

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP (IB) No. 556/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Piramal Capital and Housing Finance Limited
CIN:U65910MH1984PLC032639**

601, 6th Floor, Piramal Amiti Building, Agastya
Corporate Park, Kamani Junction, Opp. Fire
Station, LBS Marg, Kurla (West), Maharashtra-
400070.

... Financial Creditor /Petitioner

Versus

**Township Developers India Limited
[CIN:U70109MH2006PLC161598]**

HDIL Towers, 4th Floor, Anant Kanekar Marg,
Bandra East, Mumbai-400051.

...Corporate Debtor / Respondent

Order Delivered on :08.11.2023

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Vikram Nankani, Senior
Advocate
For the Corporate Debtor : None present

ORDER

Per: Justice V.G. Bisht, Member(Judicial)

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) by **Piramal Capital and Housing Finance Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Township Developers India Limited** ("the Corporate Debtor").
2. The Corporate Debtor is company incorporated on 04.05.2006 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai.

Facts:

3. The present Company Petition is filed against Township Developers India Limited i.e. the Corporate Debtor in its capacity as guarantor for default in mortgage loans totaling INR 5855,11,12,393/- (Indian Rupees Five Thousand Eight Hundred Fifty-Five Crores Eleven Lakhs Twelve Thousand Three Hundred and Ninety-Three Only) by 10 (Ten) entities ("Borrowers").
4. Dewan Housing Finance Limited (DHFL) sanctioned mortgage loans to the Borrowers amongst others, amounting to INR 4276,00,00,000/- (Indian Rupees Four Thousand Two Hundred Seventy-Six Crore Only) on the terms and conditions contained in sanction letter dated 02

August 2019. Thereafter, the DHFL advanced mortgage loans totalling INR 3453,92,12,489/- (Indian Rupees Three Thousand Four Hundred Fifty- Three Crores Ninety-Two Lakhs Twelve Thousand Four Hundred Eighty- Nine Only) ("Mortgage Loans") to the Borrowers vide separate loan agreements in the following manner:

Sr. No.	Borrowers	Amount of Disbursement (Rs.)
1.	Creatoz Builders Private Limited	11,922,000,000
2.	Database Software Technology Private Limited	2,649,013,699
3.	Dream Vision India Private Limited	2,250,000,000
4.	Indigo Tech-Ind Limited	1,000,000,000
5.	Infinium Auto Mall Private Limited	2,000,000,000
6.	Ing Satcom Limited	2,000,000,000
7.	R.R. Builders (partnership Firm)	75,000,000
8.	Rite developers Private Limited	7,585,198,790
9.	Welby Farms Private Limited	1,850,000,000

10.	West End Investment & Finance Consultancy Private Limited	3,208,000,000.
	Total	3453,92,12,489/-

5. The Corporate Debtor herein agreed to guarantee the repayment of the said Mortgage Loans together with interest and all other monies payable through a deed of guarantee executed on 22 August 2019 ("Deed of Guarantee") by the Corporate Debtor in favour of DHFL.
6. Further, with a view to secure the repayment of loans by the Borrowers, DHFL entered into a deed of simple mortgage dated 23 August 2019 with the Corporate Debtor. On 15 April 2020, the Financial Creditor issued a notice to the Corporate Debtor to deposit the title deeds with DHFL and to take necessary action for registration of the charge over the land with the Registrar of Companies. Thereafter, on 13 February 2021, DHFL through its advocates issued a legal notice invoking the Deed of Guarantee to the Corporate Debtor on account of defaults by the Borrowers calling upon the Corporate Debtor to pay the outstanding sum of INR 4252,87,59,892/- (Indian Rupees Four Thousand Two Hundred Fifty-Two Crore Eighty-Seven Lakh Fifty-Nine Thousand Eight Hundred Ninety-Two Only) within 15 (Fifteen) days of issuance of the said notice. The Financial Creditor is not privy

to any reply that may have been received by DHFL in response to the above stated notices.

