

March 28TH, 2025

The BSE Limited Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai- 400001	National Stock Exchange of India Ltd. Exchange Plaza, Plot no. C/1, G Block, Bandra- Kurla Complex, Bandra (East) Mumbai - 400 051
Scrip Code : 534312	Scrip Code: MTEDUCARE

Dear Sir/ Madam,

Sub: Intimation of the pronouncement of the Order passed by Hon'ble National Company Law Tribunal ("NCLT"), Mumbai, in Company Application No. IA No. 68/2024 IN CP No. (IB) 1291/2021

Ref: Regulation 30 read with Schedule III Part A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations")

"Pursuant to the aforesaid SEBI LODR Regulations, we hereby inform that Hon'ble National Company Law Tribunal ("**NCLT**"), Mumbai has pronounced dismissal of Claim of SVC Co-Operative Bank Limited on MT Educare Limited in Corporate Insolvency Resolution Process ("**CIRP**") under the Insolvency and Bankruptcy Code, 2016 (IBC), the detailed copy of the said order (received on 28th March, 2025) received from Hon'ble National Company Law Tribunal, Mumbai is attached.

We request you to kindly take the same on record.

Thanking you

Yours faithfully,

For, MT Educare Limited (In CIRP)

(Arihant Nenawati)

Resolution Professional

IP Reg. No: IBBI/IPA-001/IP-P00456/2017-2018/10799

Email ID: mteducare.cirp@gmail.com

Note: Pursuant to the Order dated 16th December, 2022 of the Hon'ble National Company Law Tribunal, Mumbai ("**NCLT Order**"), Corporate Insolvency Resolution Process ("**CIR Process**") has been initiated against the Company in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, ("**Code**") and related rules and regulations issued thereunder with effect from 16th December, 2022 (Corporate Insolvency Resolution Process Commencement Date). Mr. Ashwin Bhavanji Shah has been appointed as Interim Resolution Professional ("**IRP**") in terms of the NCLT Order, IRP has constituted Committee of Creditors on 21-08-2023. previously, IRP was performing function as Resolution Professional under regulation 17(3) of CIRP of IBBI, however on 22nd January, 2024, Mr. Arihant Nenawati were appointed as New Resolution Professional in the application filed by Prudent ARC by the Hob'ble NCLT, Mumbai Bench.

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A No.68/2024

IN

CP No.1291/2021

(Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016).

SVC Co-operative Bank Limited

Having Corporate Office at:
SVC Tower, Jawaharlal Nehru Road,
Vakola, Santacruz (East),
Mumbai - 400 055.

...Applicant

Vs

Mr. Ashwin Bhawanji Shah

Resolution Professional of MT Educare Limited
220, 2nd Floor, Neptune's Flying Colors,
Near Check Naka Bus Depot,
L.B.S. Cross Road, Mulund (W),
Mumbai - 400080.

...Respondent

In the matter of

Connect Residuary Pvt Ltd

...Operational Creditor

Vs.

MT Educare Limited

...Corporate Debtor

Order pronounced on: 27.03.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)



Appearances:

For the Applicant: Adv.Pradeep Sancheti, Adv. Kunal Kunungo, Adv. Tanushree Sogani, Adv. Athishay Jain

For the Respondent Sr. Counsel Adv. Gaurav Joshi, Counsel Shyam Kapadia, Adv.Ashish Pyasi, Adv.Aditya Krishnan, Adv. Anjali Shahi i/b Aendri Legal.

PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

ORDER

1. The instant application has been filed by SVC Co-operative Bank Limited, (**“The Applicant”**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**), read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - a) *To allow the present Interlocutory Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016;*
 - b) *To direct the Respondent to admit the claim of the Applicant as lodged vide Form C dated 06.10.2023;*
 - c) *To quash and set aside Impugned communication dated 03.11.2023 @ 06.56 issued by the Respondent rejecting the claim of the Applicant;*
 - d) *To pass such orders and further orders as this Hon’ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*



Brief Facts:

