IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

CP (IB) 579/MB/2022

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
VSJ Investments Private Limited
Having registered office at :- G-12, Ground Floor, Raheja Centre, 214, Free Press Journal Marg, Nariman Point, Mumbai – 400021.

..... Applicant/ Financial Creditor

Versus

Man Realty Limited
Having registered office at: - 101, MAN House, Opp. Pawan Hans, S.V. Road, Vile Parle West, Mumbai-400056.

..... Corporate Debtor

Order Delivered on :- 02.11.2023

Coram:

Mr. Anuradha Bhatia
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor: Senior Counsel Mustafa Doctor a/w Adv. Akash Agarwal, Adv. Munaf Virjee i/b ABH Law LLP.

For the Corporate Debtor: Counsel Manoj Nagrath a/w Mr. Yash Dhruva, Adv. Nishith Dhruva and Adv. Astha Ojha i/b MDP & Partners.

ORDER

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

1. The present Petition is being prosecuted under Section 7 of the Insolvency Bankruptcy Code, 20 I 6 (hereinafter referred to as "IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. VSJ Investments Private Limited (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Man Realty Ltd. (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 604,92,53,546/- (Rupees Six Hundred and Four Crores, Ninety-Two Lakhs, Fifty-Three Thousand, Five Hundred and Fourty Six only) as on 10.01.2022.

The submissions of the Financial Creditor are as follows:

2. A credit facility was sanctioned by the Financial Creditor to the Corporate Debtor vide a sanction letter dated December 22, 2017 and a loan agreement was executed between the Financial Creditor and the Corporate Debtor. The facility was to be repaid by the Corporate Debtor within a period of twenty-four equally equated monthly instalments commencing after 48 months from the date of initial disbursement along with interest. The Facility was secured by Deed of Simple Mortgage, Demand promissory note, Deed of Hypothecation and Irrevocable Personal Guarantees. Subsequent to the disbursements, the Corporate Debtor failed to adhere to the terms of the Loan Agreement and started defaulting in making regular payments of interest and principal as required under the terms of the Loan Agreement due to which the Financial Creditor issued a letter dated June 12, 2019 calling upon the Corporate Debtor to pay the due amount. The Corporate Debtor in reply refuted its liability and requested for a reconciliation of accounts. The accounts of the Corporate Debtor were classified as a Non-Performing Asset on 01.11.2019. Since the Corporate Debtor did not remedy the defaults a recall notice was sent to the Corporate Debtor by the Financial creditor. Despite the issuance of recall notice, the Corporate Debtor failed to make the payment to the Financial Creditor. Hence, the present petition. Amount of claim in default including interest as on January 10, 2022 is INR 6,04,92,53,546/-.

3. The Application u/s 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') was initially filed by M/s. Piramal Capital and Housing Finance Limited (Erstwhile Dewan Housing Finance Corporation Limited). Dewan

Housing Finance Corporation Limited ("the Original Lender") was incorporated on 11th April, 1984. Pursuant to approval of the resolution plan submitted by Piramal Capital and Housing Finance Limited in the corporate insolvency resolution process of Dewan Housing Finance Corporation Limited ("DHFL"), by the Hon'ble National Company Law Tribunal, Mumbai on June 07, 2021, Piramal Capital and Housing Finance Limited has been reverse merged into Dewan Housing Finance Corporation Limited with effect from September 30, 2021. The Certificate of Incorporation pursuant to change of name has been issued by the Registrar of Companies, Mumbai, dated November 03, 2021, wherein the name of Dewan Housing Finance Corporation Limited has been changed to Piramal Capital and Housing Finance Limited. A Deed of Assignment was entered into between the Financial Creditor and the Original Lender on 14.01.2022 and the loan under the Loan Agreement was assigned in favour of the Financial Creditor. VSJ Investments Private Limited (hereinafter referred to as the "VSJ") had filed an Interlocutory Application being IA No. 1168 of 2023 in the above-captioned Petition, seeking amendment thereof and substitution of itself as the Financial Creditor in the facts and circumstances set out therein. The said Application was allowed by this Hon'ble Tribunal vide order dated June 15, 2023. As VSJ is now the assignee in respect of the Loan, the present petition has been amended and is being currently prosecuted by it against the Corporate Debtor.

