

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

CP (IB) No.1029/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

**Piramal Capital & Housing Finance
Limited**

[L65910MH1984PLC032639]

...Financial Creditor/Applicant

V/s

Rite Developers Private Limited

[CIN: U45100MH2002PTC134760]

...Corporate Debtor/Respondent

Order pronounced on : 25/08/2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vikram Nankani, Sr. Advocate
a/w Ms. Pratiksha Agarwal, Advocate

For the Respondent(s) : Mr. Rohit Gupta a/w Mr. Prakhar
Tandon i/b Mr. Agam H. Maloo

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1029/NCLT/MB/C-IV/2022 filed by Piramal Capital & Housing Finance Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter of Rite Developers Private Limited, the Corporate Debtor.

- 1.1 The Applicant has also filed another Petition CP (IB) 1023/2022 under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter of Rite Built Private Limited, the Co-borrower.
- 1.2 The Application is filed by Mr. Sagar Seth, authorized by the Financial Creditor vide Board Resolution dated 20.06.2022, claiming amount in default amounting to Rs.88,32,06,244/- (Rupees Eighty Eight Crores, Thirty-Two Lakh, Six Thousand, Two Hundred and Forty Four only) inclusive of interest.
- 1.3 The date of Default is stated as *“In terms of the loan agreement, the first instalment of the pre-equated monthly instalment interest was required to be paid by the Corporate Debtor on 30.06.2018. However, the Corporate Debtor and/or the Co-Borrower have failed to honour their obligations in respect of the instalment due on 30.06.2018. In the event of failure to make payment of pre-equated monthly instalments interest, a cure period of 10 days is provided under the loan agreement. Accordingly, the Corporate Debtor first defaulted in its payment of PEMI/interest on 11.07.2018.”* Thereafter, the Corporate Debtor has committed default of its payment obligations towards PEMI/interest under the Sanction Letter and the Loan Agreement on consecutive occasions, which default continues as on date. The subsequent dates on which the Corporate Debtor has committed default are as follows:

Month	PEMI Interest	PEMI Interest received/Creditor	Closing PEMI O/s
July 2018	3,44,150	0	1

July 2018	2,37,625	0	58,20,775
August 2018	42,41,308	4241309	58,20,774
September 2018	29,48,324	0	87,69,098
October 2018	46,88,810	0	1,34,57,908
November 2018	48,12,188	5310	1,82,64,786
December 2018	48,56,438	23121224	0
January 2019	52,49,734	0	52,49,734
February 2019	57,34,438	-23121224	3,41,05,396
March 2019	57,34,438	39839834	0
April 2019	58,86,833	0	58,86,833
May 2019	58,86,833	-39839834	5,16,13,500
June 2019	58,86,833	0	5,75,00,333
July 2019	58,86,833	0	63,38,71,166
August 2019	58,86,833	0	6,92,73,999
September 2019	58,86,833	0	7,51,60,832
October 2019	58,86,833	-60001	8,16,47,666
November 2019	58,86,833	0	8,75,34,499
December 2019	58,86,833	0	9,34,21,332
January 2020	58,86,833	0	9,93,08,165
February 2020	58,86,833	0	10,51,94,998
March 2020	58,86,833	0	11,10,81,831
April 2020	58,86,833	0	11,69,68,664
May 2020	58,86,833	0	12,28,55,497
June 2020	58,86,833	0	1,287,42,330
July 2020	58,86,833	0	13,46,29,163
August 2020	58,86,833	0	14,05,15,996
Total			163,96,56,425

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

- 2.1 The Financial Creditor is a company incorporated under the Companies Act, 1956 and was previously known as Dewan Housing Finance Corporation Limited ("DHFL"). Pursuant to the order dated 03.12.2019 passed by this Tribunal, the Corporate Insolvency Resolution Process (CIRP) was initiated against DHFL. Thereafter, by an order dated 07.06.2021, this Hon'ble Tribunal approved the resolution plan submitted by Piramal Capital & Housing Finance Limited, in terms of which Piramal Capital & Housing Finance Limited merged into DHFL and thereafter the name of the merged entity, i.e., DHFL has been changed to Piramal Capital & Housing Finance Limited with effect from 03.11.2021.
- 2.2 The Corporate Debtor, Rite Developers Private Limited is a company incorporated under the Companies Act, 1956 and is engaged in the business of construction and development of residential houses and apartments.
- 2.3 The Corporate Debtor along with Rite Builtec Private Limited ("Co-Borrower") approached the Financial Creditor (erstwhile DHFL) for a credit facility of to the tune of 60,00,00,000 (Indian Rupees Sixty Crores) ("Loan") for the purposes of developing a real estate project under the SRA redevelopment scheme at village Magathine, Devipada, Borivalli, District Mumbai ("Project"). The Financial Creditor agreed to grant the Loan in accordance with the terms of sanction letter bearing number DHFL/2018- 10/PF/MD/695 and dated 1 June 2018 (Sanction Letter"). Accordingly, the Corporate Debtor, Co-Borrower and the Financial Creditor entered into a loan agreement executed on 6 June 2018.
- 2.4 In terms of the Sanction Letter, the Financial Creditor disbursed a total sum of INR 52,25,00,000 (Indian Rupees Fifty-Two Crores and Twenty-Five Lakhs) in the following tranches to the Borrower:

S.No.	Date of Disbursement	Amount
1.	08.06.2018	20,00,00,000
2.	15.06.2018	2,50,00,000
3.	06.08.2018	20,00,00,000
4.	14.09.2018	1,00,00,000
5.	30.10.2018	75,00,000
6.	14.01.2019	3,00,00,000
7.	21.01.2019	5,00,00,000

2.5 As per the terms of the Loan Agreement, the interest payment on the Loan was required to be made on the 15th day of each month in advance for the respective month and the same was to be paid monthly from the date of disbursement and the loan was required to be repaid in 24 (Twenty Four) equated monthly instalments ("EMIs") commencing after 36 (thirty six) months from the date of first disbursement. In the month of June, 2018, the Corporate Debtor started defaulting in the payment of its monthly interest instalments. Accordingly, the Financial Creditor issued a recall notice dated 28 August 2020 to the Corporate Debtor, Co-Borrower and the Personal Guarantors thereby recalling & demanding for repayment to the tune of Rs. 68,82,64,595.

2.6 Despite receipt of recall notice, the Corporate Debtor nor the Co-Borrower made any payments in compliance to the said notice. Accordingly, the Financial Creditor issued a notice u/s 13(2) of the SARFAESI Act on 24.09.2020 and informed the Corporate Debtor Co-Borrower and the Personal Guarantors calling upon them to jointly and severally to make payment of Rs.69,63,47,740, failing which the Financial Creditor would proceed against the Corporate Debtor and Co-Borrower under Section 13(4) of SARFAESI Act.

- 2.7 In response to the 13(2)-notice issued by the Financial Creditor, the Corporate Debtor vide its letter dated 23.09.2020 requested the Financial Creditor for a further disbursement of the Loan or allow the Corporate Debtor to bring in a partner which shall continue the project at its own cost. The Financial Creditor vide its letter responded to the letter of the Corporate Debtor and refused to disburse any further amounts since the loan account of the Corporate Debtor had already been classified as non-performing asset.
- 2.8 The Financial Creditor has also filed TransUnion CIBIL Report dated 07.06.2022 which indicates that the Corporate Debtor defaulted in repayment to the tune of Rs. 83,09,23,959, and the same is outstanding as on 31.03.2022 and payable by the Corporate Debtor and the Co-Borrower. Further, the debt owed by the Corporate Debtor is duly recorded as record of default in the report dated 7.6.2022 issued by Information Utility, National E-Governance Services Limited which records the date of default on 11.07.2018.

Reply by the Corporate Debtor

3. The Corporate Debtor has filed affidavit in reply dated 07.07.2023. Prior to this the Corporate Debtor was set ex-parte vide order dated 08.12.2022 and it is noticed from the daily order sheet dated 15.03.2023 that the Financial Creditor has sought time to file rejoinder to the reply and the order dated 14.03.2023 allowed I.A. 886/2023 taking the reply of Corporate Debtor on record subject to payment of cost which was deposited by the Corporate Debtor. The Corporate Debtor has submitted that the Petition is liable to be dismissed on following grounds:
- a. There cannot be multiple dates of default in a single Company Petition;
 - b. The amended Petition is barred under the provisions of Section 10A of the Code; and

- c. The present amended company petition/case is not maintainable as complete loan amount was never disbursed to the Respondent.
- 3.1 That the Petitioner has had mala fide intention in filing the present Company Petition against the Respondent and thereafter amending the same, and have merely been using this Hon'ble Tribunal as a forum to extort money out of the Respondent. This is clear from the contents of the Company Petition and thereafter, the contents of the Amended Company Petition, wherein, the Petitioner has not one but 26 different 'months of default's'. It is stated that, a date of default is a 'fixed date' which cannot be changed due to non-payment of future instalments. There shall not be date of default with respect to default in each instalment, this would render the entire purpose of having a single 'date of default' obsolete.
- 3.2 The Amended Company Petition filed by the Financial Creditor is defective as there are 26 different months of defaults' mentioned in the Amended Company Petition submitted by the Financial Creditor / Petitioner. It therefore appears that the Petitioner has intentionally ignored to mention a singular 'date of default' with an intention to circumvent the Provision of law and to avoid being struck by the provision of Section 10A of the Code.
- 3.3 Further it is submitted that in the absence of a singular date of default, a Company Petition is incomplete as per the mandatory clause, which is most critical i.e. (date of default) without the said mandatory fulfilment of clause the Company Petition is incomplete.
- 3.4 That the Loan recall notice has been issued on 28th August 2020, which falls in the period as specified under the provisions of Section 10A of the Code. Hence, said 'months of defaults', have been fixed, just to circumvent the implications of the said section because if the alleged default occurs during the period specified in the said section, a

