NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1039 of 2025

(Arising out of Order dated 08.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in CP (IB) No.290 of 2023)

IN THE MATTER OF:

Deepak Raheja & Anr. ...Appellants

Versus

Omkara Assets Reconstruction Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellants : Mr. Ajesh K. Shankar, Ms. Shweta Bharti, Mr. Rohit Jolly, Mr. Srihari S., Ms. Suneha, Mr. Siddharth Tandon and Mr. Raghav Sachdev, Advocates.

For Respondents : Mr. Krishnendu Dutta, & Mr. Abhijeet Sinha, Sr. Advocates with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Ms. Heena Kochar and Ms. Alina Merin Mathew, Advocates for FC. Mr.

Mr. Sanampreet Singh; Mr. Suraj Dhawan and Mr. Nikhil Singh, Advocates for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 1040 of 2025

(Arising out of Order dated 08.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in CP (IB) No.291 of 2023)

IN THE MATTER OF:

Deepak Raheja & Anr. ...Appellants

Versus

Omkara Assets Reconstruction Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellants : Mr. Ajesh K. Shankar, Ms. Shweta Bharti, Mr. Rohit Jolly, Mr. Srihari S., Ms. Suneha, Mr. Siddharth Tandon and Mr. Raghav Sachdev, Advocates.

For Respondents : Mr. Krishnendu Dutta, & Mr. Abhijeet Sinha, Sr. Advocates with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Ms. Heena Kochar and Ms. Alina Merin Mathew, Advocates for FC. Mr.

Mr. Sanampreet Singh; Mr. Suraj Dhawan and Mr. Nikhil Singh, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed challenging two orders of the same date, i.e. 08.07.2025 passed by National Company Law Tribunal, Mumbai Bench, Court-I in CP(IB) No.290 of 2023 in Omkara Asset Reconstruction Pvt. Ltd. ("**Omkara Asset**") vs. Neo Capricorn Plaza Pvt. Ltd. ("**Neo Capricorn**") and order dated 08.07.2025 passed by National Company Law Tribunal, Mumbai Bench, Court-I in CP(IB) No.291 of 2023 in Omkara Asset Reconstruction Pvt. Ltd vs. Gstaad Hotels Pvt. Ltd. ("**GSTAAD Hotels**"). By the impugned order dated 08.07.2025, Section 7 applications filed by Omkara Asset Reconstruction Pvt. Ltd – Financial Creditor, have been admitted, initiating Corporate Insolvency Resolution Process ("**CIRP**") against the two Corporate Debtors ("**CD**") namely - Neo Capricorn Plaza Pvt. Ltd. and GSTAAD Hotels Pvt. Ltd. Aggrieved by order admitting Section 7 applications, these two Appeal(s) have been filed by Suspended Directors of the respective CDs.

2. We may first notice the brief facts of the case giving rise to these two Appeal(s):

(i) A Loan Agreement dated 26.12.2017 was entered between GSTAAD Hotels, Neo Capricorn and Piramal Finance Ltd. (the

present Appellant(s)/ entities, who are mentioned as Promoter/ Obligor) for sanctioning of a facility to both the CDs, GSTAAD Hotels and Neo Capricorn. Financial facilities of a term loan of Rs.450 crores was sanctioned to GSTAAD Hotels with Rs.50 crores as revolving credit facility. Neo Capricorn was sanctioned a term loan of Rs.100 crores. Loan Agreements contemplated mortgage of security documents. The CD - GSTAAD owned JW Marriott Hotel, located at Bangalore and Neo Capricorn owned Crowne Plaza Hotel at Pune.

(ii) The Loan Agreement provided for payment of interest, repayment and period of repayment. It also provided for Debt Service Reserve ("**DSRA**") Account and events of default. A Security Trustee Agreement was also executed on 26.12.2017 with Piramal, CD and M/s IDBI Trusteeship Services Ltd. ("**IDBI Trusteeship**") On 17.01.2018, a Cash Management Agreement was entered between the Lender, Piramal, the CD and IDBI, under which Agreement, gross revenue collections of the Hotels, operated by Hotel Operators, were to be deposited into Revenue Account. The 66% of the revenue amount to be transferred on daily basis in Expense Account for meeting the daily expenses/ operation of the Hotels and 34% was to be transferred into the Retention Account towards servicing of the debt under the Loan Agreement.

(iii) On 29.12.2020 under the Emergency Credit Line Guarantee Scheme ("**ECLGS**"), a Loan Agreement was entered with Primal as Lender and GSTAAD Hotels for an amount of Rs.98 crores. On the same day, under the ECLGS, by Agreement dated 30.12.2020 an amount of Rs.19.5 crores was sanctioned to Neo Capricorn.

(iv) IDBI Trusteeship Services Ltd. had issued a notice of default, both to GSTAAD Hotels and Neo Capricorn on 04.03.2021. IDBI filed a Company Petition being CP(IB) No.1292 of 2021 on 10.08.2021 for initiating CIRP against GSTAAD Hotels. On 23.10.2021, another Company Petition being CP(IB) No.1287 of 2021 was filed against Neo Capricorn for initiating CIRP.

(v) On 11.03.2022 under ECLGS Scheme, a Loan Agreement was entered with Lender and GSTAAD Hotels for Rs.65 crores referred to as ECLGS-2.

(vi) CP(IB) No.1292 of 2021 was withdrawn on 13.12.2022, whereas CP(IB) No.1287 of 2021 was withdrawn on 22.12.2022.

(vii) On 27.12.2022, an Assignment Agreement was executed between the Lender and Omkara Asset Reconstruction Pvt. Ltd., where Term Loan as well as ECLGS-1 and ECLGS-2 with respect to GSTAAD Hotels and Neo Capricorn was signed.

