

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1686 OF 2020

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

IIFL Home Finance Limited

...Applicant

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

Financial Creditor

Vs.

Satra Properties India Limited

Corporate Debtor

Order delivered on: 22.11.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

For the Applicant : Mr. Rushabh Seth, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 1686/2020 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 by M/s IIFL Home Finance Limited (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor”), to seek directions to Sh. Devrajan Raman (“Resolution Professional”) for admission of claim of the Applicant in the category of Financial Debt.
2. The Applicant has submitted that on 28.3.2015, the Applicant had executed a loan agreement with the Corporate Debtor granting a loan facility of Rs. 20.00 crores, accordingly the necessary documents i.e. A Mortgage Deed, A demand Promissory Note and Letter of Continuity were executed by the Corporate Debtor in favor of the Applicant. On 27.7.2018, another loan agreement was executed granting additional loan facility of Rs. 5.21 Crores. In addition to the facilities granted to the Corporate Debtor by the Applicant, the Applicant’s holding Company IIFL Finance Ltd. had also granted independent and separate loan facilities to the Corporate Debtor and for the said purpose, various agreements were also executed between IIFL Finance Ltd. and the Corporate Debtor.
 - 2.1. The Corporate Debtor defaulted in respect of all the loan facilities granted by both the companies, and the Applicant’s holding company IIFL Finance Ltd. filed Company Petition (IB) No. 176/2019 u/s 7 of the Code before this Tribunal, pursuant to which consent terms were filed on 9.9.2019 before this Tribunal and the Corporate Debtor had acknowledged Applicant’s debt therein. Applicant and the Corporate Debtor also entered into an Amendment Agreement dated 9th September 2019 pursuant to the signing of the Consent Terms.

2.2. On 20th March, 2020, the Applicant, the Corporate Debtor, Satra Property Developers Pvt. Ltd. (SPDPL) and IIFL Finance Limited (IIFL) entered into a registered Deed of Security in furtherance of the Consent Terms dated 9th September, 2019 and the Amendment Agreement dated 9th September, 2019 since one of the condition therein was that the obligations of the Corporate Debtor would be secured by a first ranking mortgage and charge over the properties being all the right, title and interest over the Floor Space Index admeasuring 2,00,000 square feet on the land situated at Amrut Nagar, Ghatkopar (West), Mumbai along with pro-rata car parking space. It is the case of the Applicant that the commercial intent of the parties as can be borne out from the Consent Terms and the Amendment agreement both dated 09.09.2019 was that the said security was in addition to the securities mortgaged by the Corporate Debtor by virtue of the earlier Loan Agreements.

2.3. The Corporate Debtor was admitted to CIRP on 03.8.2020, the Applicant filed its claim in Form C on 19.08.2020 along with all the relevant documents and annexures. The Respondent vide email dated 28.09.2020 rejected the said claim stating that

“I have reviewed the consent terms, the Two Amendment Agreements, both dated 9 September, 2019, executed between SIPL, IIFL and IIFL Home Finance Limited and SPDPL and IIFL and also the Security Release Agreement dated 9 September 2019 executed between SIPL SPDPL, IIFL and IIFL Home Finance Ltd.

I have also reviewed the documents titled as “Deed of Security” dated 20th March, 2020 entered into between SIPL, SPDPL, IIFL and IIFL Home Finance Ltd. According to me, the parties have upon execution of “Deed of Security” by consent agreed to modify and/or alter the obligations of SIPL under the Loan Agreement read with amendment agreement as well as the consent terms.

According to me, upon execution of the subsequent document Deed of Security” dated 20th March, 2020, SIPL is no longer liable and is discharged from its obligations under the Loan Agreement read with amendment agreement as well as the consent terms.

Therefore, I am unable to consider the claim raised by you against SIPL and regret the inability to admit the same.”

3. The Respondent has filed written submissions stating that the applicant has executed Deed of Security dated 20.03.2020 wherein, Satra Properties Developers Pvt Ltd as “Mortgagor” has provided security on behalf of the Corporate Debtor. In terms of recital G and clause 7.3 of the Deed of Security, it was expressly agreed that the Corporate Debtor shall be henceforth not be liable for the dues as specified in the consent terms and that the Corporate shall be discharged from its obligations to make repayment under the Loan Agreement read with Amendment agreement as well as the consent terms. Further, clause 7.3 also expressly provides that repayment to the Applicant in terms of the consent terms as well as the amendment agreements shall only be from the sale of Mortgaged property.

3.1. Accordingly, there is no liability shown to be due to the Applicant in the books of account of the Corporate Debtor, which is evident from the financial statements for the year ended on 31.03.2020 drawn after execution of the Deed of Security dated 20.03.2020.

3.2. Further, in view of Deed of Security, the applicant has filed claim to the tune of Rs. 136,32,77,076/- before the Resolution Professional of SPDPL, which has been admitted in total and includes the amount claimed from the Corporate Debtor in the present application. The RP of SPDPL has admitted the claim of the Applicant as secured creditors having first ranking charge on plot bearing CTS no. 1 (Pt), S. No. 136 (Pt) of Village Ghatkopra, Mumbai, which is same as mentioned in Deed of Security.

