

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 988/MB/2023

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

Piramal Capital & Housing Finance Limited, Having Registered Office at: - 601, 06th Floor, Amiti Building, Agastya Corporate Park, Kamani Junction, Opposite Fire Station, LBS Marg, Kurla (West), Mumbai- 400070.

**..... Applicant/ Financial
Creditor**

Versus

Edweena Real Estate Private Limited

Having registered office at: - Office No. 612, B2B, Centre Cabin B, 6th Floor, Behind Malad Industrial Estate, Kachpada, Malad West, Mumbai-400064.

..... Corporate Debtor

Order Delivered on :- 22.01.2024.

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COURT-II

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Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (Hearing in Physical Mode):

For the Financial Creditor: Senior Counsel Vikram Nankani a/w Counsel Nausher Kohli, Adv. Raveena Modi and Adv. Yesha Badani i/b Wadia Ghandy & Co.

For the Corporate Debtor: None appeared.

ORDER

Per: - Shri. Kuldip Kumar Kareer, Member (Judicial).

1. This Company Petition is filed by **Piramal Capital & Housing Buildcon Private Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s. Edweena Real Estate Private Limited** (hereinafter referred to as the "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on the ground that the Corporate Debtor committed a **default** of **INR 1065,53,89,821.00/-** (Rupees One Thousand and Sixty-Five Crores, Fifty Three Lakhs, Eighty-Nine Thousand, Eight Hundred and Twenty-One Only) in repaying the financial debts to the Financial Creditor, out of which the principal amount is **INR 499,99,00,000.00/-** (Rupees Four Hundred and Ninety-Nine Crores and Ninety-Nine Lakhs only) and the outstanding interest thereon as on 31st March, 2023 of **INR 3,95,61,70,887.00/-** (Rupees

Three Hundred and Ninety-Five Crores, Sixty-One Lakhs, Seventy Thousand, Eight Hundred and Eighty-Seven Only) along with default interest/additional interest of Rs. 169,61,66,082/- (Rupees One Hundred and Sixty-Nine crores, Sixty-One Lakhs, Sixty-Six Thousand and Eighty-Two Only) and other charges Rs.31,52,852/- (Rupees Thirty-One Lakhs, Fifty-Two Thousand, Eight Hundred and Fifty-Two only).

Facts of the Case as pleaded by the Financial Creditor in its Application u/s 7 are briefly stated hereunder:

2. By and under a Loan Agreement dated 27th May, 2016 executed between the Corporate Debtor and the Financial Creditor (formerly known as Dewan Housing Finance Corporation Limited), a loan of Rs. 500,00,00,000/- (Rupees Five Hundred Crores only) was sanctioned by the Financial Creditor to the Corporate Debtor on the terms mentioned therein. Out of the said loan, Rs. 499,99,00,000.00/- (Rupees Four Hundred and Ninety-Nine Crores and Ninety-Nine Lakhs only) has been disbursed by the Financial Creditor till date in multiple tranches. The said loan is a secured loan and is secured by various securities/instrument such as Deed of Hypothecation of Receivables and Demand Promissory Note dated 23rd May 2016, Deed of Simple Mortgage dated 27th May, 2016 and 11th September, 2019 and Escrow Agreement dated 27th May, 2016.
3. The loan was sanctioned vide sanctioned letter dated 25th May, 2016. As per the terms and conditions of the loan agreement, the Corporate Debtor was to utilise the loan only for the purpose of developing the project. As per the loan agreement dated 27th May, 2016, more particularly clause 3.4 of the agreement, if there was a default in the

payment of interest or principal for two consecutive months, it shall be construed as an event of default. Clause 4.1 of the loan agreement provides that interest payment was to be made by 15th of each month for the respective month and the same would be payable from the first disbursement. Clause 8 of the loan agreement enumerates the events of default and Clause 8.1 (a) states that if there is a default in payment of any of interest or principal for two consecutive months the whole of the loan shall become forthwith due and payable and the DHFL can enforce the security creditor in its favour upon the happening of one or more events called events of default.

4. The Corporate Debtor committed its first event of default under the Loan Agreement on 31st March, 2019. Thereafter, the Corporate Debtor has committed various other events of default under the said Loan Agreement, which are still subsisting. On 23rd April 2020, the Financial Creditor issued a notice via email, thereby calling upon the Corporate Debtor, inter alia, to forthwith repay the said loan together with additional/further interest, legal charges and costs. On 24th August 2020, a legal notice was also issued by the Advocates of the Financial Creditor calling upon the Corporate Debtor, inter alia, to forthwith repay the said loan together with additional/further interest, legal charges and costs. The Advocate for the Financial Creditor issued a legal notice to the Corporate Debtor, once again, calling upon the Corporate Debtor to repay the said loan and all amounts due and payable thereon forthwith and in any event, not later than 3 days from the date thereof.

5. Despite the notices, the Corporate Debtor failed to repay the outstanding amount which includes default interest, legal charges and costs incurred.
6. Hence, the present Company Petition.
7. None appeared for the Corporate Debtor despite service of notice and paper publication of notice. Hence, this Tribunal proceeded ex-parte against the Corporate Debtor vide Order dated 02.01.2024.

