IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) No. 291 of 2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Omkara Asset Reconstruction Private Limited

… **Financial Creditor/Petitioner**

Versus

Gstaad Hotels Private Limited

… **Corporate Debtor/Respondent**

Order Delivered On : 08.07.2025

Coram:

Hon'ble Member (Judicial) : Sh. Justice Virendrasingh G Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Adv. Mr. Prateek Seskaria, Adv. Ryan D'Souza a/w. Adv. Zaid Mansuri, Adv. Prateek Kumar

For the Corporate Debtor : Adv. Aditya Joby, Adv. Ajesh Kumar Shankar, Adv Shrihari S., Adv. Sunche Bhandary

ORDER

Brief Background

1. A Company Petition **C.P. (IB) No. 291/2023** was filed on 09.03.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC/Code**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Omkara Assets Reconstruction Private Limited** [CIN:U67100TZ2014PTC020363] ("**hereinafter referred to as Applicant/ Financial Creditor**"), seeking to initiate Corporate Insolvency Resolution Process ("**CIRP"**) against **M/s. Gstaad Hotels Private Limited** [CIN:U55101MH2003PTC143481] ("**hereinafter referred to as Respondent/Corporate Debtor**"). This Application was filed by the Financial Creditor, pursuant to rights in respect of the outstanding amounts assigned in favour of the Financial Creditor by Piramal Capital and Housing Finance Limited ("**PCHFL**") and PHL Fininvest Private Limited (**later known as "Piramal Enterprises Limited" consequent to Scheme of Arrangement approved vide Order dated 12.8.2022, referred to as PEL/PHL**) vide a Deed of Assignment dated 27.12.2022. Prior to this, PCHFL had assigned its rights in respect of part of outstandings due from Corporate Debtor in favour of PHL vide Assignment Deed dated 22.3.2019.

1.1. This Tribunal admitted the Corporate Debtor into CIRP vide Order dated 09.01.2024 and declaring the Moratorium u/s 14 of the Code. This Order was challenged by Deepak Raheja, the shareholder of the Corporate Debtor, before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"). The Hon'ble NCLAT, vide its common Order dated 08.01.2025 passed in appeal against the admission order in this Petition as well CP(IB) No. 290/2023, allowed the appeal and issued following directions:

"64. In view of the foregoing discussions and our conclusions, we dispose of both the Appeal(s) in following manner:

(1) Company Appeal (AT) (Ins.) No. 165 of 2024 is allowed. The impugned order dated 09.01.2024 passed in C.P.(IB) No.291/MB/2023 is set aside.

(2) C.P.(IB) No.291/MB/2023 is revived to be considered afresh after hearing the parties.

(3) Company Appeal (AT) (Ins.) No. 212 of 2024 is allowed. The impugned order dated 09.01.2024 passed in C.P.(IB) No.290/MB/2023 is set aside.

(4) C.P.(IB) No.290/MB/2023 is revived before the Adjudicating Authority to be heard and decided afresh after hearing the parties.

(5) The IRP may utilize the amount, which is kept in the Fixed Deposit by the IRP out of the Retention Account towards the payment of the CIRP costs and rest of the amount received after 09.01.2024 be remitted to the Financial Creditors towards their debts and dues.

65. We make it clear that while deciding these Appeal(s), we are not expressing any conclusive opinion on any of the issues, which are yet to be decided by the Adjudicating Authority consequent to this remand order. Parties shall bear their own costs."

1.2. Accordingly, this matter was taken up again by this Tribunal for passing appropriate order(s) after hearing the parties. The Learned Counsel for the both the parties made extensive arguments and both the parties placed on record their additional pleadings as well.

2. Before we proceed further, it would be beneficial to state brief facts of the case leading to filing of present Petition by the Financial Creditor under Section 7 of the Code.

2.1. <u>Loan of Rs. 450 Crores :</u>

2.1.1. Pursuant to a Loan Agreement, dated 26.12.2017, Piramal Finance Limited, as it was then known (now known as Piramal Capital and Housing Finance Limited and referred to as "**PCHFL**", consequent to scheme of arrangement approved vide order dated 06.04.2018), as lender, agreed to extend a rupee term loan facility amounting to Rs. 600,00,00,000/- (Rupees Six Hundred Crore Only) to the Corporate Debtor and Neo Capricorn Plaza Private Limited ("**Neo/NCPPL/Corporate Debtor in CP (IB) 290 of 2023**") as borrowers ("**Loan Agreement**") with certain terms and conditions. Out of this, the Corporate Debtor was granted a term loan of Rs. 450.00 Crores and a Rolling Credit Facility ("**RCF**") of Rs. 50.00 Crores.

2.1.2. A Security Trustee Agreement, dated 26.12.2017, was entered into between the Corporate Debtor, Neo, PCHFL and IDBI Trusteeship Services Limited ("**IDBI**") appointing IDBI as Security Trustee in respect of the Loans.

2.1.3. Subsequently, a Deed of Guarantee, dated 26.12.2017, was executed by Mr. Deepak Raheja, Mrs. Anita Raheja, Mr. Aditya and Shiv Raheja and Advantage Raheja Hotels Private Limited in favour of IDBI guaranteeing repayment of the Loan.

2.1.4. Afterwards, on 26.12.2017, the Corporate Debtor and Neo executed a Demand Promissory Note for an amount of Rs. 600,00,00,000/- (Rupees Six Hundred Crore Only) in favour of Security Trustee. Thereafter, on 22.03. 2019 and 24.06.2019, a part of the Loan was assigned by PCHFL to PHL. On 01.02.2018, the Corporate Debtor also created a mortgage over the land in Bangalore.

2.1.5. A Cash Management Agreement dated 16.1.2018 ("**CMA**") was also entered into between PCHFL, Corporate Debtor and the Hotel Operator.

2.2. **ECLGS Scheme facility :**

2.2.1. In addition to the Loan of Rs. 600 Crores, PHL also sanctioned two loans to the Corporate Debtor under Emergency Credit Line Guarantee Scheme ("**ECLGS Scheme"**); ECLGS Facility-1 and ECLGS Facility-2. The Corporate Debtor availed ECLGS Facility-1 and ECLGS Facility-2 on 29.12.2020, and 11.03.2022, respectively.

2.2.2. In respect of the ECLGS Facility-1, dated 29.12.2020, the Corporate Debtor, IDBI and PHL executed a Security Trustee Agreement appointing IDBI as a Security Trustee and a Demand Promissory Note for an amount of Rs. 98,00,00,000/- (Rupees Ninety-Eight Crore only) in favour of IDBI. With regard to the ECLGS Facility-2, the Corporate Debtor, executed a Demand Promissory Note, dated 11.03.2022, for an amount of Rs. 65,00,00,000/- (Rupees Sixty-Five Crore only) and also hypothecated certain movable properties in favour of the Security Trustee.

2.3. Defaults

2.3.1. The Corporate Debtor, on 15.11.2022, defaulted in favour of the ECLGS Facility-1 and ECLGS Facility-2. Consequent to the default committed by the Corporate Debtor under the Loan Agreement, ECLGS Facility-1 and ECLGS Facility-2, the Financial Creditor issued a recall notice dated 15.02.2023, recalling the whole of outstanding amounts and calling upon the Corporate Debtor to pay an amount of Rs. 666,53,26,968/- (Rupees Six-Hundred and Sixty-Six Crores Fifty Three Lakhs Twenty-Six Thousand Nine Hundred

and Sixty-Eight Only) within 3 days from the date of receipt of such notice.

2.3.2. The Petitioner claimed a default of total amount of Rs. 665,74,77,237/- (Rupees Six Hundred and Sixty-Five Crores Seventy Four Lakhs Seventy-Seven Thousand Two Hundred and Thirty-Seven Only) as on 27.02.2023 in the Part IV of the Petition. The date of default in respect of Loan, ECLGS facility -1 and ECLGS facility -2 is stated to be 15.11.2022.

2.4. In addition, and without prejudice, it is also stated by the Petitioner that the Corporate Debtor and Neo addressed two letters dated 23.12.2022 and 11.01.2023 to PCHFL and PEL pertaining to, inter-alia, alleged non-disbursal of balance ECLGS amount and requesting for consideration of an One-Time Settlement, which are stated to have been responded by PCHFL and PEL vide their letter dated 14.02.2023.

3. Earlier, consequent to the default of Corporate Debtor in the month of 10.08.2021, IDBI Trusteeship Services Limited had filed a Company Petition bearing CP (IB) No. 1292 of 2021 before this Tribunal seeking initiation of CIRP and the same was subsequently withdrawn by it in terms of order dated 13.12.2022. Column 2 of the Part IV of that Application states "*As on July 28, 2021, the total amount claimed to be in default is Rs.510,82,73,829 (Rupees Five Hundred and Ten Crore, Eighty Two Lakhs, Seventy Three Thousand, Eight Hundred and Twenty Nine Only) which is due and payable. Date of Default is April 15, 2021, the date on which the Corporate Debtor defaulted in payment of interest and default interest. Subsequent default on May 15, 2021*. The default amounts as computed at Exhibit M of said Application is reproduced below :

Sr. No.	Component	PCHFL (in INR)	PHL Finvest (in INR)
1.	Principal	94,57,45,052	409,85,27,730
2.	Overdue Interest	-	3,16,61,859
3.	Default Interest	14,62,517	75,20,997
4.	Accrued Interest from July 16 – July 28, 2021	43,78,929	1,89,76,745
	Total	**510,82,73,829**	

4. Before we proceed further to examine the matter, it is relevant to take note of the **observations of the Hon'ble NCLAT in its Order dated 8.1.2025 while setting aside the Order dated 09.01.2024 passed by this Tribunal earlier**-

   a. In relation to validity of assignment agreement, it has been stated that "*The prayer of the Appellant before the High court having not been accepted, questioning the assignment dated 27.12.2022, we are of the view that no fault can be found in the assignment at this stage.*"

   b. On the issue of Res-judicata, it has been stated that "*The default in the aforesaid proceedings was default of Loan Agreement dated 27.12.2017. Section 7 Application, which has given rise to present Appeal has been filed alleging default of ECLGS-1 and ECLGS-2. In the earlier Section 7 Application initiated by IDBI Trusteeship Ltd., the ECLGS Facilities were not subject of consideration, nor the Applications were founded on any default under ECLGS Facility. Hence, we are of the view that the Applications – CP(IB) No.291/MB/2023 and CP(IB)No.290/MB/2023, cannot be held to be barred by the principle of res-judicata.*" However, the Hon'ble NCLAT observed that

