IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical/Video – Conferencing/Hybrid Mode)

CP (IB) No. 4/BB/2024
Application U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

State Bank of India Limited,
State Bank Bhawan, M.C. Road,
Nariman Point, Mumbai – 400 021
Branch Office at Stressed Assets Management Branch,
State Bank of India, 2nd Floor,
Office Complex Building, LHO Campus,
#65, St. Mark's Road, Bengaluru - 560001
... Financial Creditor/Petitioner

VERSUS

M/s. G M Infinite Dwelling (India) Private Limited,
G.M. Pearl, No.06,
BTM Layout 1st Stage, 1st Phase,
Bangalore - 560068
... Respondent/Corporate Debtor

Order delivered on: 30th July, 2024

Coram: Hon'ble Mr. K. Biswal, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Arkaprava Guha Niyagi
For the Respondent : Shri Vijay A

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 10.10.2023, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'/Code), read with Rule 4 of the Insolvency & Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'Rules') by State Bank of India (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of G.M Infinite Dwelling (India) Private Limited (for brevity 'Corporate Debtor/Respondent') for a total outstanding default amount of Rs. 64,08,12,642/-, In Part IV of Form No.1 filed with application, the following information is given:

<table>
<tr>
<td>3</td>
<td>Amount claimed to be in Default

Date on which the Default occurred

(Attach the workings for computation of amount and days of Default in Tabular Form)</td>
<td>Default Amount Claimed: Rs. 64,08,12,642/- (Rupees Sixty-Four Crores Eight Lakhs Twelve Thousand Six Hundred and Forty Two Only) on 31.08.2023 along with accrued interest, expenses, costs etc. thereon 01.09.2023 till the date of realization.
<table>
<tr><td>Outstanding Amount</td><td>53,79,88,991/-</td></tr>
<tr><td>Interest</td><td>7,85,29,521/-</td></tr>
<tr><td>Penal Interest</td><td>2,42,94,130/-</td></tr>
<tr><td>Total</td><td>64,08,12,642/-</td></tr>
</table>

The first instalment of loan was due on 05.09.2022. The Corporate Debtor failed to pay the same within 30 days. Hence, the Date of Default is 05.10.2022. Further, the Corporate Debtor failed to pay the 1st instalments within 90 days resulting in account becoming Non-Performing Asset (NPA) on 04.12.2022 in terms of RBI guidelines.

No. of days of default: 331 days i.e. from 05.10.2022 to 31.08.2023.

The account statement from 10.07.2018 to 28.08.2023 and the computation of total dues, as on 31.08.2023.

The present Application has been filed within the limitation period as prescribed under the Limitation Act, 1963.</td>
</tr>
</table>

The NeSL Record of Default is annexed at Page 270, which reflects 05.10.2022 as the Date of Default.

2. The facts of the case are discussed below:

a. The Corporate Debtor vide letter 12.04.2018 requested credit facilities and sought a Term Loan for an amount of Rs. 49 Crores towards construction of Villa Project "GM Townsville", at Hulimangala Village, Jigani Hobli, Bangalore.

b. The Financial Creditor vide Letter of Arrangement dated 06.07.2018 granted credit facilities to the corporate debtor subject to certain terms and conditions as enlisted in the Letter of Arrangement ("Term Loan"). The sanctioned amount is to tune of Rs. 53,79,88,991/-. Further, the Corporate Debtor was also required to make payment towards interest as and when applied.

c. In furtherance of issuance of the term loan, the Corporate Debtor and the land owner i.e M/s Patel Engineering Limited has also created an equitable mortgage and deposited title deeds towards property situated at Hulimangala Village, Jigani Hobli, Bangalore.

d. The Financial Creditor has also executed a Guarantee Agreement dated 06.07.2018 wherein M/s Patel Engineering Ltd and M/s Gulam Mustafa Enterprises has guaranteed the due Payment of all amounts due and payable by the borrower. The Corporate Debtor has failed to make repayments towards principal amount. The Corporate Debtor has made certain payments towards interest and penal interest aggregating to a total sum of Rs. 22,72,68,976/-. The Corporate Debtor has neither come forward to make repayments nor has issued any response to these communications.

e. On account of the continued default, the Financial Creditor has classified the assets as non-performing assets on 04.12.2022. The Financial Creditor has also issued a demand notice on 05.12.2022 calling upon the Corporate Debtor to clear the outstanding liabilities.

