

following reliefs:

- i. That the present company petition be dismissed
- ii. Direction to the Respondent/ Original Petitioner to address the liabilities arising out of unauthorized Corporate Guarantee dated 09.01.2017 in favour of M/s Sourya Container Leasing Company.

Facts leading to the present Application and Submissions advanced are as follow:

2. The primary contention of the Applicant is that a fraud is perpetrated whereby the Respondent/Original Petitioner wrongly and illegally furnished a Corporate Guarantee dated 09.01.2017 to secure funds availed by a company named Meher Miracles Pvt. Ltd from Sourya Containers. Under the said deed of Guarantee an amount of Rs.1,00,00,000 (Rupees One Crore Only) was availed by Meher Miracles, consequently an amount of Rs.1,50,00,000 (Rupees One Crore Fifty Lakh only) was agreed to be repaid within a period of 6 months.
3. The Applicant submits that at no point did the Respondent have appropriate authorization from Original Respondent No.1 Aranca (Mumbai) Pvt. Ltd. to execute the said Corporate Guarantee.
4. Pursuant to failure on part of the said Meher Miracles to make repayments to Sourya Containers, the Corporate Guarantee was

invoked vide letter dated 11.06.2019 upon the Original Respondent No.1 to make payment of Rs.1,50,00,000/- with interest and tax. In response to the said letter, a letter dated 20.06.2019 was addressed by Original Respondent No.1 to Sourya Containers that when the letter was received neither Mr. Hemendra Aran nor Ms. Gitanjali Sinha were directors of Original Respondent 1. Further the Original Respondent No.1 had no knowledge whatsoever about the existence of the Corporate Guarantee. Thereafter, a second notice dated 25.08.2020 received on behalf of Sourya Containers, the Original Respondent No.1 replied to the second notice inter alia reiterating the contents of the letter dated 20.06.2019.

5. A Petition under section 7 of the Code was filed by Sourya Containers under the Purported Corporate Guarantee. Therefore, the Applicant submits that Aranca (Mumbai) Pvt. Ltd (Original Respondent No.1) will be potentially exposed to the rigours of CIRP despite the fact the company is in sound financial health.
6. The Applicant submits that on account of abovementioned conduct, the Original Respondent No.1 filed a criminal complaint with the concerned police station on 12.11.2020 which is prior to the date of filing of the Section 7 Petition by Sourya Containers.
7. The Applicant submits that it is clear that the Corporate Guarantee has

been executed by the Respondent in absence of an appropriate Board Resolution and Shareholder Resolution as required under Section 186 of the Companies Act,2013. Further, the Applicant submits that the transaction was not registered. The contention of the Applicant that the Original Respondent No.1 is driven into CIRP basis the Deed of Guarantee which is itself fabricated and engineered document.

8. Further, the Applicant submits that this transaction appears to be money-doubling attempt owing to collusion between the Original Petitioner and Sourya Containers/Mr. Vikram Kumar. It is evident from the particulars of the transaction that an amount of Rs.1,50,00,000/- would become payable in 6 months followed by 4% interest plus tax on loan amount of Rs.1,00,00,000/-. This clearly indicates collusion between parties.
9. The Applicant submits that no proceedings have been instituted against the principal borrower being Meher Miracles.
10. The Applicant submits that even as per Audited Financial Statements of Meher Miracles of Financial Year 2016-17, there is no mention of any loan taken from Sourya Containers and any interest accrued or any default on repayment of such loan. This shows clear collusion between the Original Petitioner and Sourya Containers.

11. The Applicant submits that the Original Petitioner has wilfully acted to the detriment of the Original Respondent No.1 and has also exposed the Original Respondent No.1 to the possibility of CIRP. Further, the Applicant states that with the documents already placed on record it is evident that the any mismanagement has infact been done by the Respondent herein.

Submissions advanced by the Respondent:

12. The Respondent submits that the Application is misconceived in law and ought to be rejected on the ground that the Hon'ble NCLAT has held vide Order dated 19.02.2018 the proceedings of the Company Petition have been expedited and the Company Petition is pending final hearing. The Hon'ble NCLAT further directed that the pending IA's can be taken up together while deciding the Company Petition.
13. Further, the Respondent submits that in any case no orders can be passed in the present proceedings relating to Section 7 proceedings. The present proceedings are completely alien and distinct from the Section 7 proceedings. The Respondent herein is not a party to the Section 7 proceedings and therefore the Applicant cannot seek reliefs incidental with the Section 7 proceedings herein.
14. The Respondent states that the present Petition is filed to thwart the

hearing of the Company Petition wherein the Respondent herein has alleged oppression and mismanagement.

