IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

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

Interlocutory Application 182/2022

In

Company Petition No. 481/I&BC/NCLT/MAH/2021

Piramal Capital & Housing Finance Limited

.... Applicant

Vs.

Arpan Maheshkumar Shah

Interim Resolution Professional/ Resolution Professional

of Anuradha Real Estate Developers Pvt. Ltd

….Respondent

Interlocutory Application 308/2022

In

Company Petition No. 481/I&BC/NCLT/MAH/2021

Arpan Maheshkumar Shah,

Resolution Professional of

M/s. Anuradha Real Estate Developers Pvt. Ltd

.... Applicant

Vs.

Piramal Capital and Housing Finance Limited

….Respondent

In the matter of

Deepak Cheeda & Ors.

.... Financial Creditor/Petitioner

vs.

Anuradha Real Estate Developers Private Limited.

..… Corporate Debtor

Order delivered on 21.04.2022

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (T)

<u>IA 182/2022</u>

For the Applicant : Mr. Shyam Kapadia a/w Vishnu Shriram, Rahul Miranda and Shivani Chaturvedi, Advocates i/b Khaitan & Co

for Respondent/RP : Adv Natasha Dhruman Shah with Adv Prutha Bhavsar

<u>IA 308/2022</u>

For the Applicant: Adv Natasha Dhruman Shah with Adv Prutha Bhavsar

for Respondent : Mr. Shyam Kapadia a/w Vishnu Shriram, Rahul Miranda and Shivani Chaturvedi, Advocates i/b Khaitan & Co

Per: Suchitra Kanuparthi, Member (J)

<u>ORDER</u>

I.A. 182 of 2022

1. This Application is being filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, as amended ("**IBC**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions of this Hon'ble Tribunal to the Respondent to admit the claim filed by the Applicant as a financial creditor and

reconstitute the Committee of Creditors ("**COC**") of the Corporate Debtor by inducting the Applicant as a member.

2. The Applicant, i.e. Piramal Capital & Housing Finance Limited was previously known as Dewan Housing Finance Corporation Limited ("DHFL") Pursuant to the order dated 3 December 2019, this Hon'ble Tribunal initiated a corporate insolvency resolution process ("CIRP") against DHFL. Thereafter, by an order 7 June 2021, this Hon'ble Tribunal approved the resolution plan submitted by the Piramal Capital & Housing Finance Limited, in terms of which Piramal Capital & Housing Finance Limited merged into DHFL and the name of the merged entity has been changed to Piramal Capital & Housing Finance Limited with effect from 3rd November 2021.

<u>Loan availed by the Corporate Debtor from the Applicant and payment default:</u>

3. The Corporate Debtor is engaged in the business of construction and development of residential houses and apartments. One of the projects that the Corporate Debtor was developing was a residential building named 'Royal Accord' on the land situated at Survey No. 429, Hissa No. 1/3, New CTS no. 1069A/2A/1 and Survey no. 429/ Hissa No.2, CTS No. 1071 situated at village Malad, Taluka Borivali, Mumbai ("Project").

4. For the purpose of financing the cost of construction and development of the Project, the Corporate Debtor approached the Applicant, to avail a loan facility of up to INR 100,00,00,000 (Rupees One Hundred Crores) ("Loan"). The Applicant sanctioned the Loan as per the terms and conditions contained in the sanction

letter bearing number DHFL/2018-19/PF/MD/696 and dated 1 June 2018 ("Sanction Letter"), pursuant to which the Corporate Debtor and the Applicant entered into a loan agreement dated 6 June 2018 ("Loan Agreement"). The repayment of the loan was *inter alia* secured by the following:

a. Exclusive charge by way of registered mortgage on the land and Project along with present and future construction thereon including developers share of unsold and booked units as set out in Annexures I and II of the Sanction Letter, but excluding the units set out in Annexure IV of the Sanction Letter as per the terms of the Deed of simple mortgage dated 6 June 2018; and
b. Exclusive charge by way of hypothecation on the receivables arising out of the developer's share from 'present and future', 'unsold, booked and sold' units in the Project, more particularly described in Annexures I, II and III of the Sanction Letter;
c. Personal guarantees of Mr. Harshit Narendra Mehta, Mrs. Niyati Harshit Mehta, Mr. Ritesh V Shah, Mr. Samit Shirish Dadia, Mr. Pratik Shantilal Jiyani and Mr. Santosh Kumar Prajapati; and
d. Corporate guarantee of Rite Developers Private Limited ("**RDPL**"), an affiliate entity of the Corporate Debtor

5. The Applicant disbursed a total sum of Rs. 32,50,00,000/- (Rupees Thirty-Two Crores Fifty Lakhs) ("Disbursed Loan") in the following tranches to the Corporate Debtor.

S. No.	**Date of Disbursement**	**Amount of Disbursement (in INR)**

1.	11 June 2018	5,00,00,000
2.	15 June 2018	7,50,00,000
3.	19 July 2018	50,00,000
4.	6 August 2018	10,00,00,000
5.	3 December 2018	1,50,00,000
6.	10 April 2019	8,00,00,000
	Total	32,50,00,000

The statement of account for the Corporate Debtor's loan account being loan account no. 00035672 is annexed in the Application.

6. As per the terms of sanction, the Loan was to be repaid in 24 equated monthly instalments ("EMIs") commencing after 36 months from the date of first disbursement. Sometime in August 2018 the Corporate Debtor began defaulting in the payment of the EMIs as per the Sanction Letter and the Loan Agreement and accordingly the loan account of the Corporate Debtor was classified as a non-performing asset in the books of the Applicant on 1 November 2018. In view of the defaults, the Applicant issued a Recall Notice dated 8 November 2019 to the Corporate Debtor and the guarantors/ mortgagors, calling upon them to make payment of the outstanding amount of INR 37,97,56,230/- (Rupees Thirty Seven Crore, Ninety Seven Lakhs, Fifty Six Thousand, Two Hundred and Thirty only) as on 8 November 2019 together with accrued interests, costs, charges and expenses

within 7 days of the notice. Thereafter, the Applicant issued a notice under Section 13 (2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") bearing number PF/2020-21/SARFESI/ANURADHA dated 5 August 2020 ("13(2) Notice") calling upon the Corporate Debtor to make payment of INR 41,78,22,974 as on 31 July 2020 along with further interest, non-compliance charges, incidental expenses, costs and other charges failing which the Applicant would be constrained to take action against the Corporate Debtor under Section 13(4) of SARFAESI Act.

