

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

CP(IB) No. 1145/MB/C-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Muthoot Fincorp Limited

[CIN: U65929KL1997PLC011518]

...Financial Creditor/Applicant

V/s

Richa Lifespace Private Limited

[CIN: U4520MH2015PTC268734]

...Corporate Debtor/Respondent

Order Dated: 10.03.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Shyam Kapadia, Advocate

For the Respondent:

Mr. Gaurang Mehta, Advocate

ORDER

Per: Rajesh Sharma, Member (Technical)

- 1) This is an application being C.P. (IB) No. CP(IB) No. 1145/MB/C-IV/2020 filed by Muthoot Fincorp Ltd., the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Richa Lifespace Private Limited, Corporate Debtor, for initiating Corporate Insolvency

Resolution Process (CIRP). The Financial Creditor claiming a sum of Rs. 10,53,18,044/- inclusive of interest as on 15.05.2020

- 2) The Corporate Debtor is a private limited company incorporated on 28.09.2015 under the companies Act,2013 with Register of companies (RoC), Maharashtra, Mumbai. Its registered office at 101, 1st floor, Kshitij, Plot No 176 TPS-IV, Sena Bhavan Path, Dadar West Mumbai 400028. Therefore, this bench has jurisdiction to deal with this petition.
- 3) The case of Financial Creditors is as follows:
- a) The Financial Creditor submits that, under a Debenture Trust Deed dated 2nd June 2016 r/w Self Information Memorandum dated 31st May 2016 and pricing Supplement dated 1st June 2016 together comprising of the Financial Contract, Financial Creditor has subscribed to 700 fully secured, Redeemable, Non-Convertible Debentures under-pricing supplement for Series B Debentures, of the Corporate Debtor and had provided Rs.7,00,00,000 /-(Seven Crores Only) to the Corporate Debtor dated 02.06.2016. The Financial Creditor has disbursed this amount to the Corporate Debt on 18th July 2016 as evidenced in the Bank Statements of the Financial Creditor.
- b) The Financial Creditor submits that, the Corporate Debtor executed various security documents in favour of the Financial Creditor which is listed as below: -
1. Debenture Trust Deed dated 02.06.2016, at Pg. No 152.
 2. Debenture Trustee Agreement dated 02.06.2016 at Pg. No 440.
 3. Shelf Information Memorandum dated 31.05.2016 at Pg. No 452
 4. Pricing Supplement Dated:01.06.2016 at Pg. No 478
 5. Deed of Pledge along with Power of Attorney dated 02.06.2016.
 6. Deed of Hypothecation dated 02.06.2016.

7. Deed of Guarantee dated 02.06.2016.
 8. Escrow Agreement dated 02.06.2016.
 9. Escrow Agreement dated 02.06.2016.
 10. Demand Promissory Note dated 02.06.2016.
 11. Shortfall Undertaking dated 02.06.2016.
 12. Purchase Option Agreement dated 02.06.2016.
- c) The Financial Creditor submits that, the Corporate Debtor had to redeem the Debentures in Eight Quarterly Instalments, the first instalment starting from 15.09.2017 to the last being 15.06.2019 (“Redemption Date”) by paying Principal Amount, Interest and Default Interest. The Interest had to be paid on quarterly basis till Redemption of Debentures.
- d) The Financial Creditor submits that, the Corporate Debtor has failed to adhere to the above repayment schedule and has only paid an amount of Rs 2,65,48,134/- till date. The last amount being received by the Financial Creditor was on 10.11.2017. The Corporate Debtor failed to pay the Principal amount as well as Interest. The first date of default occurred on 15.06.2017 the Corporate Debtor failed to pay the interest on due date, however, the account of Corporate Debtor has turned NPA on 15.09.2017.
- e) The Financial Creditor submits that, the Corporate Debtor failed to adhere the repayment schedule, and upon maturity of the Debentures on 30.06.2019, an indisputable financial debt of Rs.10,53,18,044/- (Rupees Ten Crores Fifty-Three Lakh Eighteen Thousand and Forty- Four only) has become due and payable by the Corporate Debtor along with interest till realization. The interest claim on debentures under each pricing is as per Series B-18.75% p.a and default interest are 3% p.a. The amount of claim is calculated till 15.05.2020 including interest.
- f) The Financial Creditor instructed the Debenture Trustee i.e., Axis trustee Services Ltd. issued a notice dated 29.11.2019 to the Corporate Debtor,

their Promoters, co-obligors and pledgors calling upon them, immediately remit amount of Rupees 9,49,79,809/- being the outstanding amount payable to the Financial Creditor under the Debenture Trust Deed as on 22.11.2019, along with further applicable interest until payment or realisation. However, the Corporate Debtor failed to comply with the same.

