

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT- 5, MUMBAI BENCH

C.P. No. 783/MB/I&B/2021

AND

I.A. No. 2456/MB/2022

Under section 7 of the IBC, 2016

In the matter of

State Bank of India,

Corporate Centre at State Bank Bhavan,
Madam Cama Road, Nariman Point, Mumbai -
400021.

....Petitioner

v/s.

A A Estates Private Limited,

RNA Corporate Park, Next to Collector's Office,
Kalanagar, Bandra (E), Mumbai - 400051.

....Respondent

Order Reserved on: **10.10.2022**

Order pronounced on: **06.12.2022**

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through Video conferencing):

For the Petitioner : Mr. Tarak Shah, Advocate

For the Respondent: Mr. Rohit Gupta, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioners viz. 'State Bank of India' (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'A A Estates Private Limited' (**hereinafter as 'Corporate Debtor'**). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 1,35,26,12,129/- inclusive of interest and penal interest.
2. The Petitioner is a body corporate constituted under the State Bank of India Act, 1955, having its address at Corporate Centre at State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai -400021.
3. The listed documents annexed by the Petitioner on which the Petitioner relied are as follows:
 - i. A copy of the Sanction Letter dated 18.02.2012.
 - ii. A copy of Agreement of Loan-Cum-Hypothecation dated 18.02.2018
 - iii. A copy of the Escrow Agreement dated 18.02.2012.
 - iv. A copy of Guarantee Agreement dated 18.02.2012 whereby Corporate Guarantee is provided by RNA Corp Pvt. Ltd.
 - v. A copy of Deed of Mortgage dated 18.02.2012 whereby the Land owned by RNA Corp Pvt Ltd is mortgage in favour of the Applicant.
 - vi. A copy of Revival Letter dated 18.03.2014 addressed by the Corporate Debtor to the Applicant acknowledging the outstanding debt in terms of Section 18 of the Limitation act, 1963.

BRIEF FACTS:

4. The Corporate debtor had approached the Petitioner, vide an application dated 30.09.2011, for sanction of the credit facilities. Pursuant thereto, the Petitioner, through its commercial branch, Vile Parle East, Mumbai, granted Cash Credit Facilities of Rs. 70,00,00,000/- vide Sanction letter dated 18.02.2012. The Corporate Debtor, inter alia, agreed to pay interest at the rate of 4.50% bps over base rate with monthly interest in respect of the demand cash credit facility, including levying of penal interest, on account of non-compliance of sanction conditions.
5. The Petitioner submits that, the cash credit facilities were secured by creating a pari passu charge of the flats of the builder, in the project "RNA ADDRESS", and escrow & charge of receivable of the proposed property by executing the Agreement of Loan-Cum-Hypothecation dated 18.02.2012. The said Cash Credit facilities were further secured by way of mortgage of land, owned by RNA Corp. Pvt. Ltd., vide deed of Mortgage, dated 22.02.2012 and Personal Guarantee were provided by Mr. Anil Kumar Agarwal, Mrs. Saranga A. Agarwal, Mr. Anubhav A. Agarwal and Mr. Gokul A. Agarwal vide Guarantee Agreement dated 18.02.2012 and Corporate Guarantee is provided by RNA Corp. Pvt. Ltd. vide Guarantee Agreement dated 18.02.2012, for the above mentioned Cash Credit Facilities.
6. The Petitioner submits, that the Corporate Debtor first defaulted on 31.03.2014 and upon continued failure to maintain its accounts, the Petitioner requested the Respondent to regularize its account. The Corporate Debtor addressed a revival letter dated 18.03.2014 to the Petitioner and acknowledged the outstanding debt in terms of Section 18 of the Limitation Act, 1963. The Petitioner via Letter of Arrangement dated 18.03.2014, communicated to the Respondent, that the Petitioner had sanctioned shifting the Date of Commencement of

Commercial Operation (“**DCCO**”) by 12 months from June 2013 to June 2014 and shifting of repayment schedule of the then outstanding amount of Rs. 59.33 Crores, for a period of one year, from September 2014 to September 2015.