7. However, despite sending numerous reminders and notices, neither the Corporate Debtor, nor any of the guarantors/ mortgagors made any payment of the outstanding amounts due under the Loan. Accordingly, the Applicant in exercise of the powers conferred to it under sub section (4) of Section 13 of SARFAESI Act, affixed the possession notice dated 5 December 2020 and took a symbolic possession of the Project land with effect from 5 December 2020 and served the said Possession Notice to all the concerned parties through RPAD vide its letter dated 7 December 2020.

<u>Submission of the claim before the Respondent</u>

8. Pursuant to the Admission Order, the Respondent made a public announcement dated 28 August 2021 in accordance with sub-regulation (1) Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") and called upon the stakeholders of the Corporate Debtor to submit their

claim along with the proof/supporting documents by electronic means.

9. The Applicant submitted its claim for a financial debt of INR 48,63,51,064 (Rupees Forty-Eight Crores Sixty Three Lakhs Fifty One Thousand and Sixty Four) ("**Claim**") as on the insolvency commencement date vide its Form-C dated 27 October 2021 ("**Claim Form**"). The said Claim Form along with supporting evidence was submitted to the Respondent vide emails dated 1 November 2021 and 2 November 2021.

10. The Applicant did not receive any acknowledgment or communication pertaining to its Claim from the Respondent for over a month after submission of the Claim. The Applicant followed-up with the Respondent on the status of the verification of the Claim by way of numerous emails and phone calls requesting the Respondent to update the Applicant of the status of verification of its Claim. Copies of the emails sent by the Applicant to the Respondent following up on the status of verification of the Claim are annexed and marked as Exhibit "L (colly.)". However, it was only after a lapse of over 30 (thirty) days since the submission of the Claim Form, that the Respondent vide his email dated 7 December 2021, sought certain additional information/clarification pertaining to the Claim. One of the issues regarding which the clarification was sought was the status and details of certain proceedings purportedly initiated by the Corporate Debtor against the Applicant before the Hon'ble Debt Recovery Tribunal ("DRT") allegedly in respect of the payment of the outstanding amounts under the Loan having been made by a corporate guarantor on behalf of the Corporate Debtor.

11. The Applicant vide its letter dated 9 December 2021 duly provided all additional information/ clarification sought in the Respondent's email dated 7 December 2021. Specifically with respect to the clarification pertaining to the payments allegedly made by a corporate guarantor on behalf of the Corporate Debtor, it was clarified that RDPL is not only a corporate guarantor for the loan availed by the Corporate Debtor from DHFL, but also a borrower of DHFL having availed a separate loan backed by mortgage being loan account no. 0034776 from the Applicant. It was further clarified that the payment of INR 38,51,98,790 by RDPL to the Applicant on 19 November 2018 was towards part repayment of the aforesaid loan availed by RDPL from DHFL under loan account no. 0034776, and not in relation to loan account no. 00035672 availed by the Corporate Debtor from the Applicant and in respect of which the present Claim has been filed. With respect to the extract of the transaction audit report in the CIRP of DHFL pertaining to the corporate guarantor as sought by the Respondent, the Respondent was informed that the relevant evidence and supporting document for the purpose of verification and admission of the claim, including the statement of account for the Loan availed by the Corporate Debtor had already been provided, and the transaction audit report in the CIRP of DHFL is totally irrelevant for the purpose of admission of the Claim in the CIRP of the Corporate Debtor. The Respondent was also apprised of the Applicant's frustration and apprehension that the issue pertaining to RDPL is clearly an attempt by the promoters of the Corporate Debtor and RDPL to mislead the Respondent.

12. However, much to the Applicant's surprise, in spite of providing

the Respondent with all the information/clarification regarding the Claim, including the statement of the loan account of the Corporate Debtor, the Respondent vide its email dated 14 December 2021 once again erroneously placed reliance on the proceedings before the DRT and stated that the Claim is still being processed/verified by him. By an email dated 14 December 2021, an unattested and unsigned copy of the application filed by the Corporate Debtor before DRT, Mumbai along with a screenshot of the case status of the said application was shared by the Respondent. It is pertinent to note that the Applicant has not been served a copy of the said application, nor any notice from the DRT in relation to the same.

13. The Applicant vide its letter dated 15 December 2021 once again reiterated to the Respondent that the application purportedly filed by the Corporate Debtor before the Hon'ble DRT has no bearing on the Claim submitted by the Applicant and that the Respondent has been duly provided with all the documents and information in support of the Claim.

14. Thereafter, by an email dated 22 December 2021, i.e. after a lapse of nearly 60 (sixty) days since the filing of the Claim Form, the Respondent vide his email has once again informed the Applicant that the Respondent is still in the process of verifying its Claim.

15. By its letter dated 31 December 2021, the Applicant once again reiterated the inordinate delay that has occurred in the admission of its Claim despite all additional information/ clarification sought by the Respondent having been provided. The Applicant also

highlighted the grave prejudice being caused to the Applicant as a result of non-verification of the claim, and called upon the Respondent to conclude the verification of Claim within 7 (seven) days thereof and reconstitute the CoC.

16. In response to the Applicant's letter dated 31 December 2021, the Respondent vide his letter dated 6 January 2022 has *inter alia* once again stated that the Claim continues to be under verification, and that the opinion of a retired Judge is being obtained on the issue. It is pertinent to note that even vide the email dated 22 December 2021, the Respondent had informed that the Applicant that he is seeking appropriate professional advice on the matter. Yet two weeks later, the Respondent is yet to conclude the process and the Applicant's Claim remains unadmitted and under verification.