- g) The Financial Creditor along with 2 other Debenture Holders has several meetings with Corporate Debtor regarding repayment of dues to Debenture Holders including Financial Creditor. However, nothing concrete could be finalised due to the inability of the Corporate Debtor to pay any upfronts amounts.
- h) The Financial Creditor submits that, as per the Debenture Trust Deed no action could be initiated by the Debenture Trustee on behalf of the debenture Holders without consent of the majority debenture holders being Debenture Holders holding an aggregate of not less than 75% of the face value of nominal amount of the debenture outstanding at that time. Since all the Debenture Holders were not ad-idem and the Financial Creditor did not come under the ambit of definition of majority Debenture Holder, the Debenture Trustee could not take appropriate actions.
- i) The Financial Creditor submits that, under the Debenture Trust Deed and the Pricing Supplement for Series B Debenture r/w Shelf Information Memorandum, the Financial Creditor is entitled to receive the said Debenture Outstanding and any other amount along with interest. It is admitted position that the Corporate Debtor has defaulted in repayment of the Debenture Outstanding and servicing of Non-Convertible Debentures issued by them, which is also evident from the emails dated 27.03.2019, 08.05.2019, 15.05.2019 & 30.10.2019. The

Corporate Debtor has time and again failed to repay the outstanding till date.

- 4) The case of Corporate Debtor is as follows:
- a) That the filing of the above Petition has not been authorized by the Financial Creditor abovenamed and the same is without authority and of no consequence.
 - b) The Financial Creditor has made reference to four documents which are annexed at Exhibits “F” to “I” to the above Petition namely i) Debenture Trust Deed, ii) Debenture Trustee Appointment Agreement, Shelf Information Memorandum and iv) Pricing Supplement and alleged that the said four documents together form the “Financial Contract”. Pertinently, the Debenture Trust Deed is also mentioned by the Financial Creditor in item 1 of Part-V as a document creating security favouring the Debenture Trustee. Pertinently, all the four documents bear date 02.06.2016. Item I of Part-V of the above Petition also make reference to the following documents which are also dated 02.06.2016 and are part of the same financial transaction:
 1. Deed of Pledge
 2. Deed of Hypothecation,
 3. Personal Guarantees,
 4. Escrow Agreements,
 5. Shortfall Undertaking,
 6. Demand Promissory Note &
 7. Purchase Option Agreement.

The above documents though referred to by the Financial Creditor have not been produced along with the above petition. The financial contract is not restricted to the four documents mentioned in item 5 of Part-V of

the above Petition but also includes the above seven documents which have not been produced along with the above Petition.

- c) The Financial Creditor is a Debenture Holder along with others in respect of a series of Debenture issued by the Corporate Debtor. The rights and obligations of the parties are governed by the Debenture Trust Deed (“DTD”) and the Debenture Trustee Appointment Agreement (“DTAA”) r/w the other transaction documents which are stated hereinabove. The above documents resulted in the appointment of Axis trustee Services Ltd. as Debenture Trustee for the benefit of the Debenture Holders. The Debenture Trustee is a party to all the transaction documents.
- d) The Financial Creditor is a subscriber of fully Secured Debentures and the securities are created in favor of the Debenture Trustee for the benefit of the Debenture Holders. On the one hand the Debenture Trustee has invoked the guarantees and issued Legal Notice of its intention to enforce the securities which are worth much more than the alleged Debenture outstanding. On the other hand, without reference to the securities and the Debenture Trustee, the Financial Creditor has filed CIRP proceedings without giving credit to the Corporate Debtor for the market value of the securities.
- e) The Corporate Debtor is part of the Richa Group of Companies promoted by Mr. Prakash Joshi and others. The Rich Group also comprises, inter-alia, M/s. Shree Richa Realtors, a Partnership Firm (“The Richa Firms”).
- f) In view of the above, the Corporate Debtor had issued a Shelf Information Memorandum dated 31.05.2016 (Exhibit “H” to the above petition). The Shelf Information Memorandum is referred to as “the SIM” for the issue of 1000 unlisted fully secured redeemable interest bearing cumulative non-convertible Debenture (NCD’s) of the face

