

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 827/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

IDBI TRUSTEESHIP SERVICES
LIMITED

[CIN: U65991MH2001GOI131154]

...Financial Creditor

v/s.

DIRECT MEDIA DISTRIBUTION
VENTURES PRIVATE LIMITED

[CIN: U40300MH2009PTC189362]

...Corporate Debtor

Order Delivered on: 16.05.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Mustafa Doctor, Ld. Sr. Counsel
a/w Spenta Havewala, Mr. RAnjeev
Carvalho Mr. Sachin Chandarana and
Ms. Mahek Naik i/b Manilal Kher
Ambalal and Co., Ld Counsel.

For the Respondent:

Mr. Nausher Kohli a/w Ms. Tasneem
Zariwala and Mr. Rushab Chopra i/b
Vidhii Partners, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Petition being CP (IB) No.827MB-IV/2022 filed by IDBI Trusteeship Services Limited, ("Financial Creditor/Applicant"), under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("I&B Code") for initiating Corporate Insolvency Resolution Process ("CIRP") in the case of Direct Media Distribution Ventures Limited, ("Corporate Debtor").
 - 1.1. This application is filed on 12.07.2022 by Mr. Gaurav Rane, Senior Manager of the Financial Creditor in terms of Resolution dated 08.07.2022 passed by the Board of Directors, claiming a total default of Rs. 599,05,69,179/- (Rupees Five Ninety-Nine Crore Five Lacs Sixty-Nine Thousand One Hundred & Seventy-Nine only). The date of default is stated as 15.05.2022 in Part IV of the Application.
2. The Applicant is a Debenture Trustee for the benefit of Franklin Templeton Asset Management (India) Private Limited (hereinafter referred to as "Debenture Holder"), who had acquired 425 rated, unlisted, redeemable, non-convertible debentures in 2 Series, being the Series I debentures and Series II debentures with each debenture having a face value of Rs. 1 Crore each, of an aggregate nominal value of Rs. 425,00,00,000/- (Rupees Four Hundred and Twenty-Five Crores only) issued by Essel Infraprojects Limited (hereinafter referred to as "Essel") on private placement basis initially allotted to M/s Jay Properties Private Limited. It is submitted by the Applicant that -
 - 2.1. Pursuant thereto, Essel and Applicant entered into and executed a Debenture Trust Deed on 22nd May 2015 (hereinafter referred to as "DTD") recording inter alia recording terms and conditions as well as obligations.
 - 2.2. In addition to the aforesaid Share Pledge Agreement, and in order to secure all the payments with respect to the said debentures, Cyquator Media Services Private Limited and Corporate Debtor (Collectively referred to as

"Corporate Guarantors") executed a Corporate Guarantee dated 22nd May 2015 in favour of the Applicant, whereby the Guarantors jointly, severally, irrevocably and unconditionally guaranteed the obligation of Essel with respect to the Debentures as well as obliged to make payments under the DTD.

- 2.3. Sometime in or around January 2019, the Essel group of Companies faced severe liquidity crisis which seriously jeopardized the ability of Essel to fulfil its financial obligations under the DTD. Certain shares pledged as security by the Corporate Guarantors/Pledgors towards the payment obligations under the DTD witnessed a down fall in value, compromising the rights and interests of the Debenture Holders.
- 2.4. In furtherance of the aforesaid and to create additional security, DTD was amended by virtue of Supplemental and Amended Debenture Trust Deed (hereinafter referred to as "Amended Deed") was executed by and between Essel and Applicant.
- 2.5. On 22nd May 2020, balance 351 NCDs fell due for redemption, however, Essel defaulted in payment of the principal amount of NCDs and redemption premium thereon. The Applicant has time and again called upon Essel, the Corporator Debtor and other Guarantor and Pledgors of its obligations and to make payment of the balance defaulted amount in respect of the Debentures as set out hereinabove. Communications/Reminders have also been addressed by Applicant to you and Corporator Guarantors.
- 2.6. The Applicant Demand Notice addressed by Applicant to the Corporate Debtor, calling upon them to make payment of Rs. 591,81,92,216/- (Rupees Five Hundred Ninety-One Crores Eighty-One Lakhs Ninety-Two Thousand Two Hundred and Sixteen Only) as on 9th May, 2022.

