

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.42/BB/2021
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016
along with I.A No.348 of 2021

IN THE MATTER OF:

M/s. Piramal Capital and Housing Finance Ltd.

2nd Floor, Piramal Tower,
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai – 400 013.

... Petitioner/Financial Creditor

VERSUS

M/s. Dhammanagi Developers Pvt. Ltd.

137, Railway Parallel Road,
Kumara Park West,
Bangalore – 560 020.

... Respondent/Corporate Debtor

Order delivered on 05.04.2022

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

PRESENT:

For the Petitioner : Mr. Angad Varma, Adv.

For the Respondent : Mr. Shashank Kumar, Adv.

I.A. No.348 of 2021 &
C.P. (IB) No. 42/BB/2021

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ORDER**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

1. The present Application has been filed by M/s. Piramal Capital and Housing Finance Ltd. (for brevity 'Petitioner/Financial Creditor') through its Authorised Signatory, namely, Mr. Mukesh Kanodia, under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (AAA) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Dhammanagi Developers Pvt. Ltd. (hereinafter called as 'Respondent /Corporate Debtor').
2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
 - i. **M/s. Piramal Capital and Housing Finance Ltd.** is wholly owned subsidiary of Piramal Enterprises Ltd. (the flagship company of Piramal Group) is registered as a housing finance company with the National Housing Bank and is engaged in various financial services businesses. It provides both wholesale and retail funding opportunities across sectors.
 - ii. **M/s. Dhammanagi Developers Pvt. Ltd.** is a Private Limited Company incorporated on 23.03.2007 under the Companies Act, 1956, bearing CIN: U70102KA2007PTC042232. The Nominal Share Capital of the Company is Rs.2,00,00,000/- (Rupees Two Crore only) and Paid-up Share Capital is Rs.1,81,10,000/- (Rupees One Crore Eighty One Lakh and Ten Thousand Only). The Company is *inter alia* engaged in the business of construction and development of real estate projects in India.
 - iii. It is stated that an Inter Corporate Deposit Agreement dated 27th May, 2016 ('ICD') was executed between the Corporate Debtor and Piramal Enterprises Ltd. ('Loan Agreement'). By way of an assignment agreement dated 22nd September, 2016 the ICD was transferred from Piramal

Enterprises Ltd. to Piramal Finance Ltd. Thereafter the assignee Piramal Finance Ltd. merged with Piramal Housing finance Ltd, under a scheme of merger, as approved by the Hon'ble NCLT, Mumbai Bench order dated 06.04.2018 (Annexure-6). The name of the Piramal Housing finance Ltd has been changed to Piramal Capital & Housing Finance Ltd. (Financial Creditor) vide the certificate of incorporation pursuant to change of name, dated 25.06.2018 of the ROC, Mumbai. In terms of Loan Agreement, the Petitioner/Financial Creditor has extended financial assistance of Rs.70,00,00,000/- (Rupees Seventy Crores Only) to the Corporate Debtor as per terms and conditions set forth in the Loan Agreement and related documents, in the following manner:

Date	Amount (in Rupees)
31.05.2016	50,00,00,000
29.07.2016	5,00,00,000
11.08.2016	2,50,00,000
26.10.2016	2,50,00,000
26.12.2016	2,00,00,000
29.08.2017	3,00,00,000
28.11.2017	5,00,00,000

- iv. It is stated that the Corporate Debtor's obligation to repay the loan along with all the amounts due under the Loan Agreement is secured by first and exclusive mortgage over the mortgaged properties; first and exclusive charge by way of a Deed of Hypothecation on the receivable in relation to the Projects, Additional Security and Escrow Accounts; Personal Guarantees of Mr. Babu A. Dhammangi and Mrs. Mangala B. Dhammanagi in favour of Axis Trustee Services Limited (Security Trustee); Non-Disposal undertaking from the Shareholders of the

Corporate Debtor; demand promissory notes and cheques issued in respect of the entire value of the ICD together with interest thereon. 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; failure to adhere to the business plan (Clause 21.23); failure to obtain written consent from the Financial Creditor before sale/allotment of units to buyers (Clause 20.34 r/w Clause 21.3).