value of Rs. 1 Lakh each aggregating of Rs. 10crores. The SIM clearly recorded that the transaction documents shall mean collectively the following which therefore together constitute the financial contact between the parties.

1. Debenture Trust Deed,
 2. Debenture Trustee Appointment Agreement,
 3. Shelf Information Memorandum,
 4. Pricing Supplement,
 5. Deed of Pledge,
 6. Deed of Hypothecation,
 7. Personal Guarantees of Promoters,
 8. Escrow Agreements,
 9. Shortfall Undertaking,
 10. Demand Promissory Note &
 11. Purchase Option Agreement.
- g) The Financial Creditor subscribed to 700 Series 'B' Debenture of the aggregate value of Rs. 7 crores (hereinafter referred to as "the Subject Debentures"). The remaining 300 NCD's were subscribed to by Strugence Investment Advisors Pvt. Ltd. (Strugence Ltd") who is also named as 'Investment Manager' in the transaction documents. Strugence Ltd. have not concurred or consented taking any action by the Debenture Trustee under the transaction documents.
- h) It is clear from the SIM that the Corporate Debtor and the Richa Firm (as Co-obligor) created securities against the subscription of Debentures by way of Mortgage and charge over a substantial undertaking and properties of the Richa Group entities as under:

Corporate Debtor Company (RLPL):

- (i) The land and building "Vishvesh Bhuvan".

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- (ii) Development rights over the Shivaji Park Project (Magesh Bhuvan and Vishwesh Bhuvan), all the unsold units therein as also all the project receivables in respect of the free sale units in the said projects.

M/s. Shree Richa Realtors (Co-obligor 2):

- i. Commercial premises being Shop No. 3, Bilaney Chawl, Shop Nos. 7 and 8, Hives Suites and Shop Nos.1&2, Anandalaya in the proposed Buildings to be constructed by the Co-Obligor at Shivaji Park, Mumbai.
- ii. The project receivables in relation to the Anandalaya Project and the Co- Obligor's tangible and intangible assets with respect to the Anandalaya Project.

Other Securities:

- i) Pledge by the promoters of the 10,000 shares in the Corporate Debtor Company.
- ii) 10 Flats in Mulund owned by 10 persons detailed in Schedule 18 of the Debenture Trust Deed with a total carpet area of 6432 Sq. feet valued at Rs.13.05 Crores as per the valuation report.

Thus, to secure the Series 'B' Debenture issue (Rs.10 Crores), the Corporate Debtor arranged furnishing of security which was valued more than twice the amount borrowed against the Debentures.

- i) The Corporate Debtor in effect created securities by way of mortgage and hypothecation in favour of the Debenture Trustee (representing the Debenture Holders) of not only the development rights of the Richa Group over the Building Projects but also the unsold units and the project receivable in the Shivaji Park Project which were to be deposited in to an Escrow Account to be operated by the Debenture Trustee, for

being applied towards repayment of the Debentures. In, effect, the Corporate Debtor and the Richa Group created security not only over immovable properties but also over their revenue and cash flow over which the Debenture Holders through the Debenture Trustee exercised control. Pertinently, under the arrangement recorded in the transaction documents, the Corporate Debtor was required to take prior permission and consent of the Debenture Trustee before selling the unsold units in the Shivaji Park project.