Reply

17. The Respondent pointed out that the applicant herein cannot be deemed as a Financial Creditor under section 5(7) of the Code, as Financial Creditor any person to whom the Financial debt is owed and including such person to whom such debt has been legally assigned or transferred. The debt of the Applicant has not been admitted in the light of discrepancies arises out of perusal of the Financials and books of accounts of the Corporate Debtor.

18. It is established from the following serious discrepancies in relation to the procedure of facilitating the loan which is as under:
    a. The condition of Escrow Account was never followed which was part of terms of sanction;

b. No monitoring mechanism was put in place to ensure money goes into project and the funds disbursed have been allowed to be transferred to RDPL instead of direct use on project development;
c. As per clause 11 of sanction letter interest shall be "charged" from the 1st disbursement. In the first 36 months only interest needs to be paid every month. PDCs covering interest should be furnished with each disbursement. If there is a default in payment of interest or principal for 2 consecutive months it shall be construed as violation of the terms of sanction & the entire loan shall be recalled;
d. The project has been sanctioned for the floors up to 38 floors for which even construction permission/plans are not in place;
e. The disbursements of Rs. 9.50 Crores have been made even after the date of marking account as NPA on 01/11/2018 as mentioned in the application;
f. Recall Notice and SARFAESI Notice were issued only nearer to (prior to) the date of appointment of RBI Administrator;
g. The condition as regards to the security cover etc. have been allowed to be non-complied;

19. Upon examination of financial statements and the books of record maintained by the suspended management of the Corporate Debtor, documents provided in support of the claim filed by the Applicant in Form C and subsequent emails whereby the applicant as well as the suspended management provided relevant documents in relation to the transaction in question, it is found that Rite Developers Private Limited (hereinafter referred to as "**RDPL"**), being the Corporate Guarantor in its joint and several capacity, duly discharged the entire outstanding debt towards the

Applicant by making payment of Rs. 38,51,98,790/- on 19.11.2018 to the Applicant.

20. It is also established that the claim of the Applicant in its entirety stands extinguished and thus the Applicant has no claim whatsoever against the Corporate Debtor, much less a financial claim against the Corporate Debtor.

21. It is pertinent to note that the amount of loan given to the Corporate Debtor cannot be differentiated with the loan/credit with respect to RDPL for the following reasons:

"

A. Same Management

The promoters/directors of both the companies were common when the said transactions came to be entered into which also demonstrates that the control and management of the corporate debtor was same as that of RDPL.

B. Transaction in contravention to RBI Guidelines and established Fair Practice required to be followed by all financial institutions.

It is further stated that upon perusal of the accounts of the Corporate Debtor, even though the account is claimed to be classified as a Non-Performing Asset (hereinafter referred to as "NPA") in November, 2018, further disbursements were made in April, 2019 to the tune of Rs 9.50 Crores which was allowed to be transferred to the account of Sameer Dadia, the Director of the Corporate Debtor and allied group of companies from which the amount was used to settle the claim against RDPL. It is also pertinent to note that one Financial Creditor, namely, Arjun Bulchandani had filed an application for initiation of corporate insolvency resolution process of RDPL under Section 7 of the Code which came to be admitted by this Adjudicating Authority vide its order dated 11/03/2019. It is submitted that pursuant thereto suspended management of RDPL arrived at a settlement with Arjun Bulchandani by repaying an amount of Rs.7.75 Crores and accordingly an application for withdrawal of CIRP under Section 60(5) read with Rule 11 of NCLT Rules, 2016 came to be preferred before this Hon'ble Authority for repayment of the same.

C. *Amount sought to be claimed as Financial Debt to the tune of Rs. 32.50 Crores plus interest etc. required to be admitted by the respondent as Financial Claim entirely settled by RDPL, being Corporate Guarantor, to the corporate debtor on 19.11.2018.*

Despite discharge of entire liability by the Corporate Debtor through the Corporate Guarantor i.e. RDPL , the Applicant illegally issued demand notice dated 05.08.2020 under Section 13(2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") calling upon the Corporate Debtor to make payments of Rs. 41,78,22,974 and thereafter affixed possession notice dated 05.12.2020 and took a symbolic possession of the Project Land with effect from 05.12.2020 and served the possession notice to all concerned parties vide letter dated 07.12.2020.

It is stated that being aggrieved and dissatisfied by the illegal action of the Applicant, the Corporate Debtor was constrained to approach the Learned Debt Recovery Tribunal at Mumbai (hereinafter referred to as "Learned DRT, Mumbai") by way of Securitization Application No. 74/2021 filed on 30.04.2021 under Section 17 of SARFAESI Act.

D. *Amount sought to be claimed as Financial Debt to the tune of Rs. 32.50 Crores plus interest etc. required to be admitted by the respondent as Financial Claim reflected as outstanding in the total debt of RDPL*

It is pertinent to note that as per the pending adjudication of Miscellaneous Application No. 1448 of 2019 in C.P. I.B. No. 4258/MB/2019 filed by the Administrator of Dewan Housing Finance Corporation Limited vs. Kapil Wadhawan and Ors. under Section 45,60(5) and 66 of the Code, 2016, the principal amount outstanding and recoverable from RDPL is Rs. 758.52 crores as per the loan sanctioned by the Applicant. However, if the Applicant is claiming that the amount disbursed by RDPL was in furtherance of the loan granted to RDPL and not in furtherance of relieving the debt of the Corporate Debtor, then the recoverable amount in the said Application by DHFL would be approximately Rs 719.88 crores and not Rs 758.40 crores.

It is pertinent to mention that the abovementioned Interlocutory Application has been filed against the erstwhile suspended management of DHFL alleging financial fraud committed in relation to the fraudulent disbursement of loans and equally fraudulent cover-up by purportedly providing securities for impaired loan accounts categorized under ' Other Large Project Loans'.

It is pertinent to mention that the claim could not be admitted by the Respondent herein pending adjudication and final determination by also taking into consideration the interests of home buyers and their protection in light of the fact that the funds seem to be diverted in collusion with DHFL promoters.