      "(i) Section 7 Application, which was filed by IDBI Trusteeship Ltd. on behalf of the Lenders was withdrawn on 13.12.2022 and 22.12.2022 and it is to be presumed that on the date when

Application was withdrawn, there was no need for insolvency resolution process of the CD. It is to be noted that while withdrawing Section 7 Application, neither any reasons have been given for withdrawal, nor any liberty was given to file a fresh application.
(ii) Immediately after withdrawal of Section 7 Application, the debt was assigned by Lenders to Omkara on 27.12.2022, who issued recall notice on 15.02.2023 and filed Section 7 Application on 09.03.2023, claiming debt and default as on 15.11.2022, which date was prior to withdrawal of Section 7 Application.",

and has stated that *"The above fact raises question on the object and motive of Omkara to initiate CIRP against the CDs, which also needs consideration."*

c. As regards Corporate Debtor being a solvent company, the Hon'ble NCLAT has stated that "*23. Be that as it may, the above facts clearly support the submission that both the Hotels were running Hotels and earning revenue and payments were made to the Lenders even during Covid-19 period and thereafter. The Lenders, who have given finances to the Corporate Debtor for a Project, are also obliged to support the Corporate Debtor in running the business and extend their helping hand to the Corporate Debtor. The object of IBC is insolvency resolution. We, thus, find substance in the submissions of the Appellant that JW Marriott Hotel and Crown Plaza Hotel, which are run by the Corporate Debtors were profitable Companies, earning substantial profits.*"

d. As regards non-consideration of CMA Agreement, the Hon'ble NCLAT has stated that "*We are of the view that the Adjudicating Authority is required to consider Section 7 Application afresh, after taking into consideration various clauses of the CMA and consequently remittance of the amount towards repayment of the loan in the Retention Account.*"

e. As regards the Debt Service Reserve Amount ("**DSRA**") stipulated in Clause 9 of Agreement dated 26.12.2017, the Hon'ble NCLAT has stated that "*The Lenders were obliged to maintain Debt Service Reserve ("DSRA") amount as per the Loan Agreement dated 26.12.2017, which amount was required to be appropriated towards payment of principal and interest due under the Loan Agreement.*"

f. As regards contention of the Corporate Debtor that ECLGS credit proceeds were used towards servicing of interest outstanding on the Loan Account, the Hon'ble NCLAT has stated that "*The amounts sanctioned by Lenders under ECLGS-1 and ECLGS-2 of Rs.98 crores and Rs.65 crores, whether the said amount was used by the Lenders for servicing its own debts or dues, contrary to the Agreement dated 30.12.2020 and 21.03.2022, was required to be considered by the Adjudicating Authority and the said argument raised on behalf of the CD, could not have been brushed aside on the ground that end use Certificate was given by the CD.*"

g. In relation to defaults under ECLGS-1 & 2 facility, the Hon'ble NCLAT, after taking note of Review Report placed on record by the Corporate Debtor vide Additional Affidavit thereafter, has stated that "*Thus, we are of the view that for determining the default even for ECLGS Facility, the Adjudicating Authority has to consider all aspect of the matter, including excess payment under Facility-1 and Facility-2 and unused DSRA and only after considering all relevant facts, findings regarding default of ECLGS could have been given. The findings of the Adjudicating Authority with regard to default under ECLGS-1 has been returned in paragraph-16 of the order. Except the observation "54…….Nonetheless the default in relation to the outstanding loan and ECLGS-I is clearly established", neither there is any reason given, nor there is consideration of any material facts on the record for coming to the said finding. The finding returned by the Adjudicating Authority regarding default, thus is without considering of the materials on the record and are unsustainable. We have already held that DSRA was also required to be*

looked into, which has not even adverted to by the Adjudicating Authority. We, thus, are of the view that the Adjudicating Authority is required to consider the default of ECLGS and loan account, afresh, after considering the relevant materials on record, including the observations as made in this order."

h. As regards proof of default under the Loan Agreement dated 26.12.2017 and the ECLGS-II sanctioned on 21.03.2022 "*60. As noted above, in Part-IV, except statement that default is committed towards loan account, no details of default have been given and 15.11.2022 has been mentioned as the date of default. Nothing in respect of what was the outstanding amount under the Loan Agreement payable by the CD has been mentioned. We, thus, are of the view that Adjudicating Authority is required to consider the default under the loan account afresh. There being no finding of default regarding ECLGS-2 by the Adjudicating Authority, no further consideration is required with regard to ECLGS-2.*"

5. In view of the aforesaid observations of the Hon'ble NCLAT, both the parties were heard and allowed to file necessary documents before this Tribunal in support of their contention. It is clear from the Appellate Order that this Tribunal has been asked to consider the default of ECLGS and loan account, afresh, after considering the relevant materials on record, including the observations as made in this order, after taking into effect of provisions under CMA and effect of DSRA clause under the Loan Agreement, which is claimed to have resulted into recall of the Loan amounts.

6. The debt in question, is admitted to be in existence in the Audited Financial Statement of the Corporate Debtor for the year ended 31.03.2023, accordingly there is no dispute in relation to existence of debt disbursed by the erstwhile lenders, though the Corporate Debtor has disputed its obligation towards this debt qua the Financial Creditor

herein by challenging the Assignment Agreement dated 27.12.2022 itself.

6.1. The issue in relation to Assignment Agreement has already been decided by Hon'ble Karnataka High Court in favour of Financial Creditor. It is relevant to note the observation of Hon'ble NCLAT in its Order in relation also, which reads as "*The prayer of the Appellant before the High court having not been accepted, questioning the assignment dated 27.12.2022, we are of the view that no fault can be found in the assignment at this stage"*. Further, since, the existence of a debt, per-se, is not in dispute and the repayment of such debt is alleged to be in default pursuant to agreements entered between Corporate Debtor and Assignor lenders, we are also of considered view that the dispute, in relation to assignment of such debt in favour of Financial Creditor before us is not of much relevance at this stage particularly in the light of clause 27.2 of the Loan agreement specifically providing that "*The consent of the Borrowers or any of the Obligors is not required for any assignment, transfer, participation or sub-participation by an Existing Lender of any of its obligations under the Finance Documents"* and absolute right to assign vested in lenders in terms of clause 27.1 of the Loan Agreement. It is pertinent to note that the present Petition is for the resolution of the Corporate Debtor's financial stress and such stress is dehors the person claiming the rights in such debt, and those rights can also be decided at the time of admission of claim of the Financial Creditor in CIRP, if it commences.

6.1.1. Before we deal with specific issues raised by Learned Counsel for the Corporate Debtor in the light of appellate decision in the matter, it is pertinent to first look into whether there is a default in discharge of obligations under ECLGS facilities and Loan Account, considering that the present application has been filed for default amount of Rs. 6,65,74,77,237/- (stated to be due as on 27.02.2023)

arising from the issuance of Recall Notice dated 15.02.2023, whereby the Corporate Debtor was called upon to pay Rs. 666,53,26,968/- within 3 days from the date of receipt of such notice on account of default in respect of Loan, ECLGS facility -1 and ECLGS facility -2. The details of outstanding facilities as on 15.02.2023 are stated as below in the said notice.

Lender	Principal (INR)	Coupon (INR)	Default Interest (INR)	Total Overdue Amount (INR)
Lender (erstwhile PCHFL)	40,58,21,785	1,49,95,232	33,04,618	42,41,21,635
Lender (erstwhile PEL)	3,93,41,71,253	7,30,83,487	3,14,36,221	4,03,86,90,961
Lender (erstwhile PCHFL)	52,30,75,832	1,93,27,802	36,26,649	54,60,30,283
Lender (erstwhile PEL)	77,58,33,330	1,74,34,155	-	79,32,67,485
Lender (erstwhile PEL)	65,00,00,000	96,75,960	-	65,96,75,960
Total	**6,28,89,02,200**	**13,45,16,636**	**3,83,67,488**	**6,46,17,86,324**
TDS Pending including penal charges on pending TDS				20,35,40,644
Total Outstanding as on 15th February, 2023				**6,66,53,26,968**

6.1.2. In Section 2 of Part IV, the date of default in relation to default under ECLGS facility -1 and ECLGS facility -2 is stated to be 15.11.2022. It is also noted that the total outstanding has also been claimed in default as on 27.02.2023 pursuant to recall notice. For this purpose, it is pertinent to understand whether an event of default has taken place in terms of the repayment obligations and the repayment mechanism under the agreements entered into between the parties in terms of relevant clauses under various agreements. The details of total default in respect of each facility, as stated in Exhibit V of the application, are as below:-

Name of the Party	Erstwhile Lender	Outstanding	Accrued Interest but not due (Gross)	Penalty (Gross)	Total
GSTAAD Hotels Pvt Ltd - 450 Crs	PCHFL	40,58,21,785	1,67,96,413	31,45,822	42,57,64,020
GSTAAD Hotels Pvt Ltd (TL) - 50 Crs	PCHFL	52,30,75,832	2,16,49,401	34,11,694	54,81,36,927
GSTAAD Hotels Pvt Ltd - 450 Crs	PEL	3,93,41,71,253	6,67,41,902	2,92,02,769	4,03,01,15,924
Gstaad Hotels Pvt Ltd - 98 Crs - ECLGS	PEL	77,58,33,330	1,58,05,442	-	79,16,38,772
Gstaad Hotels Pvt Ltd - 65 Crs - ECLGS	PEL	65,00,00,000	82,80,948	-	65,82,80,948
Total	PCHFL	**6,28,89,02,200**	**12,92,74,106**	**3,57,60,285**	**6,45,39,36,591**
TDS Pending and Penalty on TDS Pending					**20,35,40,646**
Total O/S (as on 27th February 2023)					**6,65,74,77,237**

6.2. The Lenders and Corporate Debtor had entered into a Loan agreement dated 26.12.2017, which also contains an Escrow Arrangement between the parties as Annexure 3 thereof. Further, a Cash Management Agreement dated 17.1.2018 was entered into amongst the Lenders, Corporate Debtor and Operator of the Hotel Properties, which is defined in First Schedule to the Loan Agreement to mean "*the agreement executed on or about the date hereof between GHPL, Marriott Hotels India Private Limited (as the operator), Global Hospitality Licensing S.À R.L. (as GHL), Renaissance Services B.V. (as RSBV), Marriott International Licensing Company B.V. (as Marriott) and the Lender (as Financier) which sets out the cash management arrangement between the parties thereto in relation to the JW Marriott Hotel together with the non-disturbance agreement executed between the parties thereto.*"

6.2.1. The clause 1 A & B of CMA provides that –

"A. The Parties agree that the operating profit which (after deduction of the amounts payable to Marriott Companies under the Marriott Agreements) would otherwise be distributed to Owner (as set out in the interim accounting referred to in section 5.02 of the Operating Agreement) ("Owner Profit") will be deposited in the Retention Account (as defined below) for Financier to repay the loan under the Facility Agreement.