- j) The subscription amount of the subject Debentures was used, to secure approvals from the MCGM to the building plans for the Shivaji Park Project as mentioned hereinafter, for funding the consideration for acquisition of land and for other purposes related to the Shivaji Park Project. Though the building plans were approved in December 2017 or thereabouts, due to lack of adequate finances and other constraints, the Shivaji Park Project could not progress further. In view thereof, all the Flats in the proposed building remain unsold and there is no revenue generation till date from the Shivaji Park Project.
- k) In view thereof, in the year 2015, the Corporate Debtor had entered into a Development Agreement with the Owner of the adjoining land and building being the Mangesh Bhuvan CHS for redevelopment of Mangesh Bhuvan. The Shivaji Park Project contemplates merger of two adjoining plots of land (being Mangesh Bhuvan and Vishvesh Bhuvan) to ensure project viability considering present day rules and regulations concerning building project and the building plans were got sanctioned accordingly. However, the earlier sanctioned building plans having lapsed, the Corporate Debtor is now in a position to take advantage of present-day incentive scheme under the Development Control Regulations (see regulation no. 2034 read with Sanction 22& of

2034) which will result in an enhanced area for development thus leading to enhanced sale profitability.

- l) Due to the dilapidated structure and consequent eviction notice issued by the MCGM, the existing members and occupants of Mangesh Bhuvan vacated the Building in the year 2017 and the Corporate Debtor is required to pay monthly rent to the said members pending the development of the Shivaji Park Project. The Richa Group had endeavoured to find joint venture had contemplated allotment of two Flats in the proposed building to the Debenture Trustee, the value thereof (Rs. 6 Crores or thereabouts) to be adjusted towards repayment of the Debentures. Hereto annexed and marked Exhibit 1 is a copy of the Richa Group's email dated 06.12.2019 addressed to the Financial Creditor.
- m) In November 2019 the Debenture Trustee had issued Legal Notice dated 29.11.2019 to the Corporate Debtor, the Co-obligor and the Promoters/Guarantors named in the DTD document invoking the guarantees and enforcement of the securities given to the Financial Creditor.
- n) Mr. Ravi Oruganti is the Authorized Representative of the Financial Creditor or that he is empowered in any manner to initiate against the Corporate Debtor or any other entity an application for CIRP on behalf of the Financial Creditor.
- o) The Corporate Debtor and the Richa Firm have created security by way of mortgage and charge over the substantial undertaking and assets of the Richa Group entities including immovable properties, benefits of contract by way of development rights under Development Agreements, unsold units/ Flats in project and project receivables. The security documents like Deed of Pledge, Deed of Hypothecation, Deed of Guarantee, Purchase Option Agreement and others have not been

produced by the Financial Creditor through the same form part of the transaction documents and together constitute the Financial contract. Pertinently, though required to do so, the Financial Creditor has avoided disclosing the market value of the securities held by the Debenture Trustee on behalf of the Debenture Holder as already stated in paragraph No.2 hereinabove. I say and submit that the alleged Debenture Outstanding amounts will reduce by the market value of the securities held by the Debenture Trustee which is far more than the alleged Debenture Outstanding. Pertinently, the Debenture Trustee has the option to setoff/adjust the Debenture Trustee monies by utilizing the methodology recorded in the Purchase Option Agreement.

- p) The demand for payment by way of email dated 22.01.2019 Exhibit M to the above Petition was made by the Debenture Trustee. By way of his email dated 27.03.2019, the Director the Corporate Debtor had, inter-alia, informed the Debenture Trustee and the Debenture Holders that the cash flows from the Richa Group's Project would substantially take care of the amounts due under the subject Debentures. However, the COVID-19 pandemic intervened to stall the progress of the projects at the same coupled with poor sales on account of the economic environment resulting from the pandemic, dealt the project receivables. It is a fact borne out from the record that the project receivables in respect of the unsold Flats in the Shivaji Park Project are all hypothecated to the Financial Creditor and constitute its security under the transaction document and the amounts due under the subject Debentures are required to be paid out of the project receivables which would be dependent on the progress of the project.
- q) The Legal Notice dated 29.11.2019 (Exhibit "R" to the above petition) was received from the purported Debenture Trustee through its Advocates (being the same Advocates who now represent the Financial

Creditor). By way of the Legal Notice, the Debenture Trustee made reference to the DTD, DTA and other transaction documents and not only invoked the guarantees given by the Guarantors named in the DTD and other transaction documents but also proceeded to invoke and enforce the Deed of Hypothecation in respect of the project receivables and also the Purchase Option Agreement. On the one hand there is a positive action on the part of the Debenture Trustee to invoke the guarantees and enforce the securities while on the other hand the Financial Creditor is taking unilateral steps to initiate a CIRP proceeding against the Corporate Debtor for the entire alleged outstanding without accounting for or adjusting the market value of the securities under the transaction documents.

