NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 310 of 2024

(Arising against the impugned order dated 05.12.2023 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench in I.A. No. 767 of 2021 filed in C.P. (IB) No. 1771 of 2018)

IN THE MATTER OF:

Moneywise Financial Services Pvt. Ltd.
Address: 11/6 B, Second Floor,
Shanti Chamber, Pusa Road, **...Appellant**
Central Delhi, New Delhi- 110005.

Versus

Mr. Arunava Sikdar,
Resolution Professional **...Respondent**
M/s Dream Procon Pvt. Ltd.
Address: C-10, LGF, Lajpat Nagar -3,
New Delhi, National Capital Territory of Delhi -110024.

Present:
For Appellant: **Mr. Abhishek Garg and Mr. Yash Gaiha, Advocates.**
For Respondent: **Ms. Varsha Banerjee, Advocate.**

J U D G M E N T
(3rd July, 2025)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been preferred by Moneywise Financial Services Private Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short, the '**Code**'), being aggrieved by the Impugned Order dated 05.12.2023 passed by the National Company Law Tribunal (**Adjudicating Authority**), New Delhi Bench, in I.A. No. 767 of 2021 filed in C.P. (IB) No. 1771 of 2018. By the said order, the Adjudicating Authority dismissed the

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Appellant's application seeking admission of its claim as a Financial Creditor of **M/s Dream Procon Private Limited** (**Corporate Debtor**), despite the existence of a valid and enforceable corporate guarantee extended by M/s Dream Procon Private Limited for a loan advanced to Indirapuram Habitat Center Private Limited (IHCPL).

2. The Appellant contends that its claim arises from the corporate guarantee, and hence constitutes a "financial debt" under Section 5(8)(i) of the Code. The rejection of its claim, without adequate reasoning and without appreciating the legally binding guarantee agreement, has necessitated the filing of the present appeal

Brief Facts

3. Brief facts of the case are given below:

(i) The Appellant is engaged in the business of providing financial services. The Appellant is the **Financial Creditor** of the Corporate Debtor. The Appellant is a wholly owned subsidiary of SMC Global Securities limited and is registered with the Reserve Bank of India as a non-deposit taking systematically important non-banking finance company.

(ii) On 20.05.2015, the Appellant granted a loan of Rs. 5,00,00,000/- to the Corporate Debtor, M/s Dream Procon Pvt. Ltd., for the construction of a real estate project titled "Victory Ace" located at Plot No. GH-02, Sector 143-B, Noida, Uttar Pradesh. This transaction was formalized through a Master Loan Agreement dated 20.05.2015.

(iii) To secure the above loan, the Corporate Debtor executed a Declaration of Security on 21.05.2015, and a Form CHG-01 dated 20.05.2015 was filed, signifying the creation of a charge over the assets.

(iv) The above facility was subsequently renewed on 18.05.2017, and relevant addendums to the Master Loan Agreement were also executed between the parties.

(v) In early April 2016, Indirapuram Habitat Center Private Limited (**IHCPL**), a group concern of the Corporate Debtor, approached the Appellant seeking a term loan of Rs. 10,00,00,000/- for developing a commercial project in Ghaziabad, Uttar Pradesh.

(vi) A Term Sheet dated 07.04.2016 was issued by the Appellant in favour of IHCPL outlining the terms of the proposed loan. Importantly, the Corporate Debtor (Dream Procon Pvt. Ltd.) executed a corporate guarantee for the due repayment of this loan, thereby binding itself as a financial guarantor for the obligations of IHCPL.

(vii) Following the term sheet, a Master Loan Agreement (**MLA**) dated 22.04.2016 was executed between the Appellant and IHCPL for disbursal of the Rs. 10 crore loan facility. The Corporate Debtor stood as corporate guarantor under the MLA.

(viii) On 27.12.2017, an addendum to the Master Loan Agreement dated 22.04.2016 was executed between the Appellant, IHCPL, and the Corporate Debtor. On the same date, i.e., 27.12.2017, a Joint Declaration and Undertaking was executed by IHCPL and the Corporate Debtor in favour of the Appellant, confirming cross-

collateralization and cross-guarantee arrangements between the two entities for loan facilities extended by the Appellant.

(ix) The CIRP against IHCPL was initiated by the Hon'ble NCLT, Principal Bench, New Delhi on 22.08.2019 in CP(IB) No. 1397(PB)/2019. The Appellant filed a claim in IHCPL's CIRP on 07.09.2019 for Rs. 14,45,22,111/-, based on the 2016 loan disbursed directly to IHCPL.

(x) The CIRP against the Corporate Debtor (Dream Procon Pvt. Ltd was initiated on 06.09.2019 by the Hon'ble NCLT, New Delhi Bench in CP(IB) No. 1771/2018. On 25.10.2019, the Appellant filed a claim under Form C before the IRP of the Corporate Debtor for a sum of Rs. 7,25,19,134/- (arising from the 2015 loan), which was accepted and is not in dispute in the present appeal.

(xi) On 20.10.2020, the Appellant filed a fresh claim in Form C with the Respondent (RP of Dream Procon Pvt. Ltd.) for Rs. 14,59,89,580/-, arising from the corporate guarantee executed by the Corporate Debtor in favour of the Appellant to secure the loan advanced to IHCPL.

(xii) On 13.11.2020, the Respondent rejected the Appellant's claim, citing that the debt was not disbursed to the Corporate Debtor and hence did not qualify as "financial debt" under Section 5(8) of the IBC.

