

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV



CP (IB) 578/MB/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

India Home Loan Limited

... Financial Creditor/Applicant

Versus

Chandrabhaga Realtors Private Limited

... Corporate Debtor/Respondent

Order Delivered on: **07.05.2024**

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Manoj Mishra Present.

For the Corporate Debtor : None Present.

ORDER

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **India Home Loan Limited** (“the Financial Creditor”) herein the “Applicant”, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Chandrabhaga Realtors Private Limited** (“the Corporate Debtor”).
2. The Corporate Debtor is a private company limited by shares incorporated on 30.12.2015 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered

office is SNO. 70/1, New Sangavi, Ganesh Nagar, Pune- 411061. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present Petition was filed on 09.11.2022 before this Tribunal for claiming an Aggregate Amount for a sum of Rs. 2,94,40,000/- (Rupees Two Crore Ninety-Four Lakhs Forty Thousand Only) arising out of the Corporate Guarantee Deed executed by the Corporate Debtor. The Date of Default as specified in part IV is 03.04.2021.

Submissions made by the Financial Creditor:


4. The Financial Creditor submits that India Home Loan Limited (hereinafter referred to as Petitioner) sanctioned individual housing loans aggregating to Rs. 3,42,40,000/- (Rupees Three Crores Forty Two Lakhs Forty Thousand Only) (hereinafter collectively referred to as “the loans”) to 16 persons for which guarantee was executed to the extent of Rs. 2,94,40,000/- (Rupees Two Crore Ninety-Four Lakhs Forty Thousand Only).

Sr. No.	Borrower	Sale Agreement Date	Sale Agreement Registration No.
1.	Kunal Ghivar	02.12.2017	8321/2017
2.	Rohan Bhalerao	05.01.2018	177/2018
3.	Zarna Desai	29.12.2017	4139/2017
4.	Anjali Rathore	18.01.2018	888/2018
5.	Shrikrishna Joshi	09.03.2018	2826/2018

6.	Umesh Nangare	14.03.2018	30009/2018
7.	Rakesh Sathe	18.04.2018	4856/2018
8.	Shailesh Kante	15.01.2018	413/2018
9.	Sanjay Nanekar	27.04.2018	6132/2018
10.	Santosh Patil	27.04.2018	6133/2018
11.	Siddheshwar Khobare	02.05.2018	6364/2018
12.	Bapuraao Dhope	02.05.2018	6365/2018
13.	Ashok Gurav	06.06.2018	8263/2018
14.	Lakhan Tupsakhre	14.06.2018	8692/2018
15.	Ganesh Muchande	14.06.2018	7529/2018
16.	Deepak Mahadik	26.06.2018	1880/2018

All 16 borrowers had executed a Home Loan Agreement with the Petitioner and later on as agreed upon on the request of the said 16 borrowers, Chandrabhaga Realtors Private Limited consented in giving corporate guarantee for repayment of these loans together to the tune of Rs. 2,94,40,000/- with interest.

5. It was submitted that the Corporate Guarantor further executed Deed of Mortgage, the details for which are given below:
 1. Deed of Mortgage dated 26.11.2018 (the Mortgagor had created first and exclusive charge on 22 flats in its project known as “Bhalchandra Residency”).
 2. M/s Chandrabhaga Realtors Pvt. Ltd. had further executed an Indemnity Bond cum Affidavit dated 21.09.2018 through its directors Mr. Nilesh Borate and Mr. Yogendra Khiste and India Home Loan Limited.


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3. In pursuance to the above, the Mortgagor executed a Deed of Mortgage/Additional Security as on 11.02.2020 wherein the Chandrabhaga Realtors Private Limited had also agreed to provide additional securities to India Home Loan Limited by creating first and exclusive charge on:
- a. The 22 flats in Bhalchandra Residency (hereinafter referred to as the “**First Mortgaged Properties**”).
 - b. The Escrow account and all receivables, sale proceeds and revenue from the project (hereinafter referred to as the “**Second Mortgaged Properties**”).

In view of the above, the Corporate Guarantor executed a Deed of Guarantee in favour of the Petitioner as on 11.02.2020 wherein the Corporate Guarantor consented to pay to India Home Loan Limited the Principal sums not exceeding Rs. 2,94,40,000/-.

6. On account of failure on the part of the Corporate Guarantor, the Petitioner issued Demand notice u/s 13(2) of the SARFAESI Act, 2002 for discharge of the total dues, however the Corporate Guarantor failed to pay the debt within 120 days of the notice.


Findings:

7. Heard the Ld. Counsel for the Financial Creditors and perused the records.
8. Upon going through the record files, the Bench takes note of the order dated 26.10.2023 whereby the notice was issued through the Registry and the same was returned with the remark “**no such person in address**”. Thereafter vide order dated 07.12.2023, this Bench set the Corporate Debtor ex-parte as none appeared for the Corporate Debtor. That on 30.01.2024, this Bench set aside the said order dated 07.12.2023 as it was noted that the notice was not



properly served on Corporate Debtor and had directed Registry to issue fresh notice to the Corporate Debtor and posted the matter on 06.03.202. The said Court notice by registry could not be served and returned back. Therefore, this Bench ordered Financial Creditor to do substituted service. On 18.03.2024 substituted service was affected and proof of service was filed. Despite service there was no representation on behalf of the Corporate Debtor. Hence the matter was heard on merits based on material available on record.

9. The following facts are not in dispute:
 - 9.1 At the request of the Corporate Debtor, the Petitioner i.e. India Home Loan Limited sanctioned individual housing loans aggregating to Rs. 3,42,40,000/- (Rupees Three Crore Forty-Two Lakhs Forty Thousand Only) for which guarantee was executed to the extent of Rs. 2,94,40,000/- (Rupees Two Crore Ninety-Four Lakhs Forty Thousand Only).
 - 9.2 A Deed of Guarantee was also executed between the Petitioner and the Corporate Guarantor on 11.02.2020. Furthermore, a Deed of Mortgage was executed between the Petitioner and the Corporate Debtor and individual Home Loan Agreement was also executed between the Petitioner and the borrower.
 - 9.3 The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
 - 9.4 There is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
10. As stated supra, the Petitioner issued Demand Notice to the Corporate Guarantor on 04.12.2020 thereby calling to repay the



debt to which the Corporate Debtor failed to pay within the stipulated period i.e. 120 days from the date of invocation notice and as per the records available there is no reply from the Corporate Debtor.

11. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this Company Petition is liable to be admitted.
12. The Financial Creditor has proposed the name of **Mr. Mukesh Kumar Jain**, Registration No: IBBI/IPA-001/IP-P01236/2018-2019/11944, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
13. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 578/MB/2023** filed by **M/s India Home Loan 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 (CIRP) against **Chandrabhaga Realtors Private Limited**, the Corporate Debtor, is **Admitted**. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP

proceeding with providing necessary documents/information as required by the RP/IRP.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;


(iii) 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;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:

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(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;

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- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Mukesh Kumar Jain, Registration No: IBBI/IPA-001/IP-P01236/2018-2019/11944**, having address at C-203, Edge Commercial, Opp. Maruti Suzuki Arena, Vidhansabha Road, Mova, Raipur, Chhattisgarh ,492007, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.



- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs. 5,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)