2. The Applicant sanctioned a term loan of Rs. 4100 lakhs to Labh Ventures India Pvt. Ltd. (**'LVIPL'**), a wholly owned subsidiary of MT Educare Limited (**'Corporate Debtor'**) for which the corporate debtor created Security Interest in favour of the Applicant - Securitization of Lease Rentals receivable by from Corporate Debtor & EM/ Registered Mortgage of premises of Mahesh Pre-University College, located at Door No.1-18/50 to 1-18/54, Near Koltara Chowki, Bangra Kuloor, Kuloor Post, Mangalore 575013 admeasuring 138303.19 square feet. Pursuant thereto various documents were executed between LVIPL, Applicant and the Corporate Debtor.
3. Thereafter, the said term loan to LVIPL was reviewed and further Term Loan of Rs. 375 lakhs was sanctioned against mortgage of College and Hostel building situated at Mangalore repayable by assignment of lease rentals received from Corporate Debtor thereby raising the total funded limit to LVIPL.
4. Further, LVIPL applied for restructuring of the loan facilities in view of Covid 19 restructuring framework. Accordingly, vide sanction letter dated 22.03.2021 interalia the said loans were restructured and fresh FITL Loan of Rs.306 lakhs was sanctioned.
5. A Deed of Corporate Guarantee dated 31.03.2021 was executed by the Corporate Debtor in favour of the Applicant qua the loan facilities availed by LVIPL.
6. Subsequently, upon an application filed by an operational creditor under Section 9 of the Code the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**"CIRP"**) vide order dated 16.12.2022 passed by this Tribunal and Mr. Ashwin Bhawanji Shah was appointed as the IRP.



7. The admission order dated 16.12.2022 was challenged by way of an appeal in which interim order dated 06.01.2023 granted stay on formation of Committee of Creditors ("**COC**") which continued until the dismissal of the said Appeal on 18.07.2023.
8. In the meantime, the loan account to subsidiary of the corporate debtor LVIPL was classified as Non-Performing Asset ("**NPA**") on 29.05.2023 and a notice dated 01.08.2023 under section 13(2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**") was issued to LVIPL, Corporate Debtor & other individuals to which a reply was filed on 03.09.2023.
9. The Applicant thereafter filed its claim in Form C dated 06.10.2023 with the erstwhile Resolution Professional for an amount of Rs. 49,72,95,953.67 as on 31.07.2023 along with running interest from 01.08.2023 until payment thereof. The erstwhile Resolution Professional vide his email dated 11.10.2023 sought certain clarifications which were duly replied to by the Applicant vide its email dated 16.10.2023.
10. Thereafter, further clarification was sought by the Respondent vide his email dated 17.10.2023 and 30.10.2023 to which a reply was given by the Applicant email dated 31.10.2023.
11. The Respondent thereafter, vide impugned communication dated 03.11.2023 rejected the claim of the Applicant stating that the applicant has neither invoked corporate guarantee issued by corporate debtor nor has issued any demand notice on or before 16.12.2022 i.e. Insolvency Commencement date. Therefore, there are no dues outstanding against Corporate debtor.



12. As the said claim of the Applicant was rejected by IRP, the Applicant has filed the present Interlocutory Application seeking admission of its claims as per the reliefs reproduced in para 1 above.
13. While the present application was pending, the erstwhile Resolution Professional was replaced by Mr. Arihant Nenawati vide order dated 22.01.2024.
14. Further, on 07.02.2024, the Applicant has filed proceedings under Section 14 of SARFESI Act before the Magistrate Court. The Magistrate Court directed the Applicant to take possession of the property situated at Door No 1-18/50, 1-18/51, 1-18/52, 1-18/53, 1-18/54 Near Kottara Chowki, Bangrakuloor, Kuloor Post, Mangalore – 575013 (**‘the subject property’**).
15. The Respondent sent an email dated 18.03.2024 stating that the Corporate Debtor to whom the said property was leased out, is undergoing CIRP therefore, no steps can be taken for taking away possession of the Property which is in possession of the corporate debtor and filed I.A 3314 of 2024 seeking directions of this tribunal to handover the possession of the property.

Submissions by the Applicant:

16. The Applicant has submitted following grounds for challenging the decision of the Resolution Professional to reject its claims:
 - 16.1 It is a completely non-justiciable stand that the Applicant cannot be considered as a creditor of the Corporate Debtor because the corporate guarantee was not invoked prior to the CIRP Admission Order.
 - 16.2 The maturity of claim or invocation of guarantee has no nexus with filing of claim by a Financial Creditor. On the contrary, it is the duty of the Respondent to collate all the claims and to verify the same from



the records of assets and liabilities maintained by the Corporate Debtor.

16.3 Admittedly, the guarantee stood invoked during moratorium period but there is no bar under section 14 in relation to filing of claims and the Respondent has grossly erred in rejecting the claims of the Claimant.

