

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

CP (IB) -960/I&BP/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

**JM Financial Trustee Company
Private Limited,**

in the capacity of the trustee of JM
Financial Property Fund I

141, Maker Chamber III, Nariman Point,
Mumbai MH 400 021.

.... Petitioner

Vs.

**Kumar Urban Development Private
Limited**

10th Floor, Kumar Business Centre,
CTS No. 29, Opp. Pune Central, Bund
Garden Road. Pune MH 411001

.... Corporate Debtor

ALONG WITH

IA 1705 OF 2020

Under Section 60(5)

Filed by:

**JM Financial Trustee Company
Private Limited**

...Applicant

AND

CP (IB) -961/I&BP/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

**JM Financial Trustee Company
Private Limited,**

in the capacity of the trustee of JM
Financial Property Fund I

141, Maker Chamber III, Nariman Point,
Mumbai MH 400 021.

.... Petitioner

Vs.

Kumar Urban Development Private Limited

10th Floor, Kumar Business Centre,
CTS No. 29, Opp. Pune Central, Bund
Garden Road. Pune MH 411001

.... Corporate Debtor

ALONG WITH

IA 1709 OF 2020

Under Section 60(5)

Filed by:

**JM Financial Trustee Company
Private Limited**

...Applicant

Order delivered on: 28.04.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the petitioner: Juris Corp, Advocates and Solicitors

For the respondent: M/s J. Sagar Associates

Per: Hon'ble Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. Both the above petitions are filed by JM Financial Trustee Company Private Limited (hereinafter called the 'Petitioner') for initiation of Corporate Insolvency Resolution Process (CIRP) against Kumar Urban Development Private Limited (hereinafter called the 'Corporate Debtor') under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') on the ground that the Corporate Debtor committed default in repayment of credit facilities granted to the Corporate Debtor to the extent of Rs. 4,05,93,52,569/- and the Bank Guarantees to the tune of Rs. 49,63,18,974/- issued for and on behalf of the

Corporate Debtor, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. This is the second round of litigation between the parties as earlier CP No. 1937 of 2019 and CP 2053 of 2019 were filed by the same petitioner against the same Corporate Debtor. Later, the parties had entered into consent terms dated 09.12.2019 for full and final settlement of the amounts claimed in both the Company Petitions. Accordingly, the petitions were withdrawn by the petitioner. These consent terms were taken on record by this Bench which is evident from the order of this Tribunal dated 09.12.2019. The captioned company petitions have been filed due to breach in the said consent terms as according to clause 10 of the Consent Terms, the petitioner had an option to revive the earlier petitions or file new petitions before this Tribunal. Clause 10 of the Consent Terms reads as follows:

“10. Upon occurrence of an Event of Default, the Parties agree and acknowledge that the Applicant shall be at liberty to revive the Company Petition No. 1937 of 2019 and Company Petition No. 2053 of 2019 or file a fresh petition against the Respondent and/or the Company, it deems fit including but not limited to commencing suitable proceedings for recovery of the Exit Amount, calculated on the entire Subscription Amount, as defined in the OCD Agreement and the Investment Agreement, respectively, as on the date of the Event of Default and for each day that such the Event of Default continues, after making proportionate deduction of any prior payment received (which is not clawed back from the Applicant or is not subject to any claw back) from the Respondent pursuant to these Consent Terms prior to the Event of Default.”

