IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 315/IBC/MB/2019

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

AASAN Corporate Solutions Private Limited.
CIN: U70102MH2011PTC219815
Registered office at: 4th Floor, Piramal Tower Annexe Ganpatrao Kadam Marg Lower Parel Mumbai- 400013

……**FINANCIAL CREDITOR**

Vs

Nirmal Lifestyle Realty Private Limited
CIN:U67120MH1995PTC094461
Jawahar Talkies Compound, Dr. Rajendra P. Road, Mulund (West), Mumbai- 400080

…….Corporate Debtor

Order delivered on: 06.12.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Financial Creditor: Mr. Shyam Kapadia, advocate

For the Respondent: Mr. Gaurav Joshi, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

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1. This Company petition is filed by AASAN Corporate Private Limited (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Nirmal Lifestyle Realty Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a financial debt of Rs. 258,36,32,228/- (Two Hundred Fifty Eight Crores Thirty Six Lakhs Thirty Two Thousand Two Hundred and Twenty Eight only).

BRIEF FACTS OF THE CASE

FIRST LOAN:

2. AASAN Corporate Solutions Private Limited ('AASAN"), Financial Creditor herein granted a loan in favour of Nirmal Lifestyle Realty Private Limited (NLRPL), Corporate Debtor on the terms and conditions stated in the First Deposit Agreement read with the Term Sheet. The total amount of loan granted was Rs. 230,00,00,000/-.

3. The Financial Creditor submits that the following Security documents were executed to secure the First Loan:
   i. Deed of Mortgage dated 30.03.2017 bearing registratioin no. 3102 of 2017;
   ii. Amendment Agreement to the Indenture of Mortgage dated 10.04.2017 bearing registration no.3660 of 2017;
   iii. Security Trustee Agreement dated 30.03.2017;
   iv. Personal Guarantee dated 31.03.2017;
   v. Corporate Guarantee dated 31.03.2017;
   vi. Demand Promissory Note dated 31.03.2017;

vii. Share Pledge Agreement dated 31.03.2017;

viii. Power of Attorney dated 31.03.2017 and

ix. Letter dated 21.11.2017 addressed by NLRPL to IDBI and AASAN.

4. The Financial Creditor submits that as per the terms of the Fist Deposit Agreement read with the Term Sheet, the First Loan was repayable on the expiry of 3 (three) months from the date of the First Loan was made i.e. it was repayable by 30.06.2017. however, by and under a letter dated 21.11.2017 addressed by the Corporate Debtor to IDBI and the Financial Creditor, the period within which the First Loan was repayable was extended upto 31.12.2017 on the terms and conditions set out therein. The letter dated 21.11.2017 has been accepted by IDBI and the Financial Creditor. By an under a letter dated 09.03.2018 addressed by the Corporate Debtor to IDBI and the Financial Creditor the period within which the First Loan was to be repaid was further extended up to 31.03.2018 (First Term).

5. However, only a sum of Rs. 12,40,00,000/- towards principal and Rs. 18,54,03,616/- towards interest (including the TDS amount) was paid by NLRPL on 29.09.2017. NLRPL failed to repay the balance principal amount of Rs. 217,60,00,000/- and the outstanding interest before the expiry of the First Term.

6. Further, interest at the rate of 20% per annum was payable on the end of the First Term on the First Loan. The First Deposit Agreement, the Term Sheet and the documents executed pursuant thereto ("First Transaction Documents"), inter alia, provided that on the occurrence of an event of a default under any of the First Transaction Documents, additional interest in the form of default interest was payable

at the rate of 30% (inclusive of the interest rate) per annum which was to be compounded monthly and the interest period for such unpaid sum would be calculated from the due date till the date of actual payment.

7. On 31.03.2018, the Corporate Debtor was liable to repay the outstanding principal amount of Rs. 217,60,00,000/- net interest of Rs. 23,70,19,226/-, on the outstanding principal loan aggregating to a sum of Rs. 241,30,19,266/- (Rupees Two Hundred and Forty One Crore Thirty Lakhs Nineteen Thousand Two Hundred and Sixty Six only) which NLRPL has failed to pay and therefore an event of default has occurred and is continuing.

