



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-2

ITEM NO. 303
C.P.(IB) No. 222/(AHM)/2022

Order under section 7 of IBC

IN THE MATTER OF :

APRN Enterprise Pvt. Ltd.

....Applicant/Financial Creditor

V/s.

B.Nanji Enterprises Ltd.

....Respondent/Corporate Debtor

Order delivered on: 07/08/2023

Coram:

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Ajai Das Mehrotra, Hon'ble Member (T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH - COURT-II**

CP(IB)/222/NCLT/AHM/2022

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

In the Matter of:

APRN Enterprise Pvt. Ltd.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

B. Nanji Enterprises Ltd.

...RESPONDENT/CORPORATE DEBTOR

Order Pronounced On: 07/08/2023

Coram:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

M/s. APRN Enterprises Private Limited

(CIN: U21000MH1994PTC084095)

Sun Paradise Business Plaza,
7th Floor City Survey No.1,
A/456 Senapati Bapat Marg,
Lower Parel, Mumbai,
Maharashtra-400013

.... Applicant/Financial Creditor

Versus

M/s. B. Nanji Enterprises Limited

(CIN: L45201GJ1982PLC005148)

Moorti Bungalows,
5, Ashok Nagar Cooperative Housing Society Ltd,
B/h. Sundervan, Satellite,
Ahmedabad, Gujarat – 380015
(Email: bnanji@hotmail.com)

.... Respondent/Corporate Debtor

Appearance

For the Applicant : Mr. Nausher Kohli, Advocate a.w.
Mr. Saurabh Nikalje, Advocate and
Ms. Shikha Ginodia, Advocate.

For the Respondent : Mr. Ravi Pahwa, Advocate.



ORDER

1. This petition was originally filed by **Piramal Capital and Housing Finance Ltd.** (being successful resolution applicant of Dewan Housing Finance Corporation Limited (DHFL) and reverse merged into DHFL with effect from 30.09.2021) against **M/s. B. Nanji Enterprises Limited** – the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “CIRP”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of Rs. 32,37,78,767/-. The date of default is stated to be 08.03.2020.
2. Thereafter, Piramal Capital and Housing Finance Ltd. first assigned the debt to Omkara Assets ARC Pvt. Ltd. and later to M/s. APRN Enterprises Pvt. Ltd. Accordingly, an application bearing I.A no. 515 of 2023 was filed to substitute the name of M/s. APRN Enterprises Pvt. Ltd. in place of Piramal Capital and Housing Finance Ltd. The said application was allowed by this Tribunal vide order dated 04.05.2023.
3. The Financial Creditor i.e., M/s. APRN Enterprises Private Limited is a private limited company incorporated under the provisions of the Companies Act, 1956 on 28.12.1994 with CIN No. U21000MH1994PTC084095. The registered office of the Financial Creditor is situated at Sun Paradise Business Plaza, 7th Floor City Survey No.1, A/456 Senapati Bapat Marg, Lower Parel, Mumbai, Maharashtra-400013.



4. The Corporate Debtor i.e., M/s. B. Nanji Enterprises Ltd. is a listed company incorporated under the provisions of the Companies Act, 1956 on 15.04.1982 with CIN No. L45201GJ1982PLC005148. The said company is engaged in the business of real estate, providing real estate management and development services. The registered office of the Company is situated at Moorti Bungalows, 5, Ashok Nagar Cooperative Housing Society Ltd, B/h. Sundervan, Satellite, Ahmedabad, Gujarat-380015. The authorized/ share capital and Paid Up Share Capital of the Corporate Debtor are Rs. 6,00,00,000/- and Rs. 5,51,45,200/- respectively.
5. The averments made by the financial creditor in its petition and presented/argued by the learned counsel for the financial creditor are summarized hereunder:-
- I. At request of Corporate Debtor, Dewan Housing Finance Corporation Limited (DHFL) had sanctioned a project Loan of Rs.46,00,00,000/-. Thereafter, on the basis of accepted terms and conditions, loan agreement was executed between DHFL and Corporate Debtor pursuant to which an amount of Rs.42,00,00,000/- was disbursed to Corporate Debtor as follows:-

Sr. No.	Date of Disbursements	Amount
1.	27.03.2012	Rs.15,00,00,000/-
2.	12.07.2012	Rs.3,75,00,000/-
3.	25.10.2012	Rs.1,25,00,000/-
4.	11.02.2013	Rs.6,00,00,000/-



5.	21.03.2013	Rs.6,00,00,000/-
6.	17.05.2013	Rs.4,00,00,000/-
7.	18.07.2013	Rs.1,00,00,000/-
8.	02.07.2014	Rs.5,00,00,000/-
	Total	Rs.42,00,00,000/-

The proof of disbursement is placed on record vide affidavit dated 19.12.2022.