3. The counsel appearing for the petitioner submitted that for the purpose of CP 960/2020, it had invested a sum of INR 25,00,00,000/- towards 2500 optionally convertible debentures (OCD) of the Kul Novel Housing Private Limited (“Company”), pursuant to the OCD Subscription Agreement (as amended from time to time) between the Financial Creditor, the Company, Kumar Housing Corporation Limited (“KHCL”) and Kumar Urban Development Limited (“KUDL”). KHCL and KUDL merged into the Corporate Debtor. Further for the purpose of CP 961/2020, the petitioner stated that it had invested a sum of INR 39,99,70,827/- towards 1,765 equity shares and 3,985 compulsorily convertible debentures (“CCD”) of KUL Novel Housing Private Limited (“Company”), pursuant to the Investment Agreement (“Investment Agreement”) (as amended from time to time) which was entered between the Financial Creditor, the Company, Kumar Housing Corporation Limited (“KHCL”) and Kumar Urban Development Limited (“KUDL”). KHCL and KUDL merged into the Corporate Debtor.
4. The Learned counsel appearing for the petitioner further submitted that the Company was required to pay 0.1% (10%) as per Schedule II of the Investment Agreement. The Company was further required to pay 0.1% coupon per annum (“Coupon”) as per Schedule II of the OCD Subscription Agreement, on each of the OCDs. Similarly, the Company was required to pay 0.1% coupon per annum on each of the CCD as well. Further, in case of non-payment of full Coupon, the Company shall be liable to pay coupon at an additional rate of 3% above the Coupon (“Default Coupon”). He submitted that the Corporate Debtor and/or the Company defaulted in its obligations to pay Coupon

annually on 19.04.2014. Subsequently, the Financial Creditor vide its letter dated 27.07.2015 intimated the Company about the above default and demanded immediate payment of the outstanding Coupon.

5. Financial Creditor vide its notice dated 15.03.2019 intimated the Company and the Corporate Debtor about its defaults under the OCD Subscription Agreement. The Financial Creditor vide its letter dated 16th March 2019 demanded the Company to redeem the outstanding OCD. Further, the Financial Creditor vide its letter dated 29th March 2019 intimated the Corporate Debtor of its intention to exercise its right under clause 12.2 (c) of the OCD Subscription Agreement (“OCD Put Intimation Notice”) which requires the Corporate Debtor to purchase the OCD on happening of an Event of Default,. The Corporate Debtor defaulted in purchasing the OCD, within stipulated time in the OCD Put Intimation Notice. 4. Thereafter, on 27th May, 2019, Company Petition No. 1937 of 2019 under section 7 of the Code was filed against the Corporate Debtor to initiate corporate insolvency resolution process for an amount of Rs.160,28,84,324/- as on 15.05.2019. The Corporate Debtor had filed its Affidavit in Reply on 01.08.2019 in CP No. 1937 of 2019 raising various contentions and defences. However subsequently, the Financial Creditor, the Corporate Debtor and the Company entered Consent Terms dated 09.12.2019, for the full and final settlement of the amounts claimed in CP No. 1937 of 2019 and Company Petition No. 2053 of 2019. This Tribunal took the consent terms on record and passed an order dated 09.12.2019 disposing of CP No.1937/2019 as withdrawn.

6. The counsel further added that as per the consent terms, amongst other clauses, the Corporate Debtor and the Company, jointly and severally, undertook to make a payment of an amount of Rs.150,00,00,000/- (“Settlement Amount”) and agreed to create a charge over the residential/commercial project titled “Kairos” in favour of the Financial Creditor and create a hypothecation on the receivables on the assets/cashflows arising out of the receivables from the retail project titled “Amenity”, within 30 days from the execution of the Consent Terms. It was also agreed that an escrow arrangement with HDFC Bank (“Escrow Account”) would be entered into within 15 days of the Consent Terms. This term of 15 days lapsed on 24.12.2019 resulting into an Event of Default under the Consent Terms. Further, on 09.01.2020, the period of 30 days for execution of the security documents also lapsed resulting in an Event of Default under the Consent Terms. Additionally, the cure period of 30 days to cure the Event of Default dated 24.12.2019 lapsed on 24.01.2020. Post this, there were several email communications between the parties. The Financial Creditor informed the Corporate Debtor that on the account of breach of the Consent Terms by them, it has revoked all the concessions given to them and further informed them that it would take appropriate steps available under the Consent Terms and the applicable laws. He mentioned that it is pertinent to note that the Corporate Debtor and the Company vide their advocates’ letter 06.03.2020, informed the Financial Creditor that on-account payment of Rs.4,98,84,770/- was transferred via bank transfer on 06.03.2020 but since the Corporate Debtor failed to make the payment of the first instalment of the Settlement Amount on the due date as per the Consent Terms, its liability to pay the additional consideration has accrued and

is continuing. Further the second instalment of the Settlement Amount became due for payment on 31.03.2020 and the Respondent and/or the Company failed to pay the second instalment of the Settlement Amount on 31.03.2020 as per Clause 5 of the Consent Terms, resulting into continuous breach of Consent Terms.