8. Thereafter, the Financial Creditor through its advocate issued notice dated 17.10.2018 to the Corporate Debtor whereby Corporate Debtor was called upon to repay the First Loan. However, the Corporate Debtor has not made any payment nor has provided any explanation for its default. No response has been given by Corporate Debtor to notice dated 17.10.2018.

9. The Financial Creditor submits that by an under letter dated 17.10.2018 addressed by IDBI to Nirmal Lifestyle Limited, the Corporate Debtor guarantee dated 31.03.2017 was invoked. No response has been given by Nirmal Lifestyle Limited to notice dated 17.10.2018. By and under letter dated 17.10.2018 addressed by IDBI to Mr. Dharmesh Jain, the Personal Guarantee dated 31.03.2017 was invoked. No response has been given by Mr. Dharmesh Jain to notice dated 17.10.2018.

10. The Financial Creditor further submits that thus, at the time of filing this Petition an amount of Rs. 258,36,32,228/- (Rupees Two Hundred Fifty-Eight Crore Thirty-Six Lakh Thirty-Two Thousand Two Hundred and Twenty-Eight only),

being Rs. 217,60,00,000/- (Rupees Two Hundred and Seventeen Crore and Sixty Lakh) towards the principal amount of the First Loan, Rs. 23,70,19,266/- (Rupees Twenty-Three Crore Seventy Lakhs Nineteen Thousand Two Hundred and Sixty-Six only) towards the total net Interest (net of tax deducted at source calculated till 15.01.2019 and Rs. 17,06,12,962/- towards net default interest. In addition, the Corporate Debtor is required to make payment of Rs. 8,95,59,380/- to the Government towards TDS liability as on 15.01.2019.

SECOND LOAN:

11. The Financial Creditor agreed to grant a loan in favour of Corporate Debtor on the terms and conditions stated in the Second Deposit Agreement. The total amount of loan agreed to be granted was Rs. 277,00,00,000/-. However, a sum of Rs. 38,08,00,099/- out of the Rs. 277,00,00,000/- (Rupees Two Hundred and Seven Crore Only) was disbursed by Financial Creditor to Corporate Debtor in tranches.

12. The following Security documents were executed to secure the Second Loan:

    i. Indenture of Mortgage dated 27.10.2017 bearing registration no. 11151 of 2017;
    ii. Deed of Rectification dated 08.11.2017 bearing registration no. 11520;
    iii. Security Trustee Agreement dated 27.10.2017;
    iv. Personal Guarantee dated 27.10.2017;
    v. Corporate Guarantee dated 27.10.2017;
    vi. Demand Promissory Note dated 27.10.2017;
    vii. Share Pledge Agreement dated 27.10.2017;
    viii. Irrevocable Power of Attorney dated 27.10.2017;
    ix. Deed of Hypothecation dated 27.10.2017 and

x. Power of Attorney dated 27.10.2017.

13. As per the terms of the Second Deposit Agreement, the Second Loan was repayable on the expiry of 6 (six) months from the date of the Second Lona was made i.e. 09.05.2018 ("Second Term").

14. Further, interest at the rate of 16% per annum was payable on the respective repayment date on the Second Loan. The Second Loan and the documents executed pursuant thereto (Second Transaction Documents), inter alia, provided that on the occurrence of an event of a default under any of the Second Transaction Documents, additional interest in the form of default interest was payable at the rate of 30% per annum which was to be compounded quarterly and the interest period for such unpaid sum would be calculated from the date till the date of actual payment.

15. On 09.05.2018, the Corporate Debtor was liable to repay the outstanding principal amount of Rs. 38,08,00,099/- together with gross Interest of Rs. 1,39,17,408/- on the outstanding principal loan, aggregating to a sum of Rs. 39,47,17,507/- which the Corporate Debtor has failed to pay and therefore an event of default has occurred and is continuing.

16. Thereafter, the Financial Creditor through its advocate issued notice dated 17.10.2018 to the Corporate Debtor whereby the Corporate Debtor was called upon to repay the Second Lona. However, the Corporate Debtor has not made any payment nor has provided any explanation for its default. No response has been given by Corporate Debtor to notice dated 17.10.2018.