(viii) The Omkara Asset Reconstruction Pvt. Ltd. issued a loan recall notice dated 15.02.2023, recalling entire loan given to GSTAAD Hotels. Total amount claimed in the recall notice against GSTAAD Hotels was Rs.666,53,26,968. On the same day by a separate recall notice dated 15.02.2023, issued to Neo Capricorn, claiming total outstanding amount as Rs.119,99,23,320/-. Both GSTAAD Hotels and Neo Capricorn replied to the recall notice on 20.02.2023 stating that they continue to pay the Piramal and they asked for copy of the Assignment Agreements.

(ix) On 09.03.2023, CP(IB) No.290 of 2023 was filed by Omkara Asset Reconstruction Pvt. Ltd against Neo Capricorn and CP(IB) No.291 of 2023 was filed against GSTAAD Hotels Pvt. Ltd.

(x) On 10.03.2023, a Writ Petition was filed by GSTAAD Hotels in the High Court of Karnataka being Writ Petition No.6037 of 2023 impugning the acts of the Lender assigning the debt to Omkara Asset Reconstruction Pvt. Ltd.

(xi) In CP(IB) Nos.290 and 291 of 2023 – CDs filed the reply, to which rejoinders were also filed. The Adjudicating Authority vide two separate orders passed on 09.01.2024 admitted CP(IB) No.290 of 2023 against Neo Capricorn, initiating CIRP and by a separate order of the same date admitted CP(IB) No.291 of 2023 against GSTAAD Hotels.

(xii) Challenging the orders dated 09.01.2024 passed in CP(IB) Nos.291 of 2023, Company Appeal (AT) (Ins.) No.165 of 2024 was filed in this Tribunal. Similarly, another Appeal being Company Appeal (AT) (Ins.) No.212 of 2024 was filed in this Appellate Tribunal challenging order of the same date passed in CP (IB) No.290 of 2023.

(xiii) The Writ Petition filed in the Karnataka High Court, came to be dismissed on 28.02.2024, upholding the Assignment Agreement executed in favour of Omkara Asset Reconstruction Pvt. Ltd. A Writ Appeal was filed challenging the order of learned Single Judge dated 22.03.2024, which was registered as Writ Appeal No.478 of 2024.

(xiv) A One Time Settlement ("**OTS**") was sent by the CD, i.e. Suspended Director of GSTAAD Hotels and Neo Capricorn, offering to settle the outstanding dues of the Lenders by offering Rs.743.71 crores.

(xv) On 08.01.2025, this Tribunal allowed the Company Appeal (AT) (Ins.) Nos.165 and 212 of 2024, by setting aside order dated 09.01.2024 passed by Adjudicating Authority admitting CP (IB) Nos.290 & 291 of 2023. This Tribunal vide judgment and order dated 08.01.2025 revived both CP (IB) Nos.290 & 291 of 2023 before the Adjudicating Authority to be considered afresh.

(xvi) Subsequent to the order dated 08.01.2025 passed by this tribunal, the CDs - GSTAAD Hotels as well as Neo Capricorn filed additional affidavits in CP (IB) Nos.290 & 291 of 2023. Omkara Asset Reconstruction Pvt. Ltd. filed a reply to the additional affidavits before the Adjudicating Authority. The CDs filed affidavit in sur-rejoinder.

(xvii) The Division Bench of the Karnataka High Court dismissed the Writ Appeal on 19.05.2024. Special Leave Petition against order of the Division Bench of Karnataka High Court was also dismissed on 02.06.2025.

(xviii) The Adjudicating Authority heard CP (IB) Nos.290 & 291 of 2023 and by two separate orders of the same date, i.e. 08.07.2025 admitted CP (IB) Nos.290 & 291 of 2023, initiating CIRP against the Neo Capricorn and GSTAAD Hotels Pvt. Ltd.

(xix) Aggrieved by order dated 08.07.2025 Company Appeal (AT) (Ins.) No.1039 of 2025 has been filed the CD – Neo Capricorn Plaza Pvt. Ltd. challenging the order dated 08.07.2025 passed in CP(IB) No.290 of 2023; and Company Appeal (AT) (Ins.) No.1040 of 2025 has been filed challenging the order dated 08.07.2025 passed in CP (IB) No.291 of 2023 against the CD – GSTAAD Hotels Pvt. Ltd.

3. We have heard Shri Ajesh K. Shankar, learned Counsel appearing for the Appellant; Shri Krishnendu Datta, learned Senior Counsel and

Shri Abhijeet Sinha, learned Senior Counsel appearing for the Financial Creditor; Shri Sanam Preet Singh and Shri Suraj Dhawan, learned Counsel appearing for Respondent No.2.

4. The arguments advanced by learned Counsel for the Appellant in both the Appeal(s) as well as learned Counsel for the Financial Creditor in both the Appeal(s) being common, we hereinafter refer in both the Appeal(s) as submissions of the Appellant and submissions of the Financial Creditor. It shall be sufficient to refer to the pleadings in Company Appeal (AT) (Ins.) No.1040 of 2025 for deciding both the Appeal(s) in addition to reference in Company Appeal (AT) (Ins.) No.1039 of 2025 as and when necessary.