(xiii) The Appellant responded to this rejection through an email dated 01.12.2020, asserting that the guarantee obligations of the Corporate Debtor are co-extensive with those of the principal borrower under Section 128 of the Indian Contract Act, 1872.

(xiv) Despite repeated follow-up emails, the Respondent did not reverse the decision, prompting the Appellant to file IA No. 767 of 2021 on 27.01.2021 before the Adjudicating Authority, seeking directions to admit its claim for Rs. 14.59 crores as a financial debt.

(xv) By Order dated 05.12.2023, the Ld. Adjudicating Authority dismissed IA No. 767 of 2021, holding that the Appellant failed to demonstrate how the claim falls within the scope of clauses (a) to (h) of Section 5(8) of the Code, and that no direct disbursal was made to the Corporate Debtor.

(xvi) The Appellant has thus preferred the present Company Appeal seeking recognition of its status as a financial creditor of the Corporate Debtor under Section 5(7) r/w 5(8)(i) of the Code and consequential reliefs.

Submissions of the Appellant

4. Learned Counsel for the Appellant, Moneywise Financial Services Pvt. Ltd., respectfully submits that the present appeal arises out of the Impugned Order dated 05.12.2023, by which the Hon'ble National Company Law Tribunal, New Delhi, has erroneously dismissed the application filed by the Appellant solely on the ground that there was no disbursement of the loan amount directly from the Appellant to the Corporate Debtor, M/s Dream Procon Pvt. Ltd., and thereby concluded that the Appellant does not hold a "financial debt" within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"). Counsel for the Appellant submits that this conclusion is flawed in both law and fact, as it ignores the well-

settled legal position that the liability of a guarantor is independent of the requirement of direct disbursement and that the Corporate Debtor had indeed stood as a guarantor under a valid and binding agreement.

5. Ld. Counsel for the Appellant further submits that as per Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is co-extensive with that of the principal borrower, and the law does not require any direct disbursement to the guarantor to establish such liability. Ld. Counsel points out that the Code permits the initiation of CIRP against guarantors; whether corporate or personal, even in cases where disbursement has been made only to the principal borrower. Therefore, the rejection of the Appellant's claim on the limited ground of non-disbursal to the Corporate Debtor reflects a misapplication of the settled legal principle.

6. It is further submitted by counsel for the Appellant that Section 5(8) of the Code expressly includes within the definition of "financial debt" any liability in respect of a guarantee or indemnity. In this regard, counsel refers to the authoritative pronouncements of the Hon'ble Supreme Court in '*BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., [(2025) 1 SCC 456]*', particularly at para 26, and '*Laxmi Pat Surana v. Union of India, [(2021) 8 SCC 481]*', at paras 31 and 32. In both these cases, Hon'ble Apex Court has clearly held that the absence of disbursement to the guarantor does not preclude a financial creditor from initiating proceedings against the corporate guarantor under the Code. Hence, the Appellant qualifies as a financial creditor.

7. Ld. Counsel for the Appellant draws attention to the Report of the Insolvency Law Committee dated 20.02.2020, wherein it has been emphasized that the right to pursue simultaneous remedies against both the principal borrower and the guarantor is fundamental to the nature of a contract of guarantee. The Committee also recommended that creditors must be permitted to file claims in the CIRP of both the principal borrower and the guarantor. Counsel accordingly submits that the Appellant cannot be denied the right to submit its claim in the CIRP of the Corporate Debtor merely because a claim has also been filed in the CIRP of Indirapuram Habitat Centre Pvt. Ltd. (IHCPL).

8. Further, it is submitted by Ld. Counsel that the Committee categorically clarified that if any portion of the debt is recovered in one proceeding (e.g., CIRP of IHCPL), the creditor's claim in the other (e.g., CIRP of the Corporate Debtor) would be proportionately reduced. Therefore, any concern of duplicity or double recovery is ill-founded and cannot form the basis for rejection of the Appellant's claim. The claim made by the Appellant in the CIRP of the Corporate Debtor is thus legally sustainable.

9. Ld. Counsel also places reliance on the judgment of the Hon'ble NCLAT in '*State Bank of India v. Athena Energy Ventures Pvt. Ltd., CA (AT)(Ins.) No. 633/2020*', wherein at para 16, the Tribunal reaffirmed that a contract of guarantee is enforceable even when CIRP is initiated simultaneously against both the principal borrower and the guarantor. Counsel submits that in the present case, the Corporate Debtor had stood as a guarantor under a Term Sheet and Master Loan Agreement (MLA) executed between the Appellant, IHCPL, and the Corporate Debtor.

10. Ld. Counsel submitted that under Clause 28 of the MLA, the Corporate Debtor unconditionally and irrevocably guaranteed the due and timely repayment of the loan facilities availed by IHCPL. Counsel points out that the MLA is a comprehensive tripartite agreement and clearly outlines the Corporate Debtor's role as a guarantor, and no separate deed of guarantee was contemplated or required. The Corporate Debtor's obligations arise directly from the MLA itself.

11. Ld. Counsel further submits that as per Section 126 of the Indian Contract Act, 1872, a contract of guarantee may be either express or implied, oral or written. Therefore, the argument that the Corporate Debtor's liability is unenforceable in the absence of a separate, registered deed of guarantee is untenable. The conduct of the parties and the contents of the MLA, as emphasized by counsel, clearly establish the existence of a valid contract of guarantee.