3. The Corporate Debtor has filed an affidavit in reply dated 10.01.2023 denying any financial debt is owed to the so-called Financial Creditor and that any such debt has become due and payable to the Financial Creditor, also stating that –
- 3.1. the alleged Financial Creditor has sought to initiate CIRP of the Corporate Debtor by relying upon a deficiently stamped copy of Corporate Guarantee dated 22nd May 2015 ("Guarantee") (Annexure-H to the Petition) alleged to have been executed by inter alia the presently alleged Corporate Debtor in favour of the Financial Creditor, to stand as a guarantor to 425 (four hundred twenty-five) rated, unlisted, redeemable, non-convertible debentures having face value of Rs. 1,00,00,000/- (Rupees One Crore Only) each issued in 2 (two) series i.e., 200 (two hundred) Series-I debentures each having face value of Rs. 1,00,00,000/- (Rupees One Crore Only) and aggregating to Rs. 200,00,00,000/- (Rupees Two Hundred Crores) and 225 (two hundred twenty-five) Series-II debentures each having face value of Rs. 1,00,00,000/- (Rupees One Crore Only) and aggregating to Rs. 225,00,00,000/- (Rupees Two Hundred Twenty-Five Crores Only) ('Debentures') issued by Essel Infraprojects Limited ('Issuer') in demat form
- 3.2. That, ultimate purpose of Corporate Insolvency Resolution Process (CIRP") as envisaged under the provisions of the Insolvency and Bankruptcy Code, 2016 ('Code') is to resolve the corporate insolvency of a corporate entity in a time-bound manner for maximization of value of assets of such entity and balance the interests of all stakeholders. The focal point of the Code is default in fulfilling repayment obligations of a corporate entity, where a 'default' as defined under section 3 (12) of the Code has occurred. In the present case, the alleged Financial Creditor is not a 'financial creditor' of the Corporate Debtor, as defined under section 5(7) of the Code and does not owe a 'financial debt. as defined under section 5(8) of the Code. Furthermore, CIRP of a going concern is unheard of where, the Corporate

Debtor does not have any stressed financial exposure to any financial institution from whom it has availed financial assistance.

3.3. That, the Issuer issued the Debentures aggregating to the principal sum of Rs. 425,00,00,000/- (Rupees Four Hundred Twenty-Five Crores Only) in two parts, as under:

3.3.1. 200 Debentures aggregating to the sum of Rs. 200,00,00,000/- (Rupees Two Hundred Crores Only) on 22nd May 2015 and,

3.3.2. 225 Debentures aggregating to the sum of Rs. 225,00,00,000/- (Rupees Two Hundred Twenty-Five Crores Only) on 24th June 2015, which came to be subscribed by the following Mutual Fund Schemes of Franklin Templeton Mutual Fund: i) Franklin India Dynamic Accrual Scheme, ii) Franklin India Dynamic Accrual Scheme, iii) Franklin India Short Term Income Plan Scheme and iv) Franklin India Low Duration Fund Scheme.

3.4. The present Financial Creditor was appointed as the Debenture Trustee under the Debenture Trust Deed dated 22 May 2015 (DTD) (Annexure-O to the Petition), who was to act for and on behalf of the Debenture Holders under instructions and directions of the Majority Holder(s). Under the terms of the DTD, the Debentures were inter alia secured by way of a First and Exclusive Pledge created by inter alia the present Corporate Debtor over 6,25,11,000 fully-paid-up equity shares of Dish TV India Limited ("DTIL") held by it and, Guarantee dated 22nd May 2015 jointly executed by the present Corporate Debtor and, Cyquator Media Services Private Limited. 6,25,11,000 Dish Shares have been sold at Net consideration of Rs. 67,99,66,132/- implying net Sale Value of Rs. 10.88/- per DTIL Share from 9th November 2020 to 10th December 2020 per share. The said Debentures were due to mature on 22 May 2020.