5. Learned Counsel for the Appellant submits that order of Adjudicating Authority dated 08.7.2025 is not in accordance with order of remand dated 08.01.2025 passed by this Tribunal in Company Appeal (AT) (Ins.) Nos.165 & 212 of 2024. It is submitted the several findings returned by this Tribunal in its order dated 08.01.2025 operated as *res-judicata* to the extent of findings made, but Adjudicating Authority disregarded the said findings while passing the impugned order. It is submitted that the date of default pleaded by the Financial Creditor was 15.11.2022, whereas in the impugned judgment, the Adjudicating Authority tried to shift the date of default from 15.11.2022 to 27.02.2023, which is impermissible. It is submitted that there was excess withdrawal by the Lender to the extent of Rs.10,35,88,444/- beyond 34% from the Retention Account. If the excess withdrawal is taken into consideration,

there was no default on 15.11.2022 either in the loan account or ECLGS Facility Nos.1 and 2. It is further submitted that in Section 7 application filed with regard to GSTAAD Hotels, there was no facts pleaded with regard to default in the Term Loan Account and only pleading was with respect to default in ECLGS Facility Nos.1 and 2. ECLGS Facility were not even due on 15.11.2022. It is submitted that the CD has filed Chartered Accountant Report with respect to Facilities in question, which clearly proved that there was no default on 15.11.2022 on the part of the CDs – GSTAAD Hotels and Neo Capricorn. It is submitted that the Lender was obliged to maintain DSRA to the extent of Rs.8 crores for Facilities of GSTAAD Hotels and Rs.2 crores for Facilities of Neo Capricorn, which was only for the purpose of appropriation for any default in the Term Loan, ECLGS and the interest. Had the said amount be utilized for servicing the debt, there was no default on 15.11.2022. The very basis of Section 7 application was default on 15.11.2022, which is tried to be shifted by Financial Creditor as 27.02.2023 during the course of submissions and Adjudicating Authority also relied on the said date for default on the part of the CDs. This Tribunal in its judgment dated 08.01.2025 has clearly found out that of ECLGS facilities, which were for working capital, the amount of Rs.154 crores was appropriated by the Lenders to service their Facilities, which was impermissible. The Adjudicating Authority in the impugned order has brushed aside the said argument without giving any valid reason. It is submitted that amount, which was to be kept in reserved by the Lenders in DSRA, in event the same would have been

utilized in repayment of interest and other dues, no default could be there on 15.11.2022. It is submitted that Chartered Accountant Report relied by the Appellant, clearly proved that there was no default on 15.11.2022, which was ignored by the Adjudicating Authority. The application was filed by the Financial Creditor as a recovery measure and was filed with malafide intention. The Adjudicating Authority ignored the said aspect. The Adjudicating Authority also erred in observing that that in pro-rata appropriation of the DSRA only 26% amount could be adjusted to ECLGS Facilities, which was neither averred or contemplated under the Loan Agreement Clauses. The NCLT has conducted roving enquiry in the impugned order. There was never any demand or shortfall from both the CDs. Both the CDs are profit earning Companies and have been running the two hotels successfully, which are earning profits. The Adjudicating Authority in the impugned order has put two running Hotels in insolvency, which is not the purpose and object of the IBC.

6. Learned Counsel for the Financial Creditor refuting the submissions of learned Counsel for the Appellant submitted that argument of the Appellant that order of Adjudicating Authority is not in accordance with the remand order dated 08.01.2025 is incorrect. This Tribunal while remanding the matter to the Adjudicating Authority in paragraph 65 has clearly held that this Tribunal has not recorded any conclusive opinion on any of the issues raised and it was for the Adjudicating Authority to consider the application afresh after hearing both the parties. The Adjudicating Authority after remand gave

opportunity to both the parties and the CDs also filed additional affidavits and sur-rejoinders and Financial Creditor also filed reply, bringing on record all relevant facts including details of default as on 15.11.2022 before the Adjudicating Authority with Statement of Account. The date of default claimed in the application was 15.11.2022 and present is not a case where Financial Creditor was seeking to shift the date of default. Both the CDs were in default on 15.11.2022, leading to issue of recall notice on 15.02.2023, which was in accordance with the event of default as contemplated in the Loan Agreement Clause-19. It is submitted that Cash Management Agreement was only a mechanism devised for operation of the hotel and in event the 34% of the amount, which was transferred to the Retention Account was not sufficient for payment of loan amount or any part thereof, the CDs were obliged to make the payment from any other funds acceptable to the Lender. The amount in the Retention Account was not sufficient, hence, there was event of default on 15.11.2022. With regard to GSTAAD Hotels under ECLGS Facility-1, full installment of principal amount and interest was due including the outstanding in the loan amount. Similarly, interest was due in the ECLGS Facility with regard to Neo Capricorn. With regard to GSTAAD Hotels on 15.11.2022, total default was Rs.17,16,29,518 and with regard to Neo Capricorn, minimum default on 15.11.2022 was Rs.2,64,99,473/-. The loan amount was in the DSRA, any disbursement in DSRA as claimed could have also increased the loan liability and the interest liability on the DSRA disbursement. The amount in the Retention

Account was not sufficient to satisfy the obligation of Lender. The Adjudicating Authority after considering all relevant materials on record, returned a finding in both the proceedings that there was default on 15.11.2022 committed by the CD in payment of debt. It is submitted that the CD has never denied the existence of debt. It is submitted that in proceeding before the High Court of Karnataka, learned Single Judge as well as the Division Bench have noted the submissions of the Appellant that CD has not contested the principal or interest payment was not overdue at any point of time. The admission, which has been recorded by learned Single Judge as well as the Division Bench, in the proceedings, which was initiated by the CD, is clearly binding on the Appellant in contending that there was no debt and default. It is submitted that there is no question of applicability of any principle of *res-judicata*. This Tribunal in the judgment dated 08.01.2025 has already repelled the submissions of the Appellant based on *res-judicata* relying on withdrawal of the earlier Section 7 proceeding filed by the IDBI Trusteeship. It is submitted that this Tribunal while remanding the matter, has clearly observed that this Tribunal is not expressing any conclusive opinion on any of the issues and it was for the Adjudicating Authority to decide the issues, after hearing the parties. It is submitted that the Adjudicating Authority has also held that even though the CD has positive EBIDTA, but the profits which have been earned by the CD was not sufficient to discharge its debt obligation. The Adjudicating Authority after considering all the materials on record has returned the finding of debt