7. The counsel appearing for the Financial Creditor mentioned that though there was already breach in the Consent Terms and all concession was revoked by earlier communication. The Financial Creditor once again accorded chance to Corporate Debtor to clear the dues, by addressing an email to the Corporate Debtor on 13.04.2020 calling upon them to pay the defaulted amount. To this, the Corporate Debtor addressed e-mails dated 20.04.2020, wherein it had refused to make payment and showed its inability to perform the obligation under the Consent Terms on account of Covid-19 pandemic. In reply to this email, the Financial Creditor addressed an e-mail dated 30.04.2020 to the Corporate Debtor stating Clause 19 of the Consent Terms which explicitly stipulates that in the event the cashflows from project Amenity or Kairos are not sufficient to make payments of the Settlement Amount or the Corporate Debtor is not able to discharge their joint and several liability to pay the Settlement Amount under the Consent Terms from the cashflows of Amenity and/or Kairos for any other reason; the Corporate Debtor shall arrange other lawful sources to make payment of the Settlement Amount as per the schedule in Clause 5 of the Consent Terms. In reply to this, the Corporate Debtor addressed two e-mails dated 18.05.2020 requesting the Financial Creditor to negotiate the amount and restructure the payment schedule in light of the systemic collapse occasioned by the Covid-19

pandemic and consequent government-mandated containment measures. He submitted that the Corporate Debtor once again admitted its inability to make payment of the second instalment of the Settlement Amount, as per the terms of the Consent Terms. While the negotiations were taking place between the parties, the third instalment of the Settlement Amount became due for payment on 30.06.2020 and admittedly the Corporate Debtor failed to pay the same. The Financial Creditor addressed an e-mail dated 23.07.2020 again calling upon the Corporate Debtor to pay the defaulted amount.

8. The counsel appearing for the Financial Creditor submitted that despite of repeated requests and reminders from his clients, the Corporate Debtor failed to comply with its obligations under the Consent Terms and therefore, it is indebted to the Financial Creditor for total amount of Rs.2,18,73,15,679/- as on 20.07.2020 and thus CP 960/2020 was filed. Similarly, CP 961/2020 was filed to initiate Insolvency Resolution Process against the Corporate Debtor for a claim amount of INR 2,14,26,65,562/-.
9. The counsel for the respondent/Corporate Debtor has denied the contentions and the averments made by the Financial Creditor in both the company petitions. The Corporate Debtor submits that it was the Financial Creditor who had breached the consent terms entered into between them at the time of first instalment and has been in continuous breach of it till date. He submitted that it was the Corporate Debtor who had made all efforts to fulfil its financial obligation under the said consent terms. He referred to Clause 5 of the consent terms which contains schedule for payment of instalments and when read

with Clause 9, provides that a cure period of 30 days is available for late payments subject to a delay consideration at 24% p.a. per day of delay and this cure period is not discretionary but a right available to the Corporate Debtor.