- v. It is also stated that 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 Financial Creditor 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 and Seventeen only). However, the outstanding due was not paid by the Corporate Debtor. Thereafter, the Financial Creditor 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 Crore Thirty Seven Lakh Nine Thousand One Hundred and 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 Financial Creditor is not disputed in the present case.
- vi. In light of the above, the Corporate Debtor as of 6th January, 2021 is liable to pay to the Financial Creditor a total outstanding sum of Rs.14,13,73,799/- (Rupees Fourteen Crore Thirteen Lakh Seventy

Three Thousand Seven Hundred and Ninety Nine only) which comprises of Rs.8,24,99,423/- (Rupees Eight Crore Twenty Four Lakh Ninety Nine Thousand Four Hundred and Twenty Three only) as Principal, Rs.1,23,96,759 (Rupees One Crore Twenty Three Lakh Ninety Six Thousand Seven Hundred and Fifty Nine only) as interest and Rs.4,64,77,617/- (Rupees Four Crore Sixty Four Lakh Seventy Seven Thousand Six Hundred and Seventeen only) as default interest under the Loan Agreement.

3. The Respondent/Corporate Debtor has filed Statement of Objections dated 16.07.2021, by inter alia contending are as follows:
- i. It is not admitted that the Corporate Debtor had executed any ICD agreement, memorandum of entry or any other alleged agreements in the Financial Creditor's favour. Further, the Corporate Debtor denies executing any mortgage, hypothecation, personal guarantee or demand promissory note, undertaking of any kind in the Financial Creditor's favour. The Financial Creditor is liable to be punished under Sections 65 & 75 of IBC for initiating the insolvency process with malicious intent and for deliberately furnishing false particulars and suppressing material facts before the Adjudicating Authority.
 - ii. It is denied that the Respondent defaulted the alleged Inter Corporate Deposit Agreement dated 27.05.2016. The Financial Creditor who allegedly stepped into the shoes of the original depositor Piramal Enterprises Ltd, is misinterpreting the actual terms of the transaction which were agreed upon with the original party to the contract with an intention to mislead the Adjudicating Authority and make wrongful gains. There is no privity of contract between the Financial Creditor and the Corporate Debtor.
 - iii. It is contended that the first and foremost, by terming the Inter Corporate Agreement as 'Loan Agreement', the Financial Creditor is

attempting to mislead the Adjudicating Authority. There was never any loan taken from the Financial Creditor as alleged and the terms of the alleged ICD Agreement are clear that it is an investment deposit. The claim of the Financial Creditor that it extended financial assistance of Rs.70 Crores is false. Piramal Enterprises Ltd. is a depositor under the Agreement who deposited Rs.70 Crores as an investment, based on various targets to be achieved by the Corporate Debtor. As per the terms of the ICD Agreement, the Financial Creditor deposited money with the Corporate Debtor as an investment and there was no amount borrowed as alleged by the Financial Creditor. Therefore, the Financial Creditor is not a Financial Creditor and the alleged debt is not a financial debt under the IBC. Hence, the Petition is not maintainable and liable to be dismissed.

- iv. The original party to the contract, Piramal Enterprises Ltd. was aware that the Corporate Debtor is one of the leading real estate developer in Bangalore. Piramal Enterprises Ltd. sought to fund and market real estate projects of the Corporate Debtor in return for profit. Piramal Enterprises Ltd. was not a registered NBFC and termed the Agreement as 'Inter Corporate Deposit Agreement' to overcome the rigour of the banking laws and created a layer in the transaction through Axis Trustee Services Ltd. for the reasons best known to them. Piramal Enterprises Ltd. in partnership with the Corporate Debtor wanted the Corporate Debtor to complete the projects and sell the properties to recover its investment from the sale proceeds only. Piramal Enterprises Ltd. actively took part in formulating the business plan, monitoring the project, fixing minimum sales price, fixing norms of construction, fixing labour related rules for the workers, etc. Piramal Enterprises Ltd. had deposited amounts as working capital from time to time in favour of the Corporate Debtor, so as to enable them to complete all the residential projects and return the investment through Escrow account maintained

with Axis Bank. Accordingly, all the sale proceeds are automatically remitted to Piramal Enterprises Ltd. through the Escrow Account. As and when the properties were sold or even agreed to be sold, the sale proceeds were remitted to an Escrow Account and then into Piramal Enterprises Account on a Sweep-Ratio basis, based on the sales. In addition to this, the Corporate Debtor has remitted huge sums of money to Piramal Enterprises Ltd. over and above the remittance from Escrow account. Subsequently, after 5 months of investment, due to the mixed efforts of demonetization, GST, RERA etc. other policy/tax/legislative amendments, the entire Real Estate Market in India has been drastically hit including the Corporate Debtor and sales had been suffering. Despite such financial turmoil in the real estate industry the Corporate Debtors have promptly till date, at the cost of reduction of its working capital and cash in hand.