and default in proceeding under Section 7, it is well settled that the Adjudicating Authority has to only consider as to whether there is debt and default committed by the CD, for admitting Section 7 application. Even the Appellants have not denied the default on 15.11.2022, but their submission is that the said default is to be adjusted from the amount in DSRA or the excess withdrawal. There is no question of excess withdrawal, since any amount, which has been withdrawn by the Lender from the Retention Account was towards the debt obligation. It is not the case of the Appellant that any amount excess to the obligation of the CD has been withdrawn by the Lenders. The allegation of excess withdrawal of Rs.10 crores is misconceived. The statement by the Promoters of the CD, on the basis of Review Report obtained by the CD, is contrary to the covenants between the parties. The CMA dated 04.01.2018 and the DSRA obligation under the Loan Agreement are only mechanism to channel funds and do not override the CDs' primary obligation to repay the loans. It is submitted that the recall notices issued by the Lender on 15.02.2023 was in accordance with the Loan Agreement and right to recall has never been questioned. The Adjudicating Authority has rightly also taken note of the relevant Clauses, where after period of five years or ten years from the first disbursement, there was option given to the Lender to recall the entire loan amount. It is submitted that in case of default under the DSRA, the amount was to be replenished by the CD. According to own case of the Appellant, Rs.3 crores under the DSRA remained undisbursed with respect to GSTAAD Hotels. It is submitted

that insofar as the question of assignment is concerned, that has already been upheld by the Karnataka High Court in the judgments of Single Judge as well as the Division Bench and it is not open for the Appellant to question the assignment in these proceedings. There are pending dues against both the CDs as mentioned in the recall notice dated 15.02.2023 and the CDs need to be resolved through the CIRP.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. Before we enter into submissions of learned Counsel for the parties, it is necessary to notice the judgment of this Tribunal dated 08.01.2025 by which, this Tribunal while setting aside the order admitting Section 7 application filed against both GSTAAD Hotels and Neo Capricorn, remitted the matter for fresh consideration before the Adjudicating Authority. In the aforesaid judgment, this Tribunal after noticing the submissions of the parties has framed 11 issues for consideration, which are contained in paragraph-14 of the judgment. Paragraph 14 of the judgment dated 08.01.2025 in Company Appeal (AT) (Ins.) Nos.165 & 212 of 2024 are as follows:

> "**14.** From the submissions of learned Counsel for the parties and the materials placed on record, following issues fell for consideration in these Appeal(s):
>
> (1) Whether Assignment dated 27.12.2022 made in favour of Omkara Assets Reconstruction Pvt. Ltd. by the Lenders was not in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act") as well as the Circulars issued by the Reserve Bank of India, the account of Corporate Debtor having never declared as NPA or SMA?

(2) Whether due to dismissal of Section 7 Application filed on behalf of the Lenders, being CP(IB) No.1292/2021 and CP(IB) No.1287 of 2021 as withdrawn on 13.12.2022 and 22.12.2022, the Section 7 Application filed by Omkara Assets Reconstruction Pvt. Ltd. Being Company Petition (IB) 291 of 2023 and 290 of 2023 were not maintainable and were hit by principle of res-judicata?

(3) Whether the Corporate Debtors, who are running five star JW Marriott Hotel and Crown Plaza Hotel are profitable Companies earning substantial profits?

(4) Whether the Adjudicating Authority committed error in returning finding in paragraph 11 of the impugned order that due to denial of existence of Cash Management Agreement, the arguments of the Corporate Debtor on the basis of servicing of debt as per Cash Management Agreement, cannot be accepted?

(5) Whether the Adjudicating Authority was obliged to consider the amount transferred to Lenders under Cash Management Agreement towards servicing of debt for returning a finding of default by the Corporate Debtor?

(6) Whether Lenders were obliged to maintain DSRA reserve as per Loan Agreement dated 26.12.2017, which amount was required to be appropriated towards payment of principal & interest due under Loan Agreement & ECLGS-I and ECLGSII?

(7) Whether the finding of the Adjudicating Authority in paragraph 8 that it is undisputed fact that the defaults in payment of Loan amount exists, are sustainable the Corporate Debtor having disputed the default in the pleadings and arguments before the Adjudicating Authority?

(8) Whether out of amount sanctioned by Lenders under ECLGSI and ECLGS-II of Rs.98 crores + Rs.65 crores = Rs.163 crores, the Lenders have used the amount of about Rs.140 crores to service its own debts and dues contrary to Agreement dated 30.12.2020 and 21.03.2022 and Adjudicating Authority rightly rejected the submission of Corporate Debtor on ground of end use Certificate issued by Corporate Debtor.

(9) Whether Corporate Debtor has committed default towards ECLGS-1 sanctioned on 30.12.2020 as per date of default 15.11.2022?

(10) Whether the Financial Creditors have been able to prove default under the Loan Agreement dated

26.12.2017 and the ECLGS-II sanctioned on 21.03.2022?

(11) To what relief, if any, the Appellant(s) are entitled in these Appeal(s)?"

9. This Tribunal relying on the order of the Karnataka High Court held that assignment dated 27.12.2022 having upheld by the High Court, the assignment cannot be allowed to be questioned in the Appeal. With regard to withdrawal of the earlier Section 7 applications filed by IDBI Trusteeship, it was held that withdrawal shall not operate *res-judicata*, insofar as the applications which have been filed by Omkara Asset. This Tribunal has held that Adjudicating Authority committed error in not considering the Cash Management Agreement between the parties on mere denial of the Financial Creditor of the said Agreement, this Tribunal held that Adjudicating Authority was obliged to consider the amount transferred to Lender under the Cash Management Agreement towards servicing of debt for returning the finding of default by the CD. With respect to DSRA, it was held that said was as per the Loan Agreement dated 26.12.2017 and the amount in DSRA was required to be appropriated towards payment of principal and interest due under the Loan Agreement. It was also held that there was no admission by the CD about the default and this question was required to be considered. Rejection of submission of CD with regard to ECLGS-1 and ECLGS-2 Facilities, totaling to Rs.163 crores, out of which Rs.140 crores was utilized by the Lender to serve its own debt, only on the basis of end use Certificate given by the CD, was not correct. The question as to whether the CD has committed default towards the ECLGS-1 and ECLGS-2