12. In support of this position, Ld. Counsel refers to the decision of the '*Andhra Pradesh High Court in State Bank of Hyderabad v. Kotha Papi Reddy, [1973 SCC OnLine AP 80]'*, which held that a deed of guarantee need not be registered and can even be oral. Hence, insistence on a registered deed is legally erroneous.

13. Ld. Counsel also submits that the Code recognizes the concept of "arrangement" under Section 3(31), which includes any agreement or understanding intended to secure payment or performance of any obligation. The MLA constitutes such an arrangement and Clause 28 therein satisfies the statutory test of financial debt.

14. He submitted that the absence of a separate document titled “deed of guarantee” does not dilute the Corporate Debtor’s liability. Judicial precedents consistently emphasize that courts must consider the totality of the agreement, the conduct of the parties, and surrounding circumstances to determine whether a guarantee exists. In the present case, all such elements point to a clear understanding that the Corporate Debtor was a guarantor.

15. Counsel for the Appellant submits that the nature of the transaction must be assessed holistically. The MLA was executed to facilitate a loan to IHCPL, and the Corporate Debtor’s agreement to act as guarantor is expressly recorded therein. The execution of the MLA and Clause 28 unequivocally establish the Corporate Debtor’s liability. The argument regarding the absence of a separate deed is merely hyper-technical and undermines the substance of the transaction.

16. Ld. Counsel submitted that the Term Sheet, when read together with Clause 28 of the MLA, makes it evident that the Corporate Debtor acted as a corporate guarantor for the loan extended to IHCPL. There is no contractual requirement that the parties execute an additional deed of guarantee, and the guarantee clause within the MLA is sufficient in law.

17. It is his submission that the Appellant’s claim arises solely from the irrevocable guarantee extended by the Corporate Debtor under the MLA. The nature of this obligation is financial, as defined under Section 5(8) of the Code,

and the Appellant has rightly lodged its claim in the CIRP of both IHCPL and the Corporate Debtor.

18. Ld. Counsel emphasizes that the mutual understanding between the parties as recorded in the MLA is sufficient to create enforceable rights. No further instrument is legally necessary. The guarantee clause in the MLA constitutes a binding contractual obligation.

19. Lastly, Ld. Counsel points out that the claim was filed in the CIRP of the Corporate Debtor within the prescribed timelines and well before approval of the resolution plan. This fact remains undisputed by the Respondent in its written reply as well as during the oral hearing.

20. Summing up his arguments Ld. counsel for the Appellant prays that this Hon'ble Tribunal be pleased to set aside the Impugned Order dated 05.12.2023 and direct the Resolution Professional to admit the claim of the Appellant in the CIRP of the Corporate Debtor, as the same arises from a valid and enforceable contract of guarantee, satisfying all requirements under Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

Submissions of the Respondent

21. Ld. Counsel for the Respondent / Resolution Professional (hereinafter referred to as "RP" or "Answering Respondent"), of M/s Dream Procon Private Limited respectfully submits that the present appeal filed by the Appellant, Moneywise Financial Services Private Limited, is wholly misconceived and is

liable to be dismissed at the threshold. The Appellant has challenged the rejection of its alleged financial claim of Rs. 14,59,89,580/- filed via Form C on 20.10.2020. Counsel submits that the said claim was rightly rejected by the Respondent on 13.11.2020 on the ground that it does not fall within the scope of a "financial debt" as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Ld. Adjudicating Authority, by its detailed order dated 05.12.2023 passed in I.A. No. 767 of 2021 in CP(IB) No. 1771/ND/2018, rightly upheld the said rejection, holding that the Appellant is not a financial creditor of the Corporate Debtor. The said order is legally sustainable and does not warrant any interference.

22. Ld. Counsel for the Respondent submits that the primary issue involved in the appeal is whether the Respondent correctly rejected the Appellant's claim of Rs. 14,59,89,580/- as a financial creditor of the Corporate Debtor. In this regard, counsel submits the following:

a) That no corporate guarantee was ever executed by the Corporate Debtor in favour of the Appellant. Despite repeated assertions, the Appellant has failed to place on record any duly executed deed of guarantee by the Corporate Debtor. The foundation of the Appellant's claim thus collapses.

b) That Clause 28 of the Master Loan Agreement, relied upon by the Appellant, does not constitute a binding guarantee deed. Moreover, there exists no Board Resolution of the Corporate Debtor authorizing any of its promoters to execute a corporate guarantee in favour of the Appellant.

c) That the sanction letter issued by the Appellant to Indirapuram Habitat Centre Pvt. Ltd. only refers to an intention to obtain a corporate guarantee from the Corporate Debtor. However, in the absence of any actual deed of guarantee, no enforceable obligation has been created.

d) That the claim of the Appellant fails to meet the statutory definition of "financial debt" under Section 5(8) of the Code. In the absence of a duly executed deed of guarantee, invocation of Clause (i) of Section 5(8) is legally impermissible.

e) That even assuming for arguments sake the existence of any guarantee, counsel submits that it was never invoked by the Appellant prior to the Insolvency Commencement Date (ICD). Invocation of a guarantee is a settled pre-condition for recognition of debt under the IBC.

f) That the Resolution Plan has already been approved by the Committee of Creditors (CoC). Counsel submits that the Appellant's claim is belated and legally inadmissible. The conduct of the Appellant demonstrates suppression of facts and constitutes an abuse of process.

