

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

C.P. (IB) No. 1042/MB/2023

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

In the matter of

Piramal Capital & Housing Finance Ltd.

[CIN: L65910MH1984PLC032639]

...Financial Creditor

v/s.

Earleen Real Estate Developers Pvt. Ltd.

[CIN: U70102MH2015PTC265414]

...Corporate Debtor

Order Delivered on: **09.02.2024**

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 1042/MB-IV/2023

For the Financial Creditor:

Mr. Nausher Kohli *a/w.* Ms. Nanki
Grewal, Ms. Raveena Modi, Ms.
Manasi Joglekar, Ms. Yesha Badani
i/b. Wadia Ghandy & Co., Ltd.
Counsel for the Financial Creditor.

For the Corporate Debtor:

No Appearance on behalf of the
Corporate Debtor.

ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Piramal Capital & Housing Finance Limited** (“Financial Creditor” ; previously known as “Dewan Housing Finance Corporation Limited”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Earleen Real Estate Developers Private Limited**, the Corporate Debtor.

1.1 The captioned petition has been filed on 01.09.2023 and the total default as on 31.03.2023, per the Financial Creditor herein, amounts to INR 1442,56,64,499/- (Rupees One thousand four hundred forty-two crores, fifty-six lakhs, sixty-four thousand, four hundred and ninety-nine only), which is further broken down as hereinunder:

S. No.	Particulars	Amount Disbursed (INR)
01	Outstanding Principal Amount	500,00,00,000/-
02	Outstanding Interest	150,00,00,000/-
03	Default / Additional Interest	24,99,00,000/-
04	Cheque Return / Other Charges	31,53,152/-
		1442,56,64,499/-

1.2 The Date of Default, as specified in Part-IV of the present petition, is 31.03.2019.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Corporate Debtor was provided with a loan of INR 675,00,00,000/- (Indian Rupees Six hundred and seventy-five crores only) *vide* a Loan Agreement dated 23.05.2016 as per the terms and

conditions set out therein. Admittedly, out of the afore-stated loan, an amount of INR 674,99,00,000/- (Indian Rupees Six hundred and seventy-four crores, and ninety-nine lakhs only) has been disbursed by the Financial Creditor till date in multiple tranches under Loan A/c. No.: 00029760 on 25.05.2016, 22.06.2016 and 25.07.2016.

3. In relation to the afore-mentioned loan, various securities were executed to secure its repayment. The list of securities are as follows:

- 3.1. Deed of Hypothecation of Receivables *dated* 23.05.2016 executed by the Corporate Debtor (therein referred to as the Borrower) in favor of the Financial Creditor (therein referred to as the Lender), whereunder all the receivables from the sold and unsold flats/ units in the property described in the Schedule therein was hypothecated in favor of the Financial Creditor.
- 3.2. Escrow Agreement *dated* 23.05.2016 executed between (i) the Corporate Debtor (therein referred to as the Borrower), (ii) the Financial Creditor (therein referred to as the Lender), and (iii) Axis Bank (therein referred to as the Escrow Bank/ Escrow Agent), whereunder an escrow account was opened by the Corporate Debtor for depositing the entire receivables from the project mortgaged under Deed of Simple Mortgage dated 23.05.2016.
- 3.3. Demand Promissory Note *dated* 23.05.2016 executed by the Corporate Debtor in favor of the Financial Creditor.
- 3.4. Deed of Simple Mortgage *dated* 23.05.2016 registered with the office of Sub-Registrar of Assurances under Serial No. BDR/1/6973/2016 executed by and between (i) the Corporate Debtor (therein referred to as the Mortgagor/ Borrower), (ii) Sigtia Constructions Private Limited (therein referred to as the Confirming Party) and (iii) the Financial Creditor (therein referred to as the Mortgagee) whereunder an exclusive

charge was created by the Mortgagor in favor of the Mortgagee in the property described in Schedule I therein.

3.5. Deed of Simple Mortgage *dated* 11.09.2019 registered with the office of Sub-Registrar of Assurances under Serial No. BD/17/10700/2019 executed by and between (i) Sigtia Constructions Private Limited (therein referred to as Mortgagor), (ii) Corporate Debtor (therein referred to as Borrower) and (iii) the Financial Creditor (therein referred to as Mortgagee) whereunder an exclusive charge was created by the Mortgagor in favor of the Mortgagee in the property described in the Schedule II therein.

4. The Financial Creditor submits that owing to Corporate Debtor's continuous defaults in payment beginning from 31.03.2019 under the afore-stated Loan Agreement *dated* 23.05.2016, the Financial Creditor issued a Recall Notice to the Corporate Debtor *dated* 23.04.2020 via E-mail and subsequently, a Legal Notice *dated* 08.09.2020 seeking forthwith repayment of the outstanding amount along with the accrued interest, legal charges and cost(s) incurred.

5. The Financial Creditor submits that despite the afore-stated Recall Notice *dated* 23.04.2020 and the Legal Notice *dated* 08.09.2020 in addition to another Legal Notice issued on its behalf *dated* 25.08.2023; The Corporate Debtor has not instituted any repayment(s) whatsoever under the said Loan Agreement and all amounts due and payable thereunder.

Hence, the present petition.

Findings

6. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.

6.1. Upon going through the record files, it is observed that this Tribunal *vide* Order *dated* 05.12.2023 had directed the Ld. Counsel of the Financial Creditor to carry out substituted service upon the Corporate Debtor. Despite paper publication on part of the former, there was no representation on behalf of the Corporate Debtor in the present petition on either of the dates as duly recorded in Order(s) *dated* 07 .11.2023, 05.12.2023, 15.12.2023 and 15.01.2024. No reply has been placed on record on the Corporate Debtor's behalf and its right to file the same was forfeited *vide* Order *dated* 15.12.2023. The present case is therefore being dealt, solely on merits.

7. Upon perusal of all records, we are of the considered view that:

7.1. This Petition has been filed within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition bearing C.P. (IB) No. 1042 of 2023 filed by the Financial Creditor.

7.2. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor herein is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC, 2016. The two essential qualifications *i.e.* existence of 'debt' due and 'default', for admission of a petition under Section 7 of the IBC, 2016, have been met in this case.

7.3. The Financial Creditor has proposed the name of Mr. Jayesh Natvarlal Sanghrajka, Registration No. IBBI/IPA-001/IP-P00216/2017-18/10416, as the Interim Resolution Professional of the Corporate Debtor. He has duly filed his written communication in Form-2 *dated* 25.08.2023 as required under Rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and the same has been taken into due consideration.

ORDER

It is accordingly hereby ordered as follows:

8. The above **Company Petition No. (IB) 1042/MB/2023** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Earleen Real Estate Developers Private Limited.
9. This Bench hereby appoints **Mr. Jayesh Natvarlal Sanghrajka**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00216/2017-18/10416, with Address at Jayesh Sanghrajka & Co. LLP 405-407, Hind Rajasthan Building, DS Phalke Road, Dadar(E), Mumbai-400014 and E-mail: Jayesh.sanghrajka@incorpadvisory.in; as the Interim Resolution Professional to carry out the functions as mentioned IBC, 2016.
10. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
11. The Financial Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Five-lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
12. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

13. Notwithstanding the above, during the period of moratorium:

- (i) 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;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

14. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under sub-

section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.

15. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
16. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

09.02.2024

Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
