

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**CP(IBC)/28/KOB/2023**

*(Under Section 7 of the IBC, 2016)*

***In the matter of* Greenlace Builders and  
Developers Private Limited**

**MEMO OF PARTIES:**

**PIRAMAL TRUSTEESHIP SERVICES PRIVATE  
LIMITED**

4th Floor, Piramal Tower Annexe, Ganpatrao  
Kadam Marg, Lower Parel Mumbai 400013

**... Petitioner/ Financial Creditor**

**-Vs-**

**GREENLACE BUILDERS AND DEVELOPERS  
PRIVATE LIMITED**

28, 2<sup>nd</sup> Floor, Asten NH Bye Pass, Opposite  
Spices Board, Vennala P O, Ernakulam 682028

**... Respondent/Corporate Debtor**

**Order delivered on: 16.02.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. Nausher Kohli, Advocate

For the Respondent : Ms. Lakshmi V R, Advocate

**ORDER**

**Per Coram**

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **GREENLACE BUILDERS AND DEVELOPERS PRIVATE LIMITED**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application sets out the details of the Financial Creditor from which it is evident that the Financial Creditor is registered under Companies Act and acts as the security trustee for the original lender - Piramal Capital and Housing Finance Limited, a Housing Finance company governed by the National Housing Bank. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number: U45200KL2010PTC026469 and having its registered office at 28, 2<sup>nd</sup> Floor, Asten NH Bye Pass, Opposite Spices Board, Vennala P O, Ernakulam 682028. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Sreenivasan P R, IBBI

Registration Number: IBBI/IPA-001/IP-P-02174/2021-2022/13722 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs. 56,01,61,226.28/- as on 28.04.2023. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- 1) Sanction letter dated 19.11.2018 was issued by Piramal Capital and Housing Finance Limited (“PCHFL”) to Asten Realtors Private Limited (“Asten Realtors”) sanctioning a loan amount of Rs.55,00,00,000/-
- 2) Loan agreement dated 22.01.2019 executed by Asten Realtors
- 3) Security Trustee Agreement dated 22.01.2019
- 4) Deed of Corporate Guarantee dated 22.01.2019 executed by the Corporate Debtor in favour of the Security Trustee/Creditor
- 5) Deed of Personal Guarantee dated 22.01.2019 executed by Kakkanattil Ibrahimkuttty Mohamed Raffi Mather in favour of the Security Trustee/Creditor
- 6) Deed of Personal Guarantee dated 22.01.2019 executed by Kakanattil Abdul Rahim Siraj Mather in favour of the Security Trustee/Creditor

- 7) Deed of Corporate Guarantee dated 22.01.2019 executed by Asten Properties and Developers Private Limited in favour of the Security Trustee/Creditor
- 8) Escrow Agreement dated 22.01.2019 executed by Asten Realtors, Security Trustee/Creditor and HDFC Bank Limited
- 9) Demand Promissory Note dated 22.01.2019 along with Letter of Continuity for Demand Promissory Note
- 10) Non-Disposal Undertaking was executed on 22.01.2019
- 11) Memorandum of Entry Recording Deposit of Title Deed dated 15.02.2019 executed by and between Asten Realtors through its authorised representative and the Security Trustee/Creditor
- 12) Unattested Deed of Hypothecation dated 15.02.2019 executed by Asten Realtors in favour of the Security Trustee/Creditor
- 13) Memorandum of Entry Recording Deposit of title Deeds dated 09.01.2020 executed by Kalamassery Rajagiri Provincial House with the Security Trustee/Creditor
- 14) Statement of Account dated 31.01.2023
- 15) Bank Statements showing disbursement of the loan amount
- 16) Certificate of Creation of Charge dated 15.02.2019 and Certificate of Modification of Charge dated 09.01.2020 issued by the Registrar of Companies

