety', 'principal debtor' and 'creditor'—*
> *A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'.* ***A guarantee may be either oral or written."***

10. It was argued the first feature of the guarantee is it has to be a *tripartite agreement*, which fact was missing in the present case and no examination on this aspect was made by the Ld. NCLT.

11. It was the submission of the learned senior counsel for the appellant the Ld. NCLT had relied upon para *1* of the Deed of Hypothecation but had ignored

other paras of the said Deed, hence holistic view of the documents was never taken. It was argued the hypothecators had not signed the Loan Agreements and whereas the borrowers had not signed the Deed of Hypothecation. It is submitted the impugned order had relied upon *China Development Bank*s case but it overlooked that in the cited case the Deed of Hypothecation was rather a *tripartite* agreement which met the requirements of Section *126* and *127* of the Contract Act.

12. Further reference was made to the following clauses of the Deed of Hypothecation:

> *A. Pursuant to the loan agreement(s) the date(s) of which is/are mentioned in the Schedule III hereunder and/or any amendment(s)/addendum(s) thereto ("Loan Agreement(s)") entered into between (a) the Borrower(s) (as mentioned in Schedule III hereunder), and (b) the Lender, the Lender has lent and advanced or agreed to lend and advance to the Borrower(s) and the Borrower(s) has/have borrowed or agreed to borrow from the Lender on the terms and conditions contained in the Loan Agreement(s) and related Loan Documents, loan(s) amount as mentioned in Schedule III hereunder ("Loan(s)").*
> *B. The Parties hereto have agreed that the Borrower's Dues (as defined in the Loan Agreement(s)) together with all other monies whatsoever payable by the Obligor(s) (as defined in the Loan Agreement(s)) under the Loan Documents (as defined in the Loan Agreement(s)) **shall be secured, inter alia, by a first-ranking charge by way of hypothecation in favour of the Lender, on the Hypothecated Asset(s)** (as defined hereunder).*
>
> *1. In consideration of the Lender having lent and advanced and/or agreed to lend and advance the Loan(s) to the Borrower(s) for the purposes and subject to the terms and conditions set out in the Loan Documents, the Hypothecator(s) hereby covenant with the Lender that it/they shall cause the Borrower(s) to pay/repay the Borrower's Dues (as defined in the Loan Agreement(s)) and all other outstanding amount under*

the Loan Documents to the Lender and that the Hypothecator(s) shall duly observe and perform all the terms and conditions of the Loan Documents, as amended from time to time.

2. *In pursuance of the Loan Agreement(s) and/or for the consideration aforesaid, the Hypothecated Asset(s) are hereby hypothecated by the Hypothecater(s) as and by way of firstranking charge in favour of the Lender/Hypothecatee as Security for payment/repayment of the Borrower's Dues and other monies payable by the Obligor(s) under the Loan Documents to the Lender.*

3.1. *The Hypothecator(s) shall, on or before execution of this Deed, obtain insurance for the Hypothecated Asset(s) against loss. or damage by such risks and contingencies as the Lender deems fit, with an insurer acceptable to the Lender, for not less than the full market value of the Hypothecated Asset(s) and punctually pay all premia necessary to maintain and/or renew such insurance…..xxxx….*

4. *ENFORCEMENT*

Notwithstanding anything to the contrary contained herein and without prejudice to the Lender's other rights and remedies:

4.1. *If in the opinion of the Lender, there is any default / breach of any of the provisions of the Loan Documents by the Obligor(s) (including failure to pay any amount payable by the Obligor(s) to the Lender under the Loan Documents on Due Date(s)) or if any Event of Default (under any of the Loan Documents) occurs then the Lender shall be entitled to forthwith take possession of the Hypothecated Asset(s) with or without any intervention of any Court/arbitrator, either by itself or through its agents and allot, sell, transfer, appropriate, utilize, assign, encumber, assign and/or otherwise deal with the Hypothecated Asset(s) (or any part thereof) to enforce the Lender's Security over the Hypothecated Asset(s) and recover the Borrower's Dues, with or without any intervention of any Court/arbitrator.*

13. Thus it was argued by the learned senior counsel for the appellant ***(a)*** the Deed of Hypothecation was never a tripartite agreement hence not a Deed of Guarantee and ***(b)*** the hypothecation was only to an extent of assets hypothecated and not beyond.