16.4 Upon a conjoint reading of the definitions of "Claim", "Debt", "Default" & "Financial Debt" as given under the Code it is crystal clear that the Applicant is a Financial Creditor and its claim ought to have been admitted by the Respondent.

Reply by the Respondent:

17. It is submitted that upon receipt of claim of the Applicant amounting to Rs.49,72,95,953.67/-, the erstwhile Resolution Professional vide its email dated 11.10.2023 called for information and documents as Form C submitted by the Applicant was incomplete. The erstwhile Resolution Professional also highlighted the fact that the amount of claim is to be calculated till 16.12.2022 i.e. the date of insolvency commencement, and not as on 31.07.2023. The Erstwhile Resolution Professional also sought response of the Applicant to the principal borrower letter dated 03.09.2023 challenging demand notice issued by the Applicant in August 2023 and stated that if any amount is due, from the Corporate Debtor on the date of insolvency commencement i.e. 16.12.2022 on account of liability emerging from such corporate guarantee shall be admissible.

18. The Applicant vide its email dated 16.10.2023 provided additional information to the erstwhile Resolution Professional however, as the same was not satisfactory and key elements from the claim form were still missing, therefore the erstwhile Resolution Professional once again



vide its email dated 17.10.2023 asked clarifications with respect to the unanswered and unexplained issues.

19. Further the Respondent vide its email dated 30.10.2023 gave final opportunity to the Applicant to submit its claim on or before 02.11.2023. The Applicant vide its email dated 31.10.2023 provided amount as on 16.12.2022 with interest, however, the Applicant failed to provide response to letter dated 03.09.2023. Therefore, the erstwhile Resolution Professional vide its email dated 03.11.2023 rejected the claim of the Applicant.
20. From the reply dated 26.09.2023 of the Applicant, it was ascertained that the interest liability till 31.12.2022 payable by the wholly owned subsidiary of the Corporate Debtor namely LVIPL was funded through Funded Interest Term Loan (FITL) and accordingly there is no default by the Principal Borrower till 31.12.2022 as the Applicant has on its own allowed interest due to be adjusted to FITL.
21. In view of the above facts it was contended that the present Application is not maintainable as Corporate Guarantee was not invoked by the Applicant prior or at the time of initiation of CIRP against the Corporate Debtor. As per the provisions of Section 14 of the Code, no action can be undertaken for recovery against the Corporate Debtor, nor can any security interest be enforced against the Corporate Debtor. In the present case, invocation of the corporate guarantee has been done at a time when moratorium was applicable on the Corporate Debtor.
22. As per Regulation 13 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; the Resolution Professional is required to verify and collate the claims which have become due as on the Insolvency Commencement Date. However, when the CIRP had commenced against the Corporate Debtor, there was no default made



by the Principal Borrower as the corporate guarantee remained uninvoked on the commencement of insolvency proceedings.

Rejoinder on Behalf of the Applicant dated 16.04.2024:

23. In rejoinder the Applicant submitted that the Corporate Debtor is the corporate guarantor, who is the surety in a contract of guarantee. The liability of the guarantor is coextensive with that of the principal borrower i.e., LVIPL in the present case and the remedy under the ("Code") is not for recovery of the amount, but is for reorganisation and insolvency resolution of the Corporate Debtor who is not in a position to pay its debt. The clauses of the Deed of Corporate Guarantee dated 31.03. 2021 also explicitly provide that the Corporate Debtor herein be treated as a principal borrower for the purposes of the Deed of Guarantee.
24. The Respondent has usurped the jurisdiction of the Hon'ble Tribunal and performed a wholly adjudicatory function.

OBSERVATIONS & FINDINGS

25. Heard Ld. Counsel for the parties. We have given our thoughtful consideration to the arguments advanced by the parties on both the sides and perused the record.
26. We note that the CIRP of the Corporate Debtor commenced on 16.12.2022. It is undisputed position that till the date of commencement of the Moratorium under Section 14 of the Code, the Applicant had not invoked the Guarantee issued by the Corporate Debtor. It is the case of the Applicant that vide notice dated 01.08.2023 under Section 13(2) of the SARFESI Act, the guarantee issued by corporate debtor stood invoked, even if the invocation was after commencement of moratorium.



