

*Through Videoconference*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI SPECIAL BENCH, COURT - II**

**CP (IB) 1474/MB/2019**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule  
4 of the Insolvency and Bankruptcy

(Application to Adjudicating  
Authority) Rules, 2016

*In the matter of*

**Piramal Capital and Housing  
Finance Limited**

**Registered office :- 2<sup>nd</sup> Floor, Piramal  
Tower, Peninsula Corporate Park,  
Ganpatrao Kadam Marg, Lower  
Parel, Mumbai – 400013.**

.....Petitioner

Versus

**SK Elite Industries (India) Limited  
[CIN: U74900MH1996PLC118908]  
Registered office :- Plot No. D 404-  
405, TTC Industrial Area, MIDC,  
Turbhe, Navi Mumbai - 400705**

.....Respondent

**Order Delivered on : 07.05.2021**

***Coram:***

**Janab Mohammed Ajmal, Hon'ble Member (Judicial)**

**Mr. Ravikumar Duraisamy, Hon'ble Member (Technical)**

***Appearance:***

For the Petitioner: Mr. Gaurav Joshi, Sr. Advocate a/w  
Mr. Aditya Shiralkar, Mr. Denil Arambhan,  
Mr. Nanki Grewal, Ms. Amisha Patel i/b  
Wadia Ghandy and Company

For the Respondent: Mr. Kevic Setalvad, Sr. Advocate a/w  
Ms. Karishma Shah & Ms. Ankita Singhania  
i/b A & P Partners

***Per: Ravikumar Duraisamy, Member (Technical)***

**ORDER**

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against SK Elite Industries (India) Limited, ("the Respondent") alleging default in payment of a Financial Debt.
2. The Respondent is a Private Company and incorporated on 23.02.1996 with the Registrar of Companies, Maharashtra, Mumbai.
3. The case of the Petitioner is as follows: -
  - (a) The Petitioner is the successor-in-interest of Piramal Finance Limited, the original lender, which was amalgamated with

the Petitioner then known as Piramal Housing Finance Limited vide merger Order dated 06.04.2018 and later the name was changed to Piramal Capital & Housing Finance Limited.

- (b) Piramal Finance Limited sanctioned the term loan of Rs. 47,00,00,000/- (Rupees Forty Seven Crore only) to the Respondent and Rs. 15,00,00,000/- (Rupees Fifteen Crore only) to its sister concern one SK Wheels Private Limited, on 29.08.2017, pursuant to Sanction Letter dated 12.07.2017 and addendum to Sanction Letter dated 23.08.2017 and a Facility Agreement. Both the Companies i.e., the Respondent herein and SK Wheels Private Limited are jointly and severally liable for the repayment of the loan as co-obligors.
- (c) On 24.08.2017, a Deed of Mortgage bearing registration no. 11046 of 2017 was executed between the Respondent (Security Provider) and the Petitioner (formerly known as Piramal Finance Limited) under which the Respondent granted, conveyed, assigned, assured and transferred in favour of the Petitioner by way of first ranking mortgage.
- (d) In addition to the aforesaid mortgage, certain additional securities were also created by the Respondent in favour of the Petitioner to secure the said loan.

- (e) A Security Trustee Agreement dated 21.08.2017 was executed between the Respondent, SK Wheels Private Limited and the Petitioner & Piramal Trusteeship Services Private Limited.
- (f) The loan was further secured by Personal Guarantee dated 21.08.2017 executed by Mr. Anil Kumar, Mr. Akshit Kumar and Mrs. Manjusha Kumar, the promoters of the Respondent in favour of the Petitioner.
- (g) A Demand Promissory Note dated 22.08.2017 was issued by the Respondent in favour of the Petitioner.
- (h) A Share Pledge Agreement dated 21.08.2017 was executed by the above three promoters of the Respondent in favour of the Petitioner. Pursuant to the Share Pledge Agreement, a Power of Attorney dated 21.08.2017 was also executed.
- (i) Deed of Hypothecation dated 21.08.2017 was executed between the Respondent and the Petitioner.
- (j) A copy of amended and restated Escrow Agreement dated 22.08.2017 was executed by the Respondent and HDFC Bank Limited and Piramal Trusteeship Services Private Limited.