14. Further reference was made to the loan agreement dated 29.03.2019 to show Schedule *A* to such loan agreement and that it was never signed by the hypothecator(s). Further the appellants herein were shown as, the mortgagors or hypothecators and not the *co-borrowers* or *guarantors* and rather the guarantors were shown to be Mr. Rana Kapoor and Ms. Bindu Kapoor.

15. The learned senior counsel for the appellant then referred to the definitions of the various stakeholders as defined in the loan agreement dated 29.03.2019 as under:

> ***"Borrower(s)"*** *means the company(ies)/person(s)/firm(s) named in the Schedule I to this Agreement as the Borrower(s). The term "Borrower(s)" shall include the Co-Borrower(s), if any, named in Schedule I hereunder.*
>
> *'"**Borrower's Dues**" means the outstanding principal amount of the Loan and other amounts due/payable as per the Loan Documents and/or any other loan agreement(s) entered between (a) the Borrower(s) and (b) the Lender, including any interest, Default Interest, fees, costs, charges, expenses and other sums whatsoever payable by the Obligor(s) to the Lender.*
>
> ***"Guarantor(s)"*** *means the entity/companies/person(s), if any, named in the Schedule I hereunder as the Guarantor(s) and/or such other person(s) who/which have agreed/will agree to execute guarantee deed(s) (in the form and substance satisfactory to the Lender) in favour of the Lender guaranteeing the fulfillment of all obligations of the Obligor(s) under the Loan Documents including payment of the Borrower's Dues to the Lender.*
>
> ***"Hypothecator(s)"*** *means the company(ies)/person(s)/firm(s) named in Schedule I hereunder as the Hypothecator(s) and/or any other person(s) who/which mortgages/hypothecates, from time to time, its/his/her/their asset(s) including the Hypothecated Asset(s) and his/its present and future interests, right and title therein in favour of the Lender to secure, inter alia, the fulfillment of the Obligor(s)'obligations under the Loan Documents including payment of the Borrower's Dues to the Lender.*

*"**Hypothecated Asset(s)**" means the Receivables and/or any other asset(s) (including all the present and future interests, right and title of the Hypothecator(s) therein) more particularly described in Schedule VI hereunder hypothecated/charged or to be hypothecated/charged as Security in favour of the Lender by the Hypothecator(s) from time to time.*

*"**Obligor(s)**" means the Borrower(s), the Hypothecator(s), the Guarantor(s), the Mortgagor(s), the Pledgor(s) and/or any other persons providing Security to secure the Borrower(s)' obligations under the Loan Documents including the Borrower's Dues and/or who is or becomes a party (other than the Lender) to the Loan Documents.*

Further he referred to 2.1 loan amount: -

2.1 Loan Amount

xxx...

The Obligor(s) shall be jointly and severally liable to pay the Borrower's Dues to the Lender.

2.2.2 Guarantee

The Borrower(s) shall cause the Guarantor(s) to execute guarantee deed(s) (in the form and substance satisfactory to the Lender) in favour ofthe Lender.

2.2.4 Hypothecation

The Borrower(s) shall cause the Hypothecator(s) and the Hypothecator(s) shall agree, to the satisfaction of the Lender, to hypothecate, encumber, charge, pledge and/or assign (by way of Security) the Hypothecated Asset(s) exclusively in favour ofthe Lender. The Borrower(s) shall cause the Hypothecator(s) to promptly submit with the Lender (if so requested by the Lender) all the original documents of the Hypothecated Asset(s) duly endorsing the lien/hypothecation in favour of the Lender. The Obligor(s) shall forthwith deposit or shall cause to be deposited the Receivables directly in an escrow account(s) (and to no other nootheraccount) as may be stipulated/agreed by the Lender and shall forthwith execute escrow agreement(s) in a form satisfactory to the Lender with respect to deposit of the Receivables into the escrow account(s) and transfer of amounts into the Lender's specified bank account(s) on the Due Date(s). The Receivables shall be utilized/transferred in a manner as approved/instructed by the Lender in writing from time to time. It is hereby clarified that in case of shortfall in the escrow account(s), payment default(s) by the Obligator(s) and/or