17. The Financial Creditor submits that at the time of filing of this petition an amount of Rs. 47,09,20,305/- being Rs. 38,08,00,099/- towards the principal amount of the Second

Loan; Rs. 1,25,25,667/- towards the total net Interest (net of tax deducted at source) calculated till 15.01.2019 and Rs. 7,75,94,538/- towards net default interest (net of tax deducted at source) calculated till 15.01.2019 is due and payable to Financial Creditor. In addition, the Corporate Debtor is required to make payment of Rs. 1,00,13,356/- to the Government towards TDS liability as on 15.01.2019.

SUBMISSIONS OF CORPORATE DEBTOR:

18. The Corporate Debtor filed affidavit in reply through Rajeev Jain, Director of the Corporate Debtor opposing the admission of the above Company Petition. The brief submissions of the Corporate Debtor are as follows:

    i. The Corporate Debtor submits that it is an admitted position that the amounts allegedly granted by the Financial Creditor to the Corporate Debtor are secured by certain properties. It is also admitted that the value of the said properties for exceeds the claim amount of the Financial Creditor and therefore, the default alleged by the Financial Creditor does not tantamount to a default under the IBC.

    ii. Further, a bare perusal of the security documents in the Company Petition indicates that the transaction between the Financial Creditor and the Corporate Debtor is not a simpliciter loan or finance transaction. Additionally, the parties, in the security documents, have already reached a complete understanding about the consequences of any default in repayment.

    iii. The Corporate Debtor further submits that the petition is not maintainable, on the following grounds:

        a. Financial Creditor has committed breach of contract: Under the First Deposit Agreement dated 31.03.2017

(First Deposit), the Financial Creditor had agreed to advance an amount of Rs. 2,30,00,00,000/- to the Corporate Debtor and under the Second Deposit Agreement dated 27.10.2017 (Second Deposit), the Financial Creditor had agreed to advance an amount of Rs. 2,77,00,00,000/- to the Corporate Debtor. However, from the Second Deposit, only an amount of Rs. 38,08,00,099/- was disbursed. Under the First Deposit Term Sheets dated 28.03.2017 and 31.03.2017, the amount advanced under the Second Deposit was to be utilized to an extent of Rs. 2,37,00,00,000/- for the repayment of the amounts advanced under the First Deposit. However, as the Second Deposit was not fully advanced to the Corporate Debtor, it was unable to repay the First Deposit owing to breach of contract on part of the Financial Creditor. Hence, a claim made by the Financial Creditor under the First Deposit are untenable, bad in law and not maintainable.

b. Amount under the First Deposit are secured: In furtherance of the First Deposit, a First Indenture of Mortgage dated 10.04.2017 bearing Registration No. 3660 of 2017 (First Mortgage Deed) was executed between the Corporate Debtor, Nirmal Lifestyle limited, Sanofi India Limited, Mafatlal Dyes and Chemicals Limited and Ralliwolf Limited as mortgagors (Mortgagors) and IDBI Trusteeship Services Limited (which was the security trustee of the Financial Creditor) as mortgagee (Mortgagee). Under the First Mortgage Deed, certain properties belonging to the above Mortgagors were mortgaged in favour of the Mortgagee as security for the amounts advanced under the First Deposit. Under Clause 3- “Grant, convey and Transfer” of the First Mortgage Deed, the Mortgagors granted, transferred, conveyed, assigned and assured unto the Mortgagee certain immovable properties as security which shall, upon repayment of the amounts advanced under the First Deposit, be re-conveyed in favour of the Mortgagor4s. Additionally, under Clause 11- “Event of Default”, Sub-clause 11.2- “Enforcement” states that the security created under the First Mortgage Deed in favour of the Mortgagee shall become enforceable on the occurrence of an event of default, sub-clause 11.3- “General Enforcement Powers” grants the Mortgagee all the powers which may be exercised by the Receiver for the purpose of recovering any amounts due, and Sub-clause 11.4- “Power of Sale” empowers the Mortgagee to enter, take possession of, receive rents and profits, assign rights in respect of and sell the mortgaged properties without the intervention of any court. Thus, the Financial Creditor has at its disposal adequate remedies in law to appropriate the security interest and recover any monies allegedly due to it. Admittedly, the claim of the Financial Creditor under the First Deposit is Rs. 2,58,36,32,228/- whereas the estimated value of the properties mortgaged under the First Mortgage Deed is around Rs. 5,00,00,00,000/-. Thus, the amount of the security provided far exceeds the claim of the Financial Creditor under the First Deposit.