7. The Petitioner further submits that a Rectification Deed dated 21.03.2014 was executed for mortgage of Development Rights of saleable portion of project along with saleable portion of the building to be constructed on the land bearing CTS No. 4853, 4853/1 to 85, 87, 88, Village Kolekalyan, Sundernagar, Kalina, Santacruz (East), Mumbai having total Saleable area of 6,28,080.07 sq ft.
8. However, the Respondent continued to default in repayment of the total amount of debt due. Since, DCCO did not occur on 30.06.2014 i.e. within twelve months from the original DCCO, the account was classified as NPA on 30.06.2014, by the Petitioner, as per the directions issued by the Reserve Bank of India.
9. Upon the continued failure to maintain the account, the Petitioner issued a Legal Demand Notice, dated 02.03.2015, upon the Respondent and the Personal Guarantors under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**‘SARFAESI’**) recalling the total outstanding liability due and owed to the Petitioner. The Respondent did not remedy the default. Thereafter, the Petitioner issued a possession notice dated 01.07.2015, intimating the Respondents that the Petitioner has taken over the physical possession of the land on 27.06.2015 and had initiated the sale process of the said Land for recovery of the debt. However, the Petitioner did not receive any bids.
10. Vide a Legal Demand Notice dated 05.04.2016, issued by the Petitioner upon the Respondent, to recall the entire outstanding dues along with interest payable. The Petitioner informed this Tribunal that it had also

filed an original application on 01.07.2016 against the Respondent and the Guarantors before the Debts Recovery Tribunal-III at Mumbai under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for claim amount of Rs. 75,22,70,867.51 plus interest.

11. While the application was pending before the DRT, the Respondent by Compromise Proposal, dated 31.01.2018 admitted the liability of outstanding principal amount of Rs. 59.33 Crores and proposed for a settlement for Rs. 40 Crores to be paid in full by 31.03.2018. In its offer letter dated 31.01.2018, for settlement of loan account, the Corporate Debtor categorically stated as under:

“I/we hereby submit that the principal amount in my/our captioned accounts of Rs. 59.33 Crores approx (Rupees Fifty Nine Crores Thirty Three Lacs approx) is confirmed by me/us as on date. I/we hereby offer my/our proposal for settlement of my/our dues through compromise with details as under:

1. Amount offered Rs. 40 Crores (Rupees Forty Crores only)

2. The above offer is inclusive of legal charges/court fee/ advocate fee/ valuer fee/ publication charges etc.

3. Payment Schedule

I. Rs. 2 Crores (No lien amount; DD no. 016515 enclosed herewith; bank to confirm the receipt of no lien amount).

II. To be paid Rs. 38 Crores by 31st March 2018

4. Thus the entire compromise amount in respect of my/our loan account No. captioned above will be paid latest by 31st March 2018”

12. In pursuance of the letter dated 31.01.2018, the Corporate Debtor wrote to the Manager, SBI on 05.02.2018 enclosing a cheque No. 282194 drawn in favour of "SBI SAMB – II COLLECTION A/C" for an amount of Rs. 2 Crores which the Petitioner deposited in a separate no lien account. **The compromise proposal was not accepted by the Petitioner bank.**
13. Even after multiple correspondences exchange between the Petitioner and Respondent, the Respondent has failed to remedy the default and make timely repayments of loan/debt to the Petitioner. The last payment of Rs. 50,00,000/- was received from the Corporate Debtor on 01.06.2015. Hence, the Petition is filed before the Adjudicating Authority for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

REPLY OF THE CORPORATE DEBTOR:

14. The Corporate Debtor vide its Affidavit in reply ("**Reply**") dated 19.04.2022 and Further Affidavit in reply ("**Further Reply**") dated 21.04.2022 submitted that the petition is not maintainable, and the Petitioner had concealed and suppressed material facts from this Hon'ble Tribunal.
15. The Corporate Debtor in its reply submits that the Financial Creditor had annexed a copy of Guarantee Agreement dated 18.02.2012 by RNA Corp Private Limited (Corporate Guarantor of the Corporate Debtor). Bank of India had filed a Company Petition under Section 7 of the Code against the Corporate Guarantor i.e. RNA Corp Private Limited, which was admitted by the Hon'ble Tribunal Vide order dated 26.11.2019, and the Petitioner had filed a claim of Rs. 137,55,54,367/- in the CIRP of this Guarantor i.e. RNA Corp Private Limited.