occurrence of an Event of Default, the Obligor(s) is/shall be under an obligation to pay from any source so as to pay the amount(s) payable in accordance with the Loan Documents to the Lender. The Obligor(s) undertake to forthwith issue irrevocable instructions (in a format acceptable to the Lender) to all the concerned persons for deposit of the Receivables only in the escrow account(s) and obtain confirmations in this regard (and forthwith provide a copy thereof to the Lender) from all such person(s). The Obligor(s) shall not give any instruction(s) to the-escrow agent(s) and the escrow agent(s) shall not in any circumstance act on any instruction(s) of the Obligor(s). The Borrower(s) undertake to, and the Borrower(s) shall cause the other Obligor(s) to, irrevocably appoint the Lender as its attorney by execution of a Power of Attorney for collection of Receivables (in the form and substance satisfactory to the Lender) in favour of the Lender for, inter alia, collection of the Receivables from all the concerned persons. The Borrower(s) further agree that such power(s) would be power(s) coupled with interest and therefore irrevocable.

12.2 ***Consequence of an Event of Default***

(i) On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s): (i) cancel/recall the Loan whereupon the Loan and/or the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); - and/or

16. It was argued the liability of the hypothecators was not *co-extensive* with the borrowers and *obligor* was a general term used for various types of person *viz* guarantors, mortgagors, pledgers, hypothecators and all were liable to the extent of the documents they signed and not beyond, but the impugned order read the above definitions out of context. He further referred to the impugned order, more specifically paras *17* to *19* as under: -

17. xxx.... We heard the counsels for the parties and perused the record. Mr. Sunil Fernande, Ld. Sr. Counsel for the Corporate Debtors argued with vehemence that the execution of a Deed of Hypothecation by the Corporate Debtors would not

make them liable as Corporate Guarantors. It is seen from the common Deed of Hypothecation executed by all the Corporate Debtors before us that the expression Obligor(s) would mean the Borrower(s), the Hypothecator(s), the Guarantor(s}, the Mortgagor(s), the Pledgor(s) and / or any other person providing Security to secure the Borrower(s) obligations under the Loan Documents including the Borrower's Dues and/ or who is or becomes a party (other than the Lender} to the Loan Documents.

18. The Deed of Hypothecation further stipulates that the Hypothecators are under obligation to cause the Borrower to pay / repay the Borrowers dues as defined in the Loan Agreement and all other outstanding amount under the Loan Document to the Lender. The clause 1 of the Deed reads thus:-

> *1. In consideration of the Lender having lent and advanced and/ or agreed to lend and advance the Loan(s) to the Borrower(s) for the purposes and subject to the terms and conditions set out in the Loan Documents, the Hypothecator(s) hereby covenant with the Lender that it/ they shall cause the Borrower(s) to pay/ repay the Borrower's Dues (as defined in the Loan Agreement(s)) and all other outstanding amount under the Loan Documents to the Lender and that the Hypothecator(s) shall duly observe and perform all the terms and conditions of the Loan Documents, as amended from time to time."*

19. From the aforementioned, it is clear that the Corporate Debtors before us stood as surety for repayment of the amount of debt borrowed by the Principal Debtor from the Lender, thus it would not be gainsaid that the Corporate Debtors stood as Corporate Guarantor qua the financial facility availed by the Principal Debtor viz. Bliss House Pvt. Ltd. In China Development Bank vs. Doha Bank Q.P.S.C. and Ors. (Civil Appeals No. 7298 of 2022 with Nos. 7328, 7407, 7615 of 2022 and 7434 of 2023) decided on 20.12.2024 [reported as (2025) 7 Supreme Court Cases 729], it could be viewed that a contract between a guarantee when the same is to perform the promise or discharge the liability of a third person in case of default. In the said judgement, the Hon'ble Supreme Court further ruled that going by the title, 'Deed of Hypothecation (DoH) is a document creating Hypothecation which means the process of using an asset as collateral for a loan which acts as a protection to the Lender when the Borrower does not repay the loan, however,