4. We have heard the Learned Counsel and perused the material available on record.

4.1. The primary issue for consideration in the present application is whether Deed of Security dated 20.3.2020 discharges the Corporate Debtor qua the Applicant and the Applicant becomes creditors of SPDPL for the amount owed by the Corporate Debtor.

4.2. Recital G of the deed of Security reads thus“

The Mortgagor has agreed that the Security will be created for the benefit and in favour of the Lender for and on behalf of the Obligor. The Mortgagor hereby represents, declares and confirms to the Lenders, that Mortgaged Properties including the units/premises to be constructed by utilizing the 2,00,000 lakh sq. ft. FSI is sufficient to discharge the total debt of SPIL/Obligor as and when it becomes due and accordingly on execution of this deed/agreement i.e. in compliance of the consent terms (read with the extension letter dated 17.01.2020) as well as the Amendment Agreement, and as such SPIL/Obligor henceforth shall not be liable for the said dues (as specified in the consent terms) and shall stand discharged from its obligations to make the repayment under the Loan Agreement read with Amendment Agreement as well as Consent Terms” .

4.3. Further, Recital J reads as “*Believing upon the aforesaid representations, confirmation, declarations and covenants as true and correct and the same have been duly accepted by the Lenders and accordingly, in furtherance of the Consent Terms and amendment agreement to the Loan Agreement, the Lenders have agreed to receive the security of the Mortgaged Properties from the Mortgagor, at the behest of SPIL/Obligor against the debt of SPIL/Obligor to enable the lenders to satisfy its dues (SPIL’s dues) as specified in the consent terms” .*

4.4. Clause 2 of the Deed of Security provides that “The Security interest, including the covenants given by the Mortgagor hereunder shall be in favour and for the benefit of the Lenders subject to the powers and

provisions contained herein and in the other Financing Documents, for the due payment of the Secured Obligations and discharge of all other obligations under the Loan Agreements, the Amendment Agreements and all other agreements, documents, deeds etc. in relation thereto (collectively the 'Financing Documents').

4.5. Further, clause 7.3 of the Deed of Security provides that

“It is expressly agreed by the parties that on execution of this present deed/indenture, henceforth SPIL/Obligor’s revised loan as mentioned above which has been secured by SPIL/Obligor in favour of the Lenders shall be repaid, in terms hereof, i.e. only by way of sale proceeds to be generated from units/premises to be constructed out of the Mortgaged Properties) in terms of the Consent Terms as well as the Amendment Agreements executed between the parties to these present.”

4.6. We further find that clause 2.4 & clause 2.5 of the Amendment Agreement dated 9.9.2019 entered amongst the Applicant, the Corporate Debtor and IIFL provides that the Company (Corporate Debtor here) shall pay the aforesaid sum of Rs. 22,80,76,772/- to IIHFL (Applicant here) along with interest thereon compounded quarterly at 16% per annum starting from 1 September, 2019, as per the repayment schedule, set out in Schedule II hereof and the same shall be first recovered from Mortgaged Property / the cash flows generated from the Mortgaged Property. Clause 2.5 further provides that the cash flow / proceeds generated from the Mortgaged Property/recovered from the Mortgaged Property shall be first utilised for repayment of the outstanding financial debts due to the lenders (Corporate Debtor and IIFL Here). Schedule II provides for the repayment instalment due from 30.6.2022 till 31.3.2024. In other words, the Amendment Agreement modifies the terms and manner in which the debt owed to the Applicant was to be discharged consequent upon the consent terms.

- 4.7. From the harmonious reading of the above provisions, we find that the SPDPL had agreed to provide its property as mortgage and proceeds of/from such mortgaged property were to be first appropriated towards repayment of debt due to the Applicant in terms of Schedule II of the Amendment Agreement. Clause 7.3 of Deed of Security only clarifies a position that in case the debt is discharged out of proceeds of security interest, the same shall not be claimable from the Corporate Debtor. In substance, the transaction was to provide additional security only, and source of cash flows to pay the debt due to the applicant. Accordingly, the applicant's claim deserves to be admitted as Financial Debt, since all other ingredients in terms of section 5(8) of the Code are met in the present case.
- 4.8. However, it is made clear that the claim of the Applicant on SPDPL in relation to debts owed by Corporate Debtor can not form part of financial debt qua SPDPL in view of decision of Hon'ble Supreme Court in the case of *Anuj Jain IRP for Jaypee Infratech Ltd. Vs. Axis Bank Ltd. etc. [2020] ibclaw.in 06 SC*, as SPDPL has merely provided its property to securitise the debt owed to the applicant. Accordingly, we direct the Applicant to seek modification of its claim in the CIRP process accordingly.
5. In view of foregoing, IA 1686/2020 is allowed.

SD/-

Prabhat Kumar
Member (Technical)

SD/-

Justice V.G. Bisht
Member (Judicial)