B. To implement the arrangement in Section 1.A above, the parties agree that, notwithstanding section 9.03 of the Operating Agreement, until there is a Cash Management Default, the Hotel's Gross Revenues in relation to each Accounting Period shall be deposited and utilized in the following manner :

(i) Operator will deposit all Hotel's Gross Revenues (including tax or similar charges collected by the Hotel from patrons or guests, "Taxes") on a daily basis into an account established by Owner with Financier as revenue account ("Revenue Account");

(ii) On a daily basis, through an automatic transfer via standing instructions:

(a) Financier will transfer 66% of the Gross Revenues (including Taxes) from the Revenue Account into a designated account at YES Bank

(Account number : 02284000002912) which will be an expense account ("Expense Account"). Operator will use the funds in the Expense Account to pay for the operating expenses of the Hotel and Taxes; and

(b) Financier will transfer the remaining amount of the 34% of the Gross Revenue in the Revenue Account (after transfer of the amount referred to in section 1.B(ii)(a) above) into an account established by Owner with Financier as retention account ("Retention Account"). Financier will use the funds in the Retention Account to service the debt under the Facility Agreement.

(iii) ……

(iv) Within seven Business Days after the end of each Accounting Period, Operator will provide a copy of the interim accounting referred to in section 5.02 of the Operating Agreement to Owner and Financier and a monthly reconciliation will be performed to ensure that only amount constituting Owner's Profit (including contribution to the Repairs and Equipment Reserve) is deposited an/or retained in the Retention Account for repayment of the loan under the Facility Agreement. Accordingly,

(a) If : (1) the aggregate amounts which have been transferred from the Revenue Account to the Retention account pursuant to section 1.B(ii)(b) above in the immediately preceding Accounting Period; exceed (2) the owner Profit (including contribution to the Repairs and Equipment Reserve) relating to the immediately preceding Accounting Period, Financier and Owner will deposit the excess amount into the Expense Account within ten Business Days after Operator's provision of the interim accounting to Owner and Financier; and

(b) *If : (1) the Owner Profit (including contribution to the Repairs and Equipment Reserve) in relation to the immediately preceding Accounting Period; exceed (2) aggregate amounts which have been transferred from the Revenue Account to the Retention account*

pursuant to section 1.B(ii)(b) above in the immediately preceding Accounting Period, Operator will deposit the excess amount into the Retention Account within ten Business Days after Operator's provision of the interim accounting to Owner and Financier;

F. Owner will ensure Financier to comply with the terms of Section I of this Agreement. Any breach by Owner or Financier of Section J of this Agreement that Owner or Financier fails to rectify within 10 days after receiving a written notice from Operator requesting for rectification will constitute a "Cash Management Default".

G. This Agreement does not relieve Owner's obligation to advance additional funds required to maintain Working Capital and Inventories at levels determined by Operator to be necessary to satisfy the needs of the Hotel as Its operation may from time to time require pursuant to section 7.01 of the Operating Agreement. Owner will provide such funds to the Expense Account upon Operator's request.

H. The current split of 66% /34% ratio to allocate Hotel Gross Revenue into the Expense Account and Retention Account on a daily basis pursuant to Section l.A(ii) is determined:

(i) On the basis that the amount of Taxes collected by the Hotel will on average constitute approximately 23.5% of the Gross Revenue collected by the Hotel. If the relevant percentage of Taxes increases (e.g. due to a change in tax laws or regulations), the split ratio will be adjusted to increase the percentage of Gross Revenue to be deposited in the Expense Account on a daily basis; and

(ii) Based on the percentage of Owner Profit (including contribution to the Repairs and Equipment Reserve) to Gross Revenue in the budget of the Hotel for year 2018. If there is significant change of such percentage in the future budget which may result in the daily allocation to the Expense Account becoming insufficient for the operation of the Hotel, Financier and Operator will adjust the daily

split ratio in writing to ensure there is sufficient funds for the operation of the Hotel at the Expense Account."

Notwithstanding any changes to the daily split ratio as described in this Section 1.H above, the monthly adjustment pursuant to Section 1B(iv) will remain unchanged."

6.2.2. Further, Clause 2 of CMA provides for "Default" and consequence thereof. It reads as under:

"2. DEFAULT

A. Upon the occurrence of a Cash Management Default, the provision set out in Section 1.A of this Agreement will cease to apply and instead, the following provisions will apply upon notice by Manager to Owner and Financier:

(1) Operator will deposit all cash receipts derived from the operation of the Hotel in the Expense Account, which will be exclusively controlled by Operator in accordance with Section 1.B above; and

(2) on the date Operator provides Interim accounting to Owner pursuant to section 5.02 of the Operating Agreement, Operator will transfer to the Retention Account the operating profit which (after deduction of Working Capital needs as reasonably determined by Operator) would otherwise be distributed to Owner (as set out in the relevant interim accounting) in relation to the immediately preceding Accounting Period.

B. Without prejudice to any other rights or remedies Operator may have under the Operating Agreement and this Agreement, if Owner or Financier fails to comply with its obligations under Section 1 of this Agreement, such non-compliance will constitute an Event of Default by Owner under the Operating Agreement which will entitle Operator to terminate the Operating Agreement in accordance with section 16.02 of the Operating Agreement.

C. If Operator fails to make the deposit to the Retention Account within the timeframe as required under Scection1.B(iv)(b), Financier will notify

Operator in writing of such failure and Operator will make the relevant deposit within 5 Business Days of such notice, and if Operator fails to do so, Financier is entitled to deduct the relevant amount from the amounts it is required to transferred to the Expense Account under Section 1.B(li)."

6.2.3. In terms of the Clause 1, the CMA mandates deposit of entire Revenue collected by Operator in a Revenue Account, wherefrom the Lenders were to transfer 66% of such revenue in an Expense Account with YES Bank and balance 34% of such revenue in a Retention Account (to be opened by Corporate Debtor with the Lenders) on a daily basis via standing instructions. The CMA further contemplates a monthly reconciliation to ensure that only amount constituting the Corporate Debtor's Profit (including contribution to the Repairs and Equipment Reserve) is deposited an/or retained in the Retention Account for repayment of the loan under the Facility Agreement. It further mandates the Operator to submit a copy of the interim accounting within seven business days after end of each accounting period to the Corporate Debtor and Lenders and further provides that any excess transfer either to Expense Account or to the Retention Account beyond the agreed percentage of Revenue shall be transferred to Retention Account by Operator or to Expense Account by Lenders immediately.

6.2.4. The Corporate Debtor has placed on record reconciliation for the month of May, 2023 and April, 2023 on record to alleged that the Financial Creditors has failed to deposit the excess amount of Rs. 10,35,88,444/- drawn beyond 34% as determined in April 2023 monthly reconciliation in terms of Clause 1.B(iv)(a). On perusal of the said clause, it is noted that the obligation to deposit such overdrawn amount is casted upon both Financier and Owner. Further Clause 2 provides for the occurrence of event of default in such case, whereupon the Operator is vested a right to terminate the

Operating Agreement, besides authorising Operator to deposit all cash receipts derived from the operation of the Hotel in the Expense Account, to be exclusively controlled by the Operator in accordance with Section 1.B above. It is pertinent to note that such overdrawn amounts have been appropriated towards the obligations of the Corporate Debtor, which otherwise are required to be fulfilled by the Corporate Debtor and/or Obligors out of other sources in terms of Clause 18.39 of the Loan Agreement. It is not case of the Corporate Debtor that this excess withdrawal has resulted into advance payment against its obligation under the agreements, which otherwise had not fallen due. Further, these overdraws do not pertain to the period, in consideration in this application i.e. November 2022 to February 2023. Nonetheless, had there been a refund of any amount over withdrawn in terms of monthly reconciliation for the period from November, 2022 to February, 2023 by the lenders, this would have further increased the amount claimed to be in default on the relevant dates. It is also noted that no precipitative action has been taken by the Operator in terms of Clause 2 of CMA.