16. The Corporate Debtor has further relied upon the judgment of the Hon'ble NCLAT dated 08.01.2019 in the matter of "**Dr. Vishnu Kumar Agarwal Vs Piramal Enterprises Limited**" wherein it was *held that* for same set of debt, claim cannot be filed by same Financial Creditor in two separate CIRP. However, the Hon'ble Supreme Court has taken cognizance of the aforesaid judgement and granted status quo vide order dated 12.04.2021 in the matter of RNA Corp Private Limited.
17. The Corporate Debtor has further raised certain objections which are as follows:
- a. The Petitioner has mentioned two different dates of default. The first default occurred on 31.03.2014 whereas the date of default mentioned in Part-IV of the Company Petition is 01.06.2015.
 - b. The Petitioner has mentioned in Part-IV of the Petition that the account of the Corporate Debtor was classified as NPA on 30.06.2014. However, in the notice dated 02.03.2015 under Section 13 (2) of SARFAESI Act, 2002, the account of the Corporate Debtor was classified as NPA on 27.02.2015.
 - c. The Petitioner has annexed defective documents based on the insufficient payment of Stamp duty.
18. Therefore, the Corporate Debtor submits that the Present Petition is not maintainable and required to be dismissed.

REJOINDER OF THE PETITIONER:

19. In response to the above, the Petitioner has filed an Affidavit in Rejoinder ("**Rejoinder**") dated 28.04.2022. The Petitioner submits that the facts in the judgment of *Dr. Vishnu Agarwal vs. Piramal Enterprises Limited 2019 SCC Online NCLAT 81* ("**Piramal**") are different from the facts of the present case. In Piramal case, the CIRP was initiated against two (2) Corporate Guarantors as compared to one

(1) in the present case. Moreover, the judgement is presently sub-judice before the Hon'ble Supreme Court of India bearing Civil Appeal no. 878 of 2019 wherein status quo has been directed in respect of the CIRP of the Corporate Debtor and hence, cannot be referred to and relied upon unless judgment is passed in the matter.

20. With regards to the contention of the Corporate Debtor regarding different dates of default, the Petitioner has submitted that the loan Account of the Corporate Debtor was restructured in the Month of March 2014 upon the request of the Corporate Debtor and the terms were modified to shift the date of commencement of commercial operations by 12 months from June 2013 to June 2014. The restructuring and change of DCCO can be evidenced by the Revival Letter, Letter of Arrangement and Rectification Deed annexed at Exhibit "L", "M" and "N" of the Application. Thereafter, part payment of Rs. 50 lakh was received from the borrower on 01.06.2015 which was the last payment received from the Corporate Debtor. Hence after giving due credit to the payments made, the date of default therefore has been considered to be 01.06.2015 for the remaining sums due from the Corporate Debtor.
21. The Petitioner further deny that there is any discrepancy in the application with regard to the declaration of NPA, as is manifestly clear from the contents of the Application itself and the documents annexed in support thereof. The payment of the debt was rescheduled and restructured at the request of the Corporate Debtor which is mentioned herein above. After restructuring, there was further default and the Petitioner was then bound to further declare the account as NPA on 27.02.2015 and the same was intimated to the Corporate Debtor vide the demand notice of the Petitioner dated 02.03.2015. However, since the company failed to adhere to the revised DCCO, the account was classified as NPA w.e.f. June 30, 2014 as per the RBI Guidelines contains in master circular – Prudential norms on Income

Recognition, Asset Classification and provisioning pertaining to advances dated July 01, 2014 (“**RBI-Circular**”). Accordingly, the account was classified as NPA w.e.f. June 30, 2014 and additional provision was made by the Petitioner. Accordingly, the date of NPA is reflected as June 30, 2014 in Section 7 Application. In any event, the date of default is to be seen for the purpose of calculation of limitation. Since, the Petitioner has been able to demonstrate that the Application is within limitation by virtue of the last payment being made within 3 years of the date of NPA i.e. on 30.06.2014 and further acknowledgement of liability within 3 years of the last date of payment i.e. on 31.01.2018, the date of NPA becomes inconsequential.