f. On account of non-payment of dues, the Financial Creditor migrated the loan account of the Corporate Debtor from its Mysore Bank Circle Branch, Bengaluru (Loan Sanctioning Branch) to its specialized branch 'Stressed Assets Management Branch', Bengaluru (SAMB) for recovery of dues. SAMB Bengaluru vide is letter dated 13.02.2023 informed the corporate debtor about the migration of loan account and also requested the corporate debtor to approach the branch with concrete strategy/plan for resolution of the account. Thereafter, the CD offered to settle the dues to the bank vide its letter dated 05.04.2023 by offering comprise settlement of Rs. 50 Crores.

g. In reply to the letter dated 05.04.2023 of the CD, the Financial Creditor vide its letter dated 06.04.2023, requested the CD to provide certain information and to also deposit 5% of the amount as upfront to examine the offer of the Corporate Debtor. The CD has failed to deposit any upfront amount to show its bonafide intentions for resolution of the loan account. The FC on 03.08.2023, issued the possession notice under Section 13(4) of the SARFEASI Act, 2002. The CD vide its letter dated 16.08.2023 confirmed the debit balance of Rs. 61.75 Crores in its loan account and submitted an offer for compromise settlement for Rs. 54.39 Crores. In reply to this letter the FC vide its letter dated 17.08.2023 requested the CD to improve his offer and advised that it has not received any upfront money from the Corporate Debtor to consider compromise settlement request.

h. However, the Corporate Debtor, till this day has not come forward to clear the outstand dues. The total outstanding amount is Rs. 64,08,12,642. Hence, the present petition.

3. Learned counsel for the Respondent filed objection vide diary No 2025, dated 01.04.2024, contending that the Respondent made offer for compromise settlement of the loan amount vide letter dated 16.08.2023 and requested for settlement through repayment of the amount of Rs. 54.39 crores at interest rate of 11% per annum in line with the original sanction terms. This was proposed as against the due of Rs. 61.75 crores claimed by the Applicant bank as on 16.08.2023. As per the proposed payment schedule therein, it was stated that the delay in completion of project due to covid 19 pandemic affected cash flow wherein the respondent is obligated to invest in completion of the balance work in the project and also repay the loan amount. Further, the respondent stated in the said letter that the repayment of loan would be achievable only through sale of unsold units in the project and request the Applicant Bank for issuance of conditional NOC for sale of

the unsold units mortgaged with the Applicant bank. However, the bank has rejected the said proposal of settlement offered by the respondent. It is further stated that the respondent has no intention to default on the loans availed by the Applicant bank and is ready and willing to settle the outstanding dues at the earliest subject to sale of unsold units in the project for which the NOC from the Applicant Bank is required.

4. The Petitioner filed written submission vide Diary No 3770 dated 01.07.2024 and contented as under:

    i. It is submitted that the corporate debtor vide its letter dated 16.08.2023, had reached out to the Financial Creditor proposing to settle the accounts with the financial creditor by making a one-time payment, thereby acknowledging the debt payable by the corporate debtor. However, being dissatisfied by the extremely belated offer, the financial creditor vide its letter reply dated 17.08.2023 turned down the said proposal. As such, no settlement materialised from the aforesaid exchanges between the parties.

    ii. Further, the record of default issued by the NeSL makes it abundantly clear that the Corporate Debtor was in 'default', as defined in section 3(12) of IBC, 2016 for non-payment of Rs. 64,08,12,642/-.

    iii. The corporate debtor has also acknowledged the default on their part, specifically in its objections "*the respondent has no intention to default on the loans availed by the Applicant bank and is ready and willing to settle the outstanding dues at the earliest subject to sale of unsold units in the project for which he NOC from the Applicant Bank is required* "

    iv. It is submitted that the corporate debtor had also reached out to the financial Creditor for an out-of-court settlement for closing the accounts, pursuant to the filing of the present petition. The financial creditor, in good faith, allowed the corporate debtor time till 17.06.2024, by providing provisional NOCs for sale of 25 villas and closure of account, vide letter dated 07.05.2024 (referred to in the Memo dated 28.05.2024, filed by the corporate debtor). It is pertinent to mention that the Financial Creditor had seized the possession of the said villas which were mortgaged as security to the loan, owing to the Corporate Debtor's failure to repay the loan. It is submitted that the letter dated 07.05.2024 granting NOCs for sale of the 25 Villas specifically called upon the Corporate Debtor to close the accounts within 17.06.2024, failing which the said NOC would stand cancelled. Therefore, owing to the Corporate Debtor's failure to come through with its commitment, the said NOC was cancelled. Therefore, the annexures R2 and R4 to the written arguments filed by the Corporate Debtor are of no aid to the Corporate Debtor, since the same had been cancelled as a result of the Corporate Debtor's failure to make repayments.

v. From the aforesaid, there remains no hint of doubt that there is an existing debt of Rs, 64,08,12,642/- with the outstanding amount being Rs. 53,79,88,991; interest being Rs. 7,85,29,521 and penal interest being Rs. 2,42,94,130/- as on 31.08.2023, payable by the Corporate Debtor, as against the loan obtained vide the Letter of Arrangement dated 06.07.2018.