c. <u>Amounts under the Second Deposit are secured</u>: In furtherance of the Second Deposit, a Second Indenture of Mortgage dated 27.10.2017 bearing Registration No. 11151 of 2017 (Second Mortgage Deed) was executed between the Mortgagors and the Mortgagee. Under the Second Mortgage Deed, certain properties belonging to the above Mortgagors were mortgaged in favour of the Mortgagee as security for the amount advanced under the Second Deposit. Under Clause 3- "<u>Grant, Convey and Transfer</u>" of the Second Mortgage Deed, the Mortgages granted, transferred, conveyed, assigned and assured unto the Mortgagee certain immovable properties as security which shall, upon repayment of the amounts advanced under the First Deposit, be re-conveyed n favour of the Mortgagors. Additionally, under <u>Clause 11- "Event of Default"</u>, Sub-clause 11.2- "Enforcement" states that the security created under the First Mortgage Deed in favour of the Mortgagee shall become enforceable on the occurrence of an event of default, Sub-Clause 11.3- General Enforcement Powers" grants the Mortgagee all the powers which may be exercised by the Receiver for the purpose of recovering any amounts due, and Sub-clause 11.4- "Power of Sale" empowers the Mortgagee to enter, take possession of, receive rents and profits, assign rights in respect of and sell the mortgaged properties without the intervention of any court. Thus, the Financial Creditor has at its disposal appropriate remedies in law to appropriate the security interest and recover any monies allegedly due to it. Admittedly, the claim of the Financial Creditor under the Second Deposit is Rs. 47,09,20,305/- whereas the estimated value of the properties mortgaged is around Rs. 5,00,00,00,000/-. Thus, the amount of the security provided far exceeds the entire claim of the Financial Creditor (under the First Deposit and the Second Deposit), and the petition ought to be dismissed.

FINDINGS

1. In the light of above pleadings, the only substantial issue that needs to be decided by this Bench in the matter is:

Whether the above Company Petition is not maintainable under Section 7 of the Code in view of availability of Enough Immovable Property Security created by the Corporate Debtor under two Indenture of Mortgages dated 30.03.2017 and 27.10.2017 executed by the Corporate Debtor that amounts creation of English Mortgage?

19. Heard the arguments of Mr. Shyam Kapadia, learned counsel appearing for the Financial Creditor and Mr. Gaurav Joshi, Learned Senior Counsel appearing for the Corporate Debtor.

Before deciding the above issue, it is important to briefly mention here the conduct of the Corporate Debtor in the present case. The above Company Petition was filed on 21.01.2019 and was first listed on board on 13.02.2019. Thereafter, the matter was adjourned from time to time. In spite of availing number of adjournments, the Corporate Debtor did not choose to file any reply except taking adjournments on the pretext of settlement. This Bench after granting repeated adjournments to the Corporate Debtor for settlement of the matter, passed the following order on 28.07.2021:

"…Mr. Shyam Kapadia, counsel appeared for the petitioner, Mr. Simil Purohit, counsel appearing for the corporate debtor are present through virtual hearing.

Counsel appearing for the corporate debtor requested for an adjournment on the ground that the corporate debtor is seriously making attempt to dispose of the property belonging to the corporate debtor and clear the entire debt. of the petitioner very soon.

The above request is considered and accordingly, the matter is adjourned to 20.08.2021 with clear understanding and directions that in the event of failure on the part of the corporate debtor in settling the claims of the petitioner the company petition would automatically stands admitted since the corporate debtor even did not choose to file reply in the above petition. List this matter on 20.08.2021 high on board…"

20. Sensing the mood of this Bench, the Corporate Debtor all of sudden filed reply on 26.10.2021 after securing the order copy of '*Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited* passed by the Division Bench (Court-IV, NCLT, Mumbai).

