IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.58/BB/2021
along with I.A. No.347 of 2021
Under Section 95(1) of the IBC, 2016
R/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

Piramal Capital and Housing Finance Limited
Registered Office at:
4th Floor, Piramal Tower
Peninsula Corporate Park
Ganpatrao Kadam Marg, Lower Parel,
Mumbai 400 013. ... Applicant/Financial Creditor

Versus

Mr. Babu A. Dhammanagi
137, Railway Parallel Road,
Kumara Park West
Bengaluru – 560 020. ... Respondent/Personal Guarantor

Order delivered on: 07th June, 2022

Coram: Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant/Financial Creditor	:	Mr. Angad Varma, Adv. a/w Ms. Mahima Singh, Adv.
For the Respondent	:	Mr. Shashank Kumar, Adv.
For the RP	:	Mr. A S Vishwajit, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is filed by M/s Piramal Capital and Housing Finance Limited for brevity (**'Applicant/Financial Creditor'**), through Resolution Professional under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, (for brevity **'IBC'/ 'Code'),** r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 with a prayer to initiate Insolvency Resolution Process against Mr. Babu A. Dhammanagi (hereinafter called as "**Respondent /Personal Guarantor**") who is the Personal Guarantor for the credit facilities extended by the Applicant, M/s Piramal Capital and Housing Finance Limited, to the Corporate Debtor**,** M/s. Dhammangi Developers Private Limited (hereinafter called as **'Corporate Debtor'**)

2. It is stated that the Financial Creditor had granted various credit facilities in favour of the Corporate Debtor for which the Respondent stood as the Personal Guarantor. It is stated that the Corporate Debtor is in breach of various clauses of the Loan Agreement including Clause 5, which provides that the Corporate Debtor and the Guarantors are required to repay the amounts due jointly and severally as per the repayment schedule. On account of default by the Corporate Debtor, the Applicant first by its notice dated 10th July 2018 called upon the Corporate Debtor to pay the outstanding dues. However, the outstanding due was not paid by the Corporate Debtor. It is further stated that, the Financial Creditor of the Corporate Debtor had initiated an application under Section 7 of IBC, 2016 r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) seeking Corporate Insolvency Resolution Process against the Corporate Debtor, numbered as CP (IB) No.42/BB/2021 which was admitted on 05.04.2022 and moratorium was imposed by this Tribunal.

3. The Security Trustee of the Applicant/Financial Creditor sent notice dated 6th November 2020, to the guarantor pursuant to clause 2.1.2 of the Deed of Guarantee and demanded a sum Rs. 13,37,09,159 (Rupees Thirteen Crores Thirty Seven Lakhs Nine Thousand One Hundred Fifty Nine) which was due and payable by the Corporate Debtor as on 22nd October, 2020. However, no payment was made. The Applicant/Financial Creditor further sent the statutory notice dated 31st December 2020 to the Personal Guarantor for the unpaid debt in default. In response to the same, the Managing Director of the Corporate Debtor by his email dated 2nd January 2021, admitted the outstanding amount and sought some time for the repayment. It is also stated that the Financial Creditor has also received a letter dated 20th January 2021 from the Respondent containing bare denial of the claims made by the Applicant/Financial Creditor. It is submitted that the Corporate Debtor as on 29th January 2021 is liable to pay to the Applicant a total outstanding sum of Rs. 14,46,72,817 (Rupees Fourteen Crores Forty Six Lakhs Seventy Two Thousand Eight hundred Seventeen) which comprises of Rs. 8,24,99,423 (Rupees Eight Crores Twenty Four Lakhs Ninety Nine Thousand Four Hundred Twenty Three) as Principal, Rs.1,32,66,506 (Rupees One Crore Thirty Two Lakhs Sixty Six Thousand Five Hundred Six) as Interest and Rs.4,89,06,888 (Rupees Four Crores Eighty Nine Lakhs Six Thousand Eight Hundred Eighty Eight) as Default Interest under the Loan Agreement.

4. On presentation of the Application by the Financial Creditor, under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 11.11.2021 has appointed the Resolution Professional viz., Mr. Jayesh Natvarlal Sanghrajka, Registration No.IBBI/IPA-001/IP-P00216/2017-18/10416, and directed him to file report under section 99 of Insolvency and Bankruptcy Code, 2016. The Resolution Professional had filed his report dated 06.12.2021 vide Diary No.3411 recommending admission of the

application filed under section 95 of IBC, 2016. The grounds for admission of the application recorded in the report are as follows:-

(i) The Personal Guarantor had committed default in repayment of his debts.

(ii) The debt is registered with an Information Utility, i.e National E-Governance Service Limited (NESL)

(iii) The RP submits that the present application satisfies the requirements of provisions of section 95 of the Code.

(iv) The RP submits that based on his examination the present application deserves to be admitted under section 100 of the Code.