vi. It is submitted that the present petition was filed as a result of the Corporate Debtor's default in making payment towards the instalments which was due on 05.09.2022. As such, the date of default was considered to be 05.10.2022, i.e., 30 days from the date on which the first instalment was due on the part of the Corporate Debtor. However, the Corporate Debtor intends to construe the opportunity given by the Financial Creditor to settle the accounts, vide Letter dated 07.05.2024, as an extension of the tenure of the loan, thereby implying that there was no default on the part of the Corporate Debtor at the time of filing of the present petition.

vii. It is submitted that such an argument is nothing but an attempt on the part of the Corporate Debtor to deviate the attention of this Hon'ble Tribunal from the sole fact of the matter that the Corporate Debtor has committed default in repayment of the loan. It is submitted that one of the primary roles of the Financial

Creditor herein, being a banking institution, is advancing loans and obtaining interests as against the same. As such, an opportunity given by the Financial Creditor to the Corporate Debtor for closing its account, cannot be construed to mean that there was no default at the time of filing of the petition. Further, it would also be incorrect to suggest that such an opportunity provided to the Corporate Debtor to close the account, was in the process of restructuring of the loan. Therefore, it is abundantly clear that the Corporate Debtor was in default as on 05.10.2022, towards repayment of the loan obtained vide the Letter of Arrangement dated 06.07.2018.

viii. Further, the Petitioner relied on the Hon'ble Apex Court, in the matter of Innoventive Industries Ltd. vs ICICI Bank and Ors., ***in*** *Civil Appeal Nos. 8337-8338 of 2017****, dated 31 Aug 2017*** has observed that *"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 debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount."*

Further, the Hon'ble Court also observes that *"…in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

5. The respondent filed written submission vide diary no: 3764 dated 28.06.2024 inter alia contending that,

i. In spite of the hardship and covid 19 induced difficulties the Respondent sold 15 units out of the total 61 units falling to the share to the Respondent and from the sale proceeds of the said units and from other sources the Respondent with bonafide intention to clear the loan amount availed from the Applicant bank made payment towards the discharge of the loan amount to the tune of Rs.22,72,68,976/- till 14.02.2024 and are making all efforts to sell the remaining unsold units in the Project to clear the outstanding loan amount.

ii. That when things stood thus, the Applicant bank have preferred the above petition under section 7 of the IBC, 2016 fully aware the project has been completed only recently and the knowing very well that the sale of unsold units in the Project is in process to clear the outstanding loan amount.

iii. That the debt amount claimed by the Applicant bank is incorrect as the Applicant bank has without any justification charged such huge exorbitant penal interest on the term loan which is directly associated with the Project undertaken by the Respondent.

iv. That the Respondent Company is a solvent company having receivables and investment options in various projects undertaken by the Respondent and that the delay in payment is only because of the impacts of covid-19 pandemic and its induced conditions has hampered with the completion of the projects which has affected the sales of the units

v. That the Respondent relies on the order passed in Sh. Suresh Kumar Verma & Ors vs. Eco Green Build Tech Private Limited in Company Petition No. (IB)-129(ND)/2023, passed by the Hon'ble Delhi Bench of NCLT on 12.03.2024 wherein it was observed that:

"It is imperative to note that the Corporate Debtor is a solvent and financially healthy company, which is the beneficiary of a fresh infusion of funds by the Applicant herein. It is pointed out that the construction of the Project is well under way, and the Corporate Debtor is expected to complete the construction of the Project in phases, and the last phase being May 2025. It is further pertinent to mention that large number homebuyers have invested their hard-

earned money into the Project, and such homebuyers will be negatively affected if the application filed by the Allottees is admitted."

vi. That in the aforementioned case, the Hon'ble Bench also relied upon a judgement in CP (IB) 500 of 2018 in State Bank of India vs. M/s Krishidhan Seeds Pvt Ltd., and the same is extracted hereunder for the kind perusal of this Hon'ble Tribunal.