7. In order to demonstrate the default committed by the Borrowers, the Financial Creditor refers to the loan facility advanced to Indigo Tech-Ind Limited as a sample. On 15 May 2018, DHFL sanctioned a loan of INR 100,00,00,000/- (Indian Rupees One Hundred Crores Only) vide a sanction letter dated 15 May 2018 ("Sanction Letter") to Indigo Tech-Ind Limited and on the same day, they entered into a loan agreement ("Loan Agreement") for a loan facility of INR 100,00,00,000/- (Indian Rupees One Hundred Crores Only) inter alia, recording the terms and conditions of the said loan. The rate of interest was agreed at 6.90% less retail prime lending rate of DHFL i.e. 11.50% at monthly rests payable quarterly.
8. Indigo Tech-Ind Limited executed the following security documents in relation to the loan: (a) Agreement for hypothecation of receivables dated 15 May 2018 creating first and exclusive charge over the outstanding monies, receivables, claim rights, by way of security towards repayment of the said loan, along with the interest thereon; (b) Deed of personal guarantee dated 15 May 2018 executed by Rajesh Gawai, Jinal Devalia and Suraj Suresh Chauhan in favour of DHFL guaranteeing the due repayment of the said loan facility together with

interest by Indigo Tech-Ind Limited and (c) Demand promissory note dated 15 May 2018 promising to pay on demand the said Loan, along with the interest thereon.

9. Indigo Tech-Ind Limited committed defaults on several terms as stipulated in the Sanction Letter and Loan Agreement and also failed to repay the outstanding due amount. Hence, DHFL took the following steps:

a) DHFL issued a recall notice email dated 24 August 2020 ("Recall Notice") on account of occurrence of event of default under the Loan Agreement and recalled the entire loan amount, being an aggregate sum of INR 140,20,90,065 - (Indian Rupees One Hundred Forty Crores and Twenty Lakhs Ninety Thousand and Sixty Five Only) outstanding as on 24 August 2020, together with additional/ further interest, legal charges, cost incurred thereafter till the date of repayment of the entire liability within 7 (Seven) days from the date of the said notice. Through this notice, the deed of personal guarantee was also invoked by DHFL.

b) Thereafter, Indigo Tech-Ind Limited further failed to comply with the Recall Notice. DHFL through its advocates issued a notice of acceleration of recovery of loan facilities in furtherance of the Recall Notice dated 09 October 2020 ("Notice of

Acceleration"), calling upon Indigo Tech-Ind Limited, its directors, and the Personal Guarantors to pay the outstanding amount under the Loan Agreement, being an aggregate sum of INR 141,91,36,032/- (Rupees One Hundred Forty One Crore Ninety One Lacs Thirty Six Thousand Thirty Two Only) outstanding as on 28 September 2020 together with additional/further interest, legal charges, cost.

c) On 08 February 2021, DHFL through their advocates issued a legal notice of invocation of Deed of Personal Guarantee on the account of default by Indigo Tech-Ind Limited calling upon the Personal Guarantors to make payment of INR 148,73,19,900/- (Indian Rupees One Hundred Forty-Eight Crores Seventy Three Lakhs Nineteen Thousand Nine Hundred Only) outstanding as on 31 January 2021 together with additional further interest, legal charges, cost within 15 (Fifteen) days from the date of the said notice.

10. On 13 February 2021, DHFL through its invocation notice dated 13 February 2021 ("First Invocation Notice"), issued to the Corporate Debtor on account of defaults by the Borrowers including Indigo Tech-Ind Limited to pay the outstanding sum of INR 4252,87,59,892/- (Indian Rupees Four Thousand Two Hundred Fifty - Two Crore

Eighty- Seven Lakh Fifty-Nine Thousand Eight Hundred Ninety-Two Only) within 15 (Fifteen) days of issuance of the said notice. However, upon expiry of 15 (Fifteen) days i.e. 28 February 2021, the Corporate Debtor failed to remit the amounts due to the Financial Creditor by the borrowers and the default by the Borrowers is continuing even till date.

