IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.725/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

VSJ Investments Private Limited.

…Financial Creditor

v/s.

Galore Developers Private Limited.

[CIN: U70101PN1990PTC09617]

…Corporate Debtor

Order Delivered on: 09.02.2024

Coram:

Ms. Anu Jagmohan Singh Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:	Mr. Nausher Kohli a/w Ms. Astha Ojha and Mr. Jash Shah i/b DSK Legal, Ld. Counsel
For the Corporate Debtor:	Mr. Amir Arsiwala a/w Mr. Farjeen C., Ld. Counsel

ORDER

1. This Company Petition is filed under section 7 (“the Petition”) of the Insolvency and Bankruptcy Code, 2016 (IBC) by VSJ Investments Private Limited ("the Financial Creditor") herein the “Applicant”, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Galore Developers Private Limited ("the Corporate Debtor").

    1.1 The present Petition was filed on 20.01.2023 before this Tribunal for claiming an Amount for a sum of INR 46,47,38,567.85/- (Rupees Forty-Six Crore Forty-Seven Lakh Thirty-Eight Thousand Five Hundred and Sixty-Seven and Eight Five Paise Only) as on 12.01.2023 including the outstanding principal and interest. The Date of Default as specified in part IV is 11.09.2022.

Submissions of the Financial Creditor:

2. The Financial Creditor submits that on 05.08.2013, the erstwhile Dewan Housing Finance Corporation Limited sanctioned a project/mortgage loan of Rs. 28,50,00,000 (Rupees Twenty-Eight Crore Fifty Lakh Only) at the request of the Corporate Debtor. Accordingly, on 29.08.2013 a loan agreement was executed inter alia between the parties and as per the terms of the Loan Agreement read with the Sanction Letter, the said Loan was to be repaid by the Corporate Debtor by way of 24 (twenty-four) equated monthly instalments, commencing after 3 years from the date of first disbursement, along with interest at the rate of 2.75% per annum

3. It is submitted that a Deed of Simple Mortgage and Deed of Hypothecation was executed on 29.08.2013, a Supplementary Mortgage Deed was also executed on

30.08.2013, and a Deed of Personal Guarantee was executed on 28.08.2013. An amount of Rs.15,25,00,000/- (Rupees Fifteen Crore and Twenty-Five Lakhs Only) was disbursed to the Corporate Debtor.

4. The Corporate Debtor had defaulted on repayment of the said Loan and consequently on 11.11.2019, a Recall Notice was issued to the Corporate Debtor and the Guarantors.

5. On 25.09.2020, the Corporate Debtor addressed a letter to the erstwhile the DHFL offering a "One Time Settlement" proposal for its dues. Thereafter, pursuant to various discussions and deliberations, Piramal Capital and Housing Finance Limited ("PCHFL", post reverse merger with DHFL) and the Corporate Debtor entered into a Settlement Agreement on 23.05.2022 by accepting the one-time settlement offer of Rs.20,00,00,000/- (Rupees Twenty Crores only) to be paid as per the Settlement Agreement.

6. The Financial Creditor submits that it was agreed that if the Corporate Debtor fails to pay the OTS Amount within a period of 90 (ninety) days in the manner/schedule as provided in the Settlement Agreement, PCHFL shall revert to the pre - settlement position retaining all rights to recover full outstanding amounts due originally and existing in the books of accounts of the Financial Creditor prior to Settlement Agreement.

7. The Financial Creditor further submits that, PCHFL assigned all rights, title and interest in relation to various underlying pool of loans vide Assignment Agreement dated 14.07.2022 to VSJ Investments Private Limited i.e., the present Financial Creditor. Further, the Corporate Debtor failed to adhere to the terms of the Settlement Agreement and consequently, the Financial Creditor addressed a notice of intimation of default to Corporate debtor on 08.09.2022 wherein it was specified that if the Corporate Debtor fails to address/make the

payment within 3 days of receipt of the said notice i.e. 11.09.2022 the said loan shall become due and payable by the Corporate debtor together with interest, costs, charges thereon. Therefore, pursuant to the failure to address the said default notice and default on payment of the OTS amount the Financial Creditor cancelled the Settlement Agreement by a cancellation letter on 20.09.2022.

Submissions of the Corporate Debtor:

8. The Corporate Debtor is engaged in the business of Real Estate Construction and Development and undertakes construction of several real estate projects directly or indirectly through several purpose vehicles.

