

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT- III**

C.P.(IB)-481(MB)/C-III/2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

VSJ Investments Private Limited

Having Registered Office at:
G-12, Ground Floor, Raheja Centre, 214,
Free Press Journal Marg, Nariman Point,
Mumbai - 400 021

.....Financial Creditor/ Applicant

Versus

Manpreet Estates LLP

Having Registered Office at:
Sarkar Heritage, Jairajbhoy Peerbhoy Khoja,
Sanitor Complex, Kane & B.J. Road, Bandstand,
Bandra West,
Mumbai - 400 050

.....Corporate Debtor/ Respondent

Order Pronounced on: 24.11.2023

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (J)

Hon'ble SH. Charanjeet Singh Gulati, Member (T)

Appearances:

For the Financial Creditor: Adv. Yash Momaya a/w Adv. Astha Ojha

For the Corporate Debtor: Adv. Prashant Goyal

Per: Ms. Lakshmi Gurung, Member (J)

1. The Present **Company Petition (IB)-481(MB)/2023** is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'** / **'the Code'**) by VSJ Investments Private Limited (**"Financial Creditor"**) for initiating Corporate Insolvency Resolution Process against Manpreet Estates LLP (**"Corporate Debtor"**) for default in repayment of loan.
2. **Piramal Capital & Housing Finance Limited (PCHFL)**, (earlier known as 'Dewan Housing Finance Corporation Limited'), had sanctioned a project term loan of ₹180,00,00,000/- to the Corporate Debtor and entered into a loan Agreement dated 18.01.2017 (**Loan Facility**). Out of sanctioned amount, PCHFL had disbursed an amount of ₹1,50,00,00,000/- to the Corporate Debtor on 19.01.2017.
3. As per Part IV of the Application, the Corporate Debtor failed to adhere to the terms and conditions of the loan agreement and committed default on **15.10.2018**. Accordingly, the account of the Corporate Debtor with PCHFL was classified as NPA and a recall notice dated 25.02.2020 was issued to the Corporate Debtor.
4. Despite receipt of recall notice the corporate Debtor failed to make payment of the amount due and payable to PCHFL. Therefore, the PCHFL took following steps:

- i. Issued notice dated 09.09.2020 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor.
 - ii. Issued notice dated 04.12.2020 under Section 13(4) of the SARFAESI Act, 2002.
 - iii. Invoked the Personal Guarantee provided by the Guarantors vide invocation notice dated 06.02.2021 followed by a reminder letter dated 19.11.2021.
5. Thereafter, PCHFL, *vide* Deed of Assignment dated 14.07.2022, transferred all its rights, title, interest arising under the said Loan Facility to VSJ Investments Private Limited i.e., the present Petitioner/ Financial Creditor before us.
6. The record of default issued by NeSL is annexed to the Petition, which shows date of default as 15.10.2018. According to the default submission on 06.05.2022, which is deemed to be authenticated, the Default amount is Rs. 2,69,66,50,330/-.

REPLY BY CORPORATE DEBTOR:

7. In its reply filed by the Corporate Debtor, it has admitted that it had availed a Project Loan of ₹ 180 Crore from Dewan Housing Finance Limited (“**DHFL**”) for the purpose of undertaking a real estate project at Khar at land bearing CTS No. D/900/A/3, Survey No. 637/638, admeasuring 608.84 square metres Village Khar, Mumbai Suburban (“**Property**”) by demolishing the existing building known as Urmila Apartment standing on the Property. The said property was mortgaged to DHFL in terms of Deed of Simple Mortgage dated 19.01.2017, duly registered with the Sub Registrar of Assurances, Bandra under serial no. BDR-18/364 of 2017 read with Supplementary Deed of Simple Mortgage dated 17.03.2017, duly registered

with the Sub Registrar of Assurance, Bandra under serial no. BDR-18/1430 of 2017.

8. Against the sanctioned loan of Rs. 180 Crores, DHFL disbursed only Rs. 150 Crore. Thereafter, the Corporate Debtor could not proceed with the development thereof due to financial constraints and was unable to service the Project Loan availed from DHFL.
9. The Corporate Debtor submitted that it is not commercially unviable. The Property mortgaged with the Financial creditor has substantial value, and therefore the Financial Creditor is more than fully secured for whatever claims it may have against the Corporate Debtor. The present petition has not been filed for recovery which is not the object of IBC.

FINDINGS:

10. We have heard the Ld. Counsel for the Petitioner, considered the reply filed by the Respondent and perused the record.
11. In the present case, date of default is 15.10.2018 and the petition was filed on 15.07.2023. Therefore, it is imperative to examine whether the petition was filed within the limitation period or not. As the date of default is 15.10.2018, limitation starts from 15.10.2018. Under the normal circumstances, the limitation would have expired on 14.10.2021. However, the Hon'ble Supreme Court in the **Suo Moto Writ Petition (C) No. 3 of 2020**" has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation. Consideration the said exclusion period, we find that the present petition under Section 7 of the Code, 2016 filed on 15.07.2023 has been filed within limitation period.

12. The Corporate Debtor in its reply dated 08.09.2023 filed before this Court has **admitted the factum of availing of project loan and also the default** committed by it. Under section 7 of IBC, the Adjudicating Authority has to merely satisfy whether there is debt which has become due and payable and that there is default.

13. We are supported by the judgment of the Hon'ble Supreme Court in the ***Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407***, which clearly held that:

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority. 30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise”

14. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid and if the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application.

15. In the present case, we are satisfied that the present petition is maintainable and that the financial debt is due and there is a default in payment of debt. Accordingly, the above company petition is admitted by passing the following order.

ORDER

16. The above Company Petition No. (IB) 481 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Manpreet Estates LLP**.
17. The Petitioner has suggested name of Mr. Amit Vijay Karia an Interim Resolution Professional whose consent dated 24.12.2022 to be appointed as an Interim Resolution Professional of Corporate Debtor along with AFA dated 25.12.2022 is annexed to the Petition. Accordingly, we appoint Mr. Amit Vijay Karia (**amit.karia@incorpadvisor.in**), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02600/2021-2022/13969 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
18. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.
19. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - 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 the possession of the Corporate Debtor.
20. 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.
21. 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.
22. 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.
23. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
24. 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.
25. Accordingly, this Petition is **Admitted**.

26. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
27. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Saayli, LRA