3.5. That, the total outstanding under the Debentures as on 22nd May 2020 i.e.. the redemption date, came to be Rs. 615,63,26,032/- (Rupees Six Hundred Fifteen Crores Sixty Three Lakhs Twenty Six Thousand Thirty-Two Only):

| Particulars | Amount |
|---|------------------|
| Original Principal | 425,00,00,000.00 |
| Principal repaid on 10 th September 2020 | 74,00,00,000.00 |
| Principal outstanding as on 10 th September 2020 | 351,00,00,000.00 |
| Redemption Premium outstanding | 264,62,26,032.00 |
| Total outstanding on 22 nd May 2020 | 615,63,26,032.00 |

3.6. That, under the terms of the DTD, particularly Clause 7 thereof, the Events of Default provided thereunder included failure on part of the Issuer to pay on the 'due date' the amounts due and payable by it, failure to create necessary pledge security, et cetera. As per clause 8, upon occurrence of an Event of Default, the Financial Creditor i.c., the Debenture Trustee was entitled to, on express written instructions/directions from the Majority Holder, Franklin Templeton Mutual Fund at the relevant time in the present case, under clause 8.1 (a). "...accelerate the redemption of the Debentures and declare that all or part of the Debentures with accrued Redemption Premium and all other amounts accrued or payments under the transaction documents including the unpaid fees/remuneration to Debenture Trustee be immediately due and payable, whereupon: (i) they shall become immediately due and payable on or prior to the date falling on the expiry of 2 (two) Business Days from the date of issuance of the acceleration

notice..."; under clause 8.1(b) invoke the Guarantee and, under clause 8.1(d), invoke the pledged shares.

3.7. That, admittedly the present Financial Creditor exercised its authority under clause 8.1 (a) and issued a Demand Notice dated 12th June 2020 through its advocates upon the Issuer (Annexure-BB to the Petition) subject-lined "Redemption of Debentures in accordance with the Debenture Trust Deed dated 22nd May 2015 executed by Essel Infraprojects Limited" calling upon the Issuer to pay a sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty-Eight Thousand Six Hundred Sixteen Only) to the Debenture Trustee i.e., the present Financial Creditor within a period of 2 (two) business days from receipt thereof (Issuer Demand Notice'). As per the Financial Creditor, the Issuer did not comply with the Issuer Demand Notice.

3.8. That, under the Guarantee, particularly clause 4 thereof, "For the purposes of invoking the guarantee in terms hereof, the Debenture Trustee shall... issue a notice to the Guarantors in writing, in the form given in Schedule II hereto ("Notice of Demand") upon the receipt of which the Guarantors agrees and undertakes that the Guarantors shall, without any demur or protest and on first demand, make payment of the amount demanded thereunder within 2 (two) Business Days of receipt of the Notice of Demand, which payment shall be made for the amount mentioned in the Notice of Demand without any deduction whatsoever...". Further, clause 6 of the said Guarantee provides that, "The Guarantors hereby, jointly and severally, irrevocably and unconditionally undertake to act only upon a Notice of Demand of the Debenture Trustee or any nominee of the Debenture Trustee as may be designated by the Debenture Trustee."

3.9. That, admittedly, the Debenture Trustee i.e., the alleged Financial Creditor abovenamed issued, through its advocates, "Invocation of Deed of

Guarantee dated 22nd May 2015 ("Deed") executed by Guarantors No. 1 & 2 in favour of IDBI Trusteeship Services Limited" dated 12th June 2020 (Guarantee Invocation Notice') (Annexure-AA to the Petition), to the presently alleged Corporate Debtor and, received by it on 12th June 2020. By way of the Guarantee Invocation Notice, the Financial Creditor, inter alia relying upon the terms of the Guarantee, demanded that the Corporate Debtor pay a sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty- Eight Thousand Six Hundred Sixteen Only) as on 5th June 2020 within a span OTARY 16727 (two) business days from receipt of the said demand notice. As mentioned hereinbefore, the alleged debt which fell due and payable under the aforesaid Guarantee Invocation Notice could only be defaulted on 16 June 2020, 2 (two) business days from the date of receipt.

