

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

**CP (IB) No.337/MB-IV/2022**

Under Section 7 of the IBC, 2016

*In the matter of*

ICICI BANK LTD.

[CIN: L65190GJ1994PLC021012]

...Financial Creditor

v/s.

DARODE JOG REALTIES PRIVATE  
LIMITED.

[CIN: U70100PN2010PTC136198]

...Corporate Debtor

**Order Delivered on: 20.10.2023.**

*Coram:*

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

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Financial Creditor:

Mr. Rishi Thakur. Counsel.

For the Corporate Debtor:

Mr. Prakhar Tandon. Counsel.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by ICICI BANK LTD (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of DARODE JOG REALTIES PRIVATE LIMITED., the Corporate Debtor.

1.1 The petition is filed on 11/02/2022 and the total outstanding amount of Rs. 154,54,62,677/- in default as on 12.11.2021 together with the applicable interest, penal interest, premia charges etc. thereon at the contractual rates upon the footing of compound interest unit realization to the satisfaction of the Financial Creditor. The date of default as Specified in Part IV of the petition is 16.02.2018. The Corporate Debtor’s loan account was declared as NPA on 17.05.2018.

**Submissions of the Financial Creditor:**

2. The Financial Creditor submits that, in and around August 2015, the Corporate Debtor approached ICICI Bank Limited (Financial Creditor) for credit facilities for, inter alia, (a) takeover of the existing loan provided by Piramal Enterprises Ltd. to the Corporate Debtor, and (b) financing the balance construction cost of residential project "Liviano" having saleable area of approx. 813,877.0 sq. ft. being developed by the Corporate Debtor on the property situated at Kharadi, Pune (Project).

2.1. Pursuant to the requests of the Corporate Debtor, the Financial Creditor issued sanction letter dated 05.08.2015 with respect to the term loan facility aggregating to Rs. 130.00 crore (Rupees one hundred and thirty crore) (Facility). The Corporate Debtor by way of board resolution dated

12.08.2015 passed by the board of directors duly accepted the Facility and the terms and conditions therein.

2.2. Subsequently, the Corporate Debtor and Financial Creditor executed a facility agreement dated 12.08.2015 (Facility Agreement) with respect to the terms and conditions governing the Facility. The sanction letters with respect to the Facility have been modified and amended from time to time including on 27.10.2015, 10. 02.2017, 21.03.2017 and 26.04.2019. By way of these modifications to the sanction letters, certain terms and conditions including security for the Facility have been modified.

2.3. The Facility is secured, inter alia, by: (a) exclusive charge by way of registered mortgage over the entire immovable property being survey nos 25/3B/1/1/ and 25/3B/1/2 situated at Wadgaon, Pune (Additional Property-3) and immovable property admeasuring 1H 53R, out and forming part of Gat No. 409 totally admeasuring 3H 06R situated at villages Jambhol, Tal Maval, Pune (Additional Property-2); (b) exclusive charge by way of registered mortgage over the entire immovable property admeasuring 14.83 Hectare, out of and forming part of land bearing Gat No. 1591, Gat No. 1604, Gat No. 2249, Gat No 1571, Gat No. 1572, Gat No. 1621, Gat No. 191, Gat No. 190, Gat No. 485, Gat No. 1573, Gat No. 1596, Gat No. 1600, Gat No. 1606, Gat No. 1610, Gat No. 1580, Gat No. 1578, Gat No. 1581, Gat No. 1617, Gat No. 1613, Gat No. 1618, Gat No. 1585 situated at village Taradgaon and Chavanwadi, Tal. Phaltan, Dist. Satara owned by Sudhir Jog and Anand Jog (Property 4) (c) exclusive charge by way of registered mortgage over receivables/cash flows/revenue (including booking amounts) (Scheduled Receivables-3) arising out of and in connection with residential project "Serene County Buildings J & K" with saleable area 53,106 approx. being developed by the Corporate Debtor

(Additional Project-3), (d) exclusive charge by way of registered mortgage on the rights, titles, interests, under the project documents of the Additional Project-3; (e) exclusive charge by way of registered mortgage on the escrow account and debt service account pertaining to the Additional Project-3; (f) irrevocable and unconditional guarantee of Sudhir Darode and Anand Jog (Personal Guarantors) and Darode Jog Builders Private Limited (Corporate Guarantor); (g) post-dated cheques and (h) undertakings by promoters and other group companies.

2.4. The charge over the Additional Property-2 has been created by way of registered indenture of mortgage dated 11.09.2015 (2015 IOM) executed by the Corporate Debtor, Cheerfull Homes Private Limited. The charge over Additional Property-3, Additional Project-3 and Scheduled Receivables-3 have been created by way of registered indenture of mortgage (2017 IOM) executed by Mr. Sudhir Darode and Anand Jog and is owned by Darode Jog Associates. The charge over the Property-4 has been created by way of registered indenture of mortgage dated 30.07.2019 (2019 IOM).

2.5. The charge created in favour of the Financial Creditor by the Corporate Debtor is duly registered with the Registrar of Companies (ROC) under the Companies Act, 2013 and with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, as amended.

2.6. In 2018, the Corporate Debtor defaulted in its obligations under the Facility Agreement to repay the outstanding amounts under the Facility. The Corporate Debtor also breached several other covenants of the Facility Agreement and other undertakings. The Corporate Debtor continued to

default in its obligations and consequently, the account of the Corporate Debtor was classified as Non-Performing Asset ("NPA") from 17.05.2018.

