IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.58/BB/2021
Under Section 95(1) of the IBC, 2016 r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

M/s. Piramal Capital and Housing Finance Limited
through Mr. Jayesh Natvarlal Sanghrajka,
Insolvency Resolution Professional
(IBBI/IPA-001/IP-P00216/2017-2018/10416)
4th Floor, Piramal Tower
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel
Mumbai – 400 013. ... Applicant/Financial Creditor

VERSUS

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

Order delivered on 11.11.2021

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

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PRESENT:

For the Petitioner : Shri Prashant Kumar

For the Respondent : Shri Bhaskar Subramanian

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 Mr. Jayesh Natvarlal Sanghrajka, Insolvency Resolution Professional, under Section 95(1) of the IBC, 2016, r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 with a prayer to initiate Corporate Insolvency Resolution Process against Mr. Babu A. Dhammangi (hereinafter called as "Respondent /Personal Guarantor").
2. It is stated that an Inter Corporate Deposit Agreement dated 27th May 2016 ("ICD") was executed between the Corporate Debtor i.e. M/s. Dhammangi Developers Private Limited and M/s. Piramal Enterprises Limited ("Loan Agreement"). By way of an assignment agreement dated 22nd September 2016 the ICD was transferred to the Applicant/Financial Creditor. In terms of the Loan Agreement, the Applicant/Financial Creditor, extended financial assistance of Rs.70,00,00,000/- (Rupees Seventy Crores Only) as per terms and conditions set forth in the Loan Agreement and related documents. The Corporate Debtor's obligation to repay the Loan along with all the amounts due under the Loan Agreement is in addition to various other valuable securities. Further, the Personal Guarantee of Mr. Babu A. Dhammanagi in favour of Axis Trustee Services Limited (Security Trustee) is for the benefit of the Applicant/Financial Creditor.
3. It is also stated that the Corporate Debtor is in breach of various clauses of the Loan Agreement including Clause 5, which provides that the Corporate Debtor

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and the Guarantors are required to repay the amounts due jointly and severally as per the repayment schedule. The Corporate Debtor did not fulfil its payment obligations to the Lender in accordance with the terms and conditions of the Loan Agreement. On account of such default by the Corporate Debtor, the Applicant first by its notice dated 10th July 2018 called upon the Corporate Debtor to pay the outstanding due of the sum of Rs.5,42,59,317/- (Rupees Five Crore Forty Two Lakh Fifty Nine Thousand Three Hundred Seventeen Only). However, the outstanding due was not paid by the Corporate Debtor.

4. Thereafter, the Applicant owing to the financial and technical default by the Corporate Debtor, and in terms of the Loan Agreement vide another notice dated 29th October, 2020, recalled the loan and directed the Corporate Debtor to make payment of the balance outstanding amount as on 22nd October 2020 of Rs.13,37,09,159/- (Rupees Thirteen Crores Thirty Seven Lakhs Nine Thousand One Hundred Fifty Nine Only) which included the interest and default interest in terms of the Loan Agreement. The debt owed by the Corporate Debtor to the Applicant is not disputed in the present case.

5. It is further stated that the Security Trustee of the Applicant/Financial Creditor also sent a notice to the Guarantor/Respondent i.e. Mr. Babu A Dhammanagi dated 6th November 2020, pursuant to clause 2.1.2 of the Deed of Guarantee and demanded a sum of Rs.13,37,09,159/- (Rupees Thirteen Crores Thirty Seven Lakhs Nine Thousand One Hundred Fifty Nine Only) from him, which was due and payable by the Corporate Debtor as on October 22, 2020. However, no payment was made. The Applicant/Financial Creditor further sent the statutory notice to the guarantor, Mr. Babu A Dhammanagi dated 31st December 2020, for the unpaid debt in default for the sum of Rs.14,06,49,353/- (Rupees Fourteen Crore Six Lakh Forty Nine Thousand Three Hundred and Fifty Three). In response to the same, the Personal Guarantor/Respondent i.e. Mr. Babu A Dhammanagi by his email dated 02nd January 2021, admitted the outstanding amount and sought some time for the repayment. The Applicant/Financial Creditor has also received a letter

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dated 20th January 2021 form Respondent i.e. Mr. Babu A Dhammanagi, containing bare denial of the claims made by the Applicant. In light of the above, the Corporate Debtor as on 29th January 2021 is liable to pay to the Applicant/Financial Creditor a total outstanding sum of Rs.14,46,72,817/- (Rupees Fourteen Crore Forty Six Lakh Seventy Two Thousand Eight Hundred Seventeen Only) which comprised of Rs.8,24,99,423/- (Rupees Eight Crore Twenty Four Lakh 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 Only) as Interest and Rs.4,89,06,888/- (Rupees Four Crore Eighty Nine Lakh Six Thousand Eight Hundred Eighty Eight Only) as Default Interest under the Loan Agreement. Hence, the present Application.

6. Heard Mr. Prashant Kumar, learned Counsel for the Applicant/Financial Creditor and Mr. Shri Bhaskar Subramanian, learned Counsel for the Respondent/Personal Guarantor. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.

7. This Application has been filed by Mr. Jayesh Natvarlal Sanghrajka on behalf of M/s. Piramal Capital and Housing Finance Ltd., under Section 95(1) of the Code, r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against Mr. Babu A Dhammangi, the Personal Guarantor of the Corporate Debtor.

8. It is clarified that from the date of filing this Application i.e. 16.02.2021 by the Applicant/Financial Creditor, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any legal action or proceedings pending 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. As per Section 96(3) of the Code, the provisions of Sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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9. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provision of the Code. Since, the present Application has been filed through the Resolution Professional, Mr. Jayesh Natvarlal Sanghrajka, bearing Registration No.IBBI/IPA-001/IP-P00216/2017-2018/10416, this Bench confirms the appointment of the Resolution Professional in the matter.

10. The Applicant/Financial Creditor is directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional by all modes.

11. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code, r/w Rules made thereunder. He is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under sub-Section 7 of Section 99 to the Creditor as well as to the Personal Guarantor as soon as the same is filed before this Authority.

12. List the matter for further proceedings in this case on 16.12.2021.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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