

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

CP(IB)/77/MB-IV/2024

Under Section 7 of the IBC, 2016

In the matter of

Piramal Capital & Housing Finance Limited

[CIN: U65910MH1984PLC032639]

...PCHFL/Financial Creditor

v/s.

Township Developers India Limited

[CIN: U70109MH2006PLC161598]

...Corporate Debtor/Corporate Guarantor

Order Delivered on 29.04.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Vikram Nankani, Ld. Sr.
Counsel.

For the Corporate Debtor/ Corporate Guarantor: None Present .

ORDER

The present Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Piramal Capital & Housing Finance Limited ("Financial Creditor") against the Township Developers India Limited ("Corporate Debtor") (in its capacity as guarantor) for default totalling Rs. 1395,71,08,414/- (Indian Rupees One Thousand Three Hundred Ninety Five Crores Seventy One Lakhs Eight Thousand Four Hundred and Fourteen Rupees Only) being the unpaid interest and additional interest accrued on the mortgage loans for the period between 01 April 2021 till 31 March 2023 payable by 10 (Ten) borrower entities ("Borrowers"). The date of default as specified in Part IV of the petition is 27.06.2023.

Submissions of the Financial Creditor

1. The Financial Creditor submits that, this Tribunal admitted the application filed by RBI admitting DHFL into CIRP. Then, on 07.06.2021 the resolution plan of Erstwhile Piramal Capital & Housing Finance Limited ("Erstwhile Piramal") was approved. On 30.09.2021, Erstwhile Piramal merged into and with DHFL such that DHFL remained as the continuing legal entity. On 03.11.2021, the name of DHFL was changed to "Piramal Capital and Housing Finance Limited", i.e. the Financial Creditor.
2. The Financial Creditor sanctioned mortgage loans to the Borrowers amongst others, on the terms and conditions contained in sanction letter dated 02 August 2019. Thereafter, the Financial Creditor advanced mortgage loans totalling INR 3453,92,12,489/- (Indian Rupees Three Thousand Four Hundred Fifty-Three Crores Ninety-Two Lakhs Twelve Thousand Four Hundred Eighty-Nine Only) ("Mortgage Loans") to the Borrowers in the following manner:

Sr. No.	Entities	Disbursed Amount (INR)
1	Creatoz Builders Private Limited	1192,20,00,000
2	Database Software Technology Private Ltd.	264,90,13,699
3	Dream Vision India Private Limited	225,00,00,000
4	Indigo Tech-Ind Limited	100,00,00,000
5	Infinium Auto Mall Private Limited	200,00,00,000
6	Ing Satcom Limited	200,00,00,000
7	R.R Builders (Partnership Firm)	7,50,00,000
8	Rite Developers Private Limited	758,51,98,790
9	Welby Farms Private Limited	185,00,00,000
10	West End Investment & Finance Consultancy Private Limited	320,80,00,000
Total		Rs.3453,92,12,489/-

3. Pursuant to the above mentioned mortgage deed, the Corporate Debtor agreed to guarantee the repayment of the said Mortgage Loans together with interest and all other monies payable through a Deed of Guarantee executed on 22.08.2019 ("Deed of Guarantee") by the Corporate Debtor in favour of Dewan Housing Finance Corporation Limited ("DHFL"). Considering that the Deed of Guarantee is a continuing and co-extensive guarantee in terms of Clause 12, the Corporate Debtor upon execution of the Deed of Guarantee became liable to pay any default amount of the Borrowers. Further, with a view to secure the repayment of loans by the Borrowers, DHFL entered into a deed of simple mortgage dated 23.08.2019 with the Corporate Debtor.

4. On 15.04.2020, the Financial Creditor issued a notice to the Corporate Debtor/ Corporate Guarantor to deposit the title deeds with DHFL and to take necessary action for registration of the charge over the land with the Registrar of Companies. Thereafter, on 13.02.2021, DHFL through its advocates issued a legal notice invoking the Deed of Guarantee to the Corporate Debtor/Corporate Guarantor on account of defaults by the Borrowers calling upon the Corporate Debtor to pay the outstanding sum of INR 4252,87,59,892/- (Indian Rupees Four Thousand Two Hundred Fifty-Two Crore Eighty-Seven Lakh Fifty-Nine Thousand Eight Hundred Ninety-Two Only) within 15 (Fifteen) days of issuance of the said notice. However, upon expiry of 15 (Fifteen) days i.e., 28.02.2021, the Corporate Debtor/ Corporate Guarantor failed to remit the amounts due to the Financial Creditor by the Borrowers and the default by the Borrowers is continuing even till date.