2.7. The Financial Creditor by way of its letter 13.02.2019 (Recall Letter) recalled the entire Facility provided to the Corporate Debtor and called upon the Corporate Debtor to pay the entire outstanding amount Rs.147,44,71,040 is erroneous. Therefore, the rectification letter dated 29.03.2019 was issued by the Financial Creditor to Corporate Debtor to pay the entire outstanding principal amount, together with interest and other fees payable to the Financial Creditor as on 15.01.2019 and aggregating to Rs. 148,27,52,640 (Rupees One Hundred and Forty-Eight Crore Twenty-Seven Lakhs Fifty-Two Thousand Six Hundred and Forty) along with the applicable interest, penal interest, premia, charges etc. thereon at the contractual rates upon the footing of compound interest until payment/realization to the satisfaction of the Financial Creditor. The Corporate Debtor has not disputed its liability pursuant to the Recall Letter and the Financial Creditor has not received any response to the said Recall Letter.

**Submissions of the Corporate Debtor:**

3. The Corporate Debtor has filed Affidavit in reply dated 09.01.2023 stating that, there is a pre-existing dispute by and between the parties and which will require due consideration and production of various evidences and witnesses and has been clearly acknowledged by the petitioner in the said petition on page no. 4, stating that "*the Financial Creditor has initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Assets, 2002 and Recovery of Debts Due to the Banks and Financial Institution Act, 1993 and that the said proceedings are at present pending.*". The Cd further stated that *the present petition suffers from defects and is incomplete and on this ground is liable to be dismissed on threshold.*

**Findings:**

4. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

4.1. This bench vide order dated 29.03.2022 observed that the Financial Creditor submitted “*the matter was settled out of court amicably between the parties and appropriate application has been filed with this bench vide Diary No. 2709138021212023 for withdrawal of the main company petition, but the same has not been numbered yet, hence could not be listed before this bench. Counsel for the Corporate Debtor has confirmed this fact. As settlement is arrived between the parties, the Financial Creditor is seeking permission to withdraw the main Company Petition. In view of the above submissions, CP(IB)/337(MB)2022 is dismissed as withdrawn*”.

4.2. Subsequently, the Restoration Application No. 24(IBC)/(MB)2023 was filed by the Financial Creditor for seeking on the grounds that the Cd has defaulted in the payment as per agreement Restoration of CP(IB)-337/2022 the same was restored on 25.09.2023.

4.3. The Bench further notes the relevant clauses of the said Settlement Agreement dated 08.02.2023 as reproduced below:

*L. As on 25.01.2023, the amounts due and payable by the Borrower to ICICI Bank is INR 1,928,722,629/- (Rupees One Thousand Nine Hundred and Twenty Eight Million Seven Lakh Twenty Two Thousand Six Hundred and Twenty) (“Outstanding Dues”) with respect to the Facility sanctioned by ICICI Bank to the Borrower.*

*NOW, THEREFORE, in consideration of the terms set out and the mutual agreements and covenants contained in this settlement agreement, the parties hereby agree as follows:*

1. ACKNOWLEDGMENT OF DEBT

*The Borrower, Guarantors and Security Providers, Jointly and severally, unconditionally and unequivocally, agree and confirm that as on January 25, 2022, the total outstanding amounts owed to ICICI Bank under the Facility is INR 1,928,722,629.0 (Rupees One Thousand Nine Hundred and Twenty-Eight Million Seven Lakh Twenty-Two Thousand Six Hundred and Twenty-Nine) (“Outstanding Dues”).*

2. SETTLEMENT AMOUNT

*2.1 The Borrower undertakes and agree to make payment of INR 170.00 Million (Rupees One hundred and seventy million Only) (“Settlement Amount) to ICICC Bank, towards full and Final Settlement of all amount due and payable under the Facility, including the outstanding dues, within 90(Ninety) days from the date the execution of this Settlement Agreement. Payment of the said settlement Amount shall be made by of RTGS/NEFT.*

4.4. From the above it flows that the Corporate Debtor has acknowledged the outstanding debt as on 25.01.2022 and had agreed to repay the entire amount, which amounts to acknowledgement of liability on the part of the Corporate Debtor. Further, the Corporate Debtor has defaulted in payments in terms of settlement Agreement dated 08.01.2023, leading to Restoration of the Company Petition.

5. The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor under section 7 of IBC is

mandated to ascertain the existence of the debt, and any default in payment of such debt.

6. Considering all the facts placed before us and the fact that the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

6. The Petition bearing CP (IB) No.337/MB-IV/2022 filed by ICICI BANK LTD (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of DARODE JOG REALTIES PRIVATE LIMITED., the Corporate Debtor is **Admitted**.

a) There shall be a moratorium under section 14 of the IBC, 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.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) 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;
  - (vi) 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;
- (d) 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 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Ms. Akansha Ashish Rathi**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-002/IP-N00332/2017-2018/10938** and email- **rathiakansha83@gmail.com** . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the

functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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.
- (h) The Financial Creditor shall deposit a sum of Rs.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).
- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) 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.
- (k) 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)**  
**20.10.2023.**

Sd/-

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