

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

**C.P. (IB) No. 990/MB/2023**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016.

*In the matter of*

**Encore Asset Reconstruction Company Private  
Limited**

[CIN: U741140DL2013PTC259641]

...Financial Creditor

*v/s.*

**Pandhe Hospitality Private Limited**

[CIN: U55101MH2009PTC196642]

...Corporate Debtor

Order Delivered on: **05.04.2024**

**Coram:**

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

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

**Appearances:**

**CP (IB) No. 990/MB/2023**

For the Financial Creditor:

Mr. Amir Arsiwala *a/w.* Mr. Archit  
Virmani, Ms. Radhika Kabra *i/b.*  
Optimus Legal., Ld. Counsel for the  
Financial Creditor.

For the Corporate Debtor:

Mr. Gautam Singhal *i/b.* Ms. Smita  
Durve, Ld. Counsel for the Corporate  
Debtor (VC)

**ORDER**

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Encore Asset Reconstruction Company Private Limited** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Pandhe Hospitality Private Limited**, the Corporate Debtor.

1.1 The captioned petition has been filed on 20.08.2023 and the total default as on 19.07.2023 amounts to INR 35,83,03,129/- (Indian Rupees Thirty-five crores, eighty-three lakhs, three thousand, one hundred and twenty-nine only), per the Financial Creditor herein, which is further broken down as hereinunder:

S. No.	Particulars	Amount Outstanding (INR)
01	Principal Amount	14,75,06,807/-
02	Interest (Including interest levied by DNS Bank)	18,52,79,421/-
03	Penal Interest	2,19,68,610/-
04	Penal Interest Receipt	9,51,709/-
		<b>35,38,03,129/-</b>

1.2 The Date of Default, as specified in Part-IV of the present petition, is 19.11.2019.

**Submissions of the Financial Creditor**

2. The Financial Creditor submits that the one **Dombivli Nagari Sahakari Bank Limited** (“DNS Bank”) advanced a ‘Flexi Overdraft Facility’ (“Facility”) of INR 15,00,00,000/- (INR Fifteen Crores only) to **Pandhe Infracons Private Limited** (“Principal Borrower”) *vide* Loan Agreement *dated* 22.03.2014. The said Facility was subsequently renewed by DNS Bank *vide* Loan Agreements *dated* 09.10.2015 and 30.09.2016. Deeds of Guarantee were executed as against the said agreements by the Corporate Debtor, whereby it guaranteed to pay all the outstanding amounts disbursed to the Principal Borrower as aforementioned.
3. In relation to the said Facility, five mortgage deeds were executed by Pandhe Constructions Private Limited (a sister-concern of the Borrower) and other Guarantors of the Borrower Company to create a charge on various immovable properties situated in Solapur, in favor of DNS Bank. The same was done in lieu of the said Facility granted by DNS Bank to the Borrower.
4. The Financial Creditor submits that owing to Principal Borrower’s continuous defaults in re-payment of the outstanding amount disbursed under the said Facility, its loan account was classified as ‘NPA’ on 30.06.2018. Consequently, DNS Bank issued a Demand-Notice *dated* 04.09.2018 *u/s.* 13(2) of the SARFAESI Act seeking forthwith repayment of the outstanding amount along with the contractual interest and accrued charges.
5. Subsequently, the afore-mentioned Loans and Mortgage Securities (including that of the Borrower herein) as mentioned in Para (3) hereto were assigned by DNS Bank to the Financial Creditor (acting in its capacity as a Trustee of EARC—Bank-015 Trust) herein *vide* Assignment Agreement *dated* 15.05.2019. Pursuant to which, the Financial Creditor issued a Demand-Notice *dated* 04.11.2019 seeking forthwith repayment of the outstanding amount along with the contractual interest and accrued charges.

6. The Principal Borrower herein was admitted into CIRP by this Tribunal *u/s.* 7 of the Code *vide* Order *dated* 06.09.2021 in C.P. (IB) 556/MB/2021. Consequently, the Financial Creditor sent an additional Demand Notice *dated* 18.02.2022 invoking the Deed of Guarantee signed by *inter alia* the Corporate Debtor herein, seeking forthwith repayment of the outstanding amount along with the contractual interest and accrued charges.
7. The Financial Creditor submits that despite the afore-Demand Notice(s) *dated* 04.11.2019 and 18.02.2022, the Corporate Debtor has not instituted any repayment(s) whatsoever under the said Loan Agreement and thus, all amounts remain due and payable thereunder. Hence, the present petition.

### ***Findings***

8. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.
  - 8.1. Upon going through the record files, it is observed that this Tribunal *vide* Order *dated* 23.01.2024 had forfeited the Corporate Debtor's Right to file Reply on account of its inaction on 25.10.2023, 05.12.2023 and 05.01.2024 to the same effect. Notwithstanding the same, the Corporate Debtor was duly heard on 12.03.2024 in conformance with judicial prudence.
9. Upon perusal of all records, we are of the considered view that:
  - 9.1. In so far as the aspect of Limitation is concerned, we have given our thoughtful consideration to the contentions raised by the Learned Counsel(s). The Financial Creditor herein has cited the 'Date of Default' as 19.11.2019 in Part-IV of the captioned petition, on account of inaction by the Principal Borrower and/or Guarantor(s) (*including the Corporate Debtor herein*) as regards Demand Notice *dated* 04.11.2019. As afore-mentioned in Para (1.1) hereto, the captioned petition has been filed on 20.08.2023. On

account of the Corporate Guarantee(s) having been validly invoked *vide* the afore-mentioned Demand-Notice *dated* 04.11.2019, the captioned petition is hopelessly time-barred and in light of the same, deserves to be dismissed.

**ORDER**

It is accordingly hereby ordered as follows:

10. The captioned petition bearing C.P. (IB) No. 990/MB/2023 filed by Encore Asset Reconstruction Company Private Limited, seeking initiation of CIRP in the matter of Pandhe Hospitality Private Limited, the Corporate Debtor herein is **Dismissed**.
  
11. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**05.04.2024**  
*Aditya Kalia*

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**