15. The Respondent submits that the following events culminated to the execution of the Corporate Guarantee. The Original Respondent No.1 has decided to participate in Celebrity Football Match held in Dubai pursuant to which a cheque of Rs.50,00,000/- (Rupees Fifty Lakh Only) was drawn by Respondent No.1 duly signed by Respondent No.4.
16. The proprietor of M/s Sourya Containers was contacted by Original Respondent No.1 for procuring funds for the event, the funds could not be procured as a loan as that would defeat the purpose of rights issue that was conducted to make the Respondent debt free.
17. Therefore, the funding was undertaken through Meher Miracles. The Respondent submits that the transaction was negotiated by the board of the Original Respondent No.1 and only thereafter the Corporate Guarantee was executed.
18. The Respondent submits that as soon as Meher Miracles Pvt. Ltd. received the funds from Sourya Containers, the said amount was transferred towards funding of the event. However, due material changes in the Company Original Respondent No.1 including rights issue which prejudiced the Respondent. In the abovementioned circumstances, the

event itself stood cancelled.

19. Hence, Sourya Containers sent demand notices to the Respondents and Meher Miracles Pvt. Ltd. Further, the Respondent submits that Meher Miracles has repaid an amount of Rs.27,60,000/- (Rupees Twenty-Seven Lakh and Sixty Thousand Only).
20. The Respondent submits that now due to cash flow constraints the balance amount is not repaid.

Findings:

21. Upon perusal of documents, we have observed that Meher Miracles Pvt. Ltd. defaulted in making payment of dues as per the terms of MoU. Thereby, constituting the default in terms of the MoU. Meher Miracle Pvt. Ltd. made payment of four instalments of Rs. 6,90,000 /- per month including interest at the rate of four percent per month in default amount of 10.07.2017, 10.08.2017, 08.09.2017, and 11.10.2017. However, it is apparent that Meher Miracle Private Ltd. has failed to make the balance payment.
22. Mr. Vikram Kumar by his notice dated 11.06.2019, called upon Meher Miracle Pvt. Ltd. and other directors of Aranca (Mumbai) Pvt. Ltd. to make payment of dues as per the terms of MoU in the Deed of Corporate Guarantee. Original Respondent No. 1 hereto replied to the said letter

of 20.06.2019 inter-alia denying the liabilities and calling upon Mr. Vikram Kumar to share the copy of the Corporate Guarantee.

23. Therefore, Mr. Vikram Kumar, invoked the Corporate Guarantee issued by the Respondent on behalf of the Aranca (Mumbai) Pvt. Ltd. by his notice Dated 25.08.2020, and called upon Aranca (Mumbai) Pvt. Ltd to make payment of Rs. 3,94,99,355/- computed as on August 24.08.2020. Aranca (Mumbai) Pvt. Ltd. replied to the aforesaid letter thereby denying the liability and sought for a copy of the Corporate Guarantee.
24. Thereafter, Mr. Vikram Kumar through his Advocate addressed a letter to Aranca (Mumbai) Pvt. Ltd. on 28.09.2020 under the cover of which a copy of the Corporate Guarantee was shared.
25. In response to the same, Aranca (Mumbai) Pvt. Ltd. addressed the letter to Mr. Vikram Kumar, Advocate on 20.10.2020 inter-alia stating that they had not issued the Corporate Guarantee and it is a fraudulent document. Thus, nothing is due and payable by Aranca (Mumbai) Pvt. Ltd. to Mr. Vikram Kumar.
26. In these circumstances, Mr. Vikram Kumar filed an Insolvency Petition Under section 7 of the Insolvency & Bankruptcy Code, 2016, seeking to initiate for Insolvency Resolution Process for Aranca (Mumbai) Pvt. Ltd. The Petition was stated to be heard at length and an order was

reserved on March 2022. However, due to reconstitution of the Benches, the petition will now to be heard afresh.

27. In view of the above, the Applicant herein, has filed the present application seeking directions against the Respondent to make payment of the amount claimed by Mr. Vikram Kumar in C.P.(IB) No. 143 of 2020 on the ground that the respondent issued the Corporate Guarantee without any authorisation from Aranca (Mumbai) Pvt. Ltd. amongst other grounds as detailed in the present Application.
28. The Respondent filed an affidavit in reply on 01.08.2022 denying allegations made by the Applicant.
29. The Applicant has at the outset clarified the it is not pressing for Prayer A of the application, at the moment only seeking interim relief in the nature of Prayer Clause B. Wherein the Applicant is seeking direction to the Respondent to make payment of the amount claimed by Mr. Vikram Kumar and secure Aranca (Mumbai) Private Ltd. (Limited) from going into insolvency.
30. The Applicant contends that the respondent deliberately suppressed before this Bench, the settlement agreement dated 24.07.2017 (settlement agreement) entered into between Aranca (Mumbai) Private Ltd., Aranca U. K. Ltd., Anker Holdings, Mr. Christopher Kingsman,

Greenwood Investment (Mauritius Limited), Mr. Hemendra Aran and Mr. Madhusudan Rajgopalan.