Facilities as well as the Loan Agreement was required to be considered. After answering all the issues as framed and while considering Issue No.(11), i.e. to what relief the Appellant(s) were entitled, this Tribunal held that findings of Adjudicating Authority regarding denial of CMA are unsustainable. It was also held that Adjudicating Authority did not advert to DSRA and the submissions of the Appellant that amount received under ECLGS-1 and ECLGS-2 Facilities have been used by the Lender to service its debt and dues, which is contrary to the Agreement dated 30.12.2020 and 21.03.2022, was rejected without adverting to materials fact. This Tribunal ultimately disposed of both the Appeal(s). It is useful to notice paragraphs 62 to 65 of the judgment, which are as follows:

> "**62.** We have already held that the findings of the Adjudicating Authority regarding denial of CMA are unsustainable. The Adjudicating Authority has also not adverted to the DSRA and to the submissions of the Appellant that amounts received under ECLGS-1 and ECLGS-2 have been used by the Lenders for servicing its debt and dues, contrary to the Agreement dated 30.12.2020 and 21.03.2022 was rejected without adverting to materials relied. The said question was also required to be considered by the Adjudicating Authority. We have also noticed above that both the Hotels are running Hotels and are earning revenues. In the written submissions, which has been filed by the Appellant in pursuance of liberty granted by this Tribunal, it has been stated that from 09.01.2024 till 27.11.2024 an amount of Rs.78 crores is available in the Retention Account of the CD, which has been converted as Fixed Deposits by the IRP. Thus, after admission of the CIRP, the amount was continued to be remitted to the Retention Account as per the Cash Management Agreement and as per submission of the Appellant, the amount of Rs.78 crores is available in the Retention Account. While entertaining the Appeal, we have passed the following interim order on 24.01.2024, which is as follows:
>
> " xxx xxx xxx

In the meantime, in pursuance of the impugned order Committee of Creditors may not be constituted. However, the IRP shall ensure that there is no hindrance caused in running of the hotel by the operating management agency, with the assistance of the ex- management and their employees who shall cooperate with the IRP.

xxx xxx xxx"

63. The IRP has also filed its written submissions, which mentions that Corporate Debtor is being run as a going concern and IRP has incurred operational costs during CIRP.

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."

10. In the last paragraph of the judgment, it was made clear that while deciding the Appeal(s), this Tribunal has not expressed any conclusive opinion on any of the issues, which are yet to be decided by the Adjudicating Authority consequent to the remand order. Thus, the first

submissions of learned Counsel for the Appellant that findings returned by this Tribunal on certain issues have to operate as *res-judicata* while considering the application under Section 7 by the Adjudicating Authority, cannot be accepted. Paragraph 65, clearly indicates that this Tribunal has not expressed any conclusive opinion. The observations and findings returned by this Tribunal in judgment dated 08.01.2025 was that observation and conclusion returned in the order passed by the Adjudicating Authority impugned in the Appeal were unsustainable, due to non-consideration of relevant facts and submissions. We, thus, are of the view that no such findings were returned in the order of this Tribunal dated 08.01.2025, which may operate as *res-judicata* for consideration of any of the issues, which came for consideration before the Adjudicating Authority pursuant to the remand order dated 08.01.2025. We, thus, are not persuaded to accept the submission of the Appellant regarding certain findings to operate as *res-judicata*.

11. Learned Counsel for the Appellant during submission has also raised an argument that initiation of proceedings under Section 7 by the Omkara Asset are malafide and were for recovery of its dues. The Financial Creditor by virtue of Section 7 is given the right to initiate proceedings of insolvency against the CD, if there is any default committed by the CD, within the meaning of IBC. The IBC is a complete Code, which provides for special remedy. A CD, who commits the default, needs resolution, so as to it may revive itself and run as a going concern. In the impugned order dated 08.07.2025, passed by the Adjudicating

Authority while admitting Section 7 application CP(IB) Nos.290 and 291 of 2023, has come to the conclusion that the CD required a resolution to address its financial stress. It is useful to quote paragraph 6.7.3 of the impugned order passed in CP(IB)No.291 of 2023, which is as follows:

> 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.

12. The submission of the Appellant that Omkara Assets Reconstruction has initiated the proceedings malafide needs to be rejected, in view of the case setup by the Financial Creditor of default on 15.11.2022 and huge default on the part of the CD, subsequent to issuance of recall notice dated 15.02.2023. As noted above, recall notice dated 15.02.2023 issued to GSTAAD Hotels, where total amount demanded was Rs.666,53,26,968/- and similarly the recall notice dated 15.02.2023 with regard to Neo Capricorn, the amount claimed was Rs.119,99,23,320/-. Clause 19 of the Loan Agreement provides for event of default. Clause 19 of the Loan Agreement dated 26.12.2017 is as follows:

"**19.1 Non Payment**

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.

19.2 Non-Compliance

(1) The Borrowers and/or the Obligors do not comply with any provision of this Agreement and the other Finance Documents or there is any inaccuracy in the representations/warranties or breach/non-compliance of the covenants/ undertakings/ indemnities.

(ii) The Borrowers and/or the Obligors do not comply with any of the provisions of the Applicable Laws.

19.3 Misrepresentation

Any representation, warranty or statement made or deemed to be made by the Borrowers and/or the Obligors in the Finance Documents or any other document delivered by or on behalf of the Borrowers and/ or the Obligors under or in connection with any Finance Document, is or proves to have been incorrect or misleading in any respect when made or deemed to be made.