6.2.5. The said CMA authorises the Lenders to use the funds in the Retention Account to service the debt under the Loan Agreement. "*Repayment Instalment*" is defined in Schedule 1 to mean "*the instalment for repayment of the Loan, as set out in Part III of the Second Schedule hereunder, which may be modified at the discretion of the Lender, from time to time in the manner set out in clause 5.2",* and "*Repayment Date*" to mean *"the last date of a fiscal quarter on which a Repayment Instalment shall be payable.* Part III of the Second Schedule to the Loan Agreement provides that "*Entire Receivables lying to the credit of the Escrow Accounts (post adjustment of the operating expenses and fees/reserve as per the operator agreement/s executed inter-alia with the CP Hotel Operator and/or JWM Hotel Operator) shall be first adjusted towards*

Interest payment and balance towards repayment of the principal Loan in proportionate share for GHPL Loan, NCPPL Loan and RCF on the 15th (fifteenth) of every Month". Part III further provides that "*Post disbursement of all the GHPL Loan, NCPPL Loan and the RCF, the maximum Outstanding Amounts in respect of the Loan at end of each year during the loan tenure is as below:*

End of the period from 1st Disbursement Date	Maximum Loan O/s (Rs Cr)
1st Year	560.0
2nd Year	560.0
3rd Year	540.0
4th Year	520.0
5th Year	500.0
6th Year	470.0
7th Year	430.0
8th Year	390.0
9th Year	350.0
10th Year	300.0
11th Year	250.0
12th Year	200.0
13th Year	150.0
14th Year	100.0
15th Year	0.0

6.2.6. Clause 18.39 of the Loan Agreement provides for **Service of Loan** and reads as "*The Borrowers agree and undertake that in the event the funds lying and being in the Retention Account are not sufficient for the repayment of the Loan or any part thereof (emphasis supplied), the Borrowers and/or the Obligors shall ensure that the Loan and every part thereof is repaid through such other funds as maybe necessary for this purpose and acceptable to the Lender*". The clause 18.39 of the Agreement makes it emphatically clear that the CMA and Escrow Arrangement only put in place a mechanism to ensure agreed percentage of revenue being made available to service the obligations of the Corporate Debtor under the Loan Agreements. This arrangement, in no way, can be said to be an exhaustive arrangement to fulfil the obligations under the Loan Obligations so as to discharge the

Corporate Debtor and Obligors from their service obligation under the agreements, even if the funds available under the CMA falls short of periodic obligations under the Agreement.

6.2.7. The first Disbursement to the Corporate Debtor took place on 28.12.2017 and five years therefrom expires on 27.12.2022. Accordingly, the total principal outstanding of Loan and RCF due from the Corporate Debtor and NCPPL should be Rs. 500 crores as on that date. The break-up of the total outstanding placed at Exhibit V of the Application shows principal outstanding of Rs. 486.29 Crores under Loan and RCF account due from Corporate Debtor. Further, the Exhibit R of the Petition {CP(IB) No. 290 of 2023} filed in relation to NCPPL shows a principal outstanding of Rs. 97.20 Crores as on 27.02.2023. Thus, the principal outstanding of Loan and RCF due from Corporate Debtor and NCPPL aggregates to Rs. 583.49 Crores as on 27.02.2023 i.e. even later than the date of issue of recall notice. This clearly establishes the existence of default in terms of repayment of principal amount of Loan as on date of issuance of Recall notice.

6.2.8. It is also pertinent to note Clause 7.2.6 of the Agreement, which provides that "*Notwithstanding anything contrary contained herein, upon completion of the 5th (fifth) anniversary of the first Disbursement Date of the GHPL Loan and/or NCPPL Loan, as the case maybe, or upon completion of the 10th (tenth) anniversary of the first Disbursement Date of the GHPL Loan and/or NCPPL Loan, as the case maybe, the Lender at its discretion shall have a right within 6 (six) months following such 5th (fifth) anniversary or 10th (tenth) anniversary, as the case maybe, to call upon the Borrowers and/or the Obligors or any of them to pay/ repay the entire Outstanding Amounts or a portion thereof relating to the Loan. Upon exercise of such option, the Outstanding Amounts as on the date of exercise of such option shall become immediately due and repayable by the Borrowers and/or the*

Obligors. Any breach of this clause 7.2.6 by the Borrowers and/or the Obligors or any of them shall constitute an Event of Default." As stated above, the first disbursement of Loan took place on 28.12.2017 and five years expired on 27.12.2022, the right to recall the whole loan facility also accrued in favour of Financial Creditor on 28.12.2017 dehors the default.

6.2.9. The Financial Creditor recalled the whole of outstanding facilities in terms of notice dated 15.02.2023, Para 2 of said notice reads as "……*As you are aware, as per the terms of the Loan Agreement and ECLGS Loan Agreements, failure on the part of the Company to make payment of any installment and Coupon constitutes an Event of Default and on occurrence of an Event of Default, the lenders and/or the security trustee is entitled to exercise all its rights under the Loan Agreement, ECLGS Loan Agreements and related finance documents.*" It is further stated in Para 4 that "*In the above circumstances, and in accordance with our rights under the Loan Agreement and ECLGS Loan Agreements, we hereby recall all the Loans availed by Borrower - 1,……".* In our considered view, the words "in accordance with our rights under the Loan Agreement, also includes the right in terms of clause 7.2.6 of the Agreement.

6.2.10. The Exhibit V of the Application also shows that there is an outstanding of interest amounting to Rs. 10.51 crores and of penal interest amounting to Rs. 3.57 crores under the Loan and RCF facility as on 27.12.2023. As quoted above, Part III of the Second Schedule to the Loan Agreement provides that the amounts lying to the credit of the Retention Account shall be first adjusted towards interest payment and balance towards principal amount. The Corporate Debtor has contested the quantum of interest levied on the Loan account by the Lenders and placed on record a "**Review Report on Commercial Loans Outstanding**" submitted by B. K. Ramadhyani & Co. LLP, Bangalore under UDIN:

24215398BKFOJUB606 filed with Additional Reply dated 08.02.2025 filed by Corporate Debtor. The following observations have been given in the said Report –

a. Piramal has not reset interest rates for 5 consecutive reset periods (July 01, 2020; January 01, 2021; July 01, 2021; January 01, 2022; July, 2022) upto the date of assignment. During this time, due to the pandemic, the Repo rate, SBI Benchmark PLR and the cost of borrowings of Piramal Enterprises Ltd. showed a downward trend. Piramal kept the interest rate at 13.00% p.a. and 14.20% p.a. for the Loan facilities. In our opinion, this has led to interest being charged in excess and the excess interest charged during this period can neither be sustainable nor conform to the normal financial practice of the financial institution as per the Master Circular – Fair Practice Code issued by the Reserve Bank of India (DNBH(PD) CC. No. 054/03.10.110/2015-16).

b. GHPL has an unutilized balance of Rs. 3.00 Crores in its DSRA as at 15.11.2022 (out of Rs. 8.00 Crores as set apart in the Para 9 of the Original Loan Agreement read with Eleventh Schedule thereof) which was not utilised to offset any shortfall in interest payments which is charged monthly on the principal outstanding (monthly rest on every month as per Para 4.1 of the Agreement). Piramal has failed to access the funds from the retention ledger managed with HDFC Bank as per the Cash Management System for the replenishment of DSRA which was disbursed on 09.12.2020, of Rs. 7 Crores though there were no defaults of interest on the date of disbursement.

c. GHPL and NCPPL have availed the credits under ELGS of Rs. 182.50 Crores in total for the purpose of operation of the business during the pandemic. The disbursements under this credit have been adjusted to the tune of Rs. 158.25 Crores by

Piramal against the principal and interest outstanding instead of working capital requirements of the Company.

d. Piramal has shown a claim of Rs. 3.52 Crores in the assignment agreement with Omkara as default interest, which was not made known to the borrowers. No basis was available for the calculation of assigned default interest. The default interest/penal interest charged by Omkara is not in alignment with the loan agreement entered into by the borrower. Hence, in our opinion, a default interest of Rs. 131.91 crores in total levied by Omkara is not appropriate and tenable.

6.2.10.1. The said Review Report has also summarized the amounts reflected in the lender's statements based on interest charged by the lenders, as reproduced below:

(Amount Rs.____ in Crores)

Transaction	Particulars	Loan Accounts			Grand Total
	Start Date	Facility-1 and Facility-2	RCF-50 Crores*	ECLGS	
Disbursements	Loan Disbursed	540.00	49.55	182.50	772.05
	Transfers	-	-	-	-
	Moratorium Interest *(Refer Note-1)*	27.48	2.76	-	30.24
	DSRA Disbursed *(Refer Note-2)*	7.00	-	-	-
	Amount Lent	574.48	52.31	182.50	802.29
Repaid	Amount Repaid	309.12	26.06	43.72	378.89
Interest	Interest Charged to accounts net of TDS *(Refer Note-3)*	271.79	26.23	20.70	318.72
	Payment towards Interest *(Refer Note-4)*	271.79	26.06	20.27	318.72
	Due	-	0.17	0.43	0.60
	For the month of November	5.86	0.58	1.77	8.21
	Due For the month of November	-	0.17	0.43	0.60
	Overdue	-	-	-	-
Principal Repayment	Adjustment towards Principal *(Refer Note-4)*	37.33	-	23.45	60.78
	Principal Payable *(Refer Note-5)*	30.00	-	29.38	59.38
	Due/(Excess Paid)	-7.33	-	5.93	-1.40
	For the month of November	-	-	2.45	2.45
	Overdue/(Excess paid)	-7.33	-	3.48	-3.85
Overdue/(Excess Payment)	Total Overdue/(Excess paid)	-7.33	-	3.48	-3.85
	Inter-loan adjustment in case of Excess paid	-	-	-	-
	Net Overdue/(Excess Paid)	-7.33	-	3.48	-3.85

Refer to Annexure -7 to this report for detailed loan account-wise bifurcation.

6.2.10.2. The Hon'ble NCLAT, after noticing the aforesaid table, has stated in its order that "*Although, this Tribunal on 15.07.2024 had granted time to Respondent to file reply to additional affidavit, but no reply is on record of Respondent No.2. Thus, we are of the view that for determining the default even for ECLGS Facility, the Adjudicating Authority has to consider all aspect of the matter, including excess payment under Facility-1 and Facility-2 and unused DSRA and only after considering all relevant facts, findings regarding default of ECLGS could have been given*." It is pertinent to note that the above statement is on consolidated basis for both the accounts i.e. Corporate Debtor and NCPPL.

6.2.10.3. Per-contra, the Financial Creditor has filed a report by Mukund M. Chitale & Co., Chartered Accountants, Mumbai determining the default position as under vide Annexure F to its report dated 15.03.2025.