- v. It is submitted that Piramal Enterprises Ltd. has been working towards marketing and selling the real estate of the Corporate Debtor and discussions have been ongoing till December 2020. Piramal Enterprises Ltd. has been bringing buyers to purchase real estate properties of the Corporate Debtor including surveying the properties, assisting in title due diligence, etc. However, Piramal Enterprises Ltd. had been misusing their dominant power and illegally pressurizing the Corporate Debtor into selling their properties at nearly throwaway rates at 40-50% less than the market value. When the Managing Director of the Corporate Debtor strongly objected, the Corporate Debtor was threatened with dire consequences including filing a malicious insolvency petition before this Adjudicating Authority. The Corporate Debtor state that the Company has enough resources and assets and is not insolvent.
- vi. It is also submitted that the Corporate Debtor is not liable to pay the baselessly inflated and exorbitant principal amount, interest and alleged

penal interest/default interest in spite of having received more than Rs.93 Crores. Without prejudice to other contentions of the Corporate Debtor, the Corporate Debtor submits that the Financial Creditor had always misled the Corporate Debtor to believe that no default interest will be levied considering the force majeure events and had been in fact assisting the Corporate Debtor in selling the properties for mutual benefit.

- vii. It is submitted that despite the COVID-19 pandemic, several amounts were remitted into the escrow account. The Financial Creditor has received Rs.5,30,00,000/- on 14.01.2020, Rs.5,00,000/- on 02.06.2020 and Rs.5,00,00,000/- on 02.06.2020 and Rs.5,00,00,000/- on 23.02.2021, totally amounting to Rs.10,35,00,000/-. The Financial Creditor had deliberately not disclosed these amounts received to this Adjudicating Authority with an intention to mislead the Adjudicating Authority of making illegal gains. The Financial Creditor is liable to be punished under Sections 75 and 65 of the IBC for fraudulently and maliciously initiating proceedings and not approaching this Adjudicating Authority with clean hands.
- viii. The entire amount is disputed by the Corporate Debtor and the instant matter cannot be admitted. The Corporate Debtor has now realized that the entire interest amount has been miscalculated by the Financial Creditor and the Corporate Debtor has already cleared the entire loan amount. The Financial Creditor has on one hand stated in its notice that Rs.10 Crores has been defaulted on November 30th 2019. However, the Financial Creditor's own State of Accounts displays that Rs.10 Crores have been received. Further, their Statement of Accounts shows the balance interest due to be Rs.10,37,006/- on one side and Rs.60,74,366/- as due on the other hand. The Financial Creditor has deliberately manipulated the Statement of Accounts to illegally profit

themselves. The Financial Creditor must be prosecuted for financial fraud. Further, the Corporate Debtor is not liable to pay the alleged default interest of Rs.4,64,77,617/- over and above the principal and interest which has also been miscalculated. Hence, in lieu of the fact, that the entire amount has been repaid to the Financial Creditor and the alleged due amount itself is disputed. The Financial Creditor is liable to be punished under the Karnataka Prohibition of Exorbitant Interest Act, 2004.

4. The Petitioner/Financial Creditor has filed Rejoinder dated 01.09.2021, by inter alia stating are as follows:
- i. It is submitted that the Board resolution dated April 21, 2021 does not authorize the signatory to file the present reply. A bare perusal of the Board Resolution dated April 21, 2021 filed on behalf of the Corporate Debtor shows that the same is only limited to arbitration proceedings, civil/criminal proceedings to be filed in any Court/ High Court/ Supreme Court or local authority. It does not specifically authorize the signatory to verify, sign and file papers in relation to the present insolvency proceedings filed before the Adjudicating Authority, thus the Reply has not been filed on behalf of the Corporate Debtor by an authorized and proper person. For this reason its contents cannot be relied upon. The present Reply under response is liable to be rejected on this ground itself.
 - ii. It is submitted that after Loan Agreement was entered into, an Assignment Agreement was executed between Piramal Enterprises Ltd. and Piramal Finance Pvt. Ltd. on September 22, 2016. A Deed of Accession was also entered into and the same was also provided to the Corporate Debtor. Subsequently, Piramal Finance Pvt. Ltd. and Piramal Capital Ltd. merged with Piramal Housing Finance Ltd. and the company came to be known as Piramal Capital and Housing Finance