4. The Financial Creditor (that is to say the Original Lender) upon request of the Corporate Debtor sanctioned a credit facility ("Facility") upto Rs. 800,00,00,000/-(Rupees Eight Hundred Crore Only) vide sanction letter dated December 22, 2017 ("Sanction Letter"). Accordingly, by a loan agreement dated December 22, 2017 ("Loan Agreement") entered into inter

alia between the Corporate Debtor and Financial Creditor abovenamed, the parties thereto crystallised the terms and conditions for the grant of the Facility. The said Facility was to be utilized for the purposes of construction and development of the Project. The Facility was to be repaid by the Corporate Debtor within a period of twenty-four equally equated monthly instalments commencing after 48 months from the date of initial disbursement along with interest at the rate of 6.7% below the Financial Creditor's Retail Prime Lending Rate viz. 11.5% per annum, at monthly rest payable monthly. The said interest was payable on the 15th day of every month. The disbursement of each tranche the Facility was at the sole discretion of the Financial Creditor. The said facility was secured by an exclusive charge on the immovable property being the land by way of registered mortgage and irrevocable personal guarantees.

5. Pursuant to the terms of Loan Agreement, the Facility was disbursed to the Corporate Debtor in the following manner:

Date of Disbursement	**Amount (in INR)**
28/12/2017	16,50,00,000/-
05/01/2018	185,60,43,686/-
19/01/2018	750,000,000/-
02/02/2018	100,000,000/-
28/02/2018	150,000,000/-
05/03/2018	450,000,000/-
17/05/2018	150,000,000/-
06/06/2018	100,000,000/-
16/07/2018	70,000,000/-

07/08/2018	80,000,000/-
10/12/2018	120,000,000/-
31/12/2018	100,000,000/-
25/04/2019	177,696,648/-

The dates of disbursement and the amounts disbursed are more particularly listed in the Statement of Accounts annexed at Exhibit 'H' to the Petition.

6. Accordingly, an amount of Rs. 575,37,40,334/- was disbursed by the Financial Creditor. Subsequent to the disbursement, the Corporate Debtor failed to adhere to terms of the Loan Agreement and started defaulting in making regular payments of interest and principal as required under the terms of the Loan Agreement. As the aforesaid qualified as an event of default under clause 8.1 (a) of the Loan Agreement, the Financial Creditor issued a letter dated June 12, 2019 to the Corporate Debtor inter-alia informing the Corporate Debtor that as on June 6, 2019, it had defaulted in its obligation to repay 3 pre-equated monthly instalments amounting to Rs. 21.41 Crores. By its reply dated June 22, 2019, the Corporate Debtor, with a view to resile its obligations under the Loan Agreement, refuted liability to repay the amounts as called upon and requested for a reconciliation of accounts. Further, surprisingly, the Corporate Debtor alleged that the reasons for default, if any, were attributable to the conduct of the Financial Creditor.

7. Since the Corporate Debtor did not remedy the defaults as called upon, the Financial Creditor issued a recall notice dated November 8, 2019 to the Corporate Debtor. By the said Notice, the Financial Creditor called upon the Corporate Debtor to repay an aggregate amount of Rs. 451,20,80,886 (Rupees Four Hundred and Fifty-One Crores, Twenty Lakhs, Eighty Thousand, Eight Hundred and Eighty-Six only) within 7 days of receipt

thereof. Despite the receipt of Recall Notice, the Corporate Debtor failed to make payment of the amount due and payable to the Financial Creditor. Owing to the aforesaid failure of the Corporate Debtor to repay the amounts as called upon, the Financial Creditor is filing the present application under section 7 of the Insolvency and Bankruptcy and Code, 2016 seeking commencement of corporate insolvency resolution process against the Corporate Debtor.

The Submissions of the Corporate Debtor in brief: -

8. The Original Lender has no locus to file the Petition, in view of an assignment of debt to VSJ under the said Assignment Deed, a redacted copy of which had been annexed to IA No. 1168 of 2023.

9. The parties have settled the debt by way of a Settlement Agreement dated October 2022 entered into between (i) the Corporate Debtor as Borrower 1; (ii) the Merino Shelter Private Limited ("'Merino") as Borrower 2; (iii) the Personal Guarantors for the Corporate Debtor: (iv) the Financial Creditor as the Confirming Party/ Original Lender; and (v) VSJ. It was recorded that the purported debt owed by both the borrower companies was agreed to be settled for an amount of Rs. 360 crores. By not disclosing the compromise entered into between the parties, the Petitioner herein is guilty of suppressio veri and suggestio falsi.

10. The Loan Agreement relied upon by the Financial Creditor is allegedly insufficiently stamped and thus, it cannot be acted upon and enforced.

11. The Recall Notice dated November 8, 2019 is bad in law and void ab initio. The Respondent in its reply affidavit has stated that only partial amounts were disbursed by DHFL in breach of Loan Agreement. The Respondent further submits that by failing to disburse the amounts, the DHFL has ensured that the project of the Respondent came to a standstill resulting in mounting liabilities of the Respondent. The purported default by the Respondent is solely due to default made by DHFL/ the Petitioner. In view thereof, the Respondent has initiated appropriate proceedings by filing Commercial Suit No. 295 of 2020 against the Petitioner before the Hon'ble High Court of Bombay ("said Suit") inter alia challenging the Recall Notice, on the ground of several breaches of the Loan Agreement by the Petitioner. It is submitted that since the matter is sub-judice before the Hon'ble Bombay High Court, it is in the interest of justice that this Hon'ble Tribunal exercise its discretionary power u/s 7 of the Code and refuse admission of the present petition.