23. Counsel for the Respondent submits that the Appellant initially referred to a purported deed of guarantee dated 22.04.2016 in its claim form dated 20.10.2020. However, no such deed has been placed on record till date. Even before the Adjudicating Authority, the Appellant reiterated this claim and even quoted clauses from the alleged deed, but failed to annex or substantiate the same. In response, the RP rightly pointed out the absence of any such deed executed in favour of the Appellant.

24. Counsel further points out that in the present appeal, the Appellant has conspicuously omitted any reference to the purported deed, thereby admitting by implication that its earlier assertions were false and misleading. Such suppression of material facts renders the entire claim legally dubious.

25. It is further submitted by counsel that the timeline of claim submissions exposes the Appellant's mala fide intent. For the same loan transaction, the Appellant filed a claim against IHCPL (principal borrower) on 25.10.2019, but waited almost a full year to file the so-called corporate guarantee-based claim against the Corporate Debtor on 20.10.2020. This clearly establishes that the latter claim is an afterthought, lacking in bona fides.

26. Ld. Counsel submitted that even Clause 28 of the MLA, now relied upon by the Appellant in lieu of the earlier claimed deed, does not fulfil the statutory requirement for an enforceable guarantee. Under Sections 3(31) and 3(33) of the IBC, counsel submits that security interest must be based on actual executed documents and not on vague references or intentions.

27. Ld. Counsel places reliance on the judgments of this Appellate Tribunal in '*Unity Small Finance Bank Ltd. v. Sripatham Venkatasubramanian Ramkumar & Ors., Comp. App. (AT) (Ins.) No. 601 of 2024* (Paras 20, 24)'; and '*M/s. Star Maxx Properties v. Arunava Sikdar & Anr., Comp. App. (AT)(Ins.) No. 338 of 2024* (Paras 5, 31, 32)' to assert that only formally executed documents can constitute a valid security interest.

28. Ld. Counsel for the Respondent submits that the Appellant has not produced any evidence to show that the alleged guarantee was ever invoked before the commencement of CIRP. Clause 28 of the MLA contemplates a first demand guarantee, yet no such demand has been raised upon the Corporate Debtor.

29. Ld. Counsel further submitted that in law, an uninvoked guarantee cannot constitute financial debt. The Counsel relies on the following judgements of Hon'ble Supreme Court and this Appellate Tribunal in this regard:

i. Judgement of Hon'ble SC in *Ghanshyam Mishra & Sons v. Edelweiss ARC, (2021) 9 SCC 657 (Paras 109, 110);*

ii. Judgements of this Appellate Tribunal in

- *EARC v. Orissa Manganese and Minerals Ltd., 2019 SCC OnLine NCLAT 764 (Paras 24–28);*
- *Ankur Kumar v. Sustainable Agro-Commercial Financial Ltd., CA (AT)(INS) No. 484 of 2023 (Paras 25, 29, 31, 32); and*
- *IDBI Trusteeship Services Ltd. v. Abhinav Mukherji & Ors., CA (AT)(INS) No. 356 of 2022 (Paras 27, 29, 30).*

30. Ld. Counsel submits that the Appellant's claim for Rs. 14,59,89,580/- has already been admitted in the CIRP of IHCPL. Filing the same claim in the CIRP of the Corporate Debtor constitutes double-dipping, which is impermissible under the IBC. Permitting such a duplicate claim would unjustly prejudice over 500 homebuyers and other stakeholders and

undermine the CIRP. Counsel refers to '*Piramal Capital & Housing Finance Ltd. v. Hydric Infrastructure Pvt. Ltd., CA (AT)(INS) No. 851 of 2023* (Paras 29–34)', wherein this Appellate Tribunal held that overlapping claims are impermissible.

31. Ld. Counsel for the Respondent reiterates that a financial debt must involve disbursement of money against consideration for time value of money to the Corporate Debtor. Here, the disbursement was made exclusively to IHCPL. The essential criterion of disbursal to the Corporate Debtor is thus not satisfied.

32. Ld. Counsel places reliance is placed on the Judgment of Hon'ble SC in '*Anuj Jain, Interim RP of Jaypee Infratech Ltd. v. Axis Bank Ltd., [2020 SCC OnLine SC 237],* (Para 43)', where the Court clarified that disbursal to the corporate debtor is an essential ingredient. Debts not recorded in books or unsupported by valid instruments cannot qualify under Section 5(8).

33. Ld. Counsel submits that the last date for submission of claims in the CIRP was 29.10.2019. The Appellant filed its claim on 20.11.2020 i.e., 388 days after the deadline. This unexplained and unjustified delay renders the claim inadmissible.

34. Ld. Counsel places reliance upon the following Judgements of Hon'ble SC in this regard:

- *Essar Steel v. Satish Gupta, 2019 SCC OnLine SC 1478* (Para 88); and
- *RPS Infrastructure Ltd. v. Mukul Kumar & Anr., (2023) 10 SCC 718* (Paras 23–24).

35. Ld. Counsel for the Respondent submits that the Resolution Plan for the Corporate Debtor has already been approved by the Committee of Creditors with a vote share of 90.66% during the 11th CoC meeting held on 07.05.2021. Entertaining the Appellant's claim at this belated stage would disrupt the settled commercial wisdom of the CoC, and jeopardize the approved resolution plan, contrary to established jurisprudence.

36. In light of the above submissions, counsel for the Respondent prays that this Tribunal may dismiss the present appeal with exemplary costs, as it is devoid of merit, factually misleading, legally untenable, and constitutes an abuse of the process of law.