GSTAAD	15-11-2022	15-02-2023	08-01-2024	15-01-2025
450 Crs_PEL_30-Nov-2022-393 crs	8,54,73,913	4,02,99,20,088	4,55,84,90,958	5,50,46,28,189
450 Crs_PCHFL_30-Nov-2022-40.58 crs	81,76,700	41,50,09,377	46,93,55,047	56,66,47,376
50 Crs_PCHFL_30-Nov-2022-52.31 crs	1,05,39,183	53,43,58,114	60,42,61,245	72,94,16,776
65 Crs - ECLGS_PEL_30-Nov-2022-65crs	93,05,101	65,98,13,795	66,22,25,124	65,39,26,242
98 Crs - ECLGS_PEL_30-Nov-2022-77.58 crs	5,81,34,621	79,39,50,682	79,76,33,131	78,87,25,499
Total	**17,16,29,518**	**6,43,30,52,057**	**7,09,19,65,504**	**8,24,33,44,082**

6.2.10.4. Mukund M. Chitale & Co. has also placed on record loan account statements for the period 28.12.2017 to 15.01.2025 for the commercial loans availed by the Corporate Debtor and NCPPL from PCHFL and PEL prepared on the basis of the statement of account of the Corporate Debtor and NCPPL maintained by PCHFL and PEL and the details of recoveries prepared and provided by the Applicant Financial Creditor in spreadsheet format.

6.2.10.5. The Corporate Debtor has submitted that the Corporate Debtor has paid to the Financial Creditor a sum of Rs. 29,52,56,300/-

between 09.10.2022 to 27.02.2023, accordingly if there was any default the same was paid by it under the CMA. The Corporate Debtor has also placed on record another Report dated 26.04.2025 titled as "Report on Review of Commercial Loan Outstanding — 2" by BK Ramadhyani & Co. LLP, Chartered Accountants Bangalore. In the said report, this firm has commented on the report submitted by Mukund M. Chitale & Co. and has given following review points:

a. *For the re-computation of the loan overdues, the interest rate applied to the loan accounts are as charged by Piramal up to 15.11.2022 and 13% after the said date. The interest rates charged by Piramal are inappropriate as explained in our previous report and hence considering the same rates may not.be correct.*

b. Interest is computed on the entire balance outstanding and not on the principal outstanding which may have a compounding effect.

c. The report furnished doesn't consider the interest rate changes which need to be passed on to the borrower.

6.2.10.6. The above comments on the report of Mukund M. Chitale & Co. clearly show that BK Ramadhyani & Co. LLP has not found any fault in the computation of the default amount, but has questioned the quantum on the ground of inappropriateness in the rate of interest applied by the Financial Creditor/Lenders. These issues raised in the earlier Review Report are being dealt in the following paras.

6.2.10.7. The Review Report has determined excess levy of interest on Loan amounting to Rs. 95.37 Crores, of which a sum of Rs. 93.62 Crores has been determined as excess on the basis of Effective Lending Rate ("**ELR**") extrapolated on basis of computation of Piramal PLR with reference to SBI Benchmark PLR. It is admitted by the Corporate Debtor (as can be seen from the said

Review Report) that the Lenders had communicated its PLR upto 10.07.2018 from time to time, even though the Said Review Report has computed the chargeable interest on basis of such derived ELR for those periods also. As regards rate of interest for subsequent period, it is relevant to refer to Clause 3.2, which provides for '***Interest Reset***' and reads as - "*In the event, the Lender on account of any change/ revision in the Piramal Prime Lending Rate revises the rate of Interest payable by the Borrowers to the Lender (emphasis supplied) under the terms of this Agreement (the "Revised Interest"), the said Revised Interest shall be applicable effective from January 1 (where the revision is notified after July 2 of a calendar year and before December 31 of the same calendar year) or July 1 (where the revision is notified after January 2 of a calendar year and before June 30 of the same calendar year). Notwithstanding anything contrary contained herein, the Revised Interest shall at no point be less than 9% p.a. (nine percent per annum) in relation to the GHPL Loan and NCCPL Loan, and 10.5% p.a. (ten point five percent per annum) in relation to the RCF.*" Further, Clause 4 of Part I of Second Schedule provides for **rate of interest** chargeable on Loan and the relevant part thereof in relation to reset of PLR reads as - "*The current Piramal Prime Lending Rate is 15.9% p.a. (fifteen point nine percent per annum). Interest will be reset on a half-yearly basis from subsequent half year on 1st July and 1st January. Effective lending rate is Piramal Prime Lending Rate minus 5.4% (five point four percent) for GHPL Loan and NCPPL Loan."* The usage of the word "*will*" clearly signifies that the re-set of Piramal PLR was not a mandatory exercise failing which the borrower shall have option to reckon it with reference to benchmark lending rate of any other Bank. The language used in Clause 3.2 of the Agreement also makes it abundantly clear that the only obligation on the lender was to notify any change/revision in the rate of interest to the borrower to make it enforceable against it.

6.2.10.8. It is relevant to refer to the letter dated 23.12.2022 addressed to PCHFL and PEL by the Corporate Debtor and NCPPL whereby the Corporate Debtor has sought certain reliefs. The relevant part reads as "*We have managed to source an investor who is willing to take over your loan. We have gone through an extremely tough period due to the above facts. We request your good self to consider all the above points and request your support. We request you to immediately release the ECLGS amount. As your approach has been unfavourable, we would like to settle the debt under a onetime settlement scheme by you considering credit of the payment of INR 10 cr charged initially, revising the rate of interest charged to 10.50% p.a. with retrospective effect and giving us a lump sum discount of 20% on interest paid till date and thereby arriving at the amount due. We agree to repay the amount in an agreed time schedule, mutually acceptable*". In this letter, it is also stated that "*We have been charged 394.28 Cr. as interest from date of availing loan till Dec 22. After taking the loan, interest rate went up to 13.00% for term loan and 14.20% for revolving credit facility. We were shocked to find these increases in interest rates in spite of being assured to the contrary. In fact, when SBI PLR was going down drastically, your rates went up substantially. Since availing the loan we have been charged 80 Cr excess amount by way of increase in interest rates.*" There is no other communication placed on record by the Corporate Debtor protesting against non-fixation of Piramal PLR. The letter dated 23.12.2022 does not signify any refusal to accept the liability on account of applicable interest rates at that point, and it merely seeks a favourable consideration on part of Financial Creditor to address the concern in relation to high interest rates being charged on the facilities.

6.2.10.9. It is also pertinent to refer to Fair Practice Code referred in the said Review Report which provides at clause 2 as under –

(viii) Regulation of excessive interest charged by NBFCs

(a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as cost of funds, margin and risk premium and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

(b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.

(c) The rate of interest should be annualised rate so that the borrower is aware of the exact rates that would be charged to the account.

(ix) Complaints about excessive interest charged by NBFCs

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges. In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans are to be kept in view."

6.2.10.10. The Fair Practice Code only stipulates that the information published in the website or otherwise published should be updated whenever there is a change in the rates of interest and does not contemplate periodical reset of PLR mandatorily. Further, it also contemplates redressal mechanism for excessive interest charged by NBFCs by mandating the Board of NBFCs to lay out appropriate internal principles and procedures in determining interest rates. Instead, Fair Practice Code gives complete autonomy to the NBFCs to adopt an interest rate model taking into account relevant factors such as cost of funds,

margin and risk premium. Nonetheless, there is nothing on record to suggest that the Corporate Debtor had taken any issue with regard to non re-set of PLR by Lenders earlier and registered their protest in relation to excess levy of interest, except letter dated 23.12.2022. In our considered view, the rate of interest is governed by the agreement between the parties, which they agree at the time of sanction of loan and the borrower cannot be allowed to have any grievance later on the ground that other lender is offering lesser rate of interest. Here it is pertinent to refer to Clause 7.1 & 7.2 of the Agreement which allows the Corporate Debtor to repay the loan facility prior to five year out of 'Receivables, contributions from the Obligors and/or part sale of the assets of the Projects' and after five years out of any source.

6.2.10.11. As regards observation in relation to non-appropriation of DSRA balance of Rs. 3.00 Crores and further access to the funds in the retention ledger to replenish the DSRA account, it seems that the reviewer has failed to appreciate that (i) the balance in DSRA account was never disbursed, accordingly no interest was charged thereon; (ii) if the balance of Rs. 3.00 crores would have been appropriated towards interest obligations under the Loan account, it would have increased the Loan Principal outstanding by corresponding amount, and it would have bearing only on quantum of penal interest, as in that case interest on Rs. 3.00 crores would have been chargeable as outstanding under Loan Account; and (iii) the only source of funds available with the Corporate Debtor was retention account, which was appropriated towards the repayment obligations under Loan/RCF/ELCG facilities, accordingly, if DSRA account would have been replenished from the Retention Account, that would have made the equivalent

amount unavailable for discharge of obligations under Loan/RCF/ELCG facilities. Accordingly, the determination of Rs. 1.75 Crores being excess interest charged on Principal on account of failure of such replenishment is devoid of any merit.

6.2.10.12. As regards utilisation of ECLGS facility to the extent of Rs. 158.25 Crores by Piramal against the principal and interest outstanding instead of working capital requirements of the Company, it is to be understood that such utilisation of ECLGS facility loan only resulted into reduction of interest and principal obligations under the Loan Agreement. The Financial Creditor has placed on record various disbursement request under ECLGS facilities stating the details of retention account for credit of disbursed money in that account. This clearly indicates the voluntary consent of the Corporate Debtor to allow appropriation of such disbursed sums under ECLGS facilities for discharge of obligation under other outstanding credit facilities to keep those facilities in order and avoid the obligation of the Corporate Debtor/Obligors to otherwise service to those obligation from their other sources as contemplated in clause 18.39 of the Agreement. Even if it is in contravention of the Purpose for which the Loan was sanctioned, the said adjustment has only helped the Corporate Debtor to stay float by being able to honour its payments obligations under the Loan Agreement. The ECLGS loan carried an interest @ 13% p.a. which is lower than the interest chargeable under the Loan Agreement. It is also noteworthy that the Corporate Debtor had not raised any grievance in this relation at the time of such adjustment/appropriations, which clearly indicate that such adjustment/appropriation had taken place with the mutual consent of the parties. Since the lending and borrowing transaction is a contractual arrangement between the parties, we

do not find any merit in this contention to deny obligations under ECLGS facility on this count, as, in the absence of such adjustment, the obligations under Loan/RCF facilities would have remained unserved. Accordingly, such arrangement, even if not in conformity with the terms of sanction, cannot be taken as a ground to deny the obligations arising from disbursement under ECLGS facility.