19.4 Conditions Precedent and Conditions Subsequent

The Borrowers and/or the Obligors fail to fulfil any of the conditions precedent set out in the Third Schedule or any of the conditions subsequent set out in the Fourth Schedule, to the satisfaction of the Lender.

19.5 Management Control

19.5.1 The Obligors are no longer actively involved in the Borrowers and/or its business; or are taking any steps to cease to be so involved;

19.5.2 There is a change in the management of the Borrowers, without the prior written consent of the Lender.

19.6 Authorization

GHPL	NCPL	Deepak Raheja	Anita Rajeja	PBDPL	Aditya Raheja	Shiv Raheja	ARIIPL	Lender Piramal

19.6.1 The Borrowers fail to obtain any Authorisation necessary for the operation of the Projects or any other Authorisation necessary for the Borrowers to carry on their respective businesses that is required at such particular time.

19.6.2 Any Authorisation necessary for the Projects or necessary for the Borrowers to carry on their businesses that is required at such particular time is modified, amended, revoked, refused, not renewed before its expiry, withheld or does not remain in full force and effect.

19.7 Failure of Escrow Mechanism

Any instance of the Receivables not being routed through the Escrow Account(s) as specified in the Escrow Agreement or any actions taken or proposed to be taken that could impact the escrow mechanism."

13. In the remand order dated 08.01.2025 passed by this Tribunal, one of the questions, which was required to be considered by the Adjudicating Authority while considering the question of default on the part of the CD was the Cash Management Agreement, which Cash Management Agreement was executed on 17.01.2018, consequent to the Loan Agreement dated 26.12.2017. Under the Cash Management Agreement, which was entered between Lender, the Operator of both the Hotels and the CDs, the entire revenue of the Hotels including the amount received towards the taxes were to be received in the Revenue Account and out of the amount received in Revenue Account, 66% was to be transferred on daily basis in the Expense Account for meeting the expenses of the Hotels and 34% of the receipt in the Revenue Account, was to be transferred to the Retention Account, towards servicing the debt under the Loan Agreement. The amount exceeding the CD's profit, was to be deposited in the Expense Account. As submitted by the learned Counsel for the Financial Creditor, the Cash Management Agreement was a mechanism to

service the debt obligation. However, in event the amount in the Retention Account was not sufficient to service the debt, the CD was not absolved from its debt obligation and has to service the debt from other source of found as accepted by the Lender. Clause 18.39 of the Loan Agreement, which is relevant in this reference provides as follows:

> "**18.39 Service of the Loan**
>
> 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, 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."

14. The above Clause of the Loan Agreement clearly contemplates that in event the funds lying in the Retention Account are not sufficient for the repayment of the loan or any part thereof, the Borrowers and/or the Obligors shall ensure that the Loan and every part thereof is repaid through such other funds as may be necessary for this purpose and acceptable to the Lender. Thus, it is true that amount in the Retention Account is relevant for consideration as to whether there was sufficient fund to meet the debt obligations of the CD or not. This Tribunal while its remand order dated 08.01.2025 has directed for consideration of the CMA and this Tribunal has clearly directed that the question of default on the part of the CD is to be determined after considering the CMA and amount therein. The Adjudicating Authority in the impugned order has noticed the relevant Clauses of the CMA. Paragraph 6.2 of the order dated

08.07.2025 in CP(IB) No.291 of 2023 noticed the CMA and its various Clauses in paragraph 6.2.1, 6.2.2 and 6.2.3.

15. One of the submissions, which has been advanced by learned Counsel for the Appellant is that there was excess withdrawal of Rs.10,35,88,444/- from the Retention Account, beyond the profit of the owner. It is submitted by the Appellant that Lender/ Financial Creditor failed to deposit the above excess amount and had the said excess amount had been deposited, there would have been no default on 15.11.2022. The Retention Account is an account in which 34% of the amount received in the Revenue Account is transferred to meet the Lenders' debt obligation. The CMA further contemplate that in event there is excess transfer of 34% amount as compared to the owners' profit, Lenders are to transfer back the amount in the Expense Account. The amount of Rs.10,35,88,444/-, which is claimed by the Appellant, was thus, the amount, which was transferred by the Lenders towards the debt obligation and that was excess to the owners' profit during the relevant period. The withdrawal of the amount excess to the owners' profit was obligatory of the Lender towards the Operator of the Hotels and CMA. It is not the case of the CD that amount, which was withdrawn by Lenders was in excess of entitlement of the Lenders to service their loan and other facilities. Under Clause 18.39, noted above, if the amount in the Retention Account is not sufficient to meet the debt obligation, it was obligation of the CD to make payment from other sources. The

Adjudicating Authority in paragraph 6.2.4 has dealt with the said issue and has made following observations:

> "**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."

16. After considering the CMA and respective submissions of the parties with regard to default by GSTAAD Hotels on 15.11.2022, a finding has been returned by the Adjudicating Authority with regard to default on 15.11.2022. The Adjudicating Authority found that there was default both with regard to ECLGS-1 and ECLGS-2 Facilities on 15.11.2022. The said finding has been returned after perusal of the Statement of Accounts.

It is useful to notice paragraphs 6.3.5, 6.3.6 and 6.3.7 of the order dated 08.07.2025 in CP(IB) No.291 of 2023, which is to the following effect:

> "**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."