12. The Respondent states and submits that the Code was enacted in order to create a comprehensive and robust framework for insolvency and bankruptcy proceedings against entities which are likely to be become commercially unviable and perennially sick units with no chance of recovery. However, the Petitioner by filing the captioned Petition under the garb of a purported debt is antithetical to the objective of the Code and is acting to arm-twist and coerce to recover the purported debt against the spirit of the Code. Time and again, the Hon'ble Supreme Court of India and the Hon'ble Appellate National Company Law Tribunal including this Hon'ble Tribunal by their plethora of judgments have stated that the proceedings under the Code cannot be utilized as a recovery mechanism to arm-twist the Respondent to extort money. If such proceedings are filed with a sole intention to recover money,

then such proceedings will be against the spirit of the Code and will be categorized as fraudulent proceedings under Section 65 of the Code for abusing the process of law.

Rejoinder of the Petitioner

13. In respect of the contention of locus of the Petitioner raised by the Respondent, a formal Interlocutory Application for amendment of the Petition being I.A. No. 1168 of 2023 was preferred by VSJ to be substituted as the Financial Creditor and the same has been allowed by this Hon'ble Tribunal vide order dated June 15, 2023, recording the fact that the debt has been assigned in favour of the Financial Creditor i.e. VSJ. In view of the order dated June 15, 2023, this contention whilst even otherwise meritless and frivolous, no longer survives.

14. In rejoinder to the contention of Settlement Agreement, the Petitioner submits that Apart from paying the Rs. 15,00,00,000/- under clause 9 (ii) of the Memorandum of Agreed Terms ('MOAT') [i.e., the Settlement Agreement] at the time of execution of the MOAT, which payment was made by and appropriated towards the dues of Merino Shelters Pvt. Ltd., the Corporate Debtor and its promoters / personal guarantors have not complied with any condition contained therein. It is therefore not in dispute that the Corporate Debtor is in clear breach of the terms of the MOAT alleged, was disbursed against the consideration for time value of money. On this ground alone, the Company Petition is liable to be dismissed. The Petitioner is also put to strict proof to establish how the purported debt is a financial debt and provide documentary evidence to substantiate the same. The Corporate Debtor thus failed to pay the Settlement Amount to the Financial Creditor by

November 30, 2022, and further failed to furnish any proof that the Settlement Amount is forthcoming. Therefore, the Corporate Debtor was not entitled to the grace period. There is, therefore, a clear breach of the MOAT on the part of the Corporate Debtor. Owing to the aforesaid, the Financial Creditor by its letter dated December 5, 2022, terminated the MOAT. The Petition is filed on the basis of an admitted and undisputed financial debt, in respect of which an admitted and undisputed default has been committed. All requirements of the Code have been complied with.

15. In respect of the objection as to the Loan Agreement being insufficiently stamped, the Financial Creditor denies that the Loan Agreement is insufficiently stamped. The Financial Creditor has stated in its rejoinder affidavit that once the Tribunal is satisfied about the financial debt due and payable and its default by the Corporate Debtor, then the Tribunal must admit the petition without going into any other trivial or technical issues raised by the Corporate Debtor. In a petition under Section 7 of the IBC, the debt and default can be proved through the records of an information utility, even without filing any documents by the party - this has been done in the present case, and the record of the information utility is filed with the Petition.

ANALYSIS AND FINDINGS

16. We have heard the counsel for the parties and have gone through the records.

17. **As per the Information Utility Report** of NeSL annexed by the Petitioner herein at Exhibit 'O' to the Petition shows that the **Total Outstanding is INR**

5,93,16,19,498/- (Rupees Five Hundred and Ninety-Three Crores, Sixteen Lakhs, Nineteen Thousand, Four Hundred and Ninety-Eight Only) and **the Default amount is INR 1,58,58,93,144/-**. The date of default as per the data available in information utility is 15th August, 2019. The accounts of the Corporate Debtor were classified as a Non-Performing Asset on 01.11.2019. The Insolvency Petition against the Corporate Debtor has been filed on 20th January, 2022. Thus, the Petition appears to have been filed in time and does not suffer from limitation. The Petitioner has also annexed the true copy of the Statement of Accounts showing the amount and dates of loans disbursed to the Corporate Debtor. The Petitioner has also annexed the Copies of Form CHG-1 registering the charge created by the Corporate Debtor on its immovable properties in favour of the Original Lender. All these evidences prove the existence of financial debt due and payable and its default by the Corporate Debtor to the Financial Creditor.