5. As the default by the Borrowers and the Corporate Guarantor, was continuing till date including the unpaid interest and additional interest being accrued, the Financial Creditor issued the notice invoking the Deed of Guarantee through invocation notice dated 23.06.2023, to pay the outstanding sum of Rs. 5855,11,12,393/- (Indian Rupees Five Thousand Eight Hundred Fifty-Five Crores Eleven Lakhs Twelve Thousand Three Hundred Ninety-Three Only) within 48 (Forty-eight) hours i.e., by 27.06.2023. While the Invocation Notice dated 23.06.2023 was issued for the outstanding sum of Rs.5855,11,12,393/- (Indian Rupees Five Thousand Eight Hundred Fifty- Five Crores Eleven Lakhs Twelve Thousand Three Hundred Ninety- Three Only), the said amount also included INR 1395,71.08,414/ (Indian Rupees One Thousand Three Hundred Ninety Five Crores Seventy One Lakhs Eight Thousand Four Hundred and Fourteen Rupees Only) being the amount payable post the Section 10A period of the Code by the Borrowers, i.e, between 01.04.2021 till 31.03.2023. Therefore, from the Invocation Notice dated 23.06.2023, it became clear that an

amount of Rs. 1395,71,08,414/- (Indian Rupees One Thousand Three Hundred Ninety Five Crores Seventy One Lakhs Eight Thousand Four Hundred and Fourteen Rupees Only) being the outstanding interest and additional interest had further accrued on the said Mortgage Loans post the Section 10A period, which was included in the outstanding sum stated in the Invocation Notice dated 23.06.2023.

6. However, the Corporate Debtor/Corporate Guarantor failed to reply to the said Invocation notice dated 23.06.2023. On 28.06.2023, the Financial Creditor filed an application under Section 7 of the IBC bearing Company Petition No. 556 of 2023 (which was thereafter amended by way of the order dated 08.09.2023 passed by this Tribunal in I.A. 4063 of 2023). However, the Adjudicating Authority dismissed the Company Petition No. 556 of 2023 by an order dated 08.11.2023 on the ground that the date of default by the Corporate Debtor was in the period covered under Section 10A of the Code. The Financial Creditor thereafter challenged the Order dated 08.11.2023 before the "Hon'ble NCLAT" under Section 61 of the Code, by way of Company Appeal (AT) (Insolvency) No. 1628 of 2023. The Hon'ble NCLAT vide order dated 14.12.2023 was pleased to grant liberty to the Financial Creditor observing that the Financial Creditor had the right to file a fresh application before this Hon'ble Tribunal confining to the default after Section 10A period which may be considered and decided by this Hon'ble Tribunal. .

7. Hence, in view of the liberty granted by the Hon'ble NCLAT for the outstanding amount of INR 1395,71,08,414/- (Indian Rupees One Thousand Three Hundred Ninety Five Crores Seventy One Lakhs Eight Thousand Four Hundred and Fourteen Rupees Only) being the interest and additional interest accrued post the Section 10A period, i.e. between 01 April 2021 till 31 March 2023, which continues to be in default, the Financial Creditor is filing the instant petition against the Corporate Debtor.

Findings:

8. Heard the Counsel for the Financial Creditor. Perused the record.
9. This bench has observed that the said matter was listed on 20.02.2024 and 11.03.2024. On 11.03.2024, this bench directed the registry to issue court notice to the Corporate Debtor. As per the endorsement of the track consignment it shows that “*Item bagged*”. Thereafter, the matter was listed on 17.04.2024. At the time of hearing, the counsel for the Financial Creditor submitted that they have intimated the Corporate Debtor through email correspondence (i.e. on the email Id of Corporate Debtor as reflected on the MCA website intimate.sec@gmail.com) dated 19.02.2024 and 08.03.2024. The notice was also sent through Registered Post on 20.02.2024 and 04.04.2024 as per the endorsement of the tracking report it shows that “*item returned as addressee moved*”.
10. The petitioner relies upon judgement passed by the Hon’ble NCLAT in ***Rajnish Gupta vs. Union Bank of India & DMC Infrastructure Pvt. Ltd. Through IRP, Mr. Ashok Kumar Dewan CP(AT) Insolvency No. 351 of 2021*** held that “... *the service by the email on the registered Email ID and also on the Email ID of the Appellant herein is held sufficient in the eyes of law.*” Taking note of the decision we are of the considered view, that the service of notice through e-mail on the Registered email ID of Corporate Debtor as reflected on the MCA website is a proper service. Therefore, despite proper service of notice the Corporate Debtor failed to file reply or appear before this bench. Accordingly, right to file reply was ***forfeited*** on 17.04.2024. In the aforesaid peculiar circumstances, we proceed to decide the matter as per the basis material available on record.

11. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.

11.1. From the perusal of the records it emerges that, the Corporate Debtor has entered into a Deed of Guarantee dated 22.08.2019 as a guarantor. As per the *clause* (1) of the said Deed of Guarantee“*the guarantor agreed to pay to DHFL on demand, without demur, the loan of Rs. 5446,00,00,000/- as advanced to the borrowers alongwith all other monies which shall then be due to DHFL and all cost, charges and expenses whatsoever which DHFL may incur by reason of default on the part of the borrowers*”. This bench finds that, it is not in dispute that the said loan was to be paid by the Corporate Debtor/Corporate Guarantor on demand by the Financial Creditor.

11.2. The present petition is filed for outstanding amount of Rs.1395,71,08,414/- fallen due during the period between 01.04.2021 till 31.03.2023 *i.e* post the section 10A period which formed the part of the invocation notice dated 23.06.2023.

11.3. In view of the above, at this stage, it is pertinent to refer to the definition of the expression “Financial Creditor” in sub-section 7 and in sub-section 8 of Section 5 of the Code.

Section 5 sub-section 7 reads as follows:

“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”

Section 5 sub-section 8 “Financial Debt” reads as follows:

“Financial Debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

On the basis of the above analysis, we are of the considered view that the amount involved in the present case be considered as a Financial Debt within the definition of sub-section 8 of Section 5 of the Code. We are of the opinion that the Applicant is a Financial Creditor holding financial debt which is in default of payment by the Corporate Debtor.

12. The notice of demand was sent to the Corporate debtor/Corporate Guarantor vide email dated 23.06.2023(amount to be paid within 48 hrs from the receipt of the notice i.e. 27.06.2023) the date of default is 28.06.2023. Therefore, as per Article 137 of the Limitation Act, the limitation starts from 27.06.2023 for period of 3 years which will expire on 26.06.2026. The present application is filed on 18.04.2024. Therefore, this bench is of the considered view that the present application filed under Section 7 of the Code is within the Limitation Period.

13. We are of the considered view that the present Application under Section 7 of the Code is within the limitation and is maintainable. It is a settled law that the pre-requisites for an application under Section 7 of the Code are the existence of 'financial debt ' and a 'default' . The Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that

in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor. The petition is complete in all aspects. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under Section 7 of the Code.

14. The Financial Creditor in Part III of the petition has proposed the name of the IRP i.e. **Incorp Restructuring Services LLP**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPE-00129/IPA-1/2022-2023/50032** and email- **vinay@vkca.com**. After perusal of record, Authorisation for Assignment of the proposed IRP is valid till 12.02.2024. Therefore, this bench hereby appoints a **Mr. Purusottam Behera**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-002/IP-N00940/2019-2020/12993** and email- **purusosbbj@yahoo.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor.

ORDER

The Petition bearing CP (IB) No.77/MB-IV/2024 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Piramal Capital & Housing Finance Limited ("Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Township Developers India Limited ("Corporate Debtor") (in its capacity as guarantor) is **Admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

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- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Purusottam Behera**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-002/IP-N00940/2019-2020/12993** and email- **purusosbbj@yahoo.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

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- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Anu Jagmohan Singh
Member (Technical)
29.04.2024.

Sd/-

Kishore Vemulapalli
Member (Judicial)