10. The Corporate Debtor submitted that there has been no default on their part under the Consent Terms which could give rise to an application for CIRP in respect of subsequent payments due on 30.09.2020 and 31.12.2020 in light of the provisions of Section 10A of the Code, which was introduced by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 dated 05.06.2020 and the application of which was extended for a period of 3 months from 25.09.2020 and further extended for a period from 25.12.2020 by way of notifications of the Ministry of Corporate Affairs.
11. The Corporate Debtor submitted that it had made the complete payment of the first instalment which was accepted and not returned by the Financial Creditor till date and also has failed to transfer the proportionate securities as per Clause 5 of the consent terms and therefore, is till date in breach of these clauses of the consent terms. Doing this, the Financial Creditor went on to make written demands for the second and third instalments under the consent terms while being in continuing breach of its obligations qua the first instalment under the consent terms.
12. The Corporate Debtor further says that there is no 'default' on their part which is a pre-requisite for an application under Section 7 of the Code. Admittedly, the Financial Creditor is in receipt of a total of Rs.5,01,15,159/- plus Rs.4,98,85,770/- i.e. a total of Rs.10,00,00,929/- towards the first instalment and

hence the first instalment has been paid in entirety and therefore, there is no debt due and payable to the Financial Creditor by the Corporate Debtor under Section 7 of the Code. He further submitted that in event that this petition is admitted, it would be completely contrary to the provisions of Section 10A of the Code and hence this petition of misconceived and not maintainable and ought to be dismissed.

13. The Corporate Debtor has further relied on the judgment of the Hon'ble National Company Law Appellate Tribunal, New Delhi delivered on 11.12.2019 in the matter of ***Shyam Sunder Bhatiya v. Mr. Khozim Yusuf Nagarwala [Company Appeal (AT) (Insolvency) No. 558 of 2019]*** wherein it was held that:

“Having made the payment prior to initiation of CIRP, we are of the view that the case of the Respondent/Applicant cannot be treated as a Financial debt and default, in view of no debt payable to the Financial Creditor.”

With this the counsel for the Corporate Debtor stated that in a case where the Corporate Debtor had paid the financial debt to the Financial Creditor prior to the admission of the application under Section 7 of the Code, the debt is not a financial debt.

14. The counsel for the Corporate Debtor further submitted that it is pertinent to note that the Financial Creditor alone had sole discretion to extend the cure period of 30 days under the consent terms and there can be no “Event of Default” under the consent terms if the cure period is extended by the Financial Creditor were to waive a short delay of 5 days in partial payment of an instalment. The consent terms then continue to survive and bind the parties. In other words, if the Financial Creditor

continues to make demands under the consent terms as if they survive, then an “Event of Default” cannot have occurred.

15. The counsel for the Corporate Debtor alleged that the Financial Creditor’s conduct and correspondence is interpreted to mean that part of the first instalment was paid late by 5 days and this amounts to an extension of the cure period provided under the consent terms. This petition makes it further clear that it was the intention of the Financial Creditor to extend the cure period for the payment of instalment under the consent terms. He also alleged that the conduct of the Financial Creditor in the period until the filing of the company petition amounts to waiver of its right to act on the alleged breach of consent terms in the context of the payment of first instalment since delay, if any, in such payment had been consequently cured to the satisfaction of the Financial Creditor. He submitted that it is pertinent to note that the consent terms do not contain any provisions that require a waiver to be recorded in writing. Therefore, the averments in the petition amount to an acknowledgement that the first instalment had been paid in its entirety and a waiver of any alleged right that may arise out of an alleged breach in the payment of the first instalment by the Corporate Debtor, if any. Also, the Financial Creditor is a party in breach of the Consent Terms and hence this petition is misconceived and should not be admitted.

16. The counsel submitted that the Corporate Debtor is a solvent company and presently has no bank debt and its accounts have not been classified as “Non-Performing Assets” anywhere. This petition and the consent terms arise out of alleged defaults on the part of the Corporate Debtor’s subsidiary under the

Agreement, to which the Corporate Debtor was a party as a promoter.