Company Petition under section 7 of Code cannot be filed. Unless a loan recall notice is given or the date of default can be determined in a specific manner in terms of any guidelines given by the RBI, the Financial Creditor cannot be allowed to treat any date as date of default just because such a course would suit it.

Rejoinder by the Financial Creditor

4. The Financial Creditor filed rejoinder to the reply on 17.04.2023 denying the contentions of the Corporate Debtor and is submitted that a sum of Rs.52.5 Crores was disbursed to the Corporate Debtor which is an admitted fact. The Corporate Debtor group company viz. Anuradha Real Estate Developers Private Limited had adopted an identical argument in an attempt to have the claim of financial creditor rejected in its CIRP. However, this contention was rejected by Hon'ble NCLAT vide its order dated 19.09.2022 passed in CA (AT)(INS) No.580/2022. It is also stated that since the default arose in payment of monthly interest there exists multiple defaults and each of the default taken together has to be considered while deciding present Section 7 application. It was also submitted that even if the monthly interest fallen due under 10A period is excluded, the monthly interest payment default, outside such 10 A period and falling within 3 years from the date of filing, still exceeds the minimum threshold limit of Rs.1.00 Crore as provided u/s 4 of the Code.

5. We have heard the Ld. Counsels and perused the materials available on record.

5.1 The Financial Creditor has placed on record a sanction letter dated 01.06.2018 sanctioning a Term Loan of Rs.60 Crores to the Corporate Debtor as Applicant and M/s Rite Builtec Private Limited as Co-borrower. The said loan was repayment in 24 equated monthly instalments after 36 months from the date of 1st disbursement. The Corporate Debtor as well as co-borrower executed a Loan Agreement dated 06.06.2018; A Deed of Simple Mortgage mortgaging the properties of the Corporate Debtor and Deed of Hypothecation of Receivables were

executed on same date by the Corporate Debtor. Further a Promissory Note was signed by the Director of the Corporate Debtor on the same date. The Financial Creditor is placed on record, a copy of Bank statement evidencing disbursement of loan starting from 08.06.2018.

- 5.2 The interest was payable every month and it was agreed that if there was a default in payment of interest or principle for two consecutive terms, it shall be construed as violation of the terms of sanction and the entire loan be recalled as stated in clause 11 under other terms and conditions forming part of sanction letter which was duly accepted by Corporate Debtor as well as the Co-borrower. Further, the Agreement dated 06.06.2018 vide clause 4.1 also stipulated payment of monthly interest 15th day of each month for the respective month from the date of first disbursement. Further clause 1 'Definition Clause' defines event of default to mean any default in payment of the dues of DHFL or any breach any terms and conditions of the said loan and/or this agreement/security documents. Clause 8.1 of the Loan Agreement provides that the whole of the loan shall become forthwith due and payable by the borrower to DHFL, if there is a default in payment of interest or principal for two consecutive months.
- 5.3 It is evident from the table extracted in this order in preceding para that there has been consistent default from April 2019 onwards and no sum has been paid. Accordingly, even if recall notice was formally issued on 28.08.2020 for full facility alongwith interest becomes due and payable qua corporate debtor and co-borrower on the occurrence of default in payment of interest for two consecutive months. The Agreement nowhere contemplates issuance of any recall notice. Nonetheless, this Bench finds that the total default amount of interest at the beginning of 10A period i.e. March 2020 is Rs.10,51,94,998/-. Even if the default in monthly interest from the period September 2019 is taken into account, the default amount for the period from September 2019 till February 2020 comes to Rs.

3,53,20,998/-, which is more than threshold limit prescribed under section 7 of the Code.

5.4 In view of the foregoing, this Bench finds that there exists Financial Debt and the default in repayment thereof which is more than Rs. 1.00 Crore. The Application is within the period of limitation qua the date of default and complete in all respect.

6. Accordingly, this Bench is of the considered view that the present application deserves to be admitted.

ORDER

a) This Application being C.P. (IB) No. 1023/NCLT/MB/C-IV/2022 filed by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Rite Bultec Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) 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. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Amit Vijay Karia, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P02600/2021-2022/13969], email- amit.karia@yahoo.in as 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.
- e) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two 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).

- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational 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 today.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)