E. The said transaction requires to be scrutinized and examined under Transaction Audit of Corporate Debtor.

The transaction audit needs to be brought on record to understand the true nature of the transaction as regards to the viability etc. of the project for Rs. 100 Crores of the loan, possible collusion of Suspended Management and DHFL for syphoning the funds and interest of other home buyers. "

22. The factual matrix germane for the determination of the present application is herein under:

Date	Particular
04.03.2021	Application was filed by Financial Creditors, namely, Shri Deepak Cheeda & others under Section 7 of the Code seeking initiation of the Corporate Insolvency Resolution Process against Corporate Debtor before this Hon'ble Tribunal.
11.08.2021	Order passed by this Hon'ble Tribunal to initiate corporate insolvency resolution process of Corporate Debtor. The Respondent herein was appointed as the Interim Resolution Professional vide the same order.
28.08.2021	Public Announcement made in the format of Form-A in the newspaper Active Times(English) and Mumbai Lakshadweep(Marathi) inviting claims from all the

	creditors with respect to the Corporate Debtor and the last date of submission of claim was 10.09.2021
22.09.2021	Corrigendum to public notice dated 28.08.2021 was published in the newspapers, i.e., Active Times (English) and Mumbai Lakshadweep (Marathi) and the last date of submission of claims was 27.09.2021.
25.10.2021	1st Committee of Creditors meeting was held wherein the Respondent was appointed as the Resolution Professional of the CIRP.
02.11.2021	Form-C dated 27.10.2021 was filed by the Applicant for an amount of INR 48,63,51,054/- (Rupees Forty Eight Crores Sixty Three Lakhs Fifty One Thousand and Fifty Four) as secured financial creditors. The documents supporting their claim was sent to the Respondent herein vide emails dated 01.11.2021 and 02.11.2021. On perusal of the Books of account of the Corporate Debtor, the Respondent herein found that the claim submitted was not being reflected in the books of account and financial records of the Corporate Debtor. The Respondent was appraised of the pending proceedings against the Applicant at the Learned DRT, Mumbai in respect of the outstanding amount of loan having made by RDPL on behalf of the Corporate Debtor.

15.11.2021	The respondent sought an opinion of Retired Hon'ble Justice K. A. Puj. for treatment to the said claim.
29.11.2021	In light of the discrepancies with respect to the amount of claim, the Respondent herein sought legal opinion of Retd. Hon'ble Justice K.A. Puj in which the Respondent was advised to seek further clarifications with respect to the claim and pending proceedings from the Applicant in light of the pending DRT proceedings. The Respondent begs to annex a copy of the legal opinion dated 29.11.2021 as Annexure-R8 to the present affidavit.
03.12.2021	The Respondent herein received email from the Applicant seeking admittance of their claim to which the Respondent stated that the process of verification is ongoing and intimated about a discussion over Zoom call in respect of their claim. The Respondent begs to annex copies of email dated 03.12.2021 as Annexure-R9 to the present affidavit.
07.12.2021	The Zoom call took place on 07.12.2021 and in furtherance of the same, certain additional information/clarification was sought by the Respondent vide email from the Applicant with respect to the pending proceedings before the Learned DRT, Mumbai.
09.12.2021	The Applicant vide email clarified that the alleged payment by RDPL has been for its own loan availed by it from Dewan Housing Finance Limited (hereinafter referred to as "DHFL"). It is relevant to

	mention that in relation to documents sought for to verify that the debt is outstanding towards the corporate debtor and not RDPL, the applicant refrained from sharing the said documents and stated that the same is "unwarranted" and "irrelevant." A copy of the email dated 09.12.2021 along with letter is attached herewith as Annexure-R10 to the present affidavit.
14.12.2021	The Respondent vide letter informed the Applicant that their claim has not been rejected and is undergoing the process of verification. The Respondent also informed that the Respondent is seeking clarification and information from the Suspended management as well. The Respondent vide email also sought clarifications and documents from the suspended management of the Corporate Debtor on particulars with respect to the pending application at Learned DRT, Mumbai. The information with respect to the pending application against the Applicants was provided by the suspended management vide email along with supporting documents vide email dated 20.12.2021. The Respondent begs to annex Copies of email dated 14.12.2021 and 20.12.2021 with the Suspended Management as Annexure-R11 to the present affidavit.

15.12.2021	The Applicant informed the Respondent that the copy of securitization application against the Applicant at the Learned DRT, Mumbai has not been served to the Applicant and the claim submitted by the Applicant has no relation to the pending proceedings at the Learned DRT, Mumbai. It is pertinent to note that no clarification with respect to the pending proceedings against the Applicant at the Learned DRT, Mumbai was provided by the Applicant to the Respondent.
22.12.2021	The Respondent received email from Applicant insisting on admission of their claim to which the Respondent responded that due to contradictory records, the process of verification is taking time.
20.12.2021 & 29.12.2021	The Suspended Director vide letter to the Respondent provided further clarifications with regards to the transactions of DHFL and the Rite Group of Companies stating that RDPL had provided assistance in repaying the loan of the Corporate Debtor. The Respondent was also provided with the supporting documents stating that the alleged claim of Applicant had been dispensed with by RDPL along with the details of the transactions. The Respondent begs to annex Copies of Letter and supporting documents as Annexure-R12 to the present affidavit.

31.12.2021	The Applicant vide letter insisted on admitting their claim and reconstitution of the Committee of Creditors. The Respondent replied to the said letter on 06.01.2022 by reinstating that all necessary steps and evaluation process is being undertaken to ensure that the CIRP is carried out in an effective manner.
08.01.2022	The Resolution Professional finalized and provided the information memorandum. It is pertinent to mention that the claim of the applicant is reflected in the Information Memorandum. A copy of the relevant extract of the Information memorandum is annexed as Annexure R-13 to the present affidavit.
13.01.2022	Legal opinion of Retd. Hon'ble Justice K. Puj was received wherein the Applicant was advised to approach the Adjudicating Authority to adjudicate upon the claim. The Respondent begs to annex a copy of the legal opinion dated 12.01.2022 as Annexure R-14 to the present affidavit.
26.01.2022	It is stated that the Respondent herein has filed Interlocutory Applications pertaining to i. seeking an extension of 90 days of the corporate insolvency resolution process u/s 12 read with Section 60(5) of the

		Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016.
	ii.	Section 19 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 , Rule 11 of NCLT Rules, 2016 and Regulation 30 of IBBI(CIRP) Regulations, 2016 seeking this Hon'ble Tribunal to direct the Suspended Management comprising of Ritesh Virchand Shah and Pratik Shantilal Jiyani to deposit Cash on Hand amounting to Rs. 9586571/- (Ninety five lakhs eighty six thousand five hundred and seventy one)in the bank account of Anuradha Real Estate Developers Pvt. Ltd. i.e. the Corporate Debtor with the IDBI Bank.