II. The loan facility provided by DHFL was secured by following:-

- a) Mortgage of the total project land of "India Colony" admeasuring around 18,90,050.76 sq.ft. at Sr. no. 206/1 206/7, 206/9, 207/8, 207/9, 207/10, 207/11, 207/12, 207/13, 207/14 at Village Vevji, Taluka-Talasari, Dist Thane along with present and future constructions thereon excluding the registered sold units.
- b) Charge on entire receivables of "sold" and "to be sold" apartments/flats/bungalows/shops/plots in the above project.
- c) Personal Guarntees of the Promoters, Sandeep Bhikubhai Padsala and Bhikubhai Nanjibhai Padsala.
- d) Demand promissory note dated 22.03.2012 issued by the Corporate Debtor for the entire loan amount of INR 46,00,00,000/- (Rupees Forty-Six Crores Only)



- e) Escrow agreement between DHFL, Corporate Debtor and Axis Bank (Escrow Agent).
- III. The Corporate Debtor started defaulting in payment of the Pre-Equated Installments (PEMIs)/ Equated Monthly Installments (EMIs). The last payment made by Corporate Debtor in Escrow account was on 13.05.2019. Statement of Escrow account evidencing last receipt of payment from the Corporate Debtor is enclosed to the Petition as Exhibit-T (Pg. 382).
- IV. Subsequently on 29.11.2019, the RBI filed the Company Petition bearing CP(IB) No. 4258/MB/2019 for initiating Corporate Insolvency Resolution Process against the DHFL. The said Company Petition was admitted by Hon'ble NCLT, Mumbai Bench vide its order dated 03.12.2019.
- V. On account of continuous default of the Corporate Debtor, DHFL through its authorized officer addressed a Recall Notice dated 28.02.2020 to Corporate Debtor and Personal Guarantors calling upon them to pay outstanding amount of Rs.22,57,72,751/- within 7 days from the receipt of the recall notice. Despite of receipt of recall notice, the Corporate Debtor and Personal Guarantors failed to repay the outstanding amount and thus the date of default is considered to be 08.03.2020.
- VI. On 10.09.2020, DHFL through its authorized officer issued notice upon Corporate Debtor and the Personal Guarantors under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest



Act, 2002 to pay outstanding amount of Rs.24,67,73,933/- within 60 days from the receipt of the SARFAESI Notice. However, no payment was made by Corporate Debtor and Personal Guarantor.

VII. Thereafter, personal guarantee was invoked by way of notice dated 06.02.2021 calling upon Personal Guarantors Sandeep Bhikubhai Padsala and Bhikubhai Nanjibhai Padsala to repay an amount of Rs.26,42,75,418/-.

VIII. In the meantime, erstwhile Financial Creditor i.e. Piramal Capital and Housing Finance Limited filed an application bearing I.A. No. 449/C-I/2019 in CP(IB) NO. 4258/MB/C-II/2019 whereby resolution plan submitted by Piramal Capital and Housing Finance Limited in CIRP of DHFL was approved vide order dated 07.06.2021 and Piramal Capital and Housing Finance Limited was reverse merged into DHFL with effect from 30.09.2021.

IX. In view of the above, Piramal Capital and Housing Finance Limited stepped into the shoes of DHFL and issued legal notice dated 13.11.2021 and demand notice dated 11.05.2022 upon Corporate Debtor and Personal Guarantor.

X. The amount claimed to be in default as per the records maintained is as follows:-

Particulars	Amount
Principal	Rs.11,96,34,362/-
Interest o/s	Rs.2,03,73,516/-



Additional interest	Rs.18,37,61,889/-
Chq Rtn/Other Chgs	Rs.9,000/-
Balance as per statement	Rs.32,37,78,767/-

- XI. Despite of issue of recall letter, SARFAESI notice, Invocation of personal guarantee notice, legal notice and demand notice upon the Corporate Debtor, the outstanding amount still remains unpaid. Therefore, the present petition was preferred by erstwhile Financial Creditor (Piramal Capital and Housing Finance Limited) on 11.07.2022 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
- XII. The Corporate Debtor has not disputed its liability and has in fact admitted the same in the annual report of the Corporate Debtor for the Financial Year ending on 31.03.2021. Annual Report of the Corporate Debtor for the financial year ending on 31.03.2021 is annexed as Exhibit-U (Pg. 383-464) of the application.
- XIII. The name of Interim Resolution Professional ('IRP') Mr. Atul Kumar Kansal, having registration No.IBBI/IPA-001/IP-P00035/2016-17/10088 is proposed and the consent of the IRP is also placed on record.
6. On issuance of notice, none appeared for the Corporate Debtor therefore, this Adjudicating Authority vide its order dated 10.10.2022, gave last chance to Corporate Debtor to appear and file its reply. However, on next occasion i.e. on 10.11.2022 Corporate Debtor failed to appear therefore, right to file reply



was closed and ex-parte order was passed to declare Corporate Debtor ex-parte.

