



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.P. (IB)/1136(MB)2022

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

Piramal Capital & Housing Finance Limited

601, 6th floor, Amity Bldg, Agastya Corporate Park, Kamini Junction, Opp. Fire Station, L.B.S. Marg, Kurla (west), Mumbai – 400 070.

..... Financial Creditor

V/s

Navkar Groups Private Limited

601, Vastu Residency, Behind Nancy Colony, Borivali (east), Mumbai- 400 066

.....Corporate Debtor

Order reserved on:03.01.2023

Order Pronounced on: 02.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner: Mr. Aniket Kharote a/w Ms. Soniya Putta and Ms. Rohini

Hirwane i/b. Solomon & Co., Advocates

For the Corporate Debtor/ Respondent: None Appeared.

Per: Shri Kuldip Kumar Kareer, Member (Judicial)



ORDER

1. The above Company Petition is filed by Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing Finance Corporation Limited), hereinafter called as “**Petitioner**” on behalf of seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) against Navkar Groups Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 16,37,29,496/- and the date of default is mentioned as 15.07.2019.

Facts of the Case

2. The Petitioner is a non-banking finance company carrying on the business of providing financial services and facilities. The Respondent Company is engaged in the business of developing, re-developing and setting up real estate.
3. The Petitioner submits that the Respondent approached it with a view to avail financial assistance from the former. The Petitioner sanctioned a project loan with a limit of Rs. 20,00,00,000/- by way of a Sanction Letter dated 22.08.2018 bearing reference no. DHFL/2018-19/PF/KSG/1907. Later on the Petitioner and the Respondent executed a Loan Agreement dated 27.08.2018 for an amount of Rs. 20,00,00,000/-. The said Loan Agreement was secured by executing the following:
 - a. Deed of Simple Mortgage dated 27.08.2018,
 - b. Deed of Hypothecation dated 27.08.2018,
 - c. a Deed of Guarantee dated 27.08.2018 executed in favour of the Petitioner,
 - d. a Declaration dated 27.08.2018,
 - e. a Demand Promissory Note dated 27.08.2018 and
 - f. an Escrow Agreement dated 27.08.2018.



4. Thereafter the Petitioner disbursed an amount of Rs. 10,00,00,000/- in two instalments on 30.08.2018. As per the terms of loan agreement the Respondent was required to pay Pre-equated monthly instalments and Equated Monthly Instalments. The Petitioner submits that the Respondent has made the payments towards the PEMI and the EMI for the months from September 2018 to June 2019 and started defaulting in payments thereafter. Therefore, the Petitioner states the date of default as 15.07.2019.
5. In view of default committed by the Respondent the Petitioner had issued a loan recall notice dated 11.11.2019. Apart from that the Petitioner had also issued a statutory demand notice dated 24.09.2020 under Section 13 (2) of the SARFAESI, Act 2002. The Petitioner submits that the Corporate Debtor has failed to respond to the said notices. The Petitioner further issued a notice dated 06.02.2021, to the Personal Guarantors of the Respondent, invoking the deed of guarantee.
6. The Petitioner submits that the Respondent has defaulted in making repayment of the debt and liable to repay the same. Hence the present Petition.
7. The Respondent has not responded the Petition despite undertook to file reply and has been proceeded against as **Ex-Parte**.

Findings

8. We have heard the Counsel for the Petitioner and have gone through the record.
9. From the perusal of the record and the documents relied upon by the Petitioner shows that vide sanction letter dated 22.08.2018, a Project Loan of Rs. 20 Crores was sanctioned by the Financial Creditor in favour of the Corporate Debtor, following which, a Loan Agreement dated



27.08.2018 (Annexure-G) was executed. However, out of the sanction amount of Rs. 20 Crores, a sum of Rs. 10 Crore only was disbursed.

10. As per Clause 3.1 of the Loan Agreement dated 27.08.2018, the loan was repayable by way of monthly instalments from the date of first disbursement, the Petitioner has referred to Exhibit-O which shows that the Corporate Debtor paid interest only up to 16.06.2019 and thereafter stop making payment. Therefore, the date of default in this case is 15.07.2019 as rightly claimed in Part-IV of the Petition. Thereafter, the Petitioner served a recall notice (Exhibit-P) dated 11.11.2019 but despite the receipt of the default notice, the Corporate Debtor failed to make the payment. The Respondent has not come forward to contest the present Petition and has been proceeded against ex-parte vide order dated 03.01.2023. Since, no reply has been filed on behalf of the Corporate Debtor, by necessary implication, the averments made in the Petition have not been controverted.

11. Therefore, practically since the Corporate Debtor has not denied the averments made in the Petition, the same by necessary implication are deemed to have been admitted by the Corporate Debtor. Resultantly, it stands proves that there has been a debt and the Corporate Debtor has committed default in payment of the said Financial Debt, the Petition is otherwise within the period of limitation.

12. Therefore, in our considered view, it is a fit case for admission under Section 7, accordingly, the Petition is admitted in the following terms.

ORDER

- a. The above Company Petition No. 1136 OF 2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Navkar Groups Private Limited**



- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Ravindra Chaturvedi**, having Address BKC Center, 31-E Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai – 400 053 and having registration No. IBBI/IPA-001/IP-P00792/2017-2018/11359, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- 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.
- k. Accordingly, C.P (IB) NO. 1136 OF 2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)