21. It is the submission of the Learned Senior Counsel Mr. Gaurav Joshi appearing for the Corporate Debtor that the amounts advanced by the Financial Creditor to the Corporate Debtor under the two deposit agreements are adequately secured through creation of mortgage of immovable properties belonging to the Corporate Debtor under the above referred two Indenture of Mortgages. He further contends that the

value of the mortgage properties is far higher than the amounts claimed by the Financial Creditor in the above Company Petition and the mortgagor through the above mortgage deeds ostensibly sold the properties to the Financial Creditor and the remedy of the Financial Creditor is only to proceed against the mortgage properties and not by filing the present petition. Mr. Joshi further contends that the terms and conditions of both the Indenture of Mortgages amounts to creation of English Mortgage and the remedy of the Mortgagee under an English Mortgage is only to proceed against the mortgage property. Except the above contention Mr. Joshi did not raise any other serious legal pleas during the course of his arguments.

22. In order to buttress his argument, he has invited the attention of this Bench to the order passed by the Division Bench -IV, NCLT Mumbai headed by Smt. Suchitra Kanuparthi, Member (J) and Mr. Rajesh Sharma, Member (T) wherein the above Division Bench held as follows:

> *"…26. Therefore, in terms of the English Mortgage, the Mortgagor has a recourse to repay the mortgaged debt and has the right to seek reconveyance of the properties to the mortgagor upon complete satisfaction of Debt.*
>
> *27. The Petitioner has absolute rights in the mortgaged property and cannot initiate any action under section 7 upon non-payment of dues under the Debenture Trust Deed, the Petitioner has agreed to recourse and sell the mortgaged assets and recover the money due…"*

23. Mr. Gaurav Joshi also invited the attention of this Bench to the order passed by the Hon'ble NCLAT in the matter of *DLF*

Phase-IV Commercial Developers Limited, Company Appeal (AT) No. 180 of 2019' wherein it held:

> *"…8. Keeping in view the foregoing and all relevant considerations as also the settled law on the subject, the impugned order falling within the purview of per incuriam cannot be supported. The Tribunal should have applied its mind in the light of judicial precedents brought to its notice by way of an affidavit, and in the event of the views expressed by the Coordinate or Larger Benches being squarely applicable, followed the same. Such application of mind being abysmally absent, the impugned order is unsustainable and has to be set aside to the extent it relates to directions for convening of the meetings of Unsecured Creditors of Applicant No. 4 and the meetings of the Equity Shareholders, Secured and Unsecured Creditors of Appellant No.5…"*

24. Mr. Shyam Kapadia, counsel appearing for the Financial Creditor refuted the argument of the Corporate Debtor by inviting the attention of this Bench to the following clauses of the deposit agreements executed by the Corporate Debtor in favour of the Financial Creditor:

> *"11.2. Each of the Security mentioned above is independent of the other and may be enforced independently at the sole discretion of the Depositor upon the occurrence of an Event of Default and as per the terms of this Deed and other Finance Documents."*

> *"17.* ***CONSEQUENCES OF AN EVENT OF DEFAULT***
>
> *17.1. On the occurrence of an Event of Default the Depositor shall in that event have the rights described hereunder and the rights available under Applicable Law, as well as under*

any Security Document created in accordance with this Agreement.

(i) Cancel any unplaced Deposit;

(ii) Declare that all or part of the Deposit, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

(iii) Accelerate the Repayment of the Deposit;

(iv) Exercise any other right that the Depositors may have under the Finance Documents or under applicable Law. The Depositor reserves the right to proceed under the Applicable Law for the time being in force including but not limited to securitization right under SARFAESI Act."

…

…

…

25. He has also invited the attention of this Bench to clause 19.4 of the Indenture of Mortgage created by the Corporate Debtor in favour of the Financial Creditor that reads as follows:

"19.4. ***Other Remedies***

The rights and remedies conferred upon the Mortgagee under this Indenture shall not prejudice any other rights or remedies, to which the Mortgagee may, independently of this Indenture, be entitled or any collateral or other security now or hereafter held by the Mortgagee."