6.2.10.13. The Review Report has also raised an issue regarding non-provision of details of outstanding default interest of Rs. 3.52 Crores stated outstanding in the Assignment Agreement with Omkara as default interest. In our considered view, the Reviewer has flagged this issue on the ground that no such interest was appearing in the account statement shared by Piramal to them, however, the Reviewer has failed to understand that the default interest is leviable, as agreed, and can be levied by the Financial Creditor later on as well. Nonetheless, such non-levy does not preclude the Reviewer to determine the default interest, if any accrued, on the basis of facts before him, as the Reviewer was obligated to determine what actually is due under the agreement. It has also been stated that a default interest of Rs. 131.91 crores in total levied by Omkara is not appropriate and tenable as such interest has been charged on total outstanding and not on the default amount for the default period. The Reviewer has failed to take note of Recall notice dated 15.2.2023, whereby whole of the outstanding has become due and payable, accordingly, the default interest is leviable on such whole of amount. It may be noted that "Default Interest" is defined in First Schedule to mean "*the interest payable by the Borrowers on the Outstanding Amounts upon the occurrence of an Event of Default and such other instances as set out herein, at the rate stipulated in the Second Schedule hereunder*".

6.2.10.14. Clause 19 of the Loan Agreement provides for **Events of Default** and We may now refer to some of the relevant sub-clauses, which reads as under :

19.1 The Borrowers or any of them fail to pay the Repayment Instalment, the RCF and/or the Interest or any other amounts payable under the Finance Documents on the due date.

19.14 Any shortfall in the DSRA is not replenished as per clause 9 above.

19.17.1 Any Financial Indebtedness of the Borrower/s, the Obligor/s or any of its respective Affiliates or entities belonging to the Group is not paid when due.

19.17.2 Any Financial Indebtedness of the Borrower/s, the Obligor/s or any of its Affiliates or entities belonging to the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

6.2.10.15. Clause 20 provides for **Consequence of Event of Default** and some of the relevant sub-clauses reads as under :

20.1.1. Cancel any undisbursed Loan;

20.1.2 Declare that all or part of the Loan, together with accrued Interest, and all other amounts accrued or outstanding under the Finance Documents are immediately due and payable

6.2.10.16. As noted above, the Corporate Debtor has failed to pay the Repayment Instalment, the RCF and/or the Interest under the Loan Agreement on the due date and there is also a right available to the Financial Creditor under Clause 7.2.6 of the Agreement, the event of default as stated in clause 20.1.2 has arisen.

6.2.10.17. Further, the Corporate Debtor has also failed to replenish the DSRA balance in terms of clause 9.3 of the Agreement, which provides that "*9.3 In the event that any amount has been utilised out of the DSRA, the same shall be deemed to be a Disbursement under the Loan and the Borrowers shall, within 7 (seven) days of such Disbursement Date, deposit such amounts of money into the Retention Account such that the undisbursed portion of the DSRA together with such monies deposited into the Escrow Accounts aggregate the Minimum DSRA Balance. In the event the DSRA is disbursed to service any Interest/ Principal Repayment, then the same will have to be replenished by the Borrowers within 7 (seven) days and then the amount shall be maintained in an fixed deposit with an exclusive lien marked in favour of the Lender/ Security Trustee."* It is pertinent to note that this clause casts an obligation on the Corporate Debtor specifically to replenish the DSRA balance and the parties to the Agreement had not contemplated such replenishment out of Retention Account, consciously realising that such Retention Account was to service obligations in relation to Interest and Principal only. It is pertinent to note that "**Minimum DSRA Balance**" is defined in First Schedule to *"mean an amount equivalent to 2 (two) month's Interest payment obligations under this Agreement until the Final Maturity Date."* On perusal of Statement of Accounts for period from 15.11.2022 to 30.4.2024 provided by the Financial Creditor in respect of all facilities (placed by the Corporate Debtor in Volume 1 of his Additional Reply), it is noticed that the monthly interest obligations in respect of Loan/RCF facilities alone for the month of December, 2022 amounts to Rs. 5.44 Crores. Accordingly, the Corporate Debtor was required to maintain a balance of Rs. 10.88 Crores as Minimum DSRA Balance under the Agreement, which it has failed to do so, and thus it also constitutes event of default in terms of clause 19.14 of the Agreement.

6.2.11. We are conscious that the present Petition has been filed in relation to default under ECLGS-1 and ECLGS-II facility and not in relation to default in DSRA or Loan/RCF Obligations, however, amount claimed in default as stated in Part IV is the whole of outstanding under all facilities consequent upon recall of the all facilities, we have dealt with the aspect of default in relation to DSRA as well as Loan/RCF facility to ascertain whether all the facilities could have been recalled.

6.2.12. In view of the foregoing, we are of the considered view that there is a default in payment of Interest and Principal under Loan/RCF Facility, accordingly, the recall notice dated 15.02.2023 recalling the whole of outstanding due from Corporate Debtor was permissible under the Agreement.

6.3. Now we will examine the alleged defaults in ECLGS facilities. The Learned Counsel for the Corporate Debtor contended that present Petition u/s 7 of the Code is filed by Financial Creditor only on the basis of there being a default of the ECLGS-1 and it is significant to note that ECLGS-2 was not payable till 05.04.2024. There could not have been default in ECLGS facilities.

6.3.1. An amount of Rs. 98,00,00,000/- was sanctioned by PHL as ECLGS Facility Loan I for the purpose of working capital requirements. An Agreement dated 30.12.2020 was executed between PHL and the Corporate Debtor; a Security Trustee Agreement dated 30.12.2020 was executed amongst the Corporate Debtor, IDBI and PHL appointing IDBI as a Security Trustee; and a Demand Promissory Note was signed for an amount of Rs. 98,00,00,000/- in favour of IDBI on 30.12.2020. The obligations of the Corporate Debtor under the said Agreement were secured by creation of Security Interest in favour of the Petitioner by and until

the Final Maturity Date. The ECLGS Facility Loan I is repayable in 48 (forty-eight) instalments of Rs. 2,04,16,667/- each, payable on 5th of each calendar month, after a principal moratorium period of 12 (twelve) months from the date of first Disbursement of the Loan. The first instalment fell due on 15.12.2021. The Loan carries a fixed interest of 13% p.a. payable monthly. The CMA dated 17.01.2018 has been extended to this Loan as well in terms of definition of CMA provided in First Schedule. The terms of the Escrow Agreement dated 06.03.2020 shall prevail in this Loan Agreement.

6.3.2. An amount of Rs. 65,00,00,000/- was sanctioned by PHL as ECLGS Facility Loan II under the Emergency Credit Line Guarantee Scheme 3.0 issued by the Government of India for the purpose of working capital requirements. An Agreement dated 11.03.2022 was executed between PHL and the Corporate Debtor. The obligations of the Corporate Debtor under the said Agreement were secured by creation of Security Interest in favour of the Petitioner by and until the Final Maturity Date. The ECLGS Facility Loan II is repayable in 48 (forty-eight) instalments of Rs. 1,35,41,670/- each, payable on 5th of each calendar month, after a principal moratorium period of 24 (twenty four) months from the date of first Disbursement of the Loan. The first instalment fell due on 05.04.2024. The Loan carries a fixed interest of 13% p.a. payable monthly. CMA dated 17.1.2018 has been extended to this Loan as well in terms of definition of CMA provided in First Schedule. Escrow Agreement is defined to mean the Escrow Agreement dated 26.12.2017.

6.3.3. Part II of Second Schedule of both these Agreements provides that "*Entire Receivables lying to the credit of the Escrow Accounts (post adjustment of the operating expenses and fees/reserve as per the operator agreement/s executed inter-alia with the JWM Hotel Operator and Crown*

Płaza Hotel Operator) shall be first adjusted towards Interest payment and balance towards repayment of the principal Loan in proportionate share for GHPL Loan on the 15th (fifteenth) of every Month." Clause 29 of Agreement dated 26.12.2017 provides for appropriation of partial payments as follows :

> *"29.1 If the Lender receives a payment from the Borrowers under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrowers under the Finance Documents in the following order:*
>
> *a) First, in or towards payment of any unpaid fees, costs and expenses of the Lender or its agents under the Finance Documents;*
>
> *b) Second, in or towards payment of Default Interest;*
>
> *c) Third, in or towards payment to the Lender of any accrued Interest towards the Loan;*
>
> *d) Fourth, towards Repayment Instalments or the RCF; and*
>
> *e) Fifth, in or towards payment to the Lender of any other sum due but unpaid under the Finance Documents.*
>
> *29.1.2 The Lender may at its sole discretion vary the order set out in Clause 29.1.1."*

6.3.4. Accordingly, on combined reading of Clause 29.1 of the Agreement dated 26.12.2017 and first Para of Part II of Second Schedule to Agreement dated 30.12.2020 & 11.03.2022, it is clear that the money lying to the credit of the Retention Account was to be first appropriated towards interest in arrears, then towards period interest, and thereafter towards principal repayment of all the outstanding under each of four loan facilities i.e. Loan, RCF, ECLGS-I & ECLGS-II on pro-rata basis.

6.3.5. The Financial Creditor has alleged an overdue interest of Rs. 1,74,34,155/- and Rs. 96,75,960/- under ECLGS-1 & ECLGS-

II as on date of issuance of Recall Notice dated 15.02.2023 as per table of outstandings given in said Recall notice. As per Statement of Account for period from 15.11.2022 to 30.04.2024 provided by the Financial Creditor to the Corporate Debtor, (placed by the Corporate Debtor in Additional Affidavit in Reply), the interest outstanding as on 15.11.2022 under ECLGS-1 & ECLGS-II facilities is stated to be Rs. 1,38,64,767/- and Rs. 1,14,59,589/-. The said Statement of Account further reveals that the balance of principal outstanding under ECGLS-I facility is Rs. 77,58,53,330/-, which implies that the Corporate Debtor had paid 10 instalments of Rs. 2,04,16,667/- each, aggregating to Rs. 20,41,66,670/- towards repayment of principal, which was to commence from 15.12.2021. As on 15.11.2022, 12 instalments had fallen due, meaning thereby, 2 instalments of Rs. 2,04,16,667/- aggregating to Rs. 4,08,33,334/- under ECGLS-I facility are due for payment and not paid as on 15.11.2022. Accordingly, the total default under ECLGS-1 & ECLGS-II facilities come to Rs. 5,46,98,101/- and Rs. 1,14,59,589/- as on 15.11.2022.