17. The above finding of the Adjudicating Authority has been returned after considering the Statement of Accounts, status of the Statement of Accounts as on 15.11.2022, defaults in outstanding amount towards ECLGS-1 and ECLGS-2 Facilities and Loan Agreement with regard to GSTAAD Hotels. Similarly, while considering the CP(IB) No.290 of 2023 with respect to Neo Capricorn, after considering the Statement of Accounts as on 15.11.2022, finding has been returned in paragraph 6.2.3 that there was default in ECLGS Facility and in payment of principal, and

interest in the alleged account. In paragraphs 6.2.3 and 6.2.4, following have been stated:

> "**6.2.3.** It is alleged by the Corporate Debtor that the Financial Creditor had appropriated excess amounts towards ELCGS facility than due to cause default under the Loan Account citing the Statement of Account from 15.11.2022 to 30.04.2024 provided by Financial Creditor to it. On perusal of such statement of account, it is noticed that the said statement in respect of ELCGS facility shows a balance of Rs. 15,43,75,000 towards principal and Rs. 27,72,362/- towards interest aggregating to Rs. 15,71,47,362/- as on 15.11.2022. In terms of the repayment schedule of ELCGS facility, first instalment of Rs. 40,62,500/- fell due on 15.12.2021 and total 11 instalments have fallen due by 15.10.2022. In other words, the principal amount outstanding as on 15.10.2022 & 15.11.2022 should be Rs. 15,03,12,500/- and Rs. 14,62,50,000/- (assuming 11/12 instalments due till that date stands paid) respectively, while the outstanding principal balance as per said statement as on 15.11.2022 is Rs. 15,42,75,000/-, which clearly shows that there was a default in payment of ELCGS facility as on 15.10.2022 as well as 15.11.2022 even

Date	No of days	Opening Balance	Interest	Repayment	Total Outstanding
15-11-2022		15,43,75,000	27,72,362		15,71,47,362
30-11-2022	15		8,39,554	47,75,023	15,32,11,893
31-12-2022	31		16,91,627	1,39,53,782	14,09,49,739
31-01-2023	31		15,56,240	83,61,556	13,41,44,423
28-02-2023	28		13,37,769	80,13,759	12,74,68,433
31-03-2023	31		14,07,391	90,80,580	11,97,95,244
30-04-2023	30		12,80,004	1,00,72,711	11,10,02,537
31-05-2023	31		12,25,590	90,10,904	10,32,17,223
30-06-2023	30		11,02,869	84,02,452	9,59,17,641
31-07-2023	31		10,59,036	94,29,123	8,75,47,554
31-08-2023	31		9,66,621	81,04,930	8,04,09,245
30-09-2023	30		8,59,167	67,31,136	7,45,37,276
31-10-2023	31		8,22,973	85,62,954	6,67,97,295
30-11-2023	30		7,13,725	70,69,053	6,04,41,968
31-12-2023	31		6,67,346	1,00,12,514	5,10,96,800
31-01-2024	31		5,64,165	20,21,477	4,96,39,488
29-02-2024	29		5,12,715	-	5,01,52,203
31-03-2024	31		5,53,735	-	5,07,05,938
07-04-2024	7		1,26,418	-	5,08,32,356
Total			1,72,86,945	12,36,01,952	

in payment of principal, besides total interest of Rs. 27,72,362 outstanding as on 15.11.2022. The Corporate Debtor has alleged excess appropriation of monthly amounts under ELCGS facility than due from November, 2022 onwards. The said statement is reproduced herein below:

> 6.2.4. The said statement shows that a sum of Rs. 47,75,023/-, Rs. 1,39,53,782 and Rs. 83,61,556 has been appropriated in month of November, 2022, December, 2022 and January, 2023. After such appropriation, the balance as on 31.1.2023 is stated as Rs. 13,41,44,423/-, whereas such balance as on 15.1.2023 ought to be Rs. 13,81,25,000/- (14 instalments due till that date stands paid), thus there was no default in ELCGS facility as on that date, however, the default under Loan account remained even on 15.1.2023, if the appropriation accounted by the Financial Creditor is taken into consideration. As regards allegation of accelerated appropriation of balance in retention accounts towards obligation under ELCGS facility, we do not find any merit in the contention, as after recall of the facilities in terms of notice dated 15.02.2023, the whole loan amount become due. It is pertinent to note that such overdrawn amounts have been appropriated towards the obligations of 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. In the present matter, the petition has been filed on account of occurrence of default in respect of Loan as well as ELCGS and also on basis of occurrence of default subsequent to recall of whole of facility, accordingly, it is imperative to examine the default aspect cumulatively. Nonetheless, it is not the 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."

18. The Adjudicating Authority has also upheld the recall notice dated 15.02.2023 issued to both GSTAAD Hotels as well as Neo Capricorn, which findings have been returned in both the orders. It shall be useful to notice paragraphs 6.2.8 and 6.2.9 of the order dated 08.07.2025 in CP(IB) No.291 of 2023, which are as follows:

> "**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."

19. Insofar as the submission of the Appellant that both the Hotels were profit earning Hotels and there was positive EBIDTA and it was not a fit case for initiation of CIRP against the CDs. The Adjudicating Authority has considered the said submissions in detail and has noted the operating expenses, owners' profit and liabilities. After considering the

aforesaid in paragraph 6.3.11, 6.3.13, 6.3.14, 6.3.15 and 6.3.16 in CP(IB) No.291 of 2023, following was held in paragraph 6.3.16:

> "**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."

20. The above findings have been returned by the Adjudicating Authority after considering all relevant details, including the revenue from operations, liabilities and loan obligations, it was found that profits are not sufficient to meet the obligations.