27. Based on the submissions made by the parties, the issue for consideration is whether the Guarantee issued by the corporate debtor can be invoked after commencement of moratorium under section 14 of the Code imposed on the corporate debtor?
28. It was submitted that the liability of the surety is co-extensive to that of the principal borrower. The clauses of the Deed of Corporate Guarantee dated 31.03.2021 also explicitly provide that the Corporate Debtor herein be treated as a principal borrower for the purposes of the Deed of Guarantee. The loan account of the principal borrower was classified as NPA on 29.05.2023 and the guarantee stood invoked on 01.08.2023. Once the guarantee is invoked the corporate debtor is liable to make the payment to the Applicant and thus the Applicant's claim must be considered and the Applicant be treated as the financial creditor.
29. The Applicant relied on the judgement passed by Hon'ble NCLAT in the case **of Export Import Bank of India vs. Resolution Professional of JEKPL Pvt. Ltd. 2018 SCC Online NCLAT 465** where the issue involved about was about recognition /admission of a claim arising of invocation of Bank Guarantee subsequent to commencement to CIRP. In this context the Hon'ble NCLAT held that:
- A. that the maturity or default of a claim is irrelevant for filing claims during the CIRP, as all creditors, whether financial, operational, secured, or unsecured, are entitled to file claims pursuant to public announcements under Sections 13(1)(b) and 15(1)(c) of the Code;*
- B. that the RP is obligated under Sections 18(1) and 25(2)(e) of Code to collate and update all claims, regardless of their maturity or default status, based on the financial records of the Corporate Debtor.*



30. The Applicant Bank had made a reference to the order passed by the Hon'ble NCLAT in the matter of ***Export Import Bank of India Vs. Resolution Professional, JEKPL Pvt. Ltd (2018 SCC Online NCLAT 465.***
31. Per Contra the Respondent has submitted that the provisions of Section 14 of the Code, states that once moratorium has been declared; no action can be undertaken for recovery against the Corporate Debtor, nor can any security interest created by the Corporate Debtor be enforced against it. He has relied on the following cases:
- i. IDBI Trustees/zip Services Limited Vs. Abhinav Mukherji and Ors. (2022 SCC 011/Online NCLAT 267)***
 - ii. Export Import Bank of India Vs. Resolution Professional, JEKPL Pvt. Ltd (2018 SCC Online NCLAT 465);***
 - iii. Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited (2021 9 SCC 657).***
 - iv. Cable Corporation of India Vs. State Bank of India (IA 1798/2022 & IA 1882/2022 in CP IB 361/2021).***
 - v. Edelweiss Asset Reconstruction Company Limited Vs. Orissa Manganese and Minerals Limited and Ors. (2019 SCC Online NCLAT 764).***
32. The issue involved in the present case has been decided on 06.02.2025 by Hon'ble National Company Law Appellate Tribunal ('the Appellate Tribunal') in the case of ***Ankur Kumar vs Sustainable Agro Commercial Financial Limited 2025 SCC Online NCLAT 278*** wherein it is held that no claim can be accepted in CIRP on the basis of guarantee having been invoked subsequent to initiation of CIRP. This judgement of Hon'ble NCLAT considers all the submissions made by the Applicant herein, the case of ***JEKPL Pvt. Ltd*** (supra) and judgements by Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private***



Limited Vs. Edelweiss Asset Reconstruction Company Limited (2021 9 SCC 657). It would be profitable to reproduce relevant paragraphs from the judgement of Ankur Kumar vs Sustainable supra.

“11. The first question which has arisen in the present Appeal for consideration is as to whether the Respondent could have invoked the guarantee after initiation of the CIRP process against the Corporate Debtor which invocation was basis for filing of the claim by the Respondent.”

33. Thereafter the Appellate Tribunal referred to definition ‘security interest’ and concluded that security interest is an inclusive definition by execution of guarantee by corporate Debtor, a security interest is created and the corporate debtor is obliged to secure payment or performance of the obligation.
34. Thereafter the Hon’ble Appellate Tribunal also referred to Section 14 of the Code dealing with moratorium and to the judgement of Hon’ble Supreme Court in the case of **Rajendra K butta vs Maharashtra Housing and area Development Authority 2020 13 SCC 208** wherein Hon’ble Supreme court held that after enforcement of moratorium, statutory freeze comes into operation.
35. The Hon’ble Appellate Authority has then discussed its own judgement in the case of **IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji Company Appeal (AT) (Insolvency) No. 356 of 2022** wherein one of the issues was whether the Appellant can make a ‘Claim’ on the basis of the ‘Guarantee Deed’ which was never invoked pre-commencement of the CIRP, and remained uninvoked even as on the date of filing of the ‘Claim’,
36. The Hon'ble Appellate Tribunal then refereed to and relied on the judgement of the Hon’ble Supreme Court in **“Ghanshyam Mishra and**



Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657 and the judgment of Edelweiss Asset Reconstruction Company Ltd. v. Orissa Manganese and Minerals Ltd., 2019 SCC Online NCLAT 764 and noticed interalia paragraph 27 of that order which states as follows:

"27. It is seen from the aforementioned Judgment that an uninvoked Corporate Guarantee cannot be considered as a Matured Claim'. In para 133 of the aforementioned Judgment the Hon'ble Supreme Court has upheld the finding of the Adjudicating Authority that once the moratorium was applied under Section 14 of the Code, a Corporate Guarantee cannot be invoked.

