



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

C.P. (IB) 580/MB/2024

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

In the matter of

Capacit'e Infraprojects Limited

Having its registered office at:

605-607, Shrikant Chambers, Phase-I,
6th Floor, Adjacent to R.K. Studios,
Sion-Trombay Road, Mumbai – 400 071.

... Petitioner/ Financial Creditor

Versus

Epitome Residency Private Limited

Having its registered office at:

One BKC, A Wing 1401, Plot No. C-66,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 055.

... Respondent/ Corporate Debtor

Order Pronounced on: 22.04.2025

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For Financial Creditor: Adv. Vishal Phal a/w Adv. Bhupendra Dave i/b
Naavick Legal

For Corporate Debtor: None appears on behalf of Corporate Debtor

PER: SHRI. HARIHARAN NEELAKANTA IYER, MEMBER (TECHNICAL)

1. The present Company Petition (IB) – 580(MB)/2024 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **'IBC' / 'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Capacit'e Infraprojects Limited (hereinafter referred to as **'Financial Creditor' / 'Petitioner'**) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as **'CIRP'**) against Epitome Residency Private Limited (hereinafter referred to as **'Corporate Debtor' / 'Respondent'**) for default of Rs. 18,04,17,518 (Rupees Eighteen Crores Four Lakhs Seventeen Thousand Five Hundred and Eighteen Only/-) as on 12.06.2022 (**'said default'**).

Brief Facts:

2. The Capacit'e Infraprojects Limited was incorporated as a public company limited by shares on 05.06.2008, with Registrar of Companies at Mumbai.
3. The Corporate Debtor was incorporated as a private limited company on 03.07.2008. It is engaged in carrying on the business of Real Estate Development. In order to cater to its general business purposes, the Financial Creditor extended short-term financial assistance of Rs. 15,00,00,000/- at a simple interest of 15% p.a., as Inter-Corporate Deposits (**'ICD' / 'said loan'**) to the Corporate Debtor vide loan agreement dated 07.05.2018. The Agreement for Inter Corporate Deposits with Security is attached as 'Annexure – 1' to the Petition (**'said loan agreement'**).



4. The ICD was disbursed on 08.05.2018 in three tranches, each amounting to Rs. 5 Crores. The repayment of this loan was structured in nine instalments, with due dates commencing from 07.05.2018 and extending to 27.03.2019.
5. The said loan was sanctioned on the basis of a *security created over the Apartments/ Flats in possession of the Corporate Debtor*. A 'Deed of Mortgage' dated 07.05.2018 was executed to secure and give effect to the terms of grant of ICD, which is attached as 'Annexure-2' to the Petition.
6. The details of the property so mortgaged is given at Schedule I of the said Agreement for ICD with Security dated 07.05.2018. The flat/units mortgaged is located at 3001, 3501 and 3701, Tower-D at 30th, 35th and 37th Floors, Imperial Heights, situated at land bearing CTS No. 1(Part), corresponding to Survey No. 6 (Part) situated at Village Goregaon, BEST Nagar, Oshiwara, Goregaon (West), Mumbai – 400 062 (**'said flats'**). Accordingly, the Corporate Debtor submits to have executed the Agreement to Sale along with Possession Letters and Power of Attorney dated 07.05.2019 with respect to the said flats.
7. The tenure of repayment of ICD was revised/modified vide Supplemental Agreements dated 23.09.2019, 23.12.2019, 22.03.2020, 17.12.2020, 18.03.2021, 14.12.2021 and 15.03.2022 (**'said Supplemental Agreements'**). The last revised/modified tenure of repayment of outstanding principal amount of Rs. 9,99,99,999/-, was extended till 12.07.2022. Copies of the Supplemental Agreements are attached as 'Annexure-4 Colly' to the Petition.
8. Besides, said Supplemental Agreements were secured by mortgage of properties located at 4201, Tower-B, 42nd, 43rd and 44th Floors, Imperial Heights, situated at land bearing CTS No. 1(Part), corresponding to



Survey No. 6(Part) situated at Village Goregaon, BEST Nagar, Oshiwara, Goregaon (West), Mumbai – 400 062.

9. The Financial Creditor submits that the Respondent has not only failed to adhere to its contractual obligations under the loan agreements but is also obstructing the enforcement of the security interest created by the Deed of Mortgage. This obstruction prevents the Financial Creditor from entering and taking possession of the secured flats, thereby denying the Financial Creditor its rightful claim and possession of the said flats, which are due under the said loan agreement and the supplemental agreements.
10. The Financial Creditor, in accordance with the terms and conditions stipulated in said loan agreements and supplemental agreements, issued a Demand Notice dated 08.04.2024 concerning the outstanding unpaid debt of Rs. 20,54,10,116/- in default from the Corporate Debtor, as detailed in ‘Annexure -5’ of the Petition (**‘said demand notice’**).
11. Moreover, on perusal of said demand notice, it is noted that following amounts have been repaid in instalments as per the terms of said loan agreement by the Corporate Debtor as reproduced below-:

Due Date	Instalment Amount Paid (Rs.)	Closing Balance Principal Amount (Rs.)
31.07.2018	1,66,66,667	13,33,33,333
31.08.2018	1,66,66,667	11,66,66,666
30.09.2018	1,66,66,667	9,99,99,999



However, no response against the said demand notice was received from the Corporate Debtor.

12. The Financial Creditor states that the Corporate Debtor has defaulted repayment from fourth instalment due of said loan.
13. The total amount of default, as specified in Part-IV of Form I Particulars of Financial Debt (under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) aggregates to Rs. 18,04,17,518/-, which includes a principal outstanding amount of Rs. 9,99,99,999/- and outstanding interest amounting to Rs. 8,04,17,519/-. The 'date of default' as recorded herein is 12.07.2022.
14. With reference to the given circumstances, the Financial Creditor has filed the instant petition on 10.05.2024 for default amounting to **Rs. 18,04,17,518 (Rupees Eighteen Crores Four Lakhs Seventeen Thousand Five Hundred and Eighteen Only/-)** outstanding as on 12.07.2022.