> *the name of the document is not a decisive factor and only because the title of the document contains the word "Hypothecation", it cannot be concluded that guarantee is not a part of the document.*

17. It was argued by the learned senior counsel for the appellant the loan agreement(s) as well as Deed of Guarantee(s) are *bilateral* agreements and not *tripartite agreements* as there are no three parties in such agreements and hence the Hypothecation agreements cannot be read as Contract of Guarantee(s) which infact are always *tripartite agreements*. It was argued *Guarantee* is not defined in the IBC and hence *per* Section *3(37)* of the IBC, its meaning has to be derived from Section *126* of the Contract Act, quoted above.

18. The learned senior counsel for the appellant then referred to M/s PNB Ltd Vs Shri Vikram Cotton Mills and Another, *1970(1) Supreme Court Cases 60* which held:-

> *"10. A promise to be primarily and independently liable for another person's conduct may amount to a contract of indemnity. A contract of guarantee requires concurrence of three persons-the principal debtor, the surety and the creditor-the surety undertaking an obligation of the surety depends substantially on the principal debtor's default; under a contract of indemnity liability arises from loss caused to the promise by the conduct of the promise himself or by the conduct of another person.:*

19. It was an argument China Development Bank judgement was used out of context as in the cited case, the Hon'ble Court interpreted *tripartite agreements* which contained some other additional clauses, which are not in the present case.

20. Reference was made to JC Flowers Asset Reconstruction Pvt. Ltd Vs Vithal M Dahake, *Company Appeal (AT)(Ins) No.1801/2024*, wherein the Court held: -

> *"23. The Appellant submitted that the Mortgage Deeds executed between the Appellant, the Principal Borrower, and the Corporate Debtor fulfil all the requisites of a contract of guarantee under Section 126 of the Indian Contract Act, 1872, being a* ***tripartite agreement*** *wherein vide, Clause 3, the Corporate Debtor undertook an unconditional and unequivocal liability to repay the Secured Obligations. The Appellant further contended that the "covenant to pay" in the Mortgage Deeds constitutes a contract of guarantee under Section 126 of the Indian Contract Act, 1872 and that the liability of the surety is co-extensive with that of the principal debtor under Section 128 of the Contract Act, 1872 thereof.*

21. Thus it was the submission of the learned senior counsel for the appellant the judgements quoted were of *tripartite agreements* and were used out of context in the impugned judgement.

22. The Respondent has rebutted each and every argument of the appellant.

23. Heard.

24. The facts do show BHPL was admitted into CIRP by the Ld. NCLT vide *its* Order dated 21 January 2026 in C.P. (IB) No. *585/ND/2025.* This was affirmed by this Tribunal by judgment dated 29 May 2026 in Comp. App. (AT) (Ins) No. *2040 of 2025* and Comp. App. (AT) (Ins) No. *585 of 2026* and later by the Hon'ble Supreme Court. Hence BHPL's admission and the underlying default has, therefore, attained finality. This Appeal raises identical grounds as raised by BHPL in earlier round and rejected by this Tribunal and also affirmed by the

Hon'ble Supreme Court. The only remaining issue is the *validity of invocation of Section 60(2) of the IBC*.

25. The loan of Rs. 105 Crores to BHPL (the "BHPL Debt") is governed by the Loan Agreement dated 29 March 2019 (the "BHPL Loan Agreement"). Schedule I undisputedly lists the Corporate Debtor as a "Hypothecator".