"…this Tribunal after acknowledging the earnest effort of the Corporate Debtor Management to extricate the company from its debt predicament and opted not to immediately admit the CD to CIRP".

vii. That the value of the unsold units in the Project is much more than the outstanding loan due claimed by the Applicant Bank and that various purchasers are willing to purchase the said unsold units subject to the Applicant Bank providing NOC for the units mortgaged to proceed with sale of units and the receivables from the sale may be adjusted to the outstanding loan due to the Applicant Bank.

viii. When the Respondent requested the Applicant Bank for the extension of timeline and for the issuance of NOC to sell the villamants through their Letter dated 21.03.2024 stating that the Company had transferred sum of Rs.8,95,00,000/- the Bank and a sum of Rs.13,30,70,405/- is transferred to the RERA Escrow Account, the Applicant Bank had extended the timeline till 30.04.2024.

ix. Though at the time of filing the above petition the Applicant Bank had not provided for extension of time for payment of balance loan amount and the Respondent has stated the same in the Objections it is pertinent to note that after filing of the above petition through their Communication dated 27.03.2024, the Applicant Bank had issued provisional NOC for the sale of 24 Villaments in the Project. Further when the Respondent requested for extension of timeline through their Letter dated 29.04.2024, the Applicant Bank again had through its Letter dated 07.05.2024 had extended the timeline till 17.06.2024 for the repayment and had issued provisional NOC for the sale of 25 Villamants.

x. That the Banks consent for the extension of timeline for the repayment of the loans in every regular intervals and continuous payment by the Respondent to the Applicant Bank in the manner above said on selling the villamants clearly shows the bonafide intention of the Respondent in making the repayment and closure of the Term loan with the Applicant Bank does not amount to any default and the Applicant Bank in continuously issuing NOC Letters for the sale of the Villamants and accepting the repayment amount in regular intervals cannot keep the IBC Proceedings pending before NCLT to use the same as a tool to recover the term loans when there are other means to recover the loan amount is available to the Applicant Bank .

6. Heard both Ld. Counsels for the parties and perused the records.
7. The present petition was filed on 10.10.2023 under section 7 of the IBC to initiate Corporate Insolvency proceedings against the corporate debtor on the ground that the corporate debtor has committed a default of Rs. 64,08,12,642/-. Therefore, the threshold requirement of Rs.1 Crore at the time of filing the petition is fulfilled.
8. It is also noticed that the loan agreement dated 06.07.2018, had been revived on 02.04.2021, where the Corporate Debtor acknowledged the debt through the revival letter (Annexure -L). Therefore, the Corporate Debtor requested the Financial Creditor to extend the repayment schedule for the period of one and half year with principal moratorium vide its letter dated 24.05.2021. Accordingly, the repayment of loan was extended up to 31.05.2022 and the due date started from 05.09.2022. The same was stated by the financial creditor in the application and the Respondent also acknowledged this in their written submission dated 28.06.2024. The Corporate Debtor failed to make the payment on the due date within 30 days from 05.09.2022. Due to the instalment dated 05.09.2022 remaining outstanding for 90 days, the financial creditor declared the loan as NPA on 04.12.2022. Since, the date of default falls

on 05.10.2022 as per Form No.1 filed with the application, the petition has been filed within the limitation period.

9. The Record of Default issued by the NESL, also shows that the date of default as 05.10.2022 along with amount of Rs. 64,08,12,642/- in default. The financial creditor has also produced the certificate as per the Bankers Book Evidence Act, 1861 (Annexure -Y). Further, the Balance sheet and the bank statement of the corporate debtor has also been attached. The offers of settlement by the corporate debtor vide its letter dated 05.04.2023 and 16.08.2023 as discussed above proves that there is acknowledgement of the Debt by the Corporate Debtor. In the offer letter, dated 16.08.2023, the compromise settlement amount of Rs. 54.39 Crores was proposed by the Corporate Debtor; as against the outstanding amount of Rs. 61.75 Crores. Hence, the Debt and Default is clearly established; and the amount in default is exceeding Rs. 1 Cr.

10. In view of the above discussion, the present petition **CP (IB) No. 4 of 2024 is admitted** under Section 7 of the IBC and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences 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 any court of law, tribunal, arbitration panel or other authority;
    b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
    c. 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;
    d. 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. 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;

f. 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;
g. 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;

11. In Part-III of Form No.1, Mr. *Maligi Madhusudhana Reddy* bearing Registration No. IBBI/IPA-001/IP/-PO0843/2017-2018/11427 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.34-37 of the Petition. In view of the above, we appoint *Mr. Maligi Madhusudhana Reddy* Registration No. IBBI/IPA-001/IP/-PO0843/2017-2018/11427, having registered address at *MMR Lion Corp, 4th Floor, HSR Eden, Road no.2, Banjara Hills, Hyderabad – 500034* Contact No: 9848271555, e-mail *mmreddyandco@gmail.com* as Interim Resolution Professional to carry the functions as mentioned under the 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 Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
12. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
13. The Interim Resolution Professional shall after collation of all the claims received against the 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 Tribunal 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 Tribunal every fortnight.

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

-Sd/-
(MANOJ KUMAR DUBEY)

MEMBER (TECHNICAL)

-Sd/-
(K BISWAL)

MEMBER (JUDICIAL)