- 3.10. That, on 12th June 2020, the alleged Financial Creditor, addressed through its advocates a "Invocation of Share Pledge Agreements No. 1 & 2 dated 22nd May 2015 executed by Pledgor Nos. 1 & 2 and Share Pledge Agreement No. 3 dated 1" February 2019 executed by Pledgor No. 3" dated 12th June 2020 (Annexure-Z to the Petition) to inter alia the presently alleged Corporate Debtor addressed as 'Pledgor No. 1' ('Pledge Invocation Notice"). In the said Pledge Invocation Notice, the Financial Creditor relied upon inter alia clause 8 of the DTD and, invoked the pledge created in its favour by the Financial Creditor and other pledgors. Further, a demand for payment of the sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty-Eight Thousand Six Hundred Sixteen Only) was made, to be fulfilled within 1 (one) business day from receipt of the said Pledge Invocation Notice. Therefore, the alleged debt which fell due and payable under the Pledge Invocation Notice could only be defaulted after 15th June 2020, 1 day after receipt of the same.

- 3.11. In sum, the Guarantee as well as the Pledge came to be invoked on 12th June 2020 and, defaults if any thereunder could only be committed by the present Corporate Debtor after the 2nd day from receipt of the Guarantee Invocation Notice i.e., and after the 1 day from receipt of the Pledge Invocation Notice, respectively. Also, the default if any committed by the Issuer under the DTD along with the Demand Notice dated 12th June 2020, fell due and payable 2 days after the Issuer received the said Demand Notice. Furthermore, the Debentures matured on 22nd May 2020 therefore the date of default with respect to the Debentures as well as in respect of the guarantee invocation could occur only during the Suspension Period as provided under Section 10A of the Code.
- 3.12. As per Section 3(12) of the code, "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." The 'default' claimed by the so-called Financial Creditor has entirely occurred during the Suspension Period.
- 3.13. In the above background, the Corporate Debtor states that, the Petition is not maintainable and inadmissible at the very threshold on the following among other grounds, which are taken without prejudice to one another and in the alternate:
- 3.14. Default falls within Suspension Period prescribed under Section 10A of the Code, as the entire cause of action has occurred over the months of May and June 2020. The Debentures carried a Maturity Date of 22nd May 2020. The Guarantee Invocation Notice was received by the Corporate Debtor on 12th June 2020. The Pledge Invocation Notice was received by the Corporate Debtor on: 12th June 2020. According to the Financial Creditor itself, the Corporate Debtor has defaulted in repayment under both, the Guarantee Invocation Notice, and the Pledge Invocation Notice. The

defaults as alleged by the Financial Creditor therefore occurred in June 2020.

- 3.15. As per the Financial Creditor itself, the default committed by the principal borrower i.e., the Issuer, was first committed by it when it failed to make payment towards redemption of 351 Debentures on 22nd May 2020. On 12th June 2020, the Financial Creditor issued the Demand Notice for Redemption of Debentures to the Issuer (Annexure-BB), calling upon the Issuer to pay a sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty-Eight Thousand Six Hundred Sixteen Only) to the Debenture Trustee i.e., the present Financial Creditor within a period of 2 (two) business days from receipt thereof. The default, if any, committed by the Issuer was first committed on 22nd May 2020. The aforesaid default falls squarely within the Suspension Period.
- 3.16. Further, the Financial Creditor issued a Pledge Invocation Notice on the same date (Annexure Z to the Petition), invoking the shares pledged by the present Corporate Debtor, Direct Media Digital Ventures Private Limited and, Khoobsurat Infra Private Limited and inter alia calling upon the present Corporate Debtor, Direct Media Digital Ventures Private Limited and Khoobsurat Infra Private Limited to pay to it a sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty-Eight Thousand Six Hundred Sixteen Only) as on 5th June 2020 within a period of 2 (two) business days from date of receipt of the said Pledge Invocation Notice. The said Pledge Invocation Notice was received by the present Corporate Debtor on 12th June 2020. Therefore, the default, if any was first committed by the present Corporate Debtor after 16th June 2020 which falls squarely within the Suspension Period.
- 3.17. The Financial Creditor invoked the Guarantee vide notice dated 12th June, 2020, calling upon the present Corporate Debtor and the Principal Borrower

to pay a sum of Rs. 616,09,48,616/- (Rupees Six Hundred Sixteen Crores Nine Lakhs Forty-Eight Thousand Six Hundred Sixteen Only) as on 5th June 2020 within a period of 2 (two) business days from date of receipt of the said Guarantee Invocation Notice. There is no concept of 'continuous default' in the Code. The date of default once occurred cannot be shifted.