9. The Corporate Debtor submits that that the present Petition is barred by Limitation as there has been a grave mistake on part of the petitioner while arriving at the date of default as the petitioner has refrained from stating or relying upon the date of the loan account being classified as a Non-Performing Asset on 01.11.2016. Further, there is no document on record with respect to acknowledgment of the alleged debt during the period from 01.11.2016 to 01.11.2019 and the Loan Recall notice dated 11.11.2019 is also post expiry of the Limitation period.

10. The Corporate debtor submits that the Financial Creditor has failed to provide a systematic computation of the alleged default amount as claimed under Part IV, wherein it appears that while calculating the alleged default amount the default has been considered from the date of Loan recall notice i.e. 11.11.2019 which is contrary to the date of default as specified by the Financial creditor in Part IV of the present application.

11. The Corporate debtor further submits that the Petitioner has failed to substantiate the default amount as well as the date of default since, the Record

of Default (RoD) from Information Utility, such as NeSL Report, which is mandatory u/s. 7 of the Code. Further, the Financial creditor also invoked Guarantee Deed dated 28.08.2013 which records that the loan liability under the said Deed is joint, several, irrevocable and co-extensive with the loan liability of the Borrower.

12. The Corporate debtor submits that the Financial creditor has not placed on record the proceedings-initiated u/s.95 of the Code against the Personal guarantors with respect to the same debt arising out of the said loan agreement. Further, it is submitted that when an application is filed u/s. 94 or 95, an interim moratorium commences on the date of the application in relation to all the debts. Also, the financial creditor has failed to disclose that an amount of Rs. 8.61 Crores was to the Financial creditor by the Corporate debtor towards the repayment of the said sanctioned loan.

<u>Findings:</u>

13. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.
14. The date of default as specified under Part IV of the petition is 11.09.2022, the present petition is filed on 20.01.2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.

15. As per the material on record, this bench finds that the Corporate Debtor has issued a letter dated 25.09.2020 to the manager of Dewan Housing Finance Corporation Ltd. (DHFL) who is the erstwhile Financial Creditor, proposing One time Settlement stating that, "*Due to short disbursement the projects were stalled for need of funds and even due to poor market conditions we landed in problems and since*

then have been facing grave financial issues. Further, we would like to inform you that we are willing to come forward to pay and settle our accounts."

16. On perusal of the documents placed on record, it is observed that a Settlement Agreement dated 23.05.2022 was entered into between the Financial creditor and Corporate debtor which specifies that the Corporate debtor has agreed and undertaken to pay Rs.20,00,00,000/- (Rupees Twenty Crore Only) to the erstwhile Financial creditor i.e. Piramal Capital & Housing Finance Limited as a One-Time Settlement amount. This shows the admission of liability of the Corporate Debtor; thus, the period of limitation stands extended.

17. From the above it flows that the Corporate Debtor has acknowledged and agreed to pay the amount of Rs.20,00,00,000/- (Rupees Twenty Crore Only), which amounts to acknowledgement of liability on the part of the Corporate Debtor. Further, the Corporate Debtor has defaulted in payments in terms of settlement Agreement dated 23.05.2022 leading to revoking of the Settlement Agreement and demand of recall letter.

18. This Bench takes note that the Corporate debtor has in its submission stated that the present petition is barred by Limitation; the amount of debt is not correctly mentioned as well as the Nesl report is not placed on record and the proceedings are pending u/s 95 of the code against the personal guarantors.

19. This Bench observes that the above contentions of the Corporate debtor is devoid of merits. This Bench is of the view that the present petition is within limitation as discussed supra; proceedings u/s. 95 of the code are separate and independent of section 7, and documents placed on record by the Financial Creditor clearly establish debt and default.

20. The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor under section 7 of IBC is mandated to ascertain the existence of the debt, and any default in payment of such debt.

21. Considering all the facts placed before us and the fact that the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

22. The Petition bearing CP (IB) No.725/MB-IV/2023 filed by VSJ Investments Private Limited ("Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of GALORE DEVELOPERS PRIVATE LIMITED., the Corporate Debtor is **Admitted.**

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The bench hereby appoints **Mr. Ravindra Chaturvedi**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00792/2017-2018/11359** and email- **ravinchaturvedi@hotmail.com** and contact no.**-9820007726**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under 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 Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

(i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.

(j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-	Sd/-
ANU JAGMOHAN SINGH **MEMBER (TECHNICAL)**	**KISHORE VEMULAPALLI** **MEMBER (JUDICIAL)**