A document titled 'Deed of Hypothecation' that contains a covenant whereby the hypothecator undertakes to cause the borrower to pay or repay the borrower's dues, constitutes a contract of guarantee, rendering the executing party a Corporate Guarantor under Section 5(5A) of the IBC, irrespective of the nomenclature of the document

The **National Company Law Tribunal (NCLT), New Delhi Bench**, in the case of **J.C. Flowers Asset Reconstruction vs Imagine Habitat Private Limited [C.P.(IB) – 30/ND/2026] dated April 07, 2026**, has held that a document titled 'Deed of Hypothecation' that contains a covenant whereby the hypothecator undertakes to cause the borrower to pay or repay the borrower's dues, constitutes a contract of guarantee, rendering the executing party a Corporate Guarantor under Section 5(5A) of the Insolvency and Bankruptcy Code, 2016, irrespective of the nomenclature of the document.

The Tribunal explained that under Section 60(2) and 60(3) of the Insolvency and Bankruptcy Code, 2016, an application relating to the insolvency resolution of a Corporate Guarantor must be filed before the same National Company Law Tribunal Bench where the Corporate Insolvency Resolution Process of the Principal Debtor is pending, overriding the general territorial jurisdiction rules based on the registered office of the Corporate Guarantor.

The Tribunal therefore held that consistent with the principles of the Indian Contract Act, 1872, the liability of the principal borrower and the surety is co-extensive, permitting separate or simultaneous insolvency proceedings to be initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 against both the Corporate Debtor and the Corporate Guarantor.

The Tribunal observed that the execution of the Deed of Hypothecation by the Corporate Debtors made them liable as Corporate Guarantors. Clause 1 of the Deed explicitly contained a covenant that the Hypothecators 'shall cause the Borrower(s) to pay/repay the Borrower's Dues'. Relying on the Supreme Court judgment in China Development Bank vs. Doha Bank Q.P.S.C. [(2025) 7 Supreme Court Cases 729], the Tribunal noted that the nomenclature of a document is not decisive; a contract becomes a guarantee when it is an undertaking to perform the promise or discharge the liability of a third person in case of default. Therefore, the Corporate Debtors stood as sureties for the repayment of the debt procured by the Principal Debtor.

Addressing the contention that no default had occurred and that the Arbitral Award was under challenge, the Tribunal observed that the default was crystallized in terms of Clauses 12.1 and 12.2 of the Loan Agreement, which allowed the lender to recall the loan upon a 'Material Adverse Effect'. The Tribunal further observed that under Section 238 of the IBC, the provisions of the Code have an overriding effect notwithstanding anything inconsistent contained in any other law. It reiterated that a decree or final adjudication, such as an Arbitral Award, gives rise to a fresh period of limitation, and the pendency of a Section 34 challenge does not bar proceedings under Section 7 of the IBC.