3.18. As per the Financial Creditor, the pledged shares of Zee Entertainment Limited were sold in the open market and realized a sum of Rs. 92,34,61,401/- (Rupees Ninety-Two Crores Thirty-Four Lakhs Sixty-One Thousand Four Hundred One Only). Furthermore, the alleged Financial Creditor sold 6,25,11,000 shares of DTIL in the open market in the months of November and December 2020 and a total sum of Rs. 160,34,27,533/- (Rupees One Hundred Sixty Crores Thirty-Four Lakhs Twenty-Seven Thousand Five Hundred Thirty-Three Only), including the aforementioned sum of Rs. 92,34,61,401/- (Rupees Ninety-Two Crores Thirty-Four Lakhs Sixty-One Thousand Four Hundred One Only) was realised and appropriated towards outstanding dues pertaining to the Debentures. The sale, realisation and appropriation of the proceeds fell within the Suspension Period. Entire cause of action against the Corporate Debtor arose in the year 2020.

3.19. The alleged Financial Creditor has sought to rely upon another unsigned Demand Notice dated 13th May 2022 issued to the alleged Corporate Debtor, thereby raising a demand of Rs. 591,81,92,216/- (Rupees Five Hundred Ninety-One Lakhs Eighty-One Lakhs Ninety Two Thousand Two Hundred Sixteen Only), with the sole motivation behind such duplicity being circumvention of the clear provisions of Section 10-A and to defeat the purposes thereof when the alleged Financial Creditor had already invoked the Guarantee vide the Guarantee Invocation Notice in June 2020 and made a demand of the total outstanding dues thereunder.

- 3.20. Without prejudice to the above, the Financial Creditor in Item No. 2 of Part IV, has mentioned that, "the 'Defendant' failed to maintain security cover from January 2019" At any rate, the alleged non- maintenance of security cover does not constitute as 'default' within the meaning of the Code. For a 'default' to be considered under the Code, the same ought to stem from non-payment of financial debt which become due and thereafter remains unpaid. Such non-payment according to the Financial Creditor itself, is in May 2020 and June 2020. The Financial Creditor cannot now be allowed to shift the default to suit its case.
- 3.21. Financial Creditor lacks Locus to file the present Petition. The DTD expressly provides that before initiating any action or exercising any right or performing any duty under the Debenture Trust Deed or any of the Transaction Documents, the Debenture Trustee i.e., the present Financial Creditor is required to seek written instructions from the Debenture Holder and only upon receipt of relevant instructions from the Majority Debenture Holders (i.e. debenture holders holding an aggregate amount representing not less than 51% of the value of the nominal amount of the Debentures) is the Debenture Trustee entitled to exercise its rights and perform its duties and obligations.
- 3.22. Further, the Debentures were initially allotted to Jay Properties Private Limited and were thereafter acquired by Franklin Templeton Mutual Fund. As stated above, Franklin Templeton Mutual Fund is the Majority Holder of the Debentures. Further, Franklin Templeton Mutual Fund is a 'trust' formed under the Indian Trust Act 1882 and is represented by Franklin Templeton Trustee Services Private Limited. The Debentures therefore vest in the Trustees and not in Franklin Templeton Asset Management (India) Private Limited. Further, a debenture trustee is authorised to act solely for and on behalf of the debenture holders. Franklin Templeton Asset

Management (India) Private Limited is not even party to the DTD, as amended and is not the Majority Debenture Holder of the Debentures. To the best of the Corporate Debtor's knowledge, the Issuer did not consent to any actions of the Financial Creditor not taken in accordance with the terms of DTD, especially the requirement of express and written instructions from Majority Holder.