FINDINGS

17. Before discussing the case, we find it pertinent to put a brief about the background of the matter to further bring clarity in the outcomes and decisions which would flow in relation to CP 960/2020 and 961/2020. The background of the case is as under:-

17.1. The Financial Creditor i.e., JM Financial Trustee Company Private Limited had earlier filed similar Petition bearing CP No. 1937/2019 for an amount of Rs.160,28,84,324/- and CP No. 2053/2019 for an amount of Rs.169,67,73,836/-, both on 15.05.2019. When the matter had come up for final hearing in both the matters, the Corporate Debtor approached the Financial Creditor with the proposal for settlement of the matter. In wake of this, consent terms dated 09.12.2019 was filed before NCLT and on 09.12.2019 NCLT passed a common Order both in CP 1937/2019 and CP 2053/2019 which is as under:-

“Both sides present and submits that the matter is amicably settled between the parties and filed consent terms. Consent terms taken on record.

Accordingly, on the request made by the Petitioner for withdrawal of this Petition, the Petition is disposed of as withdrawn.”

17.2. The Petitioner filed both the CPs as the consent term was breached by the Corporate Debtor. As per Clause 10 of the

consent terms, the Applicant has a liberty to either revive the old Company Petition No.1937/2019 and 2053/2019 or file a fresh Petition against the Corporate Debtor Company. It is to be noted here that subsequent to the event of default, the Financial Creditor has filed 2 new Company Petitions which are CP 960/2020 and 961/2020 which are mirror images of CP 1937/2019 and CP 2053/2019 respectively, except that along with the total amount claimed in the later CPs, the interest component as at the time of filing of the earlier CPs has been added.

17.3. The Bench notes that as mentioned in CP 960/2020, on 19.04.2012 the Financial Creditor had invested a sum of Rs.25 Crores for 2,500 of Optionally Convertible Debentures (OCDs) of the Corporate Debtor Company pursuant to a Subscription Agreement between the two parties. Similarly, another investment was made in the same Corporate Debtor Company on the same date by way of Compulsory Convertible Debentures (CCDs/equity shares) for a total amount of 39,99,70,827/- towards 1,765 equity shares and 3,985 CCDs, pursuant to an Investment Agreement between the parties. As per the Subscription/Investment Agreement, the Corporate Debtor was to pay a 10% Coupon rate on each of the OCDs/CCDs with an additional 3% interest on default.

17.4. The Corporate Debtor defaulted in purchasing the OCDs within the stipulated time as provided in the agreement which led to Financial Creditor filing the Company Petition, CP No.1937/2019 for a claim of 160,28,84,324/- on 27.5.2019. On the same date another CP No.2053/2019 was filed by the Financial Creditor against

the Corporate Debtor for purchase of CCDs within stipulated time for a total claim of Rs.169,67,73,836/-.

17.5. As mentioned earlier, on 09.12.2019 the Financial Creditor and Corporate Debtor entered into consent terms for full and final settlement for an amount of Rs.150 Crores for full and final settlement of the amounts claimed in CP 1937/2019 and CP 2053/2019. The manner of settlement was as mentioned in Clause 5 of the consent terms. NCLT by an order dated 09.12.2019 in CP 1937/2019 and CP 2053/2019 had taken the consent terms on record and allowed withdrawal of the Petitions.

18. The Bench notes that the Corporate Debtor has not disputed the amount claimed by the Financial Creditor in CP 960/2020 and CP 961/2020. However, the only set of issue raised by the Corporate Debtor relates to breach of consent terms by the Financial Creditor and, therefore, the Respondent submits that he is not liable to pay monies to the Financial Creditor as there is no default as per the IBC.

19. Before going further, we would like to reproduce Clause 5 of the consent terms which provides the schedule of payment and also liability of the Corporate Debtor to pay additional consideration at a rate of 24% per annum for each day of delay. The clause 5 of the consent terms is as under:-

In full and final settlement of all amounts payable by the Company and the Respondent to the Applicant and upon disposal of both the Company Petitions in terms of these Consent Terms, the Company and the Respondent, jointly and severally, undertake and agree to make a payment of an amount of Rs.150,00,00,000/- (Rupees One hundred and Fifty Crores