6.3.6. It is pertinent to note that Clause 17.39 of the Agreement dated 30.12.2020 & 11.03.2022 provides that "*The Borrower agrees and undertakes that in the event the funds lying and being in the Retention Account are not sufficient for the repayment of the Loan or any part thereof, the Borrower and/or the Obligors shall ensure that the Loan and every part thereof is repaid through such other funds as maybe necessary for this purpose and acceptable to the Lender.*" However, no payment has been made by the Borrower, except Rs. 57,61,993/- and Rs. 48,27,448/- appropriated from the Retention Account on 30.11.2022. It is also relevant to note that the Corporate Debtor as well as other Obligors had undertaken to pay the amounts, that fall short after appropriation from the Retention Account. The Financial Creditor was asked to place on record a statement showing outstanding under

each account and the balance available in Retention Account as on 15.11.2022 and for subsequent periods. On perusal of such statement as on 15.11.2022, it is noted that a sum of Rs. 1,54,93,481.68 was lying in the retention account and the said amount was appropriated on 24.11.2022 towards outstanding obligations under Loan & RCF account. However, even after such appropriations, the amounts due under ECLGS-1 & ECLGS-II facilities remains in default.

6.3.7. As regards the contention of the Corporate Debtor that the Financial Creditor ought to have utilised the undisbursed DSRA amount of Rs. 3.00 Crore to have the overdue interest paid, it is noted from the Statement of Account for period from 15.11.2022 to 30.4.2024 provided by Financial Creditor to the Corporate Debtor that the total interest outstanding as on 15.11.2022 in respect of all credit facilities, including ECLGS facility, aggregates to Rs. 9,87,30,348/- , besides default interest under Loan/RCF facilities amounting to Rs. 2,90,87,114/-. In terms of rules of appropriations agreed in terms of Clause 29.1 of the Agreement dated 26.12.2017, any part payment has to be adjusted on pro-rata basis, first towards default interest, thereafter towards interest and thereafter towards principal repayment. There is neither any provision in both ECLGS Agreements in relation to DSRA nor do these Agreements extend the DSRA Account under the Loan Agreement dated 26.12.2017 to these facilities. Nonetheless, even if the undisbursed amount of DSRA (which shall increase the Loan outstanding) has to be appropriated towards outstanding interest, it has to be appropriated under all the facilities in pro-rata. Even without considering the appropriation of default interest at all, the total outstanding interest under ECLGS facilities comes to Rs. 2,53,24,356/-, accordingly, 25.65% of Rs. 3,00,00,000/- i.e. Rs. 76,95,006/- can be appropriated towards the outstanding interest under ECLGS facilities. This still

leaves a default of Rs. 1,76,29,350/- in relation to interest under ECLGS facilities as on 15.11.2022, besides default in payment of principal amount of Rs. Rs. 4,08,33,334/-. Accordingly, we are of considered view that the Corporate Debtor was in default as on 15.11.2022 in relation to its obligations under ECLGS facilities taken together, as well as individually also.

6.3.8. Clause 18 of the Agreement dated 30.12.2020 & 11.03.2022 provides that "*Each of the events or circumstances set out in the following sub-clauses of this Clause 18 is an Event of Default. It is hereby agreed to between the Parties that the question as to whether or not an Event of Default has occurred and is continuing or not, shall be at the sole discretion of the Lender without any recourse to the Borrower and/or the Obligors, and that such determination by the Lender shall be final, valid and binding:*" The said clause gives absolute right to the Lender to determine occurrence of event of default if such event of default is listed in said clause. We have already examined the occurrence of default in discharge of obligations under ECLGS facilities in preceding paras.

6.3.9. In terms of clause 18, following constitutes an Event of Default –

"18.1. The Borrower fails to pay the Repayment Instalment, and/or the Interest or any other amounts payable under the Finance Documents on the due date.

18.11. Failure to abide by the Lender's directions to repay the Outstanding Amounts

18.16.1. Any Financial Indebtedness of the Borrower, the Obligor/s or any of its respective Affiliates or entities belonging to the Group is not paid when due.

18.16.6. An event of default has occurred or is continuing under any of the hotel operating contracts/ hotel management agreements/ any other agreement in relation to operation and management of the Hotel."

6.3.10. As the default in payment of interest under both ECLGS facilities and payment of principal under ECLGS-I has been found, the said default constitutes an Event of Default in terms of clause 18.1 of both the agreements. At this juncture, it is relevant to note Clause 2.1.23 of First Schedule to the Agreement, which reads as - "*A Default (other than an Event of Default) is continuing if it has not been remedied and an Event of Default is continuing if it has not been waived."* It is not in dispute that the event of default was not waived by the Financial Creditor.

6.3.11. Clause 19 of both these Agreements provides for Consequences of an Event of Default and sub-clause 19.1.2 reads as - "*Declare that all or part of the Loan, together with accrued Interest, and all other amounts accrued or outstanding under the Finance Documents are immediately due and payable;*" This clause unequivocally vests a right in favour of the Financial Creditor to declare all or part of the Loan, together with accrued Interest, and all other amounts accrued or outstanding under these facilities as immediately due and payable. In relation to Loan/RCF facility, it is pertinent to note that "*Any Financial Indebtedness of the Borrower/s, the Obligor/s or any of its respective Affiliates or entities belonging to the Group is not paid when due.*" constitutes a default under Clause 19.17.1 of the Agreement dated 26.12.2017 and clause 20.1.2 of that Agreement contemplates similar consequence. Accordingly, the recall notice dated 15.2.2023 calling upon Corporate Debtor to pay the whole of outstanding is well within the terms of the Agreements entered into between the parties, and in consequence thereof, the whole of outstanding as claimed in default becomes due and payable, hence the Corporate Debtor can be said to be in default in failure to pay the same as claimed in Part IV of the Application.

6.3.12. Having said so, it is pertinent to examine the contention of Corporate Debtor that it is a solvent company returning positive

EBIDTA year on year. The Director's Report attached Audited Financial Statements for the year ended on 31.3.2023 of the Corporate Debtor reflects the following:

Particulars	2022-23	2021-22
Revenue from Operations	1,83,40,89,275	63,76,77,145
Less : Excise Duty	-	-
Net Revenue from Operations	1,83,40,89,275	63,76,77,145
Other Income	7,47,35,014	82,43,473
Total Revenue	1,90,88,24,288	64,59,20,618
Less : Expenditure	1,09,62,04,396	51,85,12,339
Profit/ (Loss) before finance costs, depreciation/amortization, exceptional items and tax	81,26,19,893	12,74,08,279
Less : Finance Costs	73,32,01,393	76,23,79,745

6.3.13. It is also relevant to take note of computation of Owner's Profit for the period from January 2018 to December 2024 as provided in the Review Report dated 26.04.2025. The relevant table is reproduced below:

Financial year (FY) *	Revenue	Operating Expenses	Operating Profit	Management Fees	Owner's Profit
A	B	C	D = B-C	E	F = D-E
2018-19	141.81	70.40	71.41	8.89	62.51
2019-20	165.35	81.87	83.47	11.88	71.59
2020-21	33.16	28.76	4.40	3.59	0.80
2021-22	60.35	41.38	18.98	4.66	14.31
2022-23	180.44	91.81	88.63	12.30	76.33
2023-24	215.33	106.82	108.51	14.29	94.22
2024-25	173.76	87.67	86.09	11.32	74.77

Footnote: The revenue, operating expenses and

6.3.14. This clearly shows that the Corporate Debtor is having positive EBIDTA, however, its pre-tax Cash Profits (before depreciation/amortisation and tax) for the year ended on 31.3.2023 only amounts to Rs. 7,94,18,500/- (after reducing therefrom the Finance Costs accounted by the Corporate Debtor in its books of accounts during that year), while it had repayment obligations amounting to Rs. 24.50 crores under ECLGS-I facility, availed from the Financial Creditor, only leaving the other facility's principal

repayment. It is also pertinent to note the ratio analysis as given in notes to accounts attached to the said Audited Financial Statements reports 'Debt Service Coverage Ratio' of 0.12, which means that the Corporate Debtor's internal accruals were sufficient to meet only 12% of its debt obligations in the year 2022-23. It is also pertinent to point out here that EBIDTA is only considered as indicator in relation to Enterprise's Profitability index, while the solvency of an enterprise is measured by its capacity to service its obligations towards various stakeholders i.e. Lenders and Investors, for which Debt Service Coverage Ratio is considered as suitable indicator.

6.3.15. We further note from the statement of account of the Corporate Debtor that a sum of Rs. 83,64,22,801/- is claimed to have accrued on account of normal interest (without taking into account penal interest) on the outstanding facilities in financial year 2023-24. From the above table, it can be seen that the Reviewer had determined the Owner's Profits (amount available for appropriation in terms of CMA and Escrow Agreement) to be Rs. 94.22 crores, accordingly, the balance amount available towards repayment of principal amount under Loan Account and ELCGS-I remains only Rs. 10.60 Crores approx., which is far below the repayment obligations of the Corporate Debtor during that year also. Further, out of the interest accrued during FY 2023-24, a sum of Rs. 62,70,74,891/- had been accrued from April 23 to December 23. As against this, the total money available and appropriated from the Retention Account towards service obligation under credit facility amounted to Rs. 61,20,56,163/-, thus leaving the interest of approximately Rs. 1.5 crores un-serviced besides the principal obligation under ECLGS-1 and Loan Account. Similarly, a sum of Rs. 27,51,82,855/- is claimed to have accrued on account of normal interest on the outstanding facilities from December 22 to March 23. As against this, the total money available and appropriated from the

Retention Account towards service obligation under credit facility amounted to Rs. 26,66,76,425/-, thus leaving the interest of approximately Rs. 0.90 crores un-serviced besides the principal obligation under ECLGS-1 and loan account.

6.3.16. These facts clearly belie the contention of the Corporate Debtor being a solvent company merely on the ground of positive EBIDTA, while the Corporate Debtor is clearly failing to service the normal interest and principal repayment obligations on month on month basis till December 2023 i.e. month prior to admission of Corporate Debtor into CIRP in the earlier round. Accordingly, we are of the considered view that there do not exist even exceptional circumstances warranting exercise of discretion assuming such discretion, if any, is vested in this Tribunal u/s 7 of the Code.