- 3.23. The Signatory of Form-I to file the Petition is not authorised in terms of Notification S. O. 1091 (E) dated 27th February 2019 issued by the Ministry of Corporate Affairs, an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor. In the present case, the Petition is signed by one Mr. Gaurav Rane, Senior Manager of the Financial Creditor on the strength of what appears to be a simple certificate dated 8th July 2022 (Annexure A to the Petition). Strictly without prejudice to the contention of the Corporate Debtor that the so-called Financial Creditor does not have locus to file the Petition, the Corporate Debtor states that as per the notification referred to above, the present Petition could be filed by a representative of the alleged Financial Creditor only on the strength of an appropriate Resolution passed by the Board of Directors of the Financial Creditor.
4. The Financial Creditor has filed an affidavit in Rejoinder dated 10.03.2023 refuting the contentions of the Corporate Debtor. During arguments, the Ld. Counsel for the Financial Creditor referred to a decision of this Bench in the matter of NuFuture Digital (India) Limited {IA no. 34 of 2023 in C.P. 1147/2022} to persuade the Bench that the facts in that case are applicable in this case, hence the ground of 10A is not maintainable.

Findings

5. This Bench heard the Counsel(s) and perused the material available on record.
5.1. Clause 4 & 6 of the Deed of Corporate Guarantee dated 22.05.2015 reads as follows:

“4. For the purposes of invoking the guarantee issued in terms hereof, the Debenture Trustee shall either upon (a) the occurrence of an Event of Default in terms of the Transaction Documents or (b) failure to deposit the outstanding amounts in the Designated account, upon the exercise of Put Option or call Option (as the case may be), 5 (Five) Business days before the Put Option or call option dated (as the case may be) or (c) upon any default in making payments, issue a notice to the Guarantor in writing, in the form given in schedule II hereto (“Notice of Demand”) upon the receipt of which the Guarantor agrees and undertakes that the Guarantor shall without any demur or protest and on first demand, make payment of the amount demanded thereunder within 2(two) business days of receipt of the Notice of Demand, which payment shall be made for the amount mentioned in the Notice of Demand without any deduction whatsoever. The Guarantor consents that 2 (two) Business days is a just and reasonable time to arrange for the funds in case of an Event of Default.

6. The Guarantors hereby, jointly and severally, irrevocably and unconditionally undertake to act only upon a Notice of Demand of the Debenture Trustee or any nominee of the Debenture Trustee as may be designated by the Debenture Trustee.”

- 5.2. Clause 7.1 and Clause 7.2 of Schedule I to the Debenture Trust Deed dated 22.05.2015 specifies the tenure of series one debentures and series two debentures ending on May 22, 2020. Further, clause 9 and 10 provides for

put option and call option. In the present case, neither put option nor call option has been exercised before the tenure of the Debentures.

- 5.3. On a combined reading of clause 4 & 6 of guarantee agreement and clause 7 of the debenture trust deed, it follows that the debenture had fallen due for payment on 22.05.2020 and the liability of guarantor arises only upon service of notice in the form given in schedule II of the guarantee agreement. It is not in dispute that the said notice was given only on 12.06.2020, which makes the Corporate Debtor liable to pay the amount in default within two business days. Accordingly, the date of default qua corporate guarantor is 16.06.2020 as 13 and 14.06.2020 was a holiday.
- 5.4. As regards plea of continuing default and occurrence of event of default in 2019, this bench is of the view that default takes place when an obligation to pay arises. The obligation to pay cannot said to have arisen on occurrence of event of default unless notice in the form given in schedule II of the guarantee agreement is served on the guarantor. Further, it is settled legal proposition that date of default does not shift.
- 5.5. As regards reliance placed on decision of this bench in case of NuFuture Digital (India) Limited (supra) this bench finds that it is misplaced. In that case, this bench held that the default didn't take place as no notice of mandatory pre-payment was issued and a simple request for paying the outstanding from the proceeds of a transaction expected to take place. In the present case, there is no question of mandatory pre-payment, as the tenor of debenture expired on 22.05.2020 and said debentures fell due for redemption on that day.
- 5.6. In view of the forgoing, this bench is of the considered view that the date of default qua corporate guarantor in this case is 16.06.2020 and the said date falls between the period stated in section 10A which bars filing an application u/s 7 of I&B Code forever.

ORDER

6. The petition bearing CP(IB) 827/MB-IV/2022 filed by IDBI Trusteeship Services Limited (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Direct Media Distribution Ventures Limited (“the Corporate Debtor”), is **Dismissed**.
7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
16.05.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)