Only) (“**Settlement Amount**”) to the Applicant and upon receipt of the proportionate corresponding portion of the Settlement Amount for the respective installments as set out below the Applicant shall simultaneously transfer the Securities in favour of the Respondent and/or a person and/or an entity to be nominated by the Respondent in this regard, as per the schedule below:

Installment No.	Amount (In Indian Rupees)	Date of Payment	Securities to be transferred
1	10,00,00,000/-	On or before 31 January 2020	167 OCDs, 266 CCDs and 118 Shares
2	10,00,00,000/-	On or before 31 March 2020	167 OCDs, 266 CCDs and 118 Shares
3	12,50,00,000/-	On or before 30 June 2020	208 OCDs, 332 CCDs and 147 Shares
4	12,50,00,000/-	On or before 30 September 2020	208 OCDs, 332 CCDs and 147 Shares
5	12,50,00,000/-	On or before 31 December 2020	208 OCDs, 332 CCDs and 147 Shares
6	12,50,00,000/-	On or before 31 March 2021	208 OCDs, 332 CCDs and 147 Shares
7	12,50,00,000/-	On or before 30 June 2021	208 OCDs, 332 CCDs and 147 Shares
8	12,50,00,000/-	On or before 30 September 2021	208 OCDs, 332 CCDs and 147 Shares
9	27,50,00,000/-	On or before 31 December 2021	458 OCDs, 731 CCDs and 324 Shares
10	27,50,00,000/-	On or before 31 March 2022	460 OCDs, 730 CCDs and 323 Shares
Total	150,00,00,000/-		

In case of delay in payment of any installment, beyond the respective payment date as provided under the above schedule, the Respondent and/or the Company shall be liable to pay to the Applicant additional consideration @24% p.a. for each day of delay. However, same will not entitle the Company to seek extension beyond cure period. The Respondent and/or the Company shall bear the costs/expenses towards the transfer of the Securities by the Applicant in favour of the Respondent and/or a person and/or an entity to be nominated by the Respondent in this regard. The Applicant shall cooperate with the Respondent and the Company to convert all the Securities into demat form.”

20. The Bench also notes that under the consent terms, the Corporate Debtor was under an obligation to execute an Escrow Agreement with the Financial Creditor within 15 days of execution of the consent terms and also execute security documents in favour of the Financial Creditor within 30 days of the execution of the consent terms. The consent terms was executed on 09.12.2019.

The consent terms at Clause 9 provided that:

*“9. If the Respondent and/or the Company fails to make payment of the installment amounts set out in Clause 5 above on the respective payment date specified therein and/or if such sums (or any part, thereof) paid pursuant to these Consent Terms are clawed back from the Applicant for any reason and/or Respondent and/or the Company breaches any term of these Consent Terms including but not limited to creation of charge over the residential/commercial project titled “Kairos” situated at Wadgaonsheri, Kalayani Nagar, Pune (“**Kairos**”) in favour*

of the Applicant and creation of a hypothecation on the receivables on the assets/cashflows arising out of the receivables from the retail project titled “Amenity”, situated at Kumar City, Wadgaonsheri, Pune (“Amenity”) and/or constraint on the cash flows in the Escrow Account, within thirty (30) days from execution of these Consent Terms, and/or the Respondent and/or the Company commits any act of omission and/or commission which tantamount to any breach of these Consent Terms; an Event of Default (“Event of Default”) under these Consent Terms will be deemed to have occurred, subject to a cure period of thirty (30) days, which may be extended at the sole discretion of the Applicant; and/or in the event of admission of an application against the Respondent and/or the Company for commencement of corporate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016; an Event of Default under these Consent Terms will be deemed to have occurred, with immediate effect.”

It is clear from the above that the consent terms also provided for creation of charge over the residential/commercial project titled “**Kairos**” in favour of the Applicant and creation of hypothecation for the receivables on the assets/cashflows arising out of the receivables from the “**Amenity**” projects. The consent terms also provided a period of 30 days as the cure period which would be extended at the sole the discretion of the Applicant.