(v) The RP submits that the report is presented to this Tribunal with a recommendation of accepting the present application as the Personal Guarantor has not repaid the debt due to the Creditor.

5. From the report of the Resolution Professional, there does not appear any request for issuance of any direction for the purpose of conducting negotiations between the Financial Creditor and the Personal Guarantor for arriving at the repayment plan.

6. Heard Mr. Angad Varma along with Ms. Mahima Singh, learned Counsel for the Petitioner, Mr. Shashank Kumar, learned Counsel for the Respondent and Mr. A S Vishwajit, learned Counsel for the RP and perused the entire case records/documents and have gone through the report dated 06.12.2021 filed by the Resolution Professional.

7. The Respondent Contended that he has executed the Deed of Guarantee on 27.05.2016 with M/s Axis Trustee Services Limited and that he has no privity of contract with the Petitioner. It is to be seen that M/s Dhammanagi Developers Private Limited (Principal Borrower), along with Mr. Babu A Dhammanagi (Respondent herein) and Mrs. Mangala A Dhammanagi in their capacity as obligers I and II executed the ICD Agreement on 27.05.2016 with M/s Piramal Enterprises Limited. The said M/s Piramal Enterprises Limited

assigned the said debt to M/s Piramal Finance Private Limited vide Assignment deed dated 22.09.2016. The said Piramal Finance Limited merged with M/s Piramal Housing Finance Limited vide order dated 06.04.2018 of the NCLT, Mumbai. The name of the said M/s Piramal Housing Finance Limited has been changed to M/s Piramal Capital and Housing Finance Limited, i.e., the Present petitioner in the instant C.P. M/s Dhammanagi Developers Private Limited, i.e., the Principal Borrower and M/s Piramal Enterprises Limited (the original lender) and Axis Trustee Services Limited have entered into a Security Trustee Agreement on 27.05.2016. The respondent executed a Deed of Guarantee on 27.052.016 in favour of Axis Trustee Services Limited (who acted for and on behalf of the Lender), guaranteeing the repayment of the debt payable by the Principal Borrower i.e., M/s Dhammanagi Developers Private Limited to Piramal Enterprises Limited, whose rights have been assigned to the Petitioner i.e., M/s Piramal Capital and Housing Finance Limited. It is already settled by various decisions passed by Hon'ble NCLAT and also by virtue of notification dated 27.02.2019 issued by the Ministry of Corporate Affairs, the CIRP proceedings can be initiated against the Debtor either by the Trustee or by the Lender. Hence, the contention of the Respondent is rejected.

8. The contention of the Respondent that the various documents on which the Petitioner placed reliance are insufficiently stamped and hence the C.P. is liable to be dismissed is also unsustainable. If the Respondent is disputing the validity of any document on the ground of insufficiency or deficiency in payment of the stamp duty, it is for the Respondent to approach an appropriate Competent Authority under the applicable Stamp Act and to obtain an order declaring that the said documents were insufficiently or deficiently stamped and thereby invalid and place the said order before this Adjudicating Authority. In the absence of the same this Adjudicating Authority exercising summary jurisdiction in an Application filed under

Section 7 of the IBC, 2016 cannot adjudicate such disputes. Accordingly, the contention of the Respondent is rejected.

9. None of the decisions relied on by the Respondent have any Application to the facts of case.

10. On perusal of the records available this Adjudicating Authority is of the considerate opinion that all the contentions raised by the Respondent/ Personal Guarantor are unsustainable and the present application be admitted under Section 100 of the IBC, 2016.

11. Hence, based on the reasons recorded in the report submitted by the Resolution Professional, the application i.e., CP(IB) No 58/BB/2021 filed under Section 95 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Respondent/ Personal Guarantor and moratorium is declared in place of interim moratorium, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016.

12. During the moratorium period;

(i) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

(ii) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

(iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

(iv) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. The Resolution Professional viz., Mr. Jayesh Natvarlal Sanghrajka, who has been appointed under section 97 vide Order dated 11.11.2021, is directed to

cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, Bengaluru inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspaper, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two copies of the notice to the Registry.

14. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016 shall prepare a list of creditors within 30 days from the date of notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC, 2016 which shall include provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

15. In case the Resolution Professional recommend that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106 of IBC, 2016 for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

16. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare

a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit to this Authority, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.

17. In terms of the above, CP (IB) No.58/BB/2021 filed under section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

18. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.

I.A. No.347 of 2021:

1. This Application has been filed by the Respondent/Corporate Debtor under Section 33 & 34 of the Karnataka Stamp Act, 1957, r/w Rule 11 of the NCLT Rules, 2016 seeking to impound the insufficiently stamped documents at Annexures 4, 11 and 12 and collect the stamp duty and ten times penalty as per law.

2. In the circumstances, and for the reasons mentioned in paragraph 8 of the order in the main C.P. (IB) No.58/BB/2021, the instant I.A. is dismissed.

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)