

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

CP (IB) No.681/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

**PIRAMAL CAPITAL & HOUSING FINANCE
LIMITED**

[CIN: L65910MH1984PLC032639]

...Financial Creditor/Applicant

V/s

**TENACITY REAL ESTATE PRIVATE
LIMITED**

[CIN: U70102MH2015PTC267821]

...Corporate Debtor/Respondent

Order Dated: 03.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Nausher Kohli a/w Mr.
Nanki Grewal and Manasi
Joglekar, Advocate.

For the Respondent : Ex-parte.

ORDER

Per Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.681/MB-IV/2022 filed by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Tenacity Real Estate Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. This application is filed by Mr. Sagar Seth, Authorised Signatory of the Financial Creditor vide its Board Resolution dated 17.01.2022, claiming a total default of Rs. 922,90,22,521/- (Rupees nine hundred twenty two crore ninety lakh twenty two thousand five hundred and twenty one only). The Date of Default as mentioned in the part IV of Form 1 is 31.03.2019.
3. The details of the total amount in default due to the Financial Creditor by the Corporate Debtor is stated as follows:

Sr. No	Particulars	Amount (In Rupees)
1.	Outstanding Principal Amount	509,99,22,521/-
2.	Outstanding Interest	327,03,10,887/-
3.	Default/ Additional Interest	85,56,38,782/-
4.	Cheque Return/Other Charges	31,72,852/-
	Total	922,90,22,521/-

4. The case of the Financial Creditor is as under:

- i. The Dewan Housing Finance Limited (“DHFL”) is taken over by M/s Piramal Capital & Housing Finance Limited vide order dated 07.06.2021 of the NCLT Mumbai Bench Court II in I.A. No. 449/MB/C-II/2021 in CP(IB) No. 4258/MB/C-II/2019. Vide the said order the loan sanctioned in favour of the Corporate Debtor by DHFL, for a sum of Rs. 510 crores, on the terms and conditions contained under Sanction Letter dated 22.03.2016 stood transferred to M/s Piramal Capital & Housing Finance Limited i.e. Financial Creditor.
- ii. Pursuant to the Loan Agreement between the Corporate Debtor and DHFL dated 11.04.2016, DHFL granted loan facility to the corporate debtor on the terms and conditions stated therein.
- iii. Pursuant to the of the aforesaid Loan Agreement the Corporate Debtor executed several documents namely Simple Mortgage, Escrow Agreement, Deed of Hypothecation and a Demand Promissory Note inter-alia, securing the loan sanctioned by the Financial Creditor in favour of the Corporate Debtor.
- iv. During April-May 2016 the Financial Creditor disbursed a total sum of Rs. 509,99,00,000/- to the Corporate Debtor. Under the revised Sanction Letter dated 24.03.2017, an interest moratorium of 15 months with effect from 01.01.2017 was provided with annual servicing of interest. First such annual interest servicing was to be made on 31.03.2018.
- v. It is stated that the Corporate Debtor has committed various events of default under the loan agreement and first default occurred on

31.03.2019. As per Nesl report dated 28.03.2022 the date of default is 31.03.2019.

- vi. The Financial Creditor wrote letters dated 27.01.2019 and 26.12.2019 asking the Corporate Debtor to cure the non-compliances to the sanctioned conditions but no action was taken by the Corporate Debtor. Finally, the Financial Creditors issued notice dated 23.04.2020 informing the Corporate Debtor that he had failed to pay two Pre EMIs amounting to Rs. 119,08,26,650/- and recalled the entire loan amount of Rs. 646,88,03,632/- asking the Corporate Debtor to pay this amount within 7 days from the of date of notice. However, the Corporate Debtor defaulted to pay the recalled amount.
- vii.** On 08.06.2022, when the matter was listed, the court notice was issued. However, on 13.07.2022 the counsel for the Financial Creditor submitted on record the Affidavit of service stating that the notice sent to three known addresses of the Corporate Debtor was returned due to the reasons that the “*Addressee left without instructions, not delivered. Door locked and No such person in the address*”. Therefore, this Bench issued directions to take out substituted service. Ld. Counsel for the Financial Creditor submitted that despite substituted service in two daily leading newspapers, the Corporate Debtor did not appear nor filed any reply, therefore the Corporate Debtor was set as *exparte*.

Findings

5. We have perused the material available on record and heard the counsel for the Financial Creditor.

6. From the facts stated in the Application and documents enclosed thereto it is clear that the Corporate Debtor owes a sum of Rs. 922,90,22,521/- to the Financial Creditor and it has defaulted in the repayment thereof. The initial default is stated to have occurred on 31.03.2019 in relation to payment of pre EMI interest however, subsequently another default took place in payment of whole of debt when the debt was recalled vide letter 23.04.2020. Accordingly, there is no dispute there exists a default in payment of financial debt owed to the Financial Creditor.
7. As stated in forgoing para, the Corporate Debtor initially defaulted on 31.03.2019 and the Petition is filed on 01.06.2022. The Hon'ble Supreme Court vide its Order dated 10th January 2022 passed in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 directed to exclude the period of 15.03.2020 to 28.02.2022 for the purposes of computing limitation. The relevant extract is reproduced as under:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 to 28.03.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-Judicial proceedings...

...IV. It is further clarified that the period from 15.03.2020 to 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 294 of the Arbitration and Conciliation Act, 1996, Section 124 of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribed period(s) of limitation for instituting proceedings, outer limits

(within which the court or tribunal can condone delay) and termination of proceedings"

8. Therefore, after excluding the said period of 1 year 11 months and 13 days, the date for expiration of the limitation period from the date of default of the Respondent/Corporate Debtor being, 31.03.2019 comes to 13.03.2024. As per the given fact that the captioned Petition has been filed on 01.06.2022, the same has been filed way before the expiry of the limitation period on 13.03.2024. Hence, for the aforesaid reason as well, the captioned Petition is within limitation.
9. On perusal of the documents submitted by the Applicant, financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only), being the threshold limit as specified in the notification no. S. O. 1205 (E) dated 24.03.2020 issued under section 4 of the Code, is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find it a fit case to allow the application filed for initiation of CIRP u/s 7 of the Code against the corporate debtor.
10. The Applicant has proposed the name of Mr. Jayesh Natvarlal Sanghrajka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00216/2017-2018/10416] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being **CP(IB) No.681/MB/2022** filed under Section 7 of I&B Code, 2016, presented by Piramal Capital & Housing Finance Limited, the

Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Tenacity Real Estate Private Limited, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh 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).
- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench appoints Mr. Jayesh Natvarlal Sanghrajka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00216/2017-2018/10416] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted within 7 days.

Sd/-

Prabhat Kumar
Member (Technical)

03.03.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)