18. The Application u/s 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') was initially filed by M/s. Piramal Capital and Housing Finance Limited (Erstwhile Dewan Housing Finance Corporation Limited). Pursuant to approval of the resolution plan submitted by Piramal Capital and Housing Finance Limited in the corporate insolvency resolution process of Dewan Housing Finance Corporation Limited ("DHFL"), by the Hon'ble National Company Law Tribunal, Mumbai on June 07, 2021, Piramal Capital and Housing Finance Limited has been reverse merged into Dewan Housing Finance Corporation Limited with effect from September 30, 2021. The Certificate of Incorporation pursuant to change of name has been issued by the Registrar of Companies, Mumbai, dated November 03, 2021, wherein the name of Dewan Housing Finance Corporation Limited has been changed to Piramal Capital and Housing Finance Limited. A Deed of Assignment was

entered into between the Financial Creditor and the Original Lender on 14.01.2022 and the loan under the Loan Agreement was assigned in favour of the Financial Creditor. VSJ Investments Private Limited (hereinafter referred to as the "VSJ") had filed an Interlocutory Application being IA No. 1168 of 2023 in the above-captioned Petition, seeking amendment thereof and substitution of itself as the Financial Creditor in the facts and circumstances set out therein. The said Application was allowed by this Hon'ble Tribunal vide order dated June 15, 2023. As VSJ is now the assignee in respect of the Loan, the present petition has been amended and is being currently prosecuted by it against the Corporate Debtor. Hence, the contention of locus of VSJ Investments Private Limited cannot be questioned anymore.

19. The Corporate Debtor has alleged that the Loan Agreement is not sufficiently stamped and therefore, it cannot be acted upon as evidence by the parties thereto in a court of law. The Corporate Debtor has further contended that since the Loan Agreement is insufficiently stamped, it cannot be acted upon or relied upon as evidence in a court of law. The Hon'ble Supreme Court in M/s. Innoventive Industries Ltd v/s ICICI Bank (Civil Appeal Nos. 8337-8338 of 2017) Judgment dated August 31, 2017 has held at Para 30 as follows: *"In the case of a Corporate Debtor who commits a default of a 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 become due in the sense that it is payable at some future date."*. In light of the above-referred judgment of the Hon'ble Supreme Court, it does not matter if the debt is disputed so long as it is due and payable. From the evidences on record furnished by and on behalf of the

Petitioner, the existence of financial debt due and payable and its default by the Corporate Debtor have been proved to the full satisfaction of this Tribunal. Hence, the technical objections of the Corporate Debtor with respect to the filing of a Commercial Suit in the Bombay High Court impugning the Recall Notice dated November 08, 2019 and about the Loan Agreement being insufficiently stamped, do not merit consideration.

20. The Corporate Debtor has submitted that the Settlement Agreement was executed between the parties in October, 2022 and hence, in view of the settlement arrived at between the parties herein, the present petition should be dismissed. It is true that the Memorandum of Agreed Terms was executed between the parties herein in October, 2022. The Corporate Debtor offered a settlement to the Financial Creditor proposing to pay INR 360 crores to settle the debts owed by it. However, the Corporate Debtor defaulted even in paying the settlement amount. Apart from paying INR 15 crores, no other payments were made by the Corporate Debtor. Hence, the Financial Creditor terminated the Memorandum of Agreed Terms vide Letter dated December 5, 2022. Merely entering into a settlement agreement does not change the nature of debt due and payable by the Corporate Debtor to the Financial Creditor. Settlement proposals only reduce the quantum of the debt due and payable by the Corporate Debtor to the Financial Creditor. Hence, this Petition is still maintainable.

21. As a result of above discussion, we hold that the Petitioner has been able to establish the factum of existence of the financial debt and its default having been committed by the Corporate Debtor and therefore, we find the present Petition to be a fit one to be admitted u/s 7 of the Code, 2016. It is ordered accordingly in the following terms.

ORDER

a. **The above Company Petition No. (IB) 579 (MB)/2022 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **MAN REALTY LIMITED.**

b. This Bench hereby **appoints Mr. Ashish Arjunkumar Rathi, Registration No: IBBI/IPA-001/IP-P00568/2017-18/11010 as the Interim Resolution Professional having his registered office at 19/503, N R I Complex, Section 54, 56, 58, Seawood, Nerul, Navi Mumbai, Mahrashtra-400706; Email:- ipashishrathi@gmail.com,** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

22. **Accordingly, this Petition is admitted.**

23. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**