11. It is the Petitioner case since all the Borrowers continue to default, and amounts are outstanding in respect of all of them, the Corporate Debtor continues to be liable. Since the default was continuing, the Financial Creditor issued another notice dated 23 June 2023 ("2nd Invocation Notice dated 23 June 2023") invoking the Deed of Guarantee dated 22 August 2019. The Financial Creditor vide Invocation Notice dated 23 June 2023, called upon the Corporate Debtor to pay the outstanding sum of INR 5855,11,12,393/- (Indian Rupees Five Thousand Eight Hundred Fifty- Five Crores Eleven Lakhs Twelve Thousand Three Hundred Ninety- Three Only) within 48 (Forty-eight) hours ie., by 27 June 2023. However, the Corporate Debtor failed to reply to the said notice, nor did it remit the amounts due to the Financial Creditor in terms of the Invocation Notice dated 23 June 2023.
12. The Financial Creditor sought the amendment of Date of Default in the Application, so as to plead that the date of default is 27.06.2023 basing its contention that the default is continuing, accordingly

amended the date of default in the Petition from 28.02.2021, (the first date of default) to 27.06.2023, accordingly this Tribunal, without going into the merits of the argument in this matter, allowed the amendment of date of default, which is now stated to be in Part-IV of the Petition as 27.06.2023 i.e. 48 hours from invocation notice dated 23.06.2023 (excluding 24.06.2023 and 25.06.2023, being non-working days).

13. This Tribunal admitted the application filed by RBI admitting DHFL into CIRP. Then, on 07.06.2021 the resolution plan of Erstwhile Piramal Capital & Housing Finance Limited ("Erstwhile Piramal") was approved. On 30 September 2021, Erstwhile Piramal merged into and with DHFL such that DHFL remained as the continuing legal entity. On 3 November 2021, the name of DHFL was changed to 'Piramal Capital and Housing Finance Limited', i.e. the Financial Creditor herein.
14. None appeared for the Corporate Debtor. The Corporate Debtor is set ex-parte vide Order dated 03.10.2023.

Findings:

15. Heard Learned Counsel for the Financial Creditor. Perused the record.
16. The present Application has been filed by the Financial Creditor against the Corporate Debtor in the capacity of the guarantor. The Corporate Debtor has entered into a Deed of Guarantee dated

22.08.2019 and stood as guarantor for repayment of the facility or loan together with interest and all other monies payable availed by the borrowers.

17. On account of default committed by the borrowers, the DHFL/Financial Creditor sent notice invoking guarantee on 13.02.2021 to the Corporate Debtor and called upon the Corporate Debtor to pay the outstanding amount within 15 days from the date of receipt of the notice. It is the Financial Creditor's case that since the default was continuing on part of the borrowers, a second notice dated 23.06.2023 invoking the deed of guarantee was issued to the Corporate Debtor.
18. We hold that for the purpose of maintaining a section 7 Petition against the Corporate Debtor in the capacity of a guarantor, the date of default has to be calculated from date of first invocation notice via which the Corporate Debtor was put to notice that the Corporate Guarantee has been invoked and called upon to pay the outstanding amount on behalf of the borrower. Needless to say, the amended date of default stated in part IV of the Petition which is 27.06.2023 is incorrect because the said date is calculated from the date of issuance of second invocation notice, which cannot be accepted as correct position as the default date cannot change. The correct date of default ought to have been 28.02.2021 i.e.

expiry of 15 days from 13.02.2021 (date of 1st invocation notice), the date when the Corporate Debtor was put to notice to pay and it failed to pay which occurred after 15 days from the date of first notice dated 13.02.2021.

19. We clarify that the permission to amend the particulars in Part IV permitted by this Tribunal is not based on its own finding about the correct date of default, but was dealt with on the basis whether such amendment is permissible. The amended facts are necessarily have to be adjudicated on merits and Tribunal cannot be precluded from correct adjudication of facts on the premise that it allowed such fact to be brought on record by way of amendment.
20. Section 10A of the Code reads as follow:

“10A. Suspension of initiation of corporate insolvency resolution process. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

Considering now the since the correct date of default is 28.02.2021 and the said period is clearly covered under Section 10A, the present Petition is not maintainable.

21. Accordingly, **CP. No. 556 of 2023** is **dismissed**.

Sd/-
PRABHAT KUMAR
Member (Technical)

08.11.2023
Priyal

Sd/-
JUSTICE V.G. BISHT
Member (Judicial)