22. The Petitioner states that the fact whether stamp duty has been adequately paid or not is irrelevant in the present proceedings before this Hon’ble Tribunal. The present Application before this Tribunal is to merely consider the fact whether a default in respect of the debt has occurred or no. In any event, the obligation to pay stamp duty as per Clause (r) of Annexure “B” of the sanction letter is that of the Corporate Debtor. Further, it is the Corporate Debtor who has franked the documents including Sanction Letter, Agreement of Loan-Cum-Hypothecation, Personal Guarantee Agreement, Corporate Guarantee Agreement and Deed of Mortgage. Without prejudice, the Applicant states that if at all there is deficient stamp duty, it is Corporate Debtor who is responsible and liable for the same and they cannot be permitted to take advantage of their own wrong.

FINDINGS:

23. Heard the learned counsel, Mr. Tarak Shah appearing for the Financial Creditor and Mr. Rohit Gupta appearing for the Corporate Debtor and perused the records.

24. The first contention raised by the Corporate Debtor is that, for same set of debt, claim cannot be filed by same Financial Creditor in two separate CIRP. In this regard the Bench relies on the judgement of Hon'ble NCLAT in the matter of *State Bank of India vs. Athena Energy Ventures Private Limited ("Athena")* wherein, it was held that not only CIRP can be proceeded against both the borrower and the guarantor but has also held that claim can also be filed for the same debt in the CIRP of both the borrower and the guarantor. The relevant para of the judgement is extracted below:

"...We are also of the view that simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this. We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise...."

It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal "interpreted" the law. Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal.

*For such reasons, we are unable to uphold the Judgment
as passed by the Adjudicating Authority...”*

25. Another contention raised by the Corporate Debtor is with regards to the two different dates of default. In this regard it is pertinent to note that the date of default is to be seen for the calculation of limitation. Here, the Corporate Debtor first defaulted on 31.03.2014 and, the account was classified as NPA on 30.06.2014. Thereafter the terms of loan account were modified and a part payment of Rs. 50,00,000/- was received from the Corporate Debtor on 01.06.2015. Therefore, reflected as the date of default in Part-IV of the Company Petition. Further, the Corporate Debtor vide Compromise Letter dated 31.01.2018 acknowledge the existence of the debt towards the Petitioner and proposed to settle the outstanding debt. This bench is of view that this Compromise Letter dated 31.01.2018 given by the Corporate Debtor, has extended the limitation period and is an acknowledgment of liability by the Corporate Debtor. Thus, the present application is within Limitation.
26. The next contention raised by the Corporate Debtor is with regard to insufficient Stamp Duty paid on the documents. In this regard it is important to mention here that, the Corporate Debtor has filed a Compromise Letter dated 31.01.2018 which is annexed to the Company Petition, wherein the Corporate Debtor has acknowledged the outstanding liability towards the Financial Creditor. Apart from that, the Financial Creditor also filed the Statement of Accounts of the Corporate Debtor duly certified as per Bankers' Books Evidence Act, 1891. The Corporate Debtor did not dispute the above 2 documents nor the execution of all the loan documents by them at the time of sanctioning of the loan. Therefore, the debt of the Financial Creditor stands proved. Hence, the contention of the Corporate Debtor in this regard has to be rejected as per the law laid down by the Hon'ble NCLAT

in *Praful Nanji Satra V/s Vistra ITCL (India) Limited and Others (2022 SCC OnLine NCLAT 336)*.

27. On going through the submissions made by the Learned Counsel for the Petitioner and the Respondent and on perusing the documents produced on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the Insolvency & Bankruptcy Code, 2016.
28. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
29. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘Admission’ by passing the following:

ORDER

- a. The above Company Petition No. 783/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **A A Estates Private Limited.**

- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Harshad Shamkant Deshpande**, having Email ID- harshad.deshpande@decoderesolvency.com, having Address – Flat No. 403, Kumar Millennium, Jaibhavani Nagar, Paud Road, Near Rohan Corner, Kothrud, Pune - 411038 and having registration No. IBBI/IPA-001/IP-P00166/2017-18/10335, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 783/IBC/MB/2021 is **admitted**.
- l. In pursuance of the above, I.A. No. 2456 of 2022 is **dismissed**.
- m. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia

Member (Technical)

Sd/-

H.V. Subba Rao

Member (Judicial)