Findings

15. We have considered submissions of learned counsel for the Applicant and perused documents on record.
16. It is noted that the Corporate Debtor has failed to submit its representation, despite being afforded sufficient opportunity. A reference is made to order dated 07.02.2025, which is reproduced as under:

“xxx

1. *Despite the order dated 06.12.2024 granting one last opportunity is given to the Corporate Debtor to file reply within*

2 weeks, neither has the reply been filed nor has the Corporate Debtor appeared.

2. *Under the circumstances, we are constrained to close the right of the Corporate Debtor to file reply.*

xxx”

17. According to the last Supplemental Agreement dated 15.03.2022 entered between the Financial Creditor and Corporate Debtor, the tenure of ICD is 90 days from 15.03.2022 till 12.06.2022. Following is the relevant information extracted from the Supplemental Agreement dated 15.03.2022, as under-:

- a. Outstanding sum payable: Rs. 9,99,99,999/-;
- b. Interest Amount (Net): Rs. 33,28,767/-; and
- c. 'Repayment Terms' is mentioned as:

Repayment of principal in lumpsum, payable at the expiry of tenure of this Agreement i.e. June 12, 2022.

18. As the Corporate Debtor defaulted on the repayment of the ICD on 12.06.2022, the Financial Creditor issued a Demand Notice dated 08.04.2024. In the said Demand Notice, the Financial Creditor explicitly stated its inability to enforce the security interest created over the said Flats under the Deed of Mortgage. It is due to failure of Corporate Debtor to register the Agreement to Sale for the said flats secured under the Deed of Mortgage, thereby preventing the Financial Creditor from obtaining actual and judicial possession of the secured assets.

19. We find that the Corporate Debtor has defaulted on several terms in abiding to the repayment schedule as provided by the Supplemental Agreement for ICD extended by the Capacit'e Infraprojects Limited. It is pertinent to consider the details of amount due from the Corporate Debtor as given in said demand notice dated 08.04.2024 at 'Annexure-5' of the Petition. However, no reply to the said Demand Notice was made by the Corporate Debtor.




20. The Financial Creditor has duly filed Form 1A (IAAA) with the Insolvency and Bankruptcy Board of India (IBBI) on 28.06.2024, for the purpose of serving a copy of the application for the initiation of the Corporate Insolvency Resolution Process (CIRP) to the IBBI, and has received acknowledgement ID IAAA-0624-005583.
21. Upon considering the information obtained from the aforementioned paragraphs, this Tribunal considers it sufficient to consider that as per Supplemental Agreement dated 15.03.2022, the date of default repayment was 12.07.2022. Thus, the limitation period is to be calculated from 12.07.2022 which ends on 12.07.2025. The petition was filed on 10.05.2024, which is well within limitation period.
22. This Tribunal has the jurisdiction to adjudicate the present case in accordance with Section 60(1) of the IBC, as the registered office of the Corporate Debtor, as specified in the cause title, is situated within the territorial limits of State of Maharashtra.
23. Furthermore, it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under Section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr, (2018) 1 SCC 407***, wherein it was held as follows:

“28. ... 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 a 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 that the adjudicating authority may reject an application and not otherwise.”

(emphasis supplied)

24. Accordingly, we find that the date of default is 12.07.2022 and the default amount is Rs. 18,04,17,518. From perusal of the record and the documents relied upon by the Petitioner, it is hereby proved that there has been a financial debt in respect of which default is committed by the Corporate Debtor and further the petition under Section 7 of the IBC is filed within the period of limitation period and the default amount is in excess of Rs. 1 Crore and is above the threshold limit mandated under Section 4(1) of the Code. Accordingly, we are satisfied that debt and default have been established.
25. In view of the above findings, the present Petition is maintainable.
26. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition (IB)/580(MB)/2024 is admitted and ordered as follows:

ORDER

- i. The petition bearing CP (IB) – 580(MB)/2024 filed by the **Capacit'e Infracorjects Limited**, the Financial Creditor, under section 7 of the IBC read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Epitome Residency Private Limited**, the Corporate Debtor, is **admitted**.



- ii. This bench looking into the written communication dated 19.10.2023 hereby **appoints Mr. Bharat Ramakant Upadhyay, Registration No. IBBI/IPA-002/IP-N00120/2017-2018/10289 as the Interim Resolution Professional ('IRP')** having **e-mail brupadhyay@hotmail.com** to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016. The Written Communication dated 07.05.2024 is accompanied by Authorization for Assignment ('AFA') given by proposed IRP. Upon checking IBBI webportal, we find that AFA is valid upto 31.12.2025.
- iii. There shall be a moratorium under section 14 of the IBC, in regard to 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- iv. Notwithstanding the above, during the period of moratorium:



- i. 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;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- v. 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.
- vi. The public announcement of the Corporate Insolvency Resolution process shall be made immediately by the IRP as specified under section 13 of the Code regarding the admission of this application under Section 7 of the Code. The expression 'immediately' means not later than three days from the date of appointment of IRP as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vii. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code. 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.
- viii. The Financial Creditor shall deposit a sum of Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand 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).

- ix. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- x. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xi. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xiii. Accordingly, this Petition bearing no. **C.P. (IB) 580/MB/2024** is **Admitted.**

SD/-

Hariharan Neelakanta Iyer
(MEMBER TECHNICAL)

SD/-

Lakshmi Gurung
(MEMBER JUDICIAL)

Akshita, L.R.A.