Rejoinder

23. It is pertinent to note that the RP-Respondent has also filed IA 308 of 2022 on 25 January 2022 ("**RP IA**") before this Hon'ble Tribunal in relation to the claim filed by the Applicant wherein he has sought the following reliefs:

"*a) allow the present application;*

b) to adjudicate upon the claim of the Respondent;

c) to grant any other relief or reliefs as may deem fit in the interest of justice;"

It is also pertinent to note that the Respondent has relied upon a legal opinion dated 12 January 2022 obtained from Mr Justice K. Puj (retd.) in relation to the claim submitted by the Applicant, and has stated that "*21… the advice received by him through the legal opinion was approaching the Adjudicating Authority for crystallizing the claim as it is not within the jurisdiction and competence of Applicant, being the Resolution Professional to adjudicate the claim.*"

24. The Applicant further pointed out that it is a settled position of law that the role of Interim resolution Professional/ resolution Professional in relation to verification of claim is not adjudicated in nature. The Respondent refused to admit the claim of the Petitioner on the basis of an unaudited financial statement. It is settled law that the unsigned balance sheet cannot be relied upon.

25. Further, the Applicant pointed out that instead of collating the claim and verifying the claim of the Applicant, the Respondent has entered in to the rowing enquiry and sought to adjudicate the entire claim. The fact that the Corporate Debtor, the RDPL under the common management does not in any manner affect the Applicant's claim or reduce the Corporate Debtors admitted liability towards the Applicant. On the contrary, as stated above, the misstatement of RDPL has allegedly repaid the Corporate Debtor, the letters of exchange between the RDPL and the Corporate Debtor immediately prior to the commencement of the Corporate Debtor's insolvency and the change in stance with respect to the loan availed from the applicant in the draft balance sheet of the Corporate Debtor for the financial year ended 31st March, 2021, all show that the debt has been repaid by the RDPL

is nothing but a premediated and malafied attempt by a suspended management of the Corporate Debtor/ RDPL to evade their liability as applicant.

I.A. 308 of 2022

26. The present Application is filed under Section 60(5) of the Insolvency and Bankruptcy code, 2016 read with Regulations 13 and 14 of the IBBI (CIRP) Regulations, 2016 and rule 11 of NCLT Rules, 2016 for requesting the Hon'ble Tribunal to adjudicate the claim of the Respondent in the Corporate Insolvency Resolution Process of the Corporate Debtor.

27. The Applicant submits that this Hon'ble Tribunal vide its order dated 11.08.2021 was pleased to admit said application (CP No. 481/(IB)-MB-V/2021) filed by the Financial Creditors and appointed CA Arpan Maheshkumar Shah as the Interim Resolution Professional of the Corporate Debtor.

28. The Applicant submits that Applicant herein made public announcement dated 28.08.2021 in prescribed Form A as contemplated under Section 13 (1) (b) read with Section 15 of the Code and regulations framed there under and thereby invited claims from all the creditors. The Applicant submits that the said announcement was published in the newspapers, i.e., Active Times (English) and Mumbai Lakshadweep (Marathi) on 28.08.2021 and the last date of submission of claims was 10.09.2021. The Applicant further submits that a corrigendum to public notice dated 28.08.2021 was published in the newspapers, i.e., Active Times (English) and Mumbai Lakshadweep (Marathi)on 22.09.2021 and the last date of submission of claims

was 27.09.2021.

29. The Applicant submits that the Applicant conducted the 1st Committee of Creditors ("CoC") meeting on 25.10.2021. The applicant submits that during the said meeting, the Applicant came to be appointed as Resolution Professional of the Corporate Debtor. The Applicant further submits that the point of loan received from DHFL was also discussed in the said meeting.

30. The Applicant further states and submits that Dewan Housing Finance Limited(DHFL), now known as Piramal Capital and Housing Finance Limited, the Respondent herein submitted claim for an amount of INR 48,63,51,054 (Rupees Forty Eight Crores Sixty Three Lakhs Fifty One Thousand and Fifty Four) **("Claim")** as secured financial creditor of the Corporate Debtor by filing Form C dated 27.10.2021. The Applicant states that the Claim has arose with respect to loan granted by the Respondent to the Corporate Debtor. The Applicant further states that the documents supporting the claim were submitted by the respondent on 01.11.2021 and 02.11.2021.

31. The Applicant states that upon perusing the documents submitted by the Respondents and discussions with respect to the claim, the records taken into custody, provisional financials and clarifications/information/details/documents sought from the Suspended Management of the Corporate Debtor as per Regulation 13 of the IBBI (CIRP) Regulations, 2016, the Applicant found that the claim was not being reflected in the books of account and financial records of the Corporate Debtor as provided by the erstwhile management of the Corporate Debtor.

32. The Applicant further states that the Applicant was appraised of the pending proceedings of the Respondent before the Hon'ble Debt Recovery Tribunal (DRT), Mumbai in respect of the payment of the outstanding amounts of the Loan having been made by a corporate guarantor, Rite Developers Private Limited (RDPL) on behalf of the Corporate Debtor.

33. The Applicant states that on account of the discrepancies with respect to the claim and the pending proceedings of the Respondent before the Debt Recovery Tribunal, Mumbai , the Applicant sought legal opinion from Retd. Hon'ble Justice K.A. Puj with regards to admitting the claim of the Respondent when the provisional financials of the Corporate Debtor show the repayment by the Corporate Guarantor to the Respondent and the continuance of the CIRP process pending the verification of the claim. The Applicant submits that Retd. Hon'ble Justice K.A. Puj advised the Applicant to seek further clarifications and documents from the Respondent and the Corporate Debtor since the proceedings before the DRT were stayed in light of the Moratorium period prescribed under Section 14 of the Code and the claim could not be crystallized.