- 5) The Financial Creditor has filed the Affidavit of Rejoinder and submits as under:
 - a) The Corporate Debtor has admitted its liability to pay the outstanding dues under the Series B Debentures to the Financial Creditor.
 - b) The financial assistance provided to the Corporate Debtor was an amount of Rs.7,00,00,000/- (Rupees Seven Crores Only) under the Debenture Trust Deed dated 2nd June, 2016 by subscribing to 700 fully secured, redeemable, non-convertible debentures being Series B debentures issued by the Corporate Debtor.
 - c) The Corporate Debtor was to Redeem the Series B debenture in eight quarterly instalments, starting from 15th September, 2017 and ending on 15th June, 2019 with interest to be paid on quarterly basis payable on 15th March, 15th June, 15th September, 15th December each year till repayment but failed to repay as per the Repayment Schedule, therefore the Debentures matured on 30th June 2019.

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- d) The first default occurred on 15th September 2017. The account turned NPA on 15th December 2017. The last amount paid by the Corporate Debtor to Financial Creditor was on 10th November 2017. The Corporate Debtor till date has paid only Sum of Rs 2,57,44,164/- as opposed to Rs.2,69,91,742/- alleged by the Corporate Debtor in its reply. Accordingly, as on 15th May 2020, an amount of Rs 10,53,18,044/- has become due and payable by the Corporate Debtor.
- 6) The Financial Creditor has filed the Written Submissions and submit as under:
- a) The Financial Creditor submits that, the present case there is no majority debenture holder and Financial Creditor holds 70% of the total debentures issued by the Corporate Debtor and is a Financial Creditor as per the provisions of the Code. It is submitted that it is a well settled position of law that to determine the admissibility of a petition u/s 7 of the Code, the Authority is only to see the existence of a default in respect of the debt that has become due and payable {M/s Innoventive Industries Ltd. v ICICI Bank & Anr. (AIR 2017 SC 4084 (Supreme Court))}
- 7) The Financial Creditor has filed NeSL Report showing the total outstanding of Rs. 10,53,18,044 as on 30.06.2020.

Findings:

- 8) We have heard the submissions of the counsels on both the sides and observed as under:
- 9) The default occurred on 15.06.2017. The Account of the Corporate Debtor was classified as NPA on 15.09.2017.
- 10) It is clear from the records that the Corporate Debtor has time and again acknowledged the debt which is due and payable to the Financial Creditor.

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- 11) The Corporate Debtor has no where in its reply has denied the Liability.
 - 12) On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) 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 do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor.
 - 13) The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
 - 14) The Corporate Debtor has no intention of making payment to Financial Creditor which was due and payable but taking excuses against its liability. Further, the Corporate Debtor is only taking the shield of Richa Groups Project, which is not tenable.
 - 15) The Financial Creditor submits that, Miss Neelima Anil Bhate, an Insolvency Professional registered with the Insolvency Bankruptcy Board of India having registered number IBBI/IPA-001/IP-P01122/2018-19/11900 have been proposed as the Interim Resolution Professional by the Muthoot Fincrop Ltd.

ORDER

This Application being **C.P. (IB) No. 1145/NCLT/MB/C-IV/2020** filed under Section 7 of I&B Code, 2016, presented by Muthoot Fincorp Ltd, Financial Creditor/ Applicant against **Richa Lifespace Pvt.ltd**, 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 Operational 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 Miss Neelima Anil Bhate, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01122/2018-19/11900] 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.
- VIII. 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 today.**

Sd/-

Mr. Rajesh Sharma
Member (Technical)
10.03.2022.

Sd/-

Mrs. Suchitra Kanuparthi
Member (Judicial)