Analysis and Findings

37. We have heard the Ld. Counsels for both the parties in great detail. We have gone through the records of the case including the written submissions of both the parties.

38. Based on the submissions of both the parties we frame the following 3 issues for adjudication:

I. Whether a valid and enforceable corporate guarantee has been executed by the Corporate Debtor, and if so, has it been invoked;

II. Whether the Appellant's claim, is barred by limitation under the Code; and

III. Whether the Appellant's claim is admissible in the CIRP of the Corporate Debtor considering the admitted claim for the same underlying debt of in the CIRP of IHCPL

Issue I: Whether a valid and enforceable corporate guarantee has been executed by the Corporate Debtor, and if so, has it been invoked

39. This issue strikes at the core of the present appeal, for if the Appellant has not demonstrated the existence of a legally binding and enforceable corporate guarantee executed by the Corporate Debtor, then the very foundation of its claim, asserting his status a financial creditor under the Code, must necessarily fail.

Under Section 5(8)(i) of the Code, a financial debt includes "any liability in respect of a guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h)." Thus, the primary legal threshold is whether the Appellant has to establish that the Corporate Debtor had, in fact, undertaken such a liability by way of a valid guarantee.

40. The Appellant contends that the guarantee arose pursuant to a Master Loan Agreement (MLA) dated 22.04.2016, executed between the Appellant (Moneywise Financial Services Pvt. Ltd.); the borrower entity Indirapuram Habitat Centre Pvt. Ltd. (IHCPL); and the Corporate Debtor, Dream Procon Pvt. Ltd. Clause 28 of the MLA is relied upon by the Appellant as evidence that Dream Procon undertook a corporate guarantee for repayment of the Rs.10 crore facility extended to IHCPL. The Appellant argues that this clause, when read in conjunction with the execution of the MLA and the parties' conduct; particularly the Joint Declaration dated 27.12.2017 satisfies the requirements of a valid and enforceable contract of guarantee, even though a standalone guarantee deed was never executed.

41. The Appellant relies on the principle that a contract of guarantee under Section 126 of the Indian Contract Act, 1872 may be either oral or written and need not follow a particular format. It further cites the Section 128 of the Contract Act to argue that the liability of the guarantor is co-extensive with that of the principal debtor and can be enforced without a requirement of direct disbursal to the guarantor. The Appellant relies on the Hon'ble Supreme Court's ruling in *Laxmi Pat Surana v. Union of India, (2021) 8 SCC 481*, where it was held that insolvency proceedings can be initiated against a corporate guarantor, even when the principal borrower is not a corporate person. Similarly, the Appellant cites *State Bank of India v. Athena Energy Ventures Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 633 of 2020*, and also relies upon Hon'ble SC's Judgement in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., (2025) 1 SCC 456* to reinforce the legal proposition that a valid guarantee constitutes a financial debt under Section 5(8)(i) of the Code.

42. The Respondent, however, disputes the very existence of a legally valid corporate guarantee. It is submitted that while the Appellant initially referred to a "Deed of Guarantee dated 22.04.2016" in its Form C claim, no such deed was ever produced before the Adjudicating Authority or this Tribunal. The Respondent points out that the Appellant has now entirely abandoned that position and instead relies solely on Clause 28 of the MLA. It is contended that such a clause, appearing within a tripartite loan agreement, does not constitute a formal guarantee and lacks the characteristics of an enforceable security instrument. Crucially, the Respondent highlights that there is no Board Resolution or any other corporate authorization by the Corporate

Debtor permitting its promoters or directors to extend a corporate guarantee on its behalf. In the absence of such authorization, the Respondent asserts that no legal or enforceable corporate guarantee can be inferred. The respondent places reliance upon this Appellate Tribunal's Judgements in '*Unity Small Finance Bank Ltd. v. Sripatham Venkatasubramanian Ramkumar & Ors., Comp. App. (AT) (Ins.) No. 601 of 2024*, and '*M/s. Star Maxx Properties v. Arunava Sikdar & Anr., Comp. App. (AT) (Ins.) No. 338 of 2024'*, where this Tribunal has held that an enforceable corporate guarantee must be supported by clear documentation and formal authorization.

43. We agree that Section 5(8)(i) of the Code read with Section 128 of the Contract Act permits invocation of liability against a guarantor in respect of debt disbursed to a third-party borrower. However, the existence of a valid and enforceable guarantee must still be established by the claimant. In the present case, the Appellant has failed to place on record any standalone or formally executed deed of guarantee by the Corporate Debtor. A reference has been made to the "Deed of Guarantee dated 22.04.2016 in the application filed in I.A. No. 767 of 2021. The relevant para 23 of the application is reproduced below:

Para 23 of IA no. 767 of 2021

"23. That the Deed of Guarantee dated 22.04.2016 as executed between the parties further concretizes the claim of the applicant to the extent that the liability to repay the credit facility availed by IHCPL was co-extensive over the corporate debtor. The relevant clause of Deed of Guarantee is reproduced below for kind perusal of this Hon'ble Tribunal:

> *"3 (a) In the event of any default on part of the Guarantor in payment / repayment of any of the monies referred to Clause 2 above, or in the event of any default on part of the guarantor to comply with or perform any of the terms, conditions and covenants contained in the loan documents, the guarantor shall, upon demand to the Guarantor, forthwith pay to the Moneywise on demand without demur all part of the amounts (as demanded by the Moneywise) payable by the Guarantor under the Loan Documents...*
>
> *(b) In the event of failure by the Guarantor to make payment as stated above the Guarantor shall pay the default interest at the same rate/s as specified in relation to the Facilities for the Borrower till receipt of the aforesaid amounts by the Moneywise to its satisfaction."*

44. This deed dated 22-04-2016 having aforesaid para 3 has neither been produced before NCLT nor before us. The Appellant has now dropped that contention without explanation. It is well settled that guarantees are not lightly inferred in corporate law; they must be shown by either formal execution or unequivocal documentation, especially in insolvency proceedings where competing claims affect the rights of multiple stakeholders.

