IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No.703
IB-441/ND/2022

IN THE MATTER OF:

M/s. Piramal Capital and Housing Finance Ltd.

…Financial Creditor

Versus

M/s. Hydric Town Planners Pvt. Ltd.

…Corporate Debtor

Order under Section 7 of IBC, 2016.

Order delivered on 26.05.2023

CORAM:
SHRI. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IB-441/ND/2022 stands dismissed.

SD/-	**SD/-**
(RAHUL BHATNAGAR)	**(P.S.N. PRASAD)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-441/(ND)/2022

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

In the matter of:

M/s. Piramal Capital and Housing Finance Ltd.
(Erstwhile Dewan Housing Finance Corporation Ltd.)
Registered office at:
601, 6th Floor, Amiti Building
Agastya Corporate Park Kamani Junction,
Mumbai-700070

...Financial Creditor

Versus

M/s. Hydric Town Planners Pvt. Ltd.
Registered office at:
XVI2190, No. 212, Gali No. 62-63,
Naiwala, Karol Bagh, Delhi-110005

...Corporate Debtor

<u>Coram:</u>

Shri. P.S.N. Prasad, Hon'ble Member (Judicial)
Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

Counsel for Applicant : Adv. Bihu Sharma

ORDER

PER- P.S.N PRASAD, MEMBER (JUDICIAL)

Date: 26.05.2023

1. The present application is filed by M/s Piramal Capital and Housing Finance Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as `CIRP') against M/s. Hydric Town Planners Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 53,26,52,972 (Rupees Fifety Three Crore Twenty Six Lakhs Fifety Two Thousand Nine Hundred and Seventy Two). The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

i. That the Corporate Debtor, Hydric Town Planners Private Limited, had executed the Deed of Guarantee dated 29.03.2018 offering Guarantee for the repayment of the facility extended to Crystal Facilities Management Pvt Ltd.

ii. That vide Loan Agreement dated 29.03.2018 entered into between Crystal Facilities Management Pvt Ltd ("CFMPL") and Dewan Housing Finance Corporation Limited, in furtherance of sanction letter dated 28.03.2018, a loan of Rs. 35 crores was approved and sanctioned to CFMPL.

iii. That pursuant to the approval of the resolution plan submitted by Piramal Capital & Housing Finance Limited in the corporate insolvency resolution process of Dewan Housing Finance Corporation Limited ("DHFL"), by the Hon'ble National Company Law Tribunal, Mumbai on 07.06.2021, Piramal Capital & Housing Finance Limited has been reverse merged into Dewan Housing Finance Corporation Limited with effect from 30.09.2021. The Certificate of Incorporation pursuant to change of name has been issued by the Registrar of Companies, Mumbai, dated

03.11.2021, wherein the name of Dewan Housing Finance Corporation Limited has been changed to Piramal Capital & Housing Finance Limited.

iv. The CFMPL's obligation to repay the loan along with all the amounts due under the Loan Agreement, was inter alia fully secured by, among other things a Corporate Guarantee deed dated March 29, 2018 executed by Hydric Town Planners Private Limited.

v. That the said Corporate Guarantee was issued by the Corporate Debtor in favour of the Financial Creditor, by which the Corporate Debtor issued and furnished an unconditional and irrevocable guarantee, securing CFMPL's payment obligations in terms of the Loan Agreement. In terms of the said Corporate Guarantee, the Corporate Debtor agreed that, in the event of any default on the part of CFMPL in making payments in relation to the loan availed, the Corporate Debtor shall forthwith pay to the Applicant/Financial Creditor, without protest or demur, all the amounts payable by

CFMPL to the Financial Creditor, under the Loan Agreement.

vi. That notice dated 22.02.2020 was adressed to CFMPL and other Guarantors, for an amount of Rs. 37,17,10,172/- (Rupees Thirty Seven Crores Seventeen Lakhs Ten Thousand One Hundred and Seventy Two) as on 22.02.2020. The said amount incorporated the principal outstanding, interest, default interest and other charges. Despite receipt of the said recall notice, the CFMPL and the Corporate Debtor and other Guarantors continued to be in default and failed to pay the outstanding amounts. The Corporate Debtor continues to be in default and miserably failed to discharge the said liability and the said amount remains to be paid and due. Thus, the Corporate Debtor is commercially insolvent and is not in a position to meet its liabilities.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 14.09.2022.

3. We have gone through the documents filed the Applicant and heard the arguments made by the counsel for the Applicant. The Applicant has claimed the default on part of the Respondent being the Guarantor for the Loan amount of Rs. 53,26,52,972 (Rupees Fifety Three Crore Twenty Six Lakhs Fifety Two Thousand Nine Hundred and Seventy Two) as on 11.05.2022.

4. Vide order dated 19.01.2023 paased by this Tribunal in IB-439/ND/2022 titlted M/s. Piramal Capital and Housing Finance Ltd. Vs. M/s. Crystal Facilites Management Pvt. Ltd., CIRP of M/s. Crystal Facilites Management Pvt. Ltd. has already been initiated for the same debt for which Corporate Guarantee was issued by the Corporate Debtor in favour of the Financial Creditor.

5. The Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 346 of 2018 in *"Dr. Vishnu Kumar Agarwal vs. M/s. Piramal Enterprises Ltd.* held that:

"32. There is no bar in the 'I & B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantor's or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.

6. The above judgement of Hon'ble NCLAT very clearly states that CIRP cannot be initiated against the Corporate Guarantor for the same debt if CIRP has already been initiated for the same debt against the Principal Borrower or vice versa.

7. In view of the above, we hereby dismiss the Section 7 petition filed by the Petitioner against guarantor.

Let copy of the order be served to the parties.

SD/-	**SD/-**
(RAHUL BHATNAGAR)	**(P.S.N. PRASAD)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**