26. Clause *1.1* of the BH Loan Agreement defines "*Obligors*" to include *inter-alia* the Borrower and the Hypothecators i.e. the Corporate Debtor. Clause *2.1* makes all Obligors *jointly and severally liable* for the dues under the BH Loan Agreement. Clause 12.2 empowers the Lender, upon an Event of Default, to recall the BH Debt, whereupon the entire dues become immediately *payable by the Obligors*, which term specifically includes Hypothecators.

27. Further, under Clause *2.2.4*, the Obligors "*are under an obligation to pay from any source*" upon a shortfall, payment default or Event of Default, so that the entire dues under the BH Loan Agreement are recovered by the lender. The Corporate Debtor admittedly executed the Deed of Hypothecation, whereby it assumed all obligations stipulated under the BH Loan Agreement. The Corporate Debtor executed the Deed of Hypothecation in furtherance of the BH Loan Agreement. Under its recitals *viz* ***a)*** Recital A names the BH Loan Agreement in Schedule III; ***b)*** Recital B contemplates the liability of the Obligors to repay the dues under the BH Loan Agreement; and ***c)*** Recital D records that "Obligors" includes the Hypothecator, a status the Corporate Debtor admits. The Corporate

Debtor thus consciously undertook obligations ascribed to it under the BH Loan Agreement.

28. This is further confirmed by Clause *1* of the Deed of Hypothecation, which reiterates the Corporate Debtor's assumption of the obligations under the BH Loan Agreement. Clause *5* requires the BH Loan Agreement to be read with the Deed of Hypothecation and *to prevail over it in case of inconsistency*. The obligations set out in the BH Loan Agreement establish *joint and several liability* in addition to a covenant to pay any shortfall for the reasons set out below.

29. By a Loan Recall Notice dated 9 March 2020, the BH Debt was recalled following Mr. Rana Kapoor's arrest. No repayment was made within the *5* days stipulated in the Loan Recall Notice, and accordingly, the default occurred on 14 March 2020. This failure to honour the notice resulted in Arbitral Awards dated 28 February 2023, which affirmed the liability of BHPL and the other group entities. The Award in IHFL v. BHPL (the "Bliss House 1 Award"), held Imagine Homes Pvt. Ltd. and Imagine Residence Pvt. Ltd., are jointly and severally liable for the BH Debt.

30. The Corporate Debtor is also directly liable for loans extended to it (the "Imagine Debt") under two Loan Agreements dated 5 September 2018 and 7 October 2019 aggregating to Rs. 596 Crores. Clauses *12.1.8* and *12.2* of the Imagine Loan Agreements entitled the lender to recall the loans upon default, which it did by a Loan Recall Notice dated 9 March 2020. These defaults stand crystallised by Arbitral Awards dated 28 February 2023. These Awards are

challenged before the High Court of Delhi in O.M.P. (Comm) Nos. *359/2023*, *363/2023* and *365/2023*, but, however, no stay has been granted and no amount has been repaid till date.

31. By registered Assignment Agreements dated 29 March 2025 and 30 August 2025, all rights, title and interest under the loan agreements, security documents and Awards stood assigned to Respondent No. 2 herein. By a Notice of Demand dated 29 September 2025, the Financial Creditor called upon the Corporate Debtor to pay Rs. *260,32,53,778.61*. The said demand remained *unanswered* and *unpaid*. Further, no monies have been paid under the loan agreements thereafter.

32. Section *60(2)* begins with a *non-obstante* provision which carves out an exception to the general rule of jurisdiction under Section *60(1)*. It stipulates the proceedings against the principal borrower and its guarantor are dealt with by the same Tribunal, thereby avoiding conflicting orders and double realisation. In this case, BHPL, the principal borrower, is undergoing CIRP before the Ld. NCLT, New Delhi and its admission has attained finality up to the Hon'ble Supreme Court. The CIRP of the Corporate Debtor, as a corporate guarantor, must therefore proceed before the same Ld. Adjudicating Authority. This Tribunal by judgement dated 1 August 2025, in S. Vasudevan v. IDBI Trusteeship Limited CA (AT) (CH) (Ins) No.362/2023, upheld proceedings before the Ld. NCLT, Chennai against a corporate guarantor whose registered office was in Bengaluru,

since the principal borrower's proceedings were pending before the Ld. NCLT, Chennai.