45. We now have a look at the Master Loan Agreement. The aforesaid agreement is an agreement between 6 parties Moneywise Financial Services as lender; Indirapuram habitat Centre Pvt. Ltd as Borrower; and 4 Guarantors

viz Mr. Pramod Goel; M/s Dream Procon Pvt. Ltd; M/s Victory Infra Projects Pvt. Ltd; and M/s Victory Infratech Pvt. Ltd. We now have a look at the clause 28 of the MLA, which is extracted below:

Clause 28 of MLA

"Guarantee

28. In consideration of Moneywise granting Loan Facility to the Borrower under this Agreement. the Guarantor, on request of the Borrower, unconditionally guarantees due and timely repayment of all Loan Amount according to its terms and compliance of all terms and conditions of this Agreement by the Borrower and to pay on first demand and without demur all amounts due against the Borrower under this Agreement, whether on account of principal loan, interest, additional interest, costs, charges, or otherwise jointly and severally. Any statement of account by Moneywise to the Borrower shall be binding on the Guarantor. This Guarantee shall be a continuing guarantee, joint and several and coextensive with the Borrower and shall not be revocable till all the payments as above nave been made. It shall not be necessary for Moneywise to either exhaust other remedies against the Borrower or recover from other securities before proceeding against the Guarantor or to implead the Borrower in any claim or proceeding against the Guarantor. In case any claim of Moneywise is not enforceable against the Borrower for any reason, the Guarantor shall be liable to meet it as the principal debtor. This guarantee shall not be discharged by any subsequent variation of the terms of this

Agreement by Moneywise as reserved to it in this Agreement or by any grant of time or other forbearance by Moneywise to the Borrower or by death or change of constitution of the Borrower or the Guarantor. For security and comfort of the Lender the Guarantor has agreed to provide such security(ies) as the Lender may require, to the Lender and to independently maintain the Margin during the entire period of the Loan till the Loan has been fully repaid with all interest and charges with right of the Lender to liquidate the security(ies) and adjust the proceeds against the Loan Outstanding on the Guarantor's failure to perform the Guarantee within 5 (five) days of first demand by the Lender"

(Emphasis Supplied)

46. Clause 28 of the MLA while appearing to contain language of an undertaking by the Corporate Debtor to repay the facilities advanced to IHCPL, it is embedded within a broader loan agreement, the primary purpose of which was to record the loan extended to IHCPL. It also provides for invocation of the guarantee. It is an admitted position that the so-called guarantee, if any provided by Clause 28 was never invoked. Similarly, even if read as a promise to guarantee, it is not supported by any separate authorization or corporate resolution from the Board of Directors of Dream Procon Pvt. Ltd. The absence of such authorization is fatal. In insolvency law, the courts have taken a strict view that a financial creditor must demonstrate the basis of its claim through formal instruments that clearly establish the

obligation and its enforceability. Hon'ble Supreme Court in *Anuj Jain, Interim Resolution Professional of Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401*, emphasized that financial debts under Section 5(8) must be evidenced by legally valid documentation and that any debt not recorded through a demonstrable instrument could not qualify.

47. In this context, it is also relevant to consider the conduct of the Appellant. The Appellant's in NCLT relied on Deed of Guarantee dated 22.04.2016, but could not produce the document before NCLT or before this Appellate Authority. Now before us they have taken the plea of Clause 28 of the MLA, an agreement which has 6 parties including 4 guarantors. The Clause 28 also clearly provides for invocation of the Guarantee, which clearly has not been done by the Appellant. At this stage failure to press its claim under Clause 28 initially, and its belated reliance on it only after being unable to produce the alleged deed of guarantee, casts serious doubt on the credibility and consistency of its position. The Adjudicating Authority also notes that while the Appellant refers to the Joint Declaration dated 27.12.2017 as further evidence of the Corporate Debtor's obligation, that declaration again does not amount to a legally enforceable security or guarantee in favour of the Appellant. It merely records mutual arrangements and does not independently satisfy the legal criteria for creating enforceable financial debt under the Code.

48. A corporate guarantee, like any contingent liability, becomes enforceable only upon default of the principal borrower followed by invocation by the creditor. In Ghanshyam Mishra & Sons v. Edelweiss ARC (supra), the

Hon'ble Supreme Court at paragraphs 109 and 110 held that a debt must be real, crystallized, and enforceable as on the Insolvency Commencement Date for it to be admitted in the CIRP. In the present case, the Appellant has failed to demonstrate any act of invocation; whether by notice, demand letter, or otherwise, addressed to Dream Procon prior to 06.09.2019. Although Clause 28 of the MLA refers to a "first demand" obligation, the Appellant has not shown that such demand was ever actually made. The guarantee, even assuming its validity, had therefore not matured into an enforceable claim against the Corporate Debtor as of the date when CIRP commenced. A mere default by IHCPL does not suffice to convert a contingent obligation into a live financial debt enforceable against the guarantor in the absence of invocation.