- (k) The said loan was repayable in 180 instalments commencing from the date of disbursement of the said loan with interest @ 12.5% p.a. and on default of the payment of such loan an additional interest @ 12% p.a. was payable.
- (l) On 05.11.2018, the Respondent was liable to repay Rs. 79,58,244/- (Rupees Seventy Nine Lakh Fifty Eight Thousand Two Hundred and Forty Four only) being principal amount of Rs. 62,60,886/- (Rupees Sixty Two Lakh Sixty Thousand Eight Hundred and Eighty Six only) and interest of Rs. 16,97,358/- (Rupees Sixteen Lakh Ninety Seven Thousand Three Hundred and Fifty Eight only). The Respondent failed to pay the aforesaid amount and further instalments resulting to continuing default.
- (m) The Petitioner through its Advocate issued notice dated 04.04.2019 for claiming the outstanding dues of the Respondent however, nothing fructified. The Respondent did not make any payments nor was any response given to the said notice.
- (n) At the time of filing the application, Rs. 63,77,90,205/- (Rupees Sixty Three Crore Seventy Seven Lakh Ninety Thousand Two Hundred and Five only) is stated to be in default out of which Rs. 60,10,45,045/- (Rupees Sixty Crore Ten Lakh Forty Five Thousand and Forty Five only) is the

principal amount. Following amount is calculated towards interest accrued due and payable to the Petitioner on various dates :-

(i) Rs. 3,35,66,751/- (Rupees Three Crore Thirty Five Lakhs Sixty Six Thousand Seven Hundred and Fifty One only) towards net overdue interest calculated till 04.04.2019,

(ii) Rs. 11,11,522/- (Rupees Eleven Lakh Eleven Thousand Five Hundred and Twenty Two only) towards total net accrued interest calculated from 05.04.2019 till 10.04.2019,

(iii) Rs. 20,66,887/- (Rupees Twenty Lakh Sixty Six Thousand Eight Hundred and Eighty Seven only) towards net default calculated till 10.04.2019.

(o) The Petitioner vide its Written Submissions dated 03.03.2021 submits that the Respondent has admitted the existence of the debt and default. The liability of the Respondent as well as its default has effectively confirmed and adjudicated in collateral proceedings by the Hon'ble Bombay High Court in the summons for Judgment No. 54 of 2019 in Commercial Summary Suit No. 1060 of 2019 vide its Judgment and order dated 20.03.2020. The said Summary Suit has been filed by the Petitioner against the Promoters of the Respondent who acted as guarantors of the loan facility.

4. In its reply dated 06.11.2019, the Respondent has set up the following defence: -
- (a) The Petition is not maintainable and bad in law. The Petitioner has come with unclean hands and has suppressed and concealed material facts from the Tribunal.
  - (b) The assets mortgaged and hypothecated to the Petitioner are in a very high value and hence, the dues are secured by the said assets. In light of the same, there arises no need to initiate the CIRP against the Respondent.
  - (c) The Petitioner has placed Facility Agreement dated 12.07.2017 read with Sanction Letter dated 23.08.2017 calling upon the Respondent to repay the loan. The said Facility Agreement along with other ancillary documents have been executed in Delhi i.e. outside the State of Maharashtra.
  - (d) The Respondent submits that the Facility loan Agreement has not been duly stamped as per the provisions of Section 18 of the Maharashtra Stamps Act, 1958 and hence cannot be considered or acted upon. The claim of the Petitioner is entirely based on the Facility Loan Agreement and it is not a valid document and not tenable in law. The said Facility Loan Agreement is executed in the State of New Delhi. The

Petitioner has not paid the requisite Stamp Duty nor has any penalty been paid. Hence the Facility Loan Agreement is not admissible as evidence as any instrument executed outside the State of Maharashtra must be duly stamped as per the provisions of the Maharashtra Stamps Act, 1958.