33. Moreover, the Corporate Debtor and BHPL are subsidiaries of RAB Enterprises with common ownership and promoters, forming a single integrated group. For this reason, the Ld. NCLT, by an Order dated 12 June 2026 has consolidated their CIRPs.

34. Section *5(5A)* of the IBC defines a "corporate guarantor" as a corporate person who is the surety in a contract of guarantee to a corporate debtor. Section *126* of the Indian Contract Act, 1872 defines a contract of guarantee as "a contract to perform the promise, or discharge the liability, of a third person in case of his default", and provides that it "*may be either oral or written*". Each requirement is satisfied as BHPL is the principal borrower, IHFL (now Respondent No. 2) is the creditor, and the Corporate Debtor, as an Obligor, is the surety. Clauses *2.1* and *12.2* of the BH Loan Agreement make the Obligors, including the Corporate Debtor, *jointly and severally* liable for the BH Debt, and hence liable to pay upon BHPL's default. A covenant to pay upon shortfall, such as Clause *2.2.4*, has been construed as a guarantee by the Hon'ble Supreme Court in China Development Bank v. Doha Bank QPSC, *(2025) 7 SCC 729*. The covenant under Clause *5(iii)* of the Deed of Hypothecation considered in that case is, in substance, *identical* to Clauses *2.1* and *2.2.4* of the BH Loan Agreement read with *Clause 1* of the Deed of Hypothecation. Thus the Ld. NCLT has correctly applied China Development Bank judgement while interpreting Section

60(2). The Corporate Debtor's liability is, therefore, not limited to the hypothecated assets, Clause *2.2.4* obliges the Obligors to make good any shortfall from any source.

35. The Appellant's plea based on nomenclature is equally untenable. China Development Bank (supra) reiterates the settled principle that the substance of a document's covenants, irrespective of its nomenclature, is decisive. Thus the Corporate Debtor if not described as a "guarantor" is, therefore, immaterial. It is settled law that a contract of guarantee can be recorded in multiple agreements, so long as the *intent to stand as guarantor* is clearly discernible. The mere fact that BHPL has not signed the Deed of Hypothecation is irrelevant, since the Deed of Hypothecation itself evidences the assumption of all obligations under the BH Loan Agreement. Read together, the BH Loan Agreement and the Deed of Hypothecation evidence a *tripartite arrangement* between the principal borrower (BHPL), the creditor (IHFL, now Respondent No. 2) and the surety (the Corporate Debtor), constituting a contract of guarantee. The plea is all the more untenable coming from the Appellant, who executed the BH Loan Agreement on behalf of BHPL and the Deed of Hypothecation on behalf of the Corporate Debtor. As a common director of both companies under RAB Enterprises, the Appellant cannot now raise such contentions.

36. In identical circumstances, the Hon'ble Supreme Court in Punjab National Bank v. Shri Vikram Cotton Mills, (1970) 1 SCC 60, a decision cited by the Appellant itself, held the absence of all parties' signatures on a single

document does not negate a guarantee. A guarantee *can be inferred from conduct, from an oral agreement or a combined reading of several agreements*.

37. Thus independently of its liability as guarantor of BHPL, the Corporate Debtor is liable for the Imagine Debt. As held by the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, and E.S. Krishnamurthy v. Bharath HiTech Builders Pvt. Ltd., (2022) 3 SCC 161, once the Adjudicating Authority is satisfied on the occurrence of debt and default, it must admit the petition.

38. The Appellant has not denied the execution of the Imagine Loan Agreements, the disbursal or the failure to repay.

39. Thus, the appeals are not maintainable on this count alone. The Impugned Order suffers from no illegality and thus all above appeals are dismissed. Pending applications, if any, are also disposed of.

(Justice Yogesh Khanna)
Officiating Chairperson

(Mr. Barun Mitra)
Member (Technical)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:06-11-2026

BM