34. The Applicant states that the Applicant vide email dated 03.12.2021 in response to email from the Respondent dated 03.12.2021 seeking admittance of their claim informed the Respondent that their claim is in the process of being verified and in furtherance of the same intimated about scheduling a discussion over Zoom Call for seeking further clarifications with respect to the claim and the link for the same was emailed to the Respondent vide email dated 06.12.2021.

35. The Applicant states that the Applicant vide its emails dated 07.12.2021 sought certain additional information/clarification pertaining to the Claim including the status and details of proceedings pending against the Respondent before the Hon'ble Debt Recovery Tribunal ("DRT") from the Respondent. The Respondent vide its letter dated 09.12.2021 provided clarifications/information sought by the Respondent and stated that the alleged payment by corporate guarantor i.e. RDPL has been for its own loan availed by it from DHFL.

36. The Applicant states that the Applicant vide letter dated 14.12.2021 informed the Respondent that the claim had not been rejected and is undergoing the process of verification and further informed the Respondent that the Applicant, being the Resolution Professional is taking cognizance of the facts and necessary clarifications in order to verify the claim from the Suspended Management as well as the Respondent and in furtherance of the same requested the Respondent to provide any further documents that the Respondent may have with respect to the Application pending before the Hon'ble DRT, Mumbai against the Respondent.

37. The Applicant, vide email dated 14.12.2021 also sought clarifications and documents from the Suspended Management pertaining to status of Application filed at Hon'ble DRT, Mumbai, status of legal action taken by DHFL against RDPL, statement of account of RDPL with DHFL and the details of deployment of funds disbursed by DHFL to the Corporate Debtor. The Applicant further states that the information was provided to the Applicant vide emails dated 20.12.2021.

38. The Applicant further submits that Respondent vide letter dated 15.12.2021 informed the Applicant that the copy of Securitisation Application filed by the Corporate Debtor before the Hon'ble DRT had not been served to the Respondents and further informed that the admission of the claim as a financial creditor is not dependent on the Application filed against the Respondent before the Hon'ble DRT.

Grounds

39. The Applicant submits that as per the order of the Hon'ble Tribunal dated 11.08.2021, the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated and the Applicant herein was appointed as the Interim Resolution Professional and directed to discharge its duties as the Interim Resolution Professional as under Section 15 and 18 of the Code, pursuant to which the public announcement dated 28.10.2021 was made inviting claims from creditors.

40. The Applicant submits that additionally a corrigendum to the public notice dated 28.08.22021 was published on 22.09.2021 and pursuant to the same, Ms. Mona Vora was appointed as the Authorised Representative for the Class of Creditors i.e. the Home buyers. The last date of submission of the claim was 27.09.2021. The Applicant further submits that the 1st CoC meeting was held on 25.10.2021 during which the Applicant was appointed as the Resolution Professional (RP) u/s 22 of the Code.

41. The Applicant further submits that the Respondent submitted its claim for an amount of Rs 48,63,51,054 purportedly as the secured financial creditor of the Corporate Debtor by filing Form C dated 27.10.2021 and the documents were submitted on

01.11.2021 and 02.11.2021 i.e. nearly 30 days after the last date of submission of claim.

42. The Applicant submits that the Applicant on performing its duty of verifying the Claim under Regulation 13 of the IBBI (CIRP) Regulations, 2016 found that the claim was not being reflected in the books of the account and financial records of the Corporate Debtor as provided by the erstwhile management of the Corporate Debtor.

43. The Applicant further states that on perusing the draft balance sheet of the Corporate Debtor for the year ending on 31.03.2021, books of account and other documents, it transpired that the Corporate guarantor i.e. RDPL made payment on behalf of the Corporate Debtor.

44. The Applicant further states on seeking clarifications with respect to the claim from the Respondent, the Respondent have informed that RDPL is not only a Corporate Guarantor for the loan availed by the Corporate Debtor from the DHFL but has also availed a separate mortgage loan of Rs. 758,51,98,790/- under Loan Account Code No. 00034776 from the erstwhile DHFL. The Applicant further submits that the payment made by RDPL was towards part payment of the said loan and not for the loan availed by the Corporate Debtor.

45. The Applicant further states and submits that in light of the Securitisation Application filed by the Corporate Debtor in the DRT, Mumbai, it is specifically averred that due to failure on part of DHFL in disbursing the complete loan amount, the Corporate Debtor decided to repay the said loan to DHFL and therefore, the

Corporate Debtor wrote a letter to its sister concern i.e. RDPL seeking assistance. The Applicant states that RDPL informed the Corporate Debtor that an amount of Rs 38,51,98,790 was lying as credit in the account of the DHFL and suggested to utilize the same to settle its dues with DHFL because RDPL is also a Corporate guarantor in the loan sanctioned by DHFL to Corporate Debtor and the process was carried out.

46. The Applicant states that as per the definition of "financial creditor" under Section 5A(7) of the Code which states that " *financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred"* , it is not within the authority of the Applicant to declare the Respondent as a financial creditor and admit its claim owing to the discrepancies arising from the books of record, pending adjudication before the Hon'ble DRT and the justification given by the Respondent.

47. The Applicant states that in view of the above stated facts and circumstances, upon perusing and pursuing all the relevant statutory provisions of law, seeking legal opinions, appointing professionals and seeking clarifications from all concerned individuals, the Applicant has filed the present application to request this Hon'ble Tribunal to adjudicate upon the claim of the Respondent.

Finding

48. Heard the counsel for the Applicant in I.A. 182 of 2022 and the applicant in the cross I.A. 308 of 2022 and perused the records.

49. The legal question which arises for consideration is whether

Piramal Capital and Housing Finance Ltd. (earlier known as DHFL/Applicant) is a Financial Creditor in terms of section 5(7) of the Code.