Ltd. i.e. the Financial Creditor, by virtue of a name change certificate dated June 12, 2018 issued by the Registrar of Companies, Mumbai. Accordingly, the Loan Agreement was transferred to the Financial Creditor. In this regard, the Financial Creditor relies on Section 5(7) of the IBC, which provides that a '*financial creditor*' means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned to or transferred to.

- iii. It is denied that the Financial Creditor is not a Financial Creditor and debt is not a financial debt under IBC. The Financial Creditor submits that the Corporate Debtor cannot be engaged in approbating and reprobating at the same time. At one instance the Corporate Debtor state that the Corporate Debtor accepted deposit and on the other hand they state that the Financial Creditor has not extended financial assistance. Further, as per the terms of the Loan Agreement, it is clear that the Financial Creditor that the 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 said sum of money was to be repaid as per the repayment schedule along with interest. Relevant portion of the Loan Agreement is as follows:

Whereas:

...

2. The Company (i.e. Dhammanagi Developers Private Limited) requires funds for the purpose (as defined below) and has requested and the Depositor (i.e. Piramal Enterprises Ltd.) to extend financial assistance of up to Rs.70,00,00,000/- (Rupees Seventy Crores Only);

3. The Depositor, relying upon the representation, warranties, covenants and undertakings given and made by the Company and Obligors herein and the covenants contained in the other Finance Documents, and subject to the satisfaction of the Conditions Precedent and other terms of this Agreement,

considered the request of the Company and Obligors, has agreed to deposit an amount of up to Rs. 70,00,00,000/- (Rupees Seventy Crores only) as an inter corporate deposit with the Company...

4.1.1 Subject to this Clause 4, and Interest Period for the ICD shall be 1 (One) Month and shall commence on each Disbursement Date for that ICD.

5.1 The Company shall repay the amount drawn under the ICD in accordance with the repayment schedule set forth under Part II of the Second Schedule hereunder.

5.3 Notwithstanding any other term of this Agreement, the entire ICD together with accrued interest and all other sums due and payable under the Finance Documents shall be repaid by the Company in full on or before the Final Maturity Date.

- iv. It is accordingly submitted that the Financial Creditor is a financial creditor and the debt is a financial debt. Reference in this regard is also made to Section 5(8) of IBC, which defines as a 'financial debt'. Relevant portion of Section 5(8), is as follows:

5(8) 'financial debt' means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) Money borrowed against the payment of interest;

(b) Any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;

...

A bare perusal of Section 5(8) clearly shows that if the money has been borrowed against payment of interest, then the same will constitute a financial debt. Accordingly, there is no merit in the contention of the Corporate Debtor that the debt is not a financial debt.

- v. It is submitted that the Corporate Debtor is well aware that it has defaulted in the repayment of the amounts due under the 'Inter Corporate Deposit Agreement' and related agreements. In this regard, the Financial Creditor received a response from the Director of the Corporate Debtor, i.e., Mr. Babu A. Dhammanagi dated January 2,

2021, clearly admitting the outstanding amount and seeking time for the re-payment. The said response was sent when the Financial Creditor sent the statutory default notice to the said Director of the Corporate Debtor.