26. It is the submission of Mr. Shyam Kapadia that the remedy of the Mortgagee/Financial Creditor available under the above code is in addition to the remedies available under the Indenture of Mortgage and not in derogation to the remedy available under the Code. He further contents that that the language of the deed of the Mortgage is different from that of

an English Mortgage unlike in the '*Beacon Trusteeship Limited V. Neptune Ventures and Developers Private Limited'* wherein the said word reflected in the Mortgage and form the basis of decision of the Division Bench-IV of NCLT Mumbai.

27. Mr. Shyam Kapadia also invited the attention of this Bench to another order passed by Division Bench comprising of the same Judicial Member Smt. Suchitra Kanuparthi and Mr. Chandra Bhan Singh, Member Technical in the case of *IDBI Trusteeship Services Ltd. V. Ornate Spaces Pvt. Ltd.* wherein the same Judicial Member has taken contrary view and admitted the above Company Petition bearing CP No. 4469/2019. Mr. Kapadia further submits that as per clause 19.4 of the indenture of mortgage the rights and remedies conferred upon the mortgagee under this Indenture shall not prejudice any other rights or remedies, to which the Mortgagee may, independently of this Indenture, be entitled or any collateral or other security now or hereafter held by the Mortgagee and therefore it is not for the debtor to dictate terms to the financial creditor as to whether he has to proceed first against the securities or personally against the debtor.

28. After hearing the submissions on both sides and upon perusing both the orders passed by the same Judicial Member, this bench is of the considered opinion that no credence can be given to the order relied upon by the Corporate Debtor in *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited* in view of contrary stand of the same Judicial Member in the other order i.e. *IDBI Trusteeship Services Ltd. V. Ornate Spaces Pvt. Ltd.* It is important to mention here that the Judicial Member Smt. Suchitra Kanuparthi in the above order IDBI Trusteeship

Services Ltd. in para 5 having clearly observed that the Corporate Debtor has created an English Mortgage and the Financial Creditor in the above case already filed commercial suit against the Corporate Debtor on the file of Hon'ble Bombay High Court, admitted the Company Petition and ordered initiation of CIRP. In the light of above contradictory observations of the same Judicial Member in both the above rulings, relied by the Corporate Debtor, this Bench is of the opinion that the entire argument of Mr. Gaurav Joshi deserves to be rejected.

29. It is important to mention here that the Corporate Debtor is neither disputing the debt nor the default committed by them in this case. The only contention of the Corporate Debtor is that the remedy of the Financial Creditor is to proceed against the mortgage securities as per the order of *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited*.

30. It is also important to mention here that on the date of hearing the arguments, the Learned Senior Counsel, Mr. Gaurav Joshi has shown a pay order for an amount of Rs. 180 crores issued by Axis Bank in the name of the Financial Creditor at the behest of 3rd party who is ready and willing to purchase the mortgage property subject to handing over of physical possession to the intending purchaser. The Learned Counsel Mr. Gaurav Joshi himself fairly admitted that the transaction of sale could not get through on account of the inability on the part of the Corporate Debtor in handing over the physical possession of the Property to the intending purchaser as the property is in the physical occupation of some of the employees of the Corporate Debtor for which a litigation is also going on. Under these circumstances the question of disposal

of the mortgage property by the Financial Creditor does not arise as no buyer would come forward to purchase a property running into hundreds of crores without getting physical possession. Hence, the rosy picture of the corporate Debtor to the effect that the Financial Creditor can realise their dues by readily selling the Mortgage properties is practically impossible and the above argument is nothing but an afterthought.

31. As discussed above, the Corporate Debtor is not disputing the debt and default in this case and the application is complete in all respects. The Financial Creditor also suggested the name of proposed IRP. When once the Financial Creditor establishes the existence of debt and default, the Adjudicating Authority has no option except to admit the company Petition. In view of the above observations and findings, this Bench is of the considered opinion that the above company is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -315(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Nirmal Lifestyle Reality Pvt. Ltd.*

b. This Bench hereby appoints Mr. Arun Kapoor, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00030/2017-2018/10230 having registered office at: G-601, Army Co-operative Housing Society, Section 9, Nerul (East), Navi Mumbai, Maharashtra 400706 (E-mail id: arun.kapoor58@yahoo.in) as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That 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.

g. That 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.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. 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.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)