- (e) As per the Petitioners own claim, out of the loan amount of Rs. 62,00,00,000/- (Rupees Sixty Two Crore only) an amount of Rs. 15,00,00,000/- was disbursed to SK Wheels Private Limited and Rs. 47,00,00,000/- was disbursed to the Respondent. By virtue of an Order dated 29.03.2019 in CP No. 4301 of 2018, Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted against SK Wheels Private Limited by this Tribunal and CIRP was initiated against the Co-Borrower. The Petitioner had filed its claim before the Interim Resolution Professional for Rs. 63,56,13,197/- and same was provisionally admitted. Thereafter the Petitioner filed a revised claim before the Resolution Professional for Rs. 15,31,56,271/- and the entire claim of the Petitioner had been admitted by the Resolution Professional. The Respondent submits that the Petitioner had suppressed these material facts and filed the present claim of Rs. 63,77,90,205/- for the entire amount which is inclusive of the claim admitted by the Resolution Professional of SK



Wheels Private Limited. The Petitioner has filed multiple claims thereby causing multiplicity of proceedings.

- (f) The Petitioner has also filed a Commercial Summary Suit before the Hon'ble High Court of Bombay against the guarantors of the Facility Agreement claiming an amount of Rs. 67,92,29,900/- which is pending.
- (g) The Respondent further submits that SK Wheels Private Limited had initially borrowed money from Punjab National Bank to the tune of Rs. 40,00,00,000/-. Thereafter, Piramal Realty Private Limited approached the promoters of the SK Wheels Private Limited, who are also the promoters of the present Respondent, an offer to provide finance to the Respondent on relaxed terms and conditions. The Respondent was in the process of expansion and hence was in need of finance.
- (h) In February, 2018 the Respondent was in need of finance and as per the agreed undertaking, the Respondent requested the Petitioner for additional facility of Rs. 20 Crore. The Petitioner refused to lend the facility. Hence the Respondent had no option but to approach other institutions for availing the finance.

5. The Petitioner has proposed the name of **Mr. Arun Kapoor**, Registration No. IBBI/IPA-003/IP/N00030/2017-2018/10230, as the Interim Resolution Professional of the Respondent. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
6. We have heard the arguments of both sides and perused the records.
7. With respect to the objection of the Respondent that Facility loan Agreement not been duly stamped as per the provisions of Section 18 of the Maharashtra Stamps Act, 1958 and the Facility Agreement along with other ancillary documents have been executed in Delhi i.e., outside the State of Maharashtra may not be a concern under IBC. Besides the Facility loan Agreement is not the only document to prove the debt. There is surplus material to prove that debt and default are in existence whereby this argument is not sufficient enough to deny the claim of the Petitioner herein. Therefore, the same may not be a valid ground to reject this Petition.
8. The submissions of the Respondent that assets mortgaged and or hypothecated to the Petitioner are in a very high value and hence, the dues are secured by the said assets is also not a ground for rejection of the petition filed under IBC. We are of the considered

view that it is the normal business practice that assets mortgaged are always higher value than the loan amount. It may be in multiples of the loan amount. Besides, the value of the security and the recoverability of the debt would not obliterate the fact of default. It is not in dispute that there has been a default in payment of the Financial Debt. In a Petition under section 7 of the IBC, only the debt and default need to be looked in to. The value of the security would have no bearing on the legal requirement, which when satisfied would trigger CIRP.

9. Though the Petitioner has also filed a Commercial Summary Suit before the Hon'ble High Court of Bombay against the guarantors of the Facility Agreement claiming an amount of Rs. 67,92,29,900/- and which is pending, the suit is filed against the guarantors of the Respondent which does not prohibit the petitioner from initiating CIRP against the Respondent.
10. The Respondent itself submitted that Petitioner filed a revised claim before the Resolution Professional for Rs. 15,31,56,271/- and the entire claim of the Petitioner had been admitted by the Resolution Professional. Further as per the agreement, various documents, terms and conditions the loan is to be repaid jointly and severally by the Respondent and SK Wheels Private Limited.
11. It is noted from the file that on various occasions the Respondent submitted that the matter would be settled and sought time.