50. It is the case of the Applicant in I.A. 182 of 2022 that the Respondent/RP has refused to admit the claim of the Applicant as the Financial Creditor. The Applicant has produced a letter of sanction of project loan to the tune of Rs. 100 crores dated 01.06.2018. The said sanction letter was executed by the Applicant/ Corporate Debtor/ Rite Developers Private Limited. The annexures attached with the sanction letter including terms and conditions of the agreement, list of unsold units, list of booked units, list of sold units, list of units of Lord Shree Ganesh Developers (Joint owner of the Land in project), unsold flats repayments, booked flat wise repayments, sold flat wise repayment etc.,

51. The Applicant has also annexed an unsigned copy of the loan agreement between the Corporate Debtor and the Applicant dated 06.06.2020. The applicant also annexed the deed of simple mortgage dated 06.06.2018. The applicant has also annexed the ledger accounts details of the Corporate Debtor which categorically states that an amount of Rs. 32,50,00,000/- was disbursed to the Corporate Debtor and that an amount of Rs. 48,63,51,054/- is due and payable by the Corporate Debtor. The balance sheets for the year 2019/2020 refers to the term loan of DHFL. The balance sheet is reproduced below:

ANURADHA REAL ESTATE DEVELOPERS PVT. LTD.

Notes forming part of Financial Statements for the period ended 31st March 2020

Note 2: Reserves and Surplus

	Reserves and Surplus	As at March 31,2020 Amount in Rs.	As at March 31,2019 Amount in Rs.
a.	Surplus in Profit & Loss Account		
	Opening balance	3,26,952	3,91,856
(+)	Net Profit/(Net Loss) For the current year	(93,982)	(40,933)
(+)	Excess Provision of Income Tax of earlier years	-	(23,971)
(-)	Transfer to Reserves		-
	Closing Balance	2,32,970	3,26,952
	Total	2,32,970	3,26,952

Note 3: Non- Current Liabilities

a. Long Term Borrowings

	Particulars	As at March 31,2020 Amount in Rs.	As at March 31,2019 Amount in Rs.
	Secured		
i	Term Loan - DHFL (Refer Note 1)	32,50,00,000	24,50,00,000
ii	Inter Corporate Loans	93,00,000	1,73,00,000
		33,43,00,000	26,23,00,000
	Total	33,43,00,000	26,23,00,000

52. The note attached to the balance sheet categorically state that the Corporate Debtor had raised a term loan of Rs. 100 crores from Dewan Housing Finance Corporation Limited. As per sanction letter dated 01.06.2020 and that the loan is secured against the Registered Mortgage of the land and the project located at Survey No. 429 , Hissa No. 1/3, New CTS No. 1069A/ 2A/1 and has an exclusive charge of hypothecation on the receivables on the project.

53. However, the unaudited balance sheet of the year did not reflect the long term borrowing of DHFL. The balance sheet for the year

31st March, 2021 is reproduced below :

ANURADHA REAL ESTATE DEVELOPERS PVT. LTD.

Notes forming part of Financial Statements for the period ended 31st March 2021

Note 2: Reserves and Surplus

	Reserves and Surplus	As at March 31,2021 Amount in Rs.	As at March 31,2020 Amount in Rs.
a.	**Surplus in Profit & Loss Account**		237
	Opening balance	232,970	326,952
(+)	Net Profit/(Net Loss) For the current year		(93,982)
(+)	Excess Provision of Income Tax of earlier years		-
(-)	Transfer to Reserves		
	Closing Balance	232,970	232,970
	Total	232,970	232,970

Note 3: Non- Current Liabilities

a. Long Term Borrowings

	Particulars	As at March 31,2021 Amount in Rs.	As at March 31,2020 Amount in Rs.
	Secured		
i	Term Loan - DHFL (Refer Note 1)	-	325,000,000
ii	Inter Corporate Loans	22,800,000	9,300,000
		22,800,000	334,300,000
	Total	22,800,000	334,300,000

54. The Applicant/RP in I.A. 308 of 2022 has filed the present application seeking adjudication of claim of the Respondent. He has also placed reliance on the opinion of former judge of Gujarat High Court, wherein he has opined that due to failure on the part of the DHFL disbursing the complete loan amount, the Corporate Debtor has decided to repay the said loan back to the DHFL and therefore, the Corporate Debtor wrote letter to its sister concern RDPL seeking the assistance in the matter on 27.07.2020. On 18.02.2021, RDPL informed Corporate Debtor that an amount of Rs. 38,51,98,790/- was lying as credit in the account of DHFL. Thereafter, the RDPL has suggested that that above amounts was lying in the DHFL could be used by Corporate Debtor to settle its dues to DHFL. The relevant part of the opinion is reproduced below:

It appears that the querist has considered the above stand of PCHFL in light of the securitisation application filed by CD in the DRT, Mumbai, wherein, it is specifically averred that due to failure on the part of DHFL in disbursing the complete loan amount, the CD decided to repay the said loan back to DHFL and therefore, the CD wrote a letter to its sister concern i.e. RDPL seeking their assistance in the matter on 27.07.2020. It was only on 18.2.2021, RDPL informed the CD that an amount of Rs.38,51,98,790/- was lying as credit in the account of the DHFL. Thereafter, RDPL suggested that the above amount which was lying as credit in the account of DHFL could be used by the CD to settle its dues with DHFL, not just because they are sister concern of the CD but because the RDPL is also a Corporate Guarantor in the

loan sanctioned by the DHFL to CD. RDPL has also sent the bank account statements depicting an amount of Rs.38,51,98,790/- lying in the account of DHFL.

55. It is pertinent to refer to the letter dated 27.07.2020 by Corporate Debtor to RDPL, which states that the Corporate Debtor had got a sanction of Rs. 100 crores loan from DHFL. However, even after several reminder the DHFL has only disbursed an amount of Rs. 32,50,00,000/- and hence, they decided to peruse other means of obtaining financial aid and further sought a assistance of RDPL to close the transactions with the DHFL. On 18th February, 2021 Rite Developers Private Limited have offered the financial assistance and categorically stated that the amount of Rs. 38,51,98,790 lying in the accounts of DHFL, can be unconditionally adjusted towards the loan amount availed by Corporate Debtor to the tune of Rs. 32,50,00,000/-. The letters dated 27.07.2020 and 18.02.2021 have reproduced below:

ANURADHA REAL ESTATE DEVELOPERS PVT. LTD.