21. Further, as per the consent terms, the first installment of Rs.10 Crores was payable before 31.01.2020. Admittedly, the Corporate Debtor failed to pay the first installment of the

settlement amount on 31.01.2020. Since it failed to make the payment on time on the due date as per the consent terms, the liability of Respondent to pay the additional amount of penal interest @ 24% per annum for each day of delay was applicable on them which they never paid. This Bench also notes that the payment of the first installment, only happened in 2 tranches, one of Rs.5,01,15,230 on 28.02.2020 and second of Rs.4,98,84,770/-on 06.03.2020.

22. The Bench therefore, has no doubt in its mind that even while making the first installment of payment, the Corporate Debtor made mainly 4 breaches in the consent terms which as per the consent terms are event of defaults. These breach and events of default are as under:-

1. The first event of default under the consent terms occurred on 24.12.2019 where the Corporate Debtor failed to execute the escrow account agreement;
2. The second event of default occurred on 09.01.2020 when the execution of security documents were not made by the Corporate Debtor in favour of the Financial Creditor;
3. The event of default also occurred on 31.01.2020 when the payment of the first installment of settlement was due. Even if we assume that a cure period of 30 days is applied, which otherwise is discretionary, the period of payment of first installment was only there up to 01.03.2020, i.e., after taking the cure period of 30 days.
4. Also, the Corporate Debtor did not pay penal interest of 24% per annum for each day of delay. The Bench also notes that, thereafter the Corporate Debtor has not made any payment towards any of the installments due and has taken a plea

that since there is a breach of consent terms by the Financial Creditor it is not liable to pay.

23. The Corporate Debtor alleges that since the Financial Creditor has not transferred the securities of 167 OCDs, 266 CCDs and 118 shares after the payment of the first installment, therefore, the Financial Creditor has breached the consent terms and therefore the Corporate Debtor is not liable to pay the subsequent amount. The Bench has absolute clarity that the defense which has been taken up by the Corporate Debtor is absolutely bogus and untenable. In fact, as mentioned in the above paragraph, the Corporate Debtor started renegading on the consent terms resulting in an event of default even before the first installment was due.
24. As mentioned in the above paragraphs, the Corporate Debtor has defaulted on several counts. The Bench is of the clear view that it was correct on part of the Financial Creditor not to transfer the proportionate securities back to the Corporate Debtor, as besides defaulting on execution of the Escrow Agreement and execution of the security documents, the penal amount due on the first installment has also not been made by the Corporate Debtor. Therefore, the corporate debtor is not liable to claim any concomitant securities.
25. The above Company Petitions bearing No. (IB) -960(MB)/2020 and 961(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kumar Urban Development Private Limited with the following directions:

- a. This Bench hereby appoints **Mr. Atul Jain** (atuljain@gmj.co.in) having Registration No: IBBI/IPA-001/P-P00307/2017-18/10571 and having office at GMJ and Co., Chartered Accountants, Vastu Darshan, 3rd Floor, Above Central Bank of India, Azad Road, Andheri (East), Mumbai-400069, as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- b. The Financial Creditor shall deposit an amount of Rs.5 lakhs towards the initial CIRP cost by way of Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- c. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- d. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- e. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- g. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- i. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j. The Registry is directed to communicate this order to both the parties and to IRP immediately.

With the above directions and observations, CP 960/2020 and CP 961/2020 are “**Admitted**”. Since there would be a single CIRP against the Corporate Debtor, therefore, henceforth for the progress of CIRP, the tracking CP number will be **CP(IB)960/2020**. The above CPs are disposed of in the above manner.

The Bench notes that IA 1705/2020 & IA 1709/2020 were filed in CP 960/2020 and CP 961/2020 respectively for restraining the Corporate Debtor from selling/alienating the assets of the Corporate Debtor Company, pending the final decision in the matter. Since both the CPs have been “Admitted”, the IA No. 1705/2020 in CP 960/2020 and IA No. 1709/2020 in CP 961/2020 becomes infructuous.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

H V SUBBA RAO
Member (Judicial)