37. The Hon'ble Appellate Court further notes that Hon'ble Supreme Court has found that Orissa Manganese and Minerals Ltd guarantee had not been invoked by Edelweiss Asset Reconstruction Company Ltd till the date of completion of CIRP process and once the moratorium was imposed it could not invoke corporate guarantee.

38. Following para from the above judgement need to be noted:

23. From the above judgment indicated that the view taken by the NELT in the above case that the guarantee could not have been invoked after initiation of the CIRP was upheld by the Hon'ble Supreme Court after noticing the submission of Counsel for EARC relying on the judgment of this Tribunal in "Export Import Bank of India v. JEKPL (P Ltd." (supra).

25. It is to be noted that the above judgment in "Edelweiss Asset Reconstruction Company Ltd. v. Orissa Manganese and Minerals Ltd." (supra) was by the same Bench which



decided "Export Import Bank of India v. JEKPL (P) Ltd." (supra) case. Subsequently this Tribunal in "IDBI Trusteeship Services Limited" (supra) after noticing all the judgments of this Tribunal as well as the judgment of the Hon'ble Supreme Court in "Ghanshyam Mishra and Sons Pvt. Ltd." (supra) has taken the view that on the basis of uninvoked guarantee prior to initiation of the CIRP, no claim can be admitted.

29. In view of the foregoing discussions, we are of the view that when the Respondent having invoked the guarantee on 18.09.2020 i.e. subsequent to initiation of the CIRP, on the basis of said invocation no claim could have been accepted in the CIRP."

39. In view of the clear law laid down by the Hon'ble Appellate Tribunal, as discussed above we have no hesitation to conclude that the wthe Guarantee issued by the corporate debtor could not have been invoked by the Applicant after commencement of moratorium under section 14 of the Code which imposes a statutory freeze on the account of the Corporate Debtor hence the question is answer in negative.
40. As the Applicant could not have invoked the guarantee after imposition of statutory freeze due to moratorium under Section 14, no claim can be admitted by the Resolution Professional on the basis of such invocation of guarantee post commencement of CIRP.
41. The erstwhile RP had also filed an I.A. No. 3314 of 2024 against the Applicant seeking following prayers:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A.68/2024 in C.P. No. (IB) 1291/2021



- i. Directions of this tribunal to issue an order restraining the Applicant or any party through or under them from disrupting the peaceful and continuous possession of the subject Property.
 - ii. To declare by the way of any order that the leasehold right of the Corporate Debtor over the subject property constitutes as integral part of the estate of the Corporate Debtor.
 - iii. That during the pendency and final hearing the Tribunal be pleased to declare by way of an order status quo ante as it existed prior to order.
 - iv. To pass any such other directions as this Tribunal may deem fit and proper and convenient in interest of the Corporate Insolvency Resolution Process of the Corporate Debtor.
42. Further, during the course of the hearing on 03.03.2024 Ld. Counsel for the Resolution Professional submitted that he has instructions to withdraw the I.A.3314 of 2024 and accordingly the said I.A was dismissed as withdrawn.
43. It is pertinent to point out that in the written submissions it was submitted that Respondent is obliged to run the business as a going concern under Section 17(2) read with Section 18(a) (b) read with Section 20(2) read with Section 25(2) (e) and the lease amount payable by the Corporate Debtor should be considered as a part of CIRP costs under Section 5(13) read with Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. However, no such case was pleaded in the Application. Therefore, we are unable to consider the submissions which are beyond the pleadings. Also in IA No. 3314 of 2024 being withdrawn, there is no need to consider this submission in this IA, at this stage.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
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44. Accordingly, **I.A.68 OF 2024** is dismissed and disposed of.

SD/-

SD/-

Charanjeet Singh Gulati

Lakshmi Gurung

Member (Technical)

Member (Judicial)

Apurva LRA