Registered Address : 1069, Near Balaji School, Village Malad West, Behind Evershine Mall, Mumbai - 400 064.
Email - anuradharealestate@gmail.com

Ref.: AREDPL/Royal Accord/07-01/2020
Date: 27th July, 2020

To.
Rite Developers Private Limited
202, 2nd Floor, 55 House,
Nehru Road, Vile Parle (East),
Mumbai – 400 057

RE: Seeking assistance in reference to the Loan obtained from DHFL

Dear Sir,

Please take note that vide a sanction letter dated June 1, 2018 we had sanctioned a loan for an amount of Rs. 100,00,00,000/- (Rupees One Hundred Crore only) for a project known as "Royal Accord" undertaken by us from Dewan Housing Finance Limited (DHFL). However, even after several reminders, DHFL has only disbursed an amount of Rs. 32,50,00,000/- (Rupees Thirty-Two Crore Fifty Lakh only). It appears from the conduct of DHFL that they do not wish to proceed further as per their loan agreement and do not want to provide us the remaining Rs. 67.50 Crore.

Our project is getting severely affected due their gross misconduct, therefore, we have decided to pursue other means of obtaining financial aid.

At the same time, we would like to close our transaction with DHFL, therefore, we request you to kindly assist us in repaying DHFL in case it is financially feasible for you.

Thank you for your co-operation.

Yours truly,

For Anuradha Real Estate Developers Private Limited

Director/ Authorized Signatory

RITE DEVELOPERS PRIVATE LIMITED MUMBAI
rite evolve

Received on 27 July 2020

Site Address : Royal Accord, CTS No.-1069/A/2, Village Malad, Near Gandhi Compound, Mind Space, Off Chincholi Bunder Road, Malad (West), Mumbai - 400064.
Email - anuradharealestate@gmail.com

Exhibit-Y

Rite Developers Private Limited

rite evolve

Ref: RDF/General/02-01/2021
Date: 18th February, 2021

To,
Anuradha Real Estate Developers Private Limited
1069, Balaji School, behind Evershine Mall
Malad (West), Village Malad, Mumbai 400064

Sub: Response to the communication
Ref: Your Letter dated 27th July, 2020 for seeking assistance in reference to the Loan obtained from DHFL

Dear Sir,
We, Rite Developers Private Limited received your letter dated 27th July, 2020 asking for the financial assistance, being your corporate guarantor we, hereby extend our support that our credit Amt Rs. 38, 51,98, 790/- (Rupees Thirty -Eight Crores Fifty One Lacs Ninety Eight Thousand Seven Hundred and Ninety only) with DHFL can be adjusted unconditionally towards the loan amount availed by you Rs. 32,50,00,000/-/- (Rupees Thirty-Two Crore Fifty Lacs only) and acknowledge the longterm debt in accounts accordingly.
Giving you the details of credit lying with DHFL Account as follows for your ready reference.

Beneficiary DHFL Account	914020017664947
RDPL Account	0492102000011459
Date of Transaction	19th November, 2018
Transaction Details	NEFT (UTR) IBKL181119216236
Amount	Rs. 38, 51,98, 790/- (Rupees ThirtyEight Crores Fifty One Lacs Ninety Eight Thousand Seven Hundred and Ninety only)

For any other query or assistance please contact us
Thanking You,

Yours truly,
For RITE DEVELOPERS PRIVATE LIMITED

Director

56. The Respondent/RP therefore reiterated that in view of the internal communication between the inter-corporate group and the clarification dated 29.12.2021 by the erst while director of the Corporate Debtor, they came to a conclusion that the outstanding

loan of the applicant namely Piramal Capital & Housing Finance Limited has been repaid and hence, failed to admit the claim of the Applicant. The letter of 29.12.2020 is reproduced below;

To,

The Resolution Professional
Anuradha Real Estate Developers Private Limited
Mumbai

Re: Clarification regarding transaction with DHFL, the lender on one hand, And rite group of companies, namely 1) ARDEPL 2) RBPL 3) RDPL on other hand

Dear Sir,

We request you to kindly refer to prior correspondence and discussion with your good self. We hereby make the following clarification with yourself

- There are three companies of Rite group involved in relation to the chain of transaction, as well as the deployment of the funds i.e. ARDPL, RDPL, & RBPL. All these companies are owned and managed by the same promoter group i.e. Ritesh Shah
- Upon an application made by the Rite group, ARDPL, was sanctioned loan of Rs 100 Crore in Anuradha Real Estate Developers Private Limited initially a sum of Rs. 32.50 cr was disbursed to ARDPL, out of the said Rs. 32.50 Crores, a sum of Rs.9.75 Crores was used by AREDPL for the following: -
  - Buyback of flats
  - Assessment Tax of MCGM
  - Payment to old Promoters
  - Payment to Old Outstanding
- Remaining sum out of 32.50 crores i.e. 23 crores, was transferred to RDPL which was onward used other project i.e. Rite Builtec Private Limited that project is also project funded by DHFL.
- The afore mentioned transfer of sum was made by AREDPL on specific instructions of Mr. Rajendra Mirashie. I must record that, Generally the instruction of DHFL was given on telephone by Mr. Rajendra Mirashie at the instruction of Wadhwan. I (Ritesh) was informed not to raise any objection to the instruction for the transfer of fund as the fund otherwise belonged to DHFL and ARDPL is only a channel for disbursement of money
- I, Ritesh Shah record that the RITE group paid (for and on behalf of ARDPL and the account of back to DHFL a sum of Rs. 38 crores to DHFL well prior to December 2018 day and thus no one could have classified the account as NPA, ARDPL cannot be and ought to be a NPA anytime.
- A proof of the same that AREDPL was never an NPA can be made from the fact that ARDPL served the interest only for one quarter and even after that a sum of Rs. 1.50