7. During the hearing held on 04.05.2023, Ld. Counsel Mr. Saurabh Nikalje appeared on behalf of applicant in I.A. No. 515/2023 and submitted that original debt of Piramal Capital and Housing Finance Ltd. was first assigned to Omkara Assets ARC Pvt. Ltd. and thereafter, on 03.02.2023 it was assigned to M/s. APRN Enterprises Pvt. Ltd. therefore, I.A. No. 515/2023 is filed seeking substitution of the name of M/s. APRN Enterprises Pvt. Ltd. in place of Piramal Capital and Housing Finance Ltd. The substitution was allowed by this Adjudicating Authority vide order dated 04.05.2023.
8. On 14.06.2023, Learned Counsel Mr. Ravi Pahwa appeared for the Corporate Debtor and stated that settlement talks are going on and he needs two weeks time to conclude the settlement. Thereafter on 03.07.2023, Mr. Ravi Pahwa stated that he has already paid Rs. 2 Crores on 28.06.2023 and in all Rs.6 Crores from 11.04.2023 till 28.06.2023. He further stated that after paying balance amount of Rs.2 Crores he will get a letter of acceptance by 04.07.2023, in view of which matter was adjourned to 05.07.2023. However, Learned Counsel for the Corporate Debtor on 05.07.2023 submitted that he is unable to get the acceptance letter.
9. We have heard the learned counsel for the Financial Creditor and perused the relevant documents available on record. It is noted that DHFL and the Corporate Debtor had entered into a Loan Agreement dated 22.03.2012 whereby an amount of Rs.



42,00,00,000/- (Rupees Forty-Two Crores Only) was disbursed to Corporate Debtor. The Corporate Debtor had started defaulting in payment of instalments and the last payment made by the Corporate Debtor was on 13.05.2019. Thereafter, DHFL was admitted into CIRP and resolution plan filed by the erstwhile Financial Creditor i.e. Piramal Capital and Housing Finance Limited was approved and Piramal Capital and Housing Finance Limited was reverse merged into DHFL. It is further noted that, despite of issue of several notices upon Corporate Debtor no payment of outstanding amount has been made. Therefore, present petition was filed by erstwhile Financial Creditor. Thereafter an application was filed for substituting name of M/s. APRN Enterprises Pvt. Ltd. in place of Piramal Capital and Housing Finance Ltd. which was allowed.

10. The present petition is filed before this Adjudicating Authority on 11.07.2022. The last payment made by the Corporate Debtor was on 13.05.2019 and the Corporate Debtor has acknowledged the debt due in Annual Report for the Financial Year ending on 31.03.2021. Hence, the limitation period gets renewed as the Corporate Debtor has accepted its liability before the limitation period got over. Therefore, the said petition is well within the prescribed limitation period. No reply is filed by the Corporate Debtor. The Ld. Counsel for the Corporate Debtor appeared and requested time to settle the matter but settlement could not be arrived at. This application is complete, the debt is admitted by the Corporate Debtor which is above threshold and application is filed within limitation. Accordingly, the Application filed under section 7 of



the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

11. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor **B Nanji Enterprises Ltd.** is admitted in Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence thereof, a moratorium under section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the IBC, 2016.

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 Securitisation 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.*
- e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period
- (v) As proposed by the Financial Creditor, we appoint **Mr. Atul Kumar Kansal** having Registration No. IBBI/IPA-0011/IP-P00035/2016-17/10088, having address at Address: SCO 61, 3rd Floor, Old Judicial Complex, Sector-15, Civil Lines, Gurgaon-122001. (e-mail: cakansal@yahoo.com) under section 13 (1)(c) of the Code



to act as Interim Resolution Professional (IRP) subject to the condition that no disciplinary proceedings be pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or cooperate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police



Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/-** as fees and expenses till the COC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. A copy of the order may be communicate to the IBBI for their record and for getting status of the CD updated in MCA portal.
- (xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to



the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.

(xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

12. Accordingly, this petition **CP (IB) No. 222 of 2022** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Arati Suryavanshi-LRA