- vi. The Financial Creditor denied that it has received several amount from the Corporate Debtor. It is specifically denied that the Financial Creditor has received any amount, except Rs.5,00,00,000/- (Rupees Five Crore Only) on February 23,2021. The said amount was received after the filing of the Petition by the Financial Creditor under Section 7 of the IBC, in January 2021. The Corporate may be put to strict proof regarding the deposit of other sum of money i.e. Rs.5,30,00,000/- (Rupees Five Crores Thirty Lakhs Only) and Rs.5,00,000/- (Rupees Five Lakhs). The Financial Creditor submits that it is not liable to be punished under Section 75 and 65 of the IBC. On the contrary, the Corporate Debtor is liable to be punished for intentionally making false statements before this Adjudicating Authority.
 - vii. The Financial Creditor submitted that the Corporate Debtor is deliberately diverting from the issue at hand and is not interested in the re-payment of the principal and the interest amount arising from the Loan Agreement. The Financial Creditor has filed a tabulated computation of the amount due and payable along with the Petition and the same has been enclosed as (Annexure-14), which clearly shows the outstanding amounts. Accordingly, the objection of the Corporate Debtor on this count is meritless and is liable to be rejected.
5. The Respondent/Corporate Debtor has filed Written Arguments dated 16.02.2022, by inter alia stating are as follows:
- i. It is submitted that appropriate Stamp Duty has not been paid on the documents relied upon on the basis of which the Section 7 of the IBC Application has been filed. Under Section 34 of the Karnataka Stamp

Act, there is a clear bar to act upon an unstamped document – “No instrument chargeable with duty shall be acted upon... by a public officer ... unless such document is duly stamped.” Section 34 of the KSA is mandatory and the obligation is imposed on the NCLT as well. The precedents cited by the Applicant of the Mumbai and Kolkata Bench are not binding on this Adjudicating Authority and are *per incuriam* and have not considered the obligation imposed on the Courts inside the State of Karnataka. If this Adjudicating Authority allows an unstamped document, it will set a bad precedent and this Adjudicating will cause a loss of nearly Rs.3-4 Crores to the State exchequer just to safeguard the interest of a Financial Creditor who has not been diligent to follow the law of the land. The entire case of the Financial Creditor is based on an Inter Corporate Deposit Agreement of Rs.70 Crores on which a mere Rs.400 stamp duty has been paid. The Financial Creditor has admitted to have not paid the stamp duty in its reply. Therefore, the argument that stamp duty is a curable defect is prima facie against Section 34 of the Karnataka Stamp Act. Neither the IRP nor the Committee of Creditors can cure this defect and only this Adjudicating Authority is the only forum where the issue of stamp duty can be addressed. Hence, this Adjudicating Authority by exercising its powers and judicial wisdom must impound the unstamped documents and collect the stamp duty from the Financial Creditor before proceeding with the IBC Application.

- ii. It is submitted that the Financial Creditor should not be allowed relief as the financial creditor has approached the present Adjudicating Authority with unclean hands. The Supreme Court in *S.S. Chengalvaraya Naidu vs. Jagannath*¹ has held that withholding of vital information and documents relevant to litigation amount to fraud on Court. Further, the Apex Courts in *Oswal Fats & Oils Ltd.*² has held that

¹ (1994)1 SCC

² (2010) 4 SCC 728

the Court is duty bound to deny relief to persons mischievously approaching the Court with unclean hands. It is settled law that a person who approaches the Court for grant of relief is under a solemn obligation to candidly disclose all the material facts which have bearing on the adjudication of the issues raised in the case. The party approaching the Court owes a duty to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If the party is found guilty of concealment of material facts or making an attempt to pollute the steams of justice, the Court in has not only a right but a duty to deny relief to such person. In the instant case, the Financial Creditor is playing fraud on the Court by not furnishing all statements and records. Therefore, it is clear that the document is created to manipulate this Adjudicating Authority and further, there are no documents to show any amount is outstanding or that an amount of nearly 14 crores is outstanding. On one hand the Financial Creditor states that 5.47 Crores is received but there is no whisper of how much amount is due or outstanding. The Financial Creditor is liable to be prosecuted under Section 65 and 75 of IBC and one Crore fine must be imposed for the fraud committed on the Adjudicating Authority.

iii. The Respondent/Corporate Debtor has relied upon the following judgments in support of their case:

- *Patel Stone Trading Co. vs. Ramsing* dated 22.01.1974 passed by the Hon'ble Bombay High Court³.
- *Lexicon Finance Ltd. vs. Park Securities Ltd.* dated 14.11.2003, passed by the Hon'ble Bombay High Court.