31. It is a matter of record that Aranca (Mumbai) Private Ltd. greatly suffered at the time when the respondent was in-charge of the day to day management. For instance, the Respondent entered into several related party transactions and misuse of Aranca Funds unjustly enrich himself report of the SKP Business consulting LLP in November 2017 set out in significant detail the conduct of the respondent.
32. In the past the Respondent has also forged signature of Mr. Madhusudan Rajgopalan on a Board Resolution of Aranca to avail loan from Bajaj Finance Limited in favour of Aranca. However, the respondent has misappropriated the loan amount of Rs. 35,00,000 to his personal account.
33. On account of the said forging the respondent stood disqualified as a director of Aranca by operation of law. This is as per Section 84 and Section 167(1)(D) of the Companies Act, 2013.
34. The rights issue of December 2017 was undertaken to address the repayment of obligations of Aranca to R. B. L. Bank Limited. This default itself was the result of conduct of the Respondent. The said rights issue was not undertaken to dilute the Respondent's shareholding since

he was at liberty to subscribe to shares in the said rights issue. Even at the time granting Interim relief in CP No. 755 of 2017 this Adjudicating Authority vide its Order dated 10.01.2018 did not grant stay on the rights issue, the Hon'ble NCLAT vide Order dated 19.02.2018 upheld the decision of the NCLT.

35. Pursuant to Section 7 Petition Aranca (Mumbai) Private Ltd. was exposed to the possibility of dragged into CIRP on account of the conduct of the Respondent. In any event, the Respondent is exposed to liability of at least Rs.3,94,99,355/- which is an amount claimed by Mr. Vikram Kumar in the Section 7 petition.
36. In the circumstances, the Respondent did not approach the NCLT with clean hands and has suppressed material information. We direct the Respondent to indemnify Aranca (Mumbai) Private Ltd. from any liability arising from signing of the unauthorised, purported Corporate Guarantee by the Respondent contrary to Section 185 of the Companies Act, 2013 that is all liabilities arising out of the purported transactions with M/s Sourya Containers leasing Company ought to be borne solely by the Respondent.
37. The Respondent has opposed the present application, on the ground that Aranca (Mumbai) Private Ltd. and its directors on the board were at all

times aware about the transactions with Sourya Containers Leasing Company. They had taken responsibility of signing purported authorisation. Furthermore, the Respondent has contended that the loan was in fact taken for Celebrity Football Match organised by Aranca (Mumbai) Private Ltd. The Respondent has also alleged delay in filing the present application and contended that Aranca (Mumbai) Private Ltd. was aware of the Corporate Guarantee since 2020, however, no steps were taken by them till 2022, and therefore, no urgent ad-interim relief ought to be granted in favour of the applicant on the ground of their acquiescence. Although, the Respondent has made several allegations in respect of Corporate Guarantee and the loan transactions in a signed document of record has been placed in support of his contentions.

38. In addition to the above, it is clear that the Respondent by way of his unauthorised act has exposed Aranca (Mumbai) Private Ltd. to liability and potential insolvency commencement.

39. The Applicant has submitted that there appears to be elaborate conspiracy between Mr. Hemendra Aran and Mr. Vikram Kumar to extort monies from the respondent. None of the persons such as Mr. Christopher Kingsman, Mr. Madhusudan Rajgopalan ever approached Mr. Vikram Kumar.

40. It appears from record placed before us that Corporate Guarantee has been issued without any authority which rendered the Corporate Guarantee illegal. The above conduct of Mr. Hemendra Aran and issuance of engineered Corporate Guarantee demonstrates initiation to perpetuate fraud against Aranca (Mumbai) Private Limited.
41. After considering rival submissions, we are of the view that there is express irregularity in issuance of the Corporate Guarantee by the respondent and provisions under section 85 and provisions under section 185 of the Companies Act, 2013, were not followed.
42. Considering the above circumstances, this Bench direct the respondent herein, to deposit an amount of Rs.3,94,99,355.00/- with Registry of NCLT Mumbai Bench within 15 days from this order to secure interest of Aranca (Mumbai) Private Ltd. The Ld. Counsel Ms. Malliaka Joshi appearing for the Respondent has on instructions requested that the Respondent be granted three (3) weeks to deposit the aforesaid amount. Considering the request made by the Ld. Counsel we allow and direct the Respondent to deposit the amount within three weeks from the date of the Order.

43. With the aforesaid observation present **CA No. 231 of 2022 In C.P No. 755/MB/C-I/2017** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

30.09.2022

Priyal/Manish Tiwari

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)