Considering the submissions of the Ld. Senior Counsel for the Respondent, time was granted. The Respondent also submitted that it is in the process of selling the assets/building of the Respondent, is the interest of amicable settlement/due diligence process is being carried out by reputed Companies and expressed their interest to buy the buildings/assets of the Respondent which is situated in Navi Mumbai. On the pretext of due diligence, valuation few adjournments were taken. However, despite providing various opportunities, nothing seems to have been fructified and the Respondent is not in a position to pay the outstanding dues of the Petitioner.

12. Ld. Senior Counsel for the Petitioner submitted that assets of the Respondent have been pledged, mortgaged to the Petitioner and without their consent/permission in writing, the Respondent cannot sell the assets to the third-party. Ld. Senior Counsel also submitted that the negotiations with the prospective buyers are not up to the market value as per the estimated or the calculation of the Petitioner. Therefore, he submitted that even though the deal with the prospective buyers would go through, the Petitioner would not give permission to sell the assets and they will not release the mortgage created in the assets to sell to the prospective buyers.

13. From the Application it is also noted that the outstanding debt amount is approximately Rs. 84.87 Crores and the account was classified as NPA/default on 10.04.2019. The Application was filed in the month of January 2019 and in spite of lapse of more than one and half years the Respondent did not pay even a single rupee to the Petitioner despite various assurances/submissions made during the course of the submissions. Finally, during the hearing held on 14.12.2020, Ld. Counsel for the Respondent submitted that settlement had failed. In view of the same we are of the considered view that debt and default under Section 7 of the IBC, 2016 is established. The Petition is complete in all respect and there is no reason to deny admission of this Petition held under Section 7 of IBC and to initiate CIRP proceedings against the Respondent.
14. The Petitioner has proposed the name of **Mr. Arun Kapoor**, Registration No. IBBI/IPA-003/IP/N00030/2017-2018/10230, as the Interim Resolution Professional of the Respondent. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
15. Under section 7(5) of IBC “where the Adjudicating Authority is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary

proceedings pending against the proposed RP, it may, by order, admit such application;” It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. In the above facts and material made available on record we are satisfied that debt and the default stands established and no disciplinary proceedings pending against the proposed IRP therefore the petition deserves to be admitted and there is no reason to deny the admission of the Petition. Accordingly, the Adjudicating Authority admits the Petition No CP (IB) 1474/MB/2019 and initiates CIRP proceedings against the Respondent and declares moratorium as under section 14 of the IBC and appoints IRP of the Respondent. Respondent.

16. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP(IB)-1474/MB/2019** filed by **Piramal Capital and Housing Finance Limited**, the Petitioner, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **SK Elite Industries (India) Limited [CIN: U74900MH1996PLC118908]**, the Respondent, is **admitted**.

- (b) 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 Respondent 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 Respondent 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 Respondent 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 Respondent.
- (c) Notwithstanding the above, during the period of moratorium:-

- (i) 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;
- (ii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 of the IBC or passes an order for Liquidation of Respondent under section 33 of the IBC, as the case may be.
- (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) **Mr Arun Kapoor**, Registration No. IBBI/IPA-003/IP/N00030/2017-2018/10230, having address at -G-601, Army Co-operative Housing Society, Section-9, Nerul (East), Navi Mumbai, Maharashtra – 400706



[email: arun.kapoor58@yahoo.in] is hereby appointed as Interim Resolution Professional (IRP) of the Respondent to carry out the functions as per the IBC. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Respondent shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Respondent shall provide all documents in their possession and furnish every information in their knowledge to the IRP.
- (h) The Petitioner shall deposit a sum of Rs. 3,00,000/- (Rupees three lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Petitioner, the Respondent and the IRP by Speed Post and email immediately.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Respondent.

**Sd/-**  
**Janab Mohammed Ajmal**  
**Member (Judicial)**

**Sd/-**  
**Ravikumar Duraisamy**  
**Member (Technical)**

**07.05.2021**