- 17) National E-Governance Services Limited report dated 27.04.2023 of the Corporate Debtor
- 18) Copy of the Default notice dated 18.04.2022 issued to the borrower, guarantors and mortgagors
- 19) Copy of the letter dated 28.04.2022 by Asten Realtors
- 20) Legal notice dated 13.10.2022 by PCHML to Asten Realtors, guarantors and mortgagors
- 21) Legal notice dated 09.11.2022, 06.01.2023, 13.01.2023 and 24.01.2023 by PCHML to borrowers
- 22) Corporate guarantee invocation notice dated 21.03.2023

4. Brief fact of the case is:

- i. The present application is filed by Piramal Trusteeship Services Private Limited, the security trustee of Piramal Capital and Housing Finance Limited (hereinafter 'PCHFL'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Greenlace Builders and Developers Private Limited.
- ii. The PCHFL sanctioned a Term Loan of Rs. 55 crores by way of loan agreement and security trustee agreement dated 22.01.2019 to Asten Realtors Private Limited, the principal borrower which was disbursed as per Annexure S Bank statements. The CD had executed deed of guarantee dated

22.01.2019 in favour of PCHFL/FC providing absolute, unconditional guarantee to secure payment of outstanding loan. The CD has also registered the charge under Companies Act on 15.02.2019 and 09.01.2020. It is stated that default notice was served on borrower, guarantors and mortgagors on 18.04.2022, 13.10.2022, 09.11.2022, 06.01.2023, 13.01.2023, and 24.01.2023 by PCHFL. Thereafter the principal borrower was admitted to CIRP vide order dated 25.01.2023 of this Tribunal in view of which FC vide notice dated 21.03.2023 invoked corporate guarantee on the CD demanding Rs. 55,07,65,717/- as on 16.03.2023.

- iii. It is stated that as on 28.04.2023, CD is in default of Rs. 56,01,61,226.28/- under the loan account. The applicant has submitted the default with NESL, information utility on 27.04.2023. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
  - iv. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
  - v. The application was filed by the FC on 17.06.2023 and states that the petition is filed within the period of limitation under the IBC.
5. On the respondent side, it is contended that as CIRP is already ongoing against the principal borrower, guarantee invocation notice after the CIRP commencement calling upon the default

against CD as corporate guarantor is not tenable. It is also stated that the initiation of CIRP would be arbitrary upon the CD and takes cue from **Hon'ble Supreme Court in Vidarbha Industries Power Limited v Axis Bank Limited** seeking the Tribunal to exercise equitable discretion.

6. Heard the submissions, and perused the documents placed on record. The debt amounting to 56,01,61,226.28/- as on 28.04.2023 is beyond the threshold limit stipulated under the IBC, 2016. The date of default of debt by the CD is stated as 29.03.2023 which is from default on account of invocation of corporate guarantee on CD for nonpayment of debt by principal borrower. Hence this petition filed on 17.06.2023, comes well within the period of limitation under the law.
7. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) 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; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution

Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant-Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.

8. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
  - A. The petition bearing CP (IBC)/28/ KOB /2023, by Piramal Trusteeship Services Private Limited, the Financial Creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **GREENLACE BUILDERS AND DEVELOPERS PRIVATE LIMITED.**, (CIN: U45200KL2010PTC026469), the corporate debtor is **ADMITTED.**
  - B. There will be a moratorium under section 14 of the Code.
  - C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
  - D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of




the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

- E. The Financial Creditor has proposed the name of one Sreenivasan P R, IBBI Registration Number: IBBI/IPA-001/IP-P-02174/2021-2022/13722, email: **sreenivasan.p.r@icai.org**, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- F. During the CIRP period the management of the Corporate Debtor shall vest with 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 one week from the date of receipt of this order, in default of which coercive steps will follow.

- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means 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 Tribunal within seven days from the date of receipt a copy of this order.

9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

**SHYAM BABU  
GAUTAM**  Digitally signed by SHYAM  
BABU GAUTAM  
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**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**T.KRISHNAVALLI**  Digitally signed by  
T.KRISHNAVALLI  
Date: 2024.02.16 14:55:46 +05'30'

**T KRISHNA VALLI  
(MEMBER JUDICIAL)**

Signed on this, the 16<sup>th</sup> day of February, 2024.

Rohit/LRA