6.4. Further, the Note no. 4.7 to said Financial Statements states that "*Loan from Piramal group has been reduced on the basis of December 2022 SOA received by them on mail which has been recalled by Piramal Loan has been transferred lo Omkara Asset Reconstruction Company which has been challenged in Karnataka High Court & NCLT by the company. No SOA has been received after Dec 2022 from Piramal group by the company hence the amt paid has been adjusted as per normal accounting principle. Loan waived off has been transferred to capital reserve. Any difference amount that would arise on receipt of SOA from Piramal would be adjusted accordingly in subsequent financial years,*" The final Review Report dated 26.04.2025 has also stated in relation to this write off that - "*In our opinion, based on the communication regarding the write-off, we believe that the borrowers are entitled to avail the credit for the same. This ensures that they benefit from the adjustment, reflecting their accurate outstanding balances and fostering transparency in financial dealings*". It can be seen from the Note no. 4.7 that Piramal had recalled the Statement of Accounts shared via e-mail dated 15.01.2023. It is also pertinent to note that Piramal has assigned

the said debt to the Financial Creditor in terms of Assignment Agreement dated 27.12.2022 and any entry in the books of Piramal settling the account of Corporate Debtor consequent upon such assignment can not constitute a waiver of an obligation due to the Financial Creditor from the Corporate Debtor. Further, it is trite law that unilateral write off of a debt by a creditor does not discharge the debtor from the obligation under such debt due from him. Accordingly, we do not find any merit in the claim of the Corporate Debtor to deny any liability in relation to the amount of write off, in the absence of any communication from the assignee financial creditor after assignment of debt or by Piramal prior to assignment of debt.

6.5. The issue was also raised about suppression of CMA document by the Financial Creditor. As noted above, Clause 1 & 2 of the CMA are already forming part of the Escrow Agreement, which is placed along with the Petition. Nothing more, in substance, is added in the CMA so as to consider the suppression thereof a vital defect warranting dismissal of this Petition. In relation to the DSRA balance suppression, we have already explained in the preceding paras the effect of such DSRA balance on the total amount in default. The aspect of withdrawal of CP (IB) No. 1287 and 1292 of 2021 has already been dealt with by Hon'ble NCLAT, accordingly nothing remains therein. Nonetheless the present Petition has been filed for a different cause of action.

6.6. As regard the allegation of multiple bank statements being inconsistent with one another, we note that the amount collected by the Financial Creditor/Lenders, the interest chargeable on the loans as per the rate of interest agreed under the agreement and the amount disbursed to the Corporate Debtor are not in dispute. The Corporate Debtor has only challenged the applicable rate of interest and

diversion of ECLGS facility disbursement for service of obligation under Loan/RCF facility. These issues have already been dealt with in the preceding paras, accordingly, there is no merit in this argument as long as there exist a debt and a default in payment thereof exceeding Rs. 1 crore. The Corporate Debtor has also raised the contention that the present Petition has been filed for default of Rs. 666 crores whereas the Financial Creditor has admitted default of about Rs. 17 crores as on 15.11.2022. It is noted that a default of Rs. 666 crores stated as on 27.02.2023 is arising from the recall of whole facility subsequently on 15.02.2023, which the Corporate Debtor has consciously been avoiding referring to. It was also submitted by the learned Counsel for the Corporate Debtor that the Corporate Debtor is ready to deposit the amount of default in ECLGS facilities as on 15.11.2022 after appropriation of DSRA balance, if allowed an opportunity to cure the said default. However, we find that subsequent to 15.11.2022 the Financial Creditor has recalled the whole of outstanding credit facilities as on 15.02.2023, accordingly a question of curing the default as on 15.11.2022 does not arise. Further, as we have noted above, the cash accruals available with the Corporate Debtor till December 2023 have been insufficient to meet the service obligation under the credit facilities, and there has also been a default in subsequent period as well, even if the said recall of the whole facilities is ignored.

6.7. In view of the above discussion and analysis, we are considered view that there exists a financial debt, which is in default in relation to ECLGS facilities as on 15.11.2022 as well as in relation to whole of credit facilities having been recalled in terms of notice dated 15.12.2023. Having said so, we are conscious that the Hon'ble NCLAT has also observed that "*18. Even though, we have found that Section 7 Application filed by Omkara is not barred by res-judicata, the issue still needs to be considered is as to whether Section 7 Application filed by*

Omkara was for resolution of insolvency of the Corporate Debtor or was only filed as recovery measure." Accordingly, it has required us to consider the following facts while answering the above issue stating that these fact raises question on the object and motive of Omkara to initiate CIRP against the CDs:

> *(i) Section 7 Application, which was filed by IDBI Trusteeship Ltd. on behalf of the Lenders was withdrawn on 13.12.2022 and 22.12.2022 and it is to be presumed that on the date when Application was withdrawn, there was no need for insolvency resolution process of the CD. It is to be noted that while withdrawing Section 7 Application, neither any reasons have been given for withdrawal, nor any liberty was given to file a fresh application.*
>
> *(ii) Immediately after withdrawal of Section 7 Application, the debt was assigned by Lenders to Omkara on 27.12.2022, who issued recall notice on 15.02.2023 and filed Section 7 Application on 09.03.2023, claiming debt and default as on 15.11.2022, which date was prior to withdrawal of Section 7 Application".*

6.7.1. To examine this aspect, it is pertinent to note the rights vested in the Financial Creditor under the Loan Agreement on occurrence of event of default. Clause 20 of the Loan Agreement contemplates the rights available to the Financial Creditor on occurrence of event of default, besides filing an application for resolution of stress of the Corporate Debtor in terms of the Code. In terms of Clause 20.1.3, the Lender/FC had the right to take charge of or takeover the Projects and Project Properties or any of them; in terms of Clause 20.1.7, the Lender/FC had the right to review the management set-up and reconstitute and appoint directors on the Board of the Borrowers, and/or require the Borrowers to restructure; in terms of Clause 20.2, the Lender/FC had the right, without any further consent of the Borrowers or the Obligors, to sell or concur with any other person in selling the Secured Properties or any part thereof

without the intervention of the court, either by public auction or private contract; in terms of Clause 20.7.1, the Lender/FC had the right to convert, at its option, the Outstanding Amounts, either in part or full, and whether the same is due or not, into fully paid up equity shares of the Borrowers, at such valuation as may be determined by the Lender in accordance with the Strategic Debt Restructuring Scheme.

6.7.2. We note that the aforementioned rights available to the Financial Creditor can cause displacement of the current management completely from the control of the Corporate Debtor, even if an application under Insolvency and Bankruptcy Code is not filed by the Financial Creditor before this Tribunal. The Scheme of the Code contemplates the resolution of the Corporate Debtor and the recovery to the Financial Creditor, though not a primary objective behind the initiation of process of such resolution, is certainly an incidental outcome of such resolution. The Scheme of Insolvency Resolution Process under the Code contemplates the replacement of existing management by an Insolvency Professional, assisted and guided by the Committee of Creditors, in the resolution of the financial stress of a Corporate Debtor. As we have noticed in the preceding paras, the Corporate Debtor is not in a position to service its periodic obligations in the present form, we are of the considered view that the Corporate Debtor's debt certainly requires either resolution or restructuring. It is an admitted fact that the restructuring binds only the parties to such restructuring process, while the resolution process under the Code binds all stakeholders so as to address the defaults qua other stakeholders as well. Accordingly, we are of the considered view that the present Petition deserves to be allowed so as to address the financial stress of the Corporate Debtor.

6.7.3. As regard the intent and objects of the Financial Creditor behind the present Petition, it is noticed that the earlier Company Petition was filed by IDBI on behalf of erstwhile Lenders and was withdrawn prior to assignment of credit facilities in favour of the Financial Creditor, which indicates that it was the erstwhile Lenders who had moved the earlier Petition for recovery of the money and withdrew it when it found its successor to provide it an exit. The Financial Creditor has also placed on record certain e-mail communication in month of April 2024 whereby one Angels Financial Services had approached the Petitioner with a One Time Settlement offer and enhancement thereafter as well. These proposals were turned down by the Financial Creditor even though the earlier order of admission was stayed by the Hon'ble NCLAT. This clearly indicates the intent and object of the Financial Creditor in filing this Petition as not being that of recovery. Accordingly, we are satisfied that the present Petition is for the resolution of the Corporate Debtor, who requires a resolution to address its financial stress.

7. In view of the foregoing discussion and analysis, we are of considered view that present Petition, CP (IB) No. 291 of 2023 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserves to be **admitted/allowed**.

8. We are of considered view that there exists a financial debt, exceeding the threshold limit prescribed u/s 4 of IB Code and the same is in default. The Petition is complete in all respects. Therefore, the Petition bearing CP (IB) No. 291/2023 filed by **Omkara Assets Reconstruction Private Limited**, the Financial Creditor, under Section 7 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Gstaad Hotels Private Limited**, the Corporate Debtor, is **admitted/allowed**.

9. The Financial Creditor has proposed the name of Mr Jayesh Natvarlal Sanghrajka, Registration No. IBBI/IPA-001/IP-P00216/2017-2018/10416, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

10. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) No. 291/(MB) 2023 filed by **Omkara Asset Reconstruction Private Limited**, the Financial Creditor, under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **GSTAAD Hotels Private Limited** [CIN: U55101MH2003PTC143481], the Corporate Debtor, is admitted.

(b) There shall be a moratorium under Section 14 of the Code, in regard to the following:

(i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium: -

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Jayesh Natvarlal Sanghrajka**, Registration No. IBBI/IPA001/IP-P00216/2017-2018/10416, having registered address at 405-407, Hind Rajasthan Building. Phalke Road, Dadar East, Mumbai 400014 Email ID: jayesh@jsaandco.in is hereby appointed as Interim Resolution Professional ("**IRP**") of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be

issued by the Insolvency & Bankruptcy Board of India ("**IBBI**"). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims and such amount shall be treated as Interim Finance. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) The IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)