21. The learned Counsel for the Appellant has also taken exception to the findings of the Adjudicating Authority that with regard to DSRA, the Adjudicating Authority has held that even though amount was to be adjusted from DSRA, the balance of Rs.3 crores in GSTAAD Hotels and only 26% on pro-rata basis would fall for satisfying the liabilities under ECLGS Facilities. The Adjudicating Authority in the impugned order has noted the relevant Clauses of the Agreement, which provide that amount has to be first utilized against penal interest and thereafter for interest and the principal. The said findings of the Adjudicating Authority were based on Clauses of the Loan Agreement, pro-rata distribution of the

amount lying in the account. It is on the record that amount of Rs.3 crores remained undisbursed in the DSRA. Due to non-disbursement, there was no liability towards Rs.3 crores. The interest and disbursement of Rs.3 crores could also include interest liabilities. Hence, the findings of the Adjudicating Authority that even assuming the balance amount of Rs.3 crores in DSRA is utilized, the default shall still continue, are the findings based on consideration of all relevant facts and cannot be faulted. The Adjudicating Authority, thus, has while passing the order dated 08.07.2025, in admitting CP(IB)Nos.290 and 291 of 2023 has considered all relevant facts, materials on record, the submissions of the parties and keeping in view of the remand order dated 08.01.2025, has admitted Section 7 applications finding debt and default on the part of the CDs.

22. The learned Counsel for the Appellant along with written submissions has relied on large number of judgments of this Tribunal and the Hon'ble Supreme Court on the proposition that event of default must arise from Agreement. He has relied on 10 judgments. It is sufficient to refer to judgment of the Hon'ble Supreme Court in ***M. Suresh Kumar Reddy vs. Canara Bank and Ors – (2023) 8 SCC 387***, wherein the Hon'ble Supreme Court held that once NCLT is satisfied that default has occurred, there is hardly a discretion left with the NCLT to refuse admission. In paragraph 11 of the judgment, following was held:

> "**11.** Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.

"Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

> "**3. *Definitions***.—In this Code, unless the context otherwise requires—
>
> * * *
>
> (12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

23. There cannot be any dispute to the proposition that event of default must arise from the Agreement. Several judgments cited of this Tribunal and the Hon'ble Supreme Court on the said proposition, need no repetition. In the present case, the event of default has been noticed in Clause 19 of the Agreement, which we have already extracted above.

24. Another proposition, on which reliance has been placed by the Appellant is that cash liquidity of the CDs and its financial health, which is relevant to be noticed and the purpose and object of the IBC is to see an attempt to revive the CD and make it a running concern. In the present case, reliance has been placed by the Appellant on judgment of the Hon'ble Supreme Court in ***Indus Biotech Pvt. Ltd. vs. Kotak India Venture (Offshore) Fund & Ors. – (2021) 6 SCC 436***. There can be no

dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. Learned Counsel for the Appellant also referred to the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. – (2022) 8 SCC 352***, where the Hon'ble Supreme Court held that the discretionary power is not to be exercised arbitrarily or capriciously. The ratio laid down by the Hon'ble Supreme Court in the above cases, do not come to any aid to the Appellant in the present case, since the Adjudicating Authority by the impugned order has considered all relevant facts and thereafter has come to the conclusion that Section 7 applications need admission. All relevant factors, which need to be considered, have been considered and specially in the present case, this Tribunal vide its order dated 08.01.2025, while remanding the matter for fresh consideration has highlighted the factors, which need to be considered by the NCLT while considering the applications afresh. The Adjudicating Authority heard the applications afresh and adverted to all the aspects which have been noticed in order of this Tribunal dated 08.01.2025.

25. Lastly, the learned Counsel for the Appellant has relied on the observation of this Tribunal in judgment dated 08.01.2025 with regard to utilizing of Rs.140 crores of the ECLGS-1 to evergreen the loan facilities of the Lenders. The Adjudicating Authority has adverted to the said observation of this Tribunal and has noticed the said submission and the relevant observation has been made by the Adjudicating Authority in paragraph 6.2.10.12. The Adjudicating Authority has referred to Clause

18.39 of the Agreement, which obliged the Borrower to meet the loan obligations, even if it is in contravention of the purpose for which the loan was sanctioned. It has also been held by the Adjudicating Authority that CD has never raised any grievance in the above relation, when amount received in the Retention Account from ECLGS Facilities were utilized for adjustments/appropriation. Finding returned is that the said adjustments have taken place with mutual consent of the parties. It is useful to notice the findings in paragraph 6.2.10.12, which are as follows:

> "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."

26. Learned Counsel for the Respondent has also referred to and relied on the judgment of the Karnataka High Court of learned Single Judge as well as of the Division Bench, which orders have been brought on the record. The High Court in the said judgment has noticed and held that account of the CD – GSTAAD Hotels were irregular. However, in view of the fact that in the impugned order, the Adjudicating Authority has considered the Statement of Accounts and has returned a finding regarding the default, it is not necessary to refer or rely on the judgment of the Karnataka High Court in this regard. It is also relevant to notice that during the pendency of proceedings under Section 7, the CD has given an OTS proposal on 30.04.2025, by which letter the CD sought One Time Settlement with revised offer of Rs.743.71 crores. The revised proposal was given as OTS with respect to GSTAAD Hotels as well as Neo Capricorn. The said letter also proposed the mode of payment of the amount of Rs.743.71 crores. The OTS offer thus makes it clear that debt and default has been admitted by the CD while giving One Time Settlement. The said OTS letter has also been brought on record by the Appellant himself, which is part of Company Appeal (AT) (Ins.) No.1040 of 2025 Vol.14 at page 3256.

27. In view of our foregoing discussions, we come to the conclusion that the Adjudicating Authority in the impugned order after considering all relevant facts on the record, including the Statement of Accounts and the

materials placed by both the parties, has returned finding that date of default is 15.11.2022 and has also upheld the loan recall notice dated 15.02.2023 and other circumstances, under which the CDs need resolution has also been considered by the Adjudicating Authority, as noted above. We, thus, do not find any ground to interfere with the order of the Adjudicating Authority dated 08.07.2025, admitting CP(IB) Nos.290 & 291 of 2023 in respect of Neo Capricorn and GSTAAD Hotels. In result, both the Appeals, i.e. Company Appeal (AT) (Ins.) No.1039 of 2025 and Company Appeal (AT) (Ins.) No.1040 of 2025 are dismissed. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

19th August, 2025

Ashwani