³ Civil Revn. Appln. No.21 of 1974

- *Edelweiss Asset Reconstruction Co. Ltd. vs. Winsome Yarns Ltd.*⁴ passed by NCLT, Chandigarh
- *Vistra ITCL India Ltd. vs. Satra Properties India Ltd.*⁵ passed by NCLT Bombay
- *India Resurgence ARC Pvt. Ltd. vs. Indian Steel Corporation Ltd*⁶ passed by NCLT Bombay
- *Avinash Kumar Chauhan vs. Vijay Krishna Mishra*⁷
- *Chilakuri Gangulappa vs. Revenue Divisional Officer, Madanpalle and Another*⁸
- *Garware Wall Ropes Ltd. vs. Coastal Marine Constructions and Engineering Ltd.*⁹
- *Sandra Lesley Anna Bartels vs. P. Gunavathy*¹⁰ passed by Hon'ble Karnataka High Court

6. Heard Mr. Angad Varma, learned Counsel for the Petitioner/Financial Creditor and Mr. Shashank Kumar, learned Counsel for the Respondent/Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.
7. The Petitioner/Financial Creditor filed the instant CP under Section 7 of the I&B Code, 2016.
8. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. in Civil Appeal Nos.8337-8338 of 2017* observed as under:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes

⁴ CP(IB)No.291/Chd/CHD/2018

⁵ CP(IB)No.1632/2019

⁶ CP(IB)No.3846/MB-II/2019

⁷ (2009) 2 SCC 532

⁸ (AIR 2001 SC 1321)

⁹ (2019)9 SCC 209

¹⁰ W.P. No.30884 of 2012

due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in

which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

- 9.** In the backdrop of the various contentions referred above, and in view of the judgment of the Hon'ble Apex Court in *M/s. Innoventive Industries Ltd. (supra)* the following issues fell for consideration:
- 1) Whether the CP is barred by the period of limitation?
 - 2) Whether the CP is liable to be dismissed as the documents on which the Petitioner placed reliance were not eligible in evidence as the same were insufficiently stamped?
 - 3) Whether the Petitioner/Financial Creditor proved the relationship of Financial Creditor and the Corporate Debtor?
 - 4) Whether the Petitioner/Financial Creditor proved the existence of the financial debt and the default?
- 10.** At the outset, it is to be clarified that, though the Respondent/Corporate Debtor also contended that there was a pre-existing dispute about the quantum of the financial debt claimed in the CP but the same is rejected on the ground that an application filed under Section 7 of the IBC, 2016, even if a pre-existing dispute is proved, the same will not come in the way of this Adjudicating Authority to initiate the CIRP against the Respondent/Corporate Debtor. Moreover, even the alleged pre-existing dispute, in the instant case, even if accepted, does not reduce the total financial debt to less than the threshold limit of Rs.1 Crore.
- 11.** Though, the agreement of Inter Corporate Deposit was dated 27.05.2016, but since the Respondent/Corporate Debtor admittedly made various payments on various dates and various correspondence between the parties wherein the Respondent/Corporate Debtor admitted the debt and sought for granting of further time to repay the same, and in view of the

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entries made in the financial statements of the Respondent/Corporate Debtor, the first issue held in favour of the Petitioner.

- 12.** The learned Counsel for the Respondent/Corporate Debtor advanced/ elaborate submissions and placed reliance on various judgments in support of his contention that the instant CP is not maintainable on the ground that the documents basing on which the CP was filed, were insufficiently stamped and hence the same are liable to be impounded, before placing any reliance on the same.
- 13.** In this regard, it is sufficient if we refer one Judgment of a Coordinate Bench, at Chandigarh, wherein one of us was a Member (Mr. Ajay Kumar Vatsavayi) in *Edelweiss Asset Reconstruction Company Limited vs. M/s. Winsum Yarns Ltd.* in C.P. (IB) No.291/Chd/CHD/2018. An identical issue i.e., insufficient and inadequate stamping of the loan documents was raised and answered, in Para No.25 as under:

“25. It is settled principle of law that the Corporate Insolvency Resolution Process (CIRP) is not a money claim nor a suit or a litigation and the Adjudicating Authority cannot decide the disputed question of fact. It is also the settled principle of law that the Adjudicating Authority will not go into the aspects of the validity of an agreement of an order etc. and the Adjudicating Authority is not a Civil Court to decide such disputes between the parties. Needless to mention that this principle is applicable equally to both the sides. The issue on hand goes to the root of the maintainability of the CP as the entitlement of the petitioner-EARC to file the petition under Section 7 of the Code as a financial creditor of the corporate Debtor is solely dependent on the enforceability of Annexure P-1 Assignment Agreement dated 10.12.2015. In normal circumstances, the presumption of the validity and enforceability goes in favour of the document on record. The onus of providing a document as invalid and unenforceable is heavily on the person who is challenging the said document. Bald allegations without sufficient basis cannot shift the onus from the person questioning the validity to the person placing reliance on a particular document. In the instant case, the respondent-corporate debtor by placing reliance on the above referred documents of the Revenue Authorities whereunder a categorical finding was given that the Annexure P-1 Assignment Agreement dated 10.12.2015 is inadequately stamped and that the petitioner was directed to pay an amount of Rs.1,45,85,000/- towards the deficit stamp duty on Annexure P-1, able to shift the onus to the petitioner. In view of the summary nature of the CIRP proceedings, we cannot go into the submissions made by the

learned counsel for the petitioner on the power, authority or jurisdiction of the Revenue Authorities to pass orders referred at Paragraph Nos.20 and 21 above with reference to various provision of Indian Stamp Act, 1899 as applicable to the State of Punjab and the relevant judgment thereon. On the other hand, it is to be seen that the above referred orders of the Revenue Authorities are subsisting as on today. The petitioner has not shown any stay order against the same, though contended that the aforesaid orders were challenged before a Higher Forum.”

14. Therefore, in view of above observation, this Adjudicating Authority cannot decide the disputed questions of fact and it will not go into the aspects of the validity of an Agreement. If the Respondent/Corporate Debtor is disputing the validity of any loan document on the ground of insufficient or deficient stamp duty, it is for it to approach the appropriate authority under the applicable Stamp Act and to obtain an appropriate order thereon and in the event of production of any order passed by any Competent Authority declaring a particular document as invalid, this Adjudicating Authority will consider the same in accordance with law in order to come to a conclusion whether an application filed under Section 7 or 9 can be admitted based on the said order or not. In the instant case, admittedly the Respondent/Corporate failed to place any order passed by any Competent Authority under the relevant Stamp Act, before this Adjudicating Authority and hence this Adjudicating Authority being in a summary jurisdiction cannot adjudicate the said contention. No other decision cited by the Respondent supports its contention in this regard. Accordingly, the issue no.2 is held against the Respondent/Corporate Debtor.

15. It is not in dispute that the Respondent/Corporate Debtor received an Inter Corporate Debt vide agreement dated 27.05.2016 from Piramal Enterprises Limited. The said Piramal Enterprises Limited by way of an agreement dated 22.09.2016 assigned the ICD in favour of Piramal Finance Limited. The said Piramal Finance Limited merged with Piramal Housing Finance Limited under an order of the Hon'ble NCLT Mumbai

Bench dated 06.04.2018. The name of the said Piramal Housing Finance Limited has been changed to the present Piramal Capital and Housing Finance Limited. The Petitioner specifically proved the existence of the financial debt through various documents on record. Further, the same is also proved by virtue of the record of default issued by NESL dated 10.11.2020. It is the settled principal of law that Inter Corporate Deposits are financial debts and admittedly the Respondent/Corporate Debtor obtained the subject amount from the Petitioner/Financial Creditor by way of Inter Corporate Deposit. Accordingly, issues 3 and 4 are held in favour of the Petitioner.

16. In the given facts and circumstances, the present petition being complete and having established the debt and default for the amount being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in;
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;

- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

17. In Part III of Form 1, Mr. Vinay Mruthyunjaya, Registration No. IBBI/IPA-001/IP-P02052/2020-2021/13173 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 12.01.2021 has been filed along with the C.P at Page No.469.

18. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Vinay Mruthyunjaya and there is nothing adverse against him. In view of the above, we appoint Mr. Vinay Mruthyunjaya, bearing Registration No. IBBI/IPA-001/IP-P02052/2020-2021/13173, registered address at SUNNY No.54 and 55, 7th Main, 2nd Cross, Shankarnagar, Mahalakshmi Layout, Bangalore-560096, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

19. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and

shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

20. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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1. Since the issue raised in this I.A. has already been answered in the C.P. at paras 9(2), and 12 to 14, and for the same reasons, the instant I.A. is dismissed.

— Sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Puja/Amar