49. The following emerge from the discussion in paras above:

i. The Appellant has failed to prove that a valid and binding corporate guarantee was executed by Dream Procon Pvt. Ltd.

ii. The reliance on Clause 28 of the MLA, unsupported by any separate guarantee deed falls short of establishing an enforceable obligation under Section 5(8)(i) of the IBC. Even this clause has not been invoked by the Appellant which is essential for filing any claim under the code.

iii. The Appellant could not produce a resolution of the board of Directors of the Dream Procon Pvt Ltd. for providing such guarantee.

We therefore hold that a legally binding valid guarantee has not been executed by the Respondent and consequently, the Appellant does not qualify as a financial creditor of the Corporate Debtor on the strength of the alleged guarantee.

Issue II: Whether the Appellant's claim is barred by limitation under the Code

50. The Appellant contends that the claim in question arises from an ongoing contractual obligation in the nature of a corporate guarantee and that the limitation for enforcing such a claim must be calculated from the date of default, which in this case is post-2019. The Appellant also asserts that the claim was submitted well in advance of the final approval of the resolution plan by the Adjudicating Authority and, therefore, should not have been dismissed on procedural grounds alone. It is further submitted that mere delay in filing the claim, absent malice or fraud, ought not to bar a creditor from asserting a legitimate financial claim, especially when the underlying transaction is genuine and enforceable. The Appellant seeks to invoke the broad principle laid down by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531,* to argue that the procedural timelines in the IBC should not override substantial rights and that the resolution process must be inclusive rather than overly rigid.

51. On the other hand, the Respondent asserts that the Appellant's claim was filed hopelessly beyond the statutory time limits. The CIRP of the Corporate Debtor/ Dream Procon Pvt. Ltd. commenced on 06.09.2019. In accordance with Regulation 6(2)(c) of the IBBI (Insolvency Resolution Process

for Corporate Persons) Regulations, 2016 read with Section 15(1)(c) of the Code, the last date for submission of claims was 29.10.2019. The Appellant, who had already participated in the CIRP by filing its earlier claim in respect of a separate loan transaction on 25.10.2019, chose to file the present claim only on 20.10.2020, almost a year later. This delay of 388 days, according to the Respondent, is not only procedurally fatal, but also devoid of any justification, as the Appellant was well aware of the CIRP proceedings and its timelines.

52. The Respondent further emphasizes that by the time the belated claim was filed, the CIRP had advanced significantly and a Resolution Plan had already been approved by the Committee of Creditors with 90.66% voting share in its meeting held on 07.05.2021. It is contended that once the CoC exercises its commercial wisdom to approve a resolution plan, no additional liability can be introduced without upsetting the finality and commercial balance of the process. To reinforce this position, reliance is placed on several judicial pronouncements including '*Deputy Commissioner v. Kiran Shah, Comp. App. (AT)(Ins.) No. 328 of 2021'*, of this Appellate Tribunal, where it was held that the literal language of Section 12 of the Code mandates strict adherence to the time frame it lays down. The Respondent places further reliance upon the judgement of Hon'ble SC in '*RPS Infrastructure Ltd. v. Mukul Kumar & Anr., [(2023) 10 SCC 718]',* wherein the Hon'ble Court reaffirmed that belated claims cannot be accepted or made part of the CIRP and that doing so would compromise the sanctity of timelines and stakeholder expectations.

53. We are inclined to agree with the Respondent's submissions. The IBC is a time-bound statute, whose framework is premised upon predictability, certainty, and strict adherence to procedural milestones. The objective of Section 12 and related regulations is to ensure that insolvency proceedings conclude within a scheduled timeframe ideally within 180 days and, at most, 330 days. Regulation 12(2) of the CIRP Regulations does provide a limited window for admitting claims after the public announcement, provided they are submitted before approval of the resolution plan by the CoC. However, even within this discretionary framework, the claimant must demonstrate diligence, good faith, and absence of prejudice to other stakeholders. None of these factors appear to favour the Appellant in the present case.

54. The Appellant was not a dormant or unaware creditor. It had already submitted a claim for a different transaction in October 2019, acknowledging the existence and schedule of the CIRP. Its failure to file the present claim within the permitted time cannot be attributed to lack of knowledge or external impediments. No explanation—let alone a legally sustainable one—has been offered to justify a delay of 388 days. Even assuming that the Appellant only became aware of its right to enforce the corporate guarantee subsequently, it could have sought directions from the Adjudicating Authority or filed the claim with a proper explanation. It did neither.

55. The IBC is not designed to accommodate open-ended, hydra-headed claims that emerge unpredictably after the CoC has performed its commercial function. In this regard, the Tribunal is guided by the reasoning of the Hon'ble Supreme Court in '*RPS Infrastructure Ltd. v. Mukul Kumar & Anr., (2023) 10*

SCC 718', where it was held that the Code does not permit revival of stale or belated claims once the resolution plan has achieved finality. The Appellant's argument that it should still be allowed to participate merely because the claim arose before plan approval is not tenable. The delay was not minimal or excusable, it was gross, unexplained, and disruptive.

56. In conclusion, we find that the Appellant's claim is barred by limitation. The same cannot be entertained after the approval of the Resolution Plan by the CoC, as doing so would contravene the statutory mandate of Section 12, undermine the resolution process, and prejudice the interests of other stakeholders. The delay in submission of the claim is solely attributable to the Appellant, who was well aware of the timelines and who has already submitted one of his claims well within timeline, but submitted the second one with 388 days delay for which it has no explanation.

Issue III: Whether the Appellant's claim is admissible in the CIRP of the Corporate Debtor considering the admitted claim for the same underlying debt of in the CIRP of IHCPL

57. We now turn to the 3rd issue in this appeal i.e., whether the Appellant, even assuming arguendo the existence of a corporate guarantee, could validly assert a claim for the same debt in the CIRP of the Corporate Debtor (Dream Procon Pvt. Ltd.) despite already having filed and admitted that claim in the CIRP of the principal borrower, Indirapuram Habitat Centre Pvt. Ltd. (IHCPL). The issue is important because even where a guarantee exists, the claim can be rejected, if the right to enforce it has not crystallized, or if admitting it would result in unjust enrichment or procedural abuse.

58. The Appellant contends that it is legally entitled to file claims in both CIRPs; that of the principal borrower (IHCPL) and the guarantor (Dream Procon Pvt. Ltd.). It argues that Section 128 of the Indian Contract Act, 1872 clearly provides that the liability of a guarantor is co-extensive with that of the principal debtor, unless otherwise agreed, and that a creditor can pursue either party or both simultaneously. The Appellant also places reliance on the Insolvency Law Committee (ILC) Report dated 20.02.2020, which clarified that creditors should be allowed to file claims in both CIRPs without fear of duplicity, and that any recovery made in one proceeding would reduce the corresponding amount claimed in the other. The Appellant further submits that a demand for payment i.e., invocation of the guarantee was not necessary prior to the Insolvency Commencement Date (ICD) because the guarantee was a "first demand guarantee" and the default of IHCPL in repaying the loan was sufficient to trigger liability of the guarantor, Dream Procon. In support of its position, the Appellant relies on the judgments of the Hon'ble Supreme Court in '*Laxmi Pat Surana v. Union of India, (2021) 8 SCC 481'* and the NCLAT's decision in '*State Bank of India v. Athena Energy Ventures Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 633 of 2020'*, both of which confirm that insolvency proceedings can be initiated against corporate guarantors even in the absence of direct disbursal of funds to them, and that a valid guarantee suffices to create financial creditor status.

59. The Respondent on the other hand emphasizes that the Appellant had already submitted the very same claim of ₹14.59 crores in the CIRP of IHCPL, the principal borrower, and that it was duly admitted there. The filing of an

identical claim against the guarantor, Dream Procon, without any disclosure of the earlier claim or an adjustment mechanism, constitutes impermissible "double dipping" and is contrary to the spirit and structure of the IBC. The Respondent relies on the ruling in *Piramal Capital & Housing Finance Ltd. v. Hydric Infrastructure Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 851 of 2023,* where the NCLAT held that simultaneous and overlapping claims are not permissible unless recovery in one CIRP is proportionately adjusted in the other. Additionally, the Respondent cites the decisions of Hon'ble SC in *Ghanshyam Mishra & Sons v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657* and of this Appellate Tribunal in *IDBI Trusteeship Services Ltd. v. Abhinav Mukherji & Ors., Company Appeal (AT)(Insolvency) No. 356 of 2022* to emphasize that in the absence of a demand or invocation prior to CIRP, the debt cannot be said to have crystallized for purposes of claim admission.

60. We find that the Appellant had already submitted and secured admission of the ₹14.59 crore claim in the CIRP of IHCPL on 07.09.2019. This fact is not denied. A year later, on 20.10.2020, the Appellant filed the same claim in the CIRP of Dream Procon without disclosing that the earlier claim had been admitted. There was no mechanism proposed for adjusting or reconciling the claims in both CIRPs. The Appellant merely filed the same claim amount twice in two proceedings for the same underlying loan transaction. This, in our view, amounts to impermissible duplication and is contrary to the equitable distribution principle underlying the IBC. We are guided here by the decision of this Appellate tribunal in *Piramal Capital v. Hydric Infrastructure Pvt. Ltd.,(supra),* wherein it was held that a financial

creditor cannot be allowed to enforce the same claim in multiple CIRPs without proper adjustment or coordination. The Report of the Insolvency Law Committee (2020) also clarifies that simultaneous claims are permitted only to the extent that double recovery is avoided. In the present case, the Appellant made no effort to safeguard against such eventuality.

61. We also note that permitting such a duplicated claim would seriously prejudice other stakeholders in Dream Procon's CIRP, including over 500 homebuyers. It would also compromise the discipline and finality of the claims process. The IBC is not a forum for speculative assertion of parallel claims, and its procedural safeguards must be respected by all creditors. The Appellant, being a established financial entity, cannot claim ignorance of this obligation.

62. Having considered the facts, submissions, and applicable law, we find that the Appellant has failed to establish the existence of any valid or enforceable corporate guarantee executed by the Corporate Debtor. Clause 28 of the Master Loan Agreement, without a separate deed or board resolution, does not constitute a financial debt under Section 5(8)(i) of the IBC.

63. The claim was filed after a delay of 388 days and cannot be entertained post-approval of the Resolution Plan by the CoC with 90.66% majority. Further, the alleged guarantee was never invoked prior to the Insolvency Commencement Date, and the same claim had already been admitted in the CIRP of the principal borrower, IHCPL. Filing the identical claim in the CIRP of Dream Procon constitutes impermissible duplication.

64. In view of the above findings, we do not find any infirmity in the impugned order. The appeal is dismissed. Pending I.A.s are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)