ANALYSIS AND FINDINGS

8. We have heard the learned Senior Counsel for the Petitioner and perused the documents and materials placed on record.
9. We have perused the copy of Loan Agreement (at Exhibit 'D') dated 27.05.2016 executed between the Corporate Debtor and the Financial Creditor. The Loan Agreement, inter alia, provides for the loan limit, rate of interest, details of security for loan by way of mortgage and hypothecation, disbursement of loan and defines the event of default. Thus, the nature of debt is financial debt as defined u/s 5(8) of the Code since money was borrowed by the Corporate Debtor from the Financial Creditor against the payment of interest. We have also perused the Loan Account Statement upto 31.03.2023 annexed by the Petitioner at Exhibit 'T'. The Loan Account Statement shows the disbursement of loan by the Financial Creditor to the Corporate Debtor in the following installments:

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<u>DATE</u>	<u>AMOUNT (INR)</u>
27/06/2016	150,00,00,000/-
05/07/2016	150,00,00,000/-
12/07/2016	150,00,00,000/-
25/07/2016	49,99,00,000
TOTAL	499,99,00,000/-

10. The Loan Account Statement also reveals that the last payment received by the Financial Creditor from the Corporate Debtor towards the repayment of loan is on 30.06.2018 of Rs. 51,74,89,646.00/- and thereafter no loan repayment has been made by the Corporate Debtor. As per Clause 8.1 (a) of the Loan Agreement dated 27.05.2016, if there is a default in payment of any interest or principal for two consecutive months, it shall be treated as an event of default. As per the Loan Sanction Letter dated May 25, 2016 and Clause 3.1 of the Loan Agreement dated 27.05.2016, the interest payment is to be made by the 15th day of each month in advance for the respective month and it will be payable monthly from the date of first disbursement. After June, 2018, the loan interest has not been paid for the two consecutive months of July, 2018 and August, 2018.

11. We have also seen the NeSL Report annexed by the Petitioner at Exhibit 'M'. The Report states that the date of default is 31.03.2019 and the Default amount is Rs. 565,54,89,821.00/-. The aforementioned report further states that the date of last repayment is 30.06.2018 and

the amount of last repayment is Rs. 51,74,89,646.00/-. Status of the above-mentioned NeSL report is 'Deemed to be Authenticated' on 24.06.2023. Thus, the factum of financial debt, disbursal and default stand proven on record. We also observe that the default amount in the present case meets the minimum threshold of rupees one crore u/s 4 of the Code required to trigger the CIRP against the Corporate Debtor.

12. As regards the issue of limitation, the Ld. Sr. Counsel for the Petitioner submits that the present Petition is not barred by the law of limitation viz. Article 137 of the Limitation Act, 1963 read with Section 238A of the Code. The Learned Senior Counsel for the Petitioner submits that an insolvency petition under IBC, 2016 filed against Dewan Housing Finance Corporate Limited ('DHFL') the original lender came to be admitted on 03rd December, 2019. The resolution plan of the Petitioner herein was approved by the Hon'ble Adjudicating Authority u/s 31 of the Code on 07th June, 2021 as a result of which the moratorium declared u/s 14 came to be lifted. Therefore, the ld. Senior Counsel contends that in view of Section 60(6) of the Code, the time period between 03rd December, 2019 (commencement of moratorium) and 07th June, 2021 (lifting of moratorium) i.e. 01 year, 06 months and 04 days has to be excluded while computing the limitation period in respect of the present petition. The learned Senior Counsel has further pointed out that in view of the Order dated 10th January, 2022 passed by the Hon'ble Supreme Court in M.A. No. 21 of 2022 in Suo Motu Writ Petition No. 03 of 2020, the period from 15th March, 2020 to 28th February, 2022 i.e. 01 year, 11 months and 14 days has also to be excluded.

13. Having considered the aforesaid contentions raised by the Counsel for the Petitioner, we are of the considered view that the present Petition has been filed within the period of limitation. The instant application u/s 7 of the Code was filed by the Applicant on 01.09.2023. The date of default ascertained as stated above is 15th August, 2018. For the reasons stated in the foregoing paragraph, the period lost during moratorium from 03.12.2019 to 28.02.2022 has to be excluded for the purpose of computing limitation. If the said period is excluded, then the period of limitation under Article 137 of the Limitation Act, 1963 (i.e. 3 years) for filing the present petition expires on 11th November, 2023; whereas the present petition has been filed on 01.09.2023. Besides, the Covid period has also to be excluded as per the aforesaid suo moto judgment of the Hon'ble Supreme Court. Therefore, the Petition must be held to have been filed within the period of limitation.
14. As the existence of financial debt due and payable and the factum of its default by the Corporate Debtor stand proven on record, we find the present application to be a fit case for admission u/s 7 of the I&B Code. It has also been established that the petition is not barred by limitation and that it meets the minimum threshold u/s 4 of the Code. Therefore, the Petition deserves to be admitted.

ORDER

- (a) The petition bearing **CP(IB)-988/MB/2023** filed by **PIRAMAL CAPITAL & HOUSING FINANCE PRIVATE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate

Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. **EDWEENA REAL ESTATE PRIVATE LIMITED** [CIN: U70102MH2015PTC265384] is hereby **admitted;**

(b) **Mr. Jayesh Natvarlal Sanghrajka**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P00216/2017-2018/10416**, (email: jayesh@jsandco.in), **is hereby appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(c) 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 Securitization 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.
- (d) 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 IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (e) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (f) 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.
- (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

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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 ₹ 5,00,000/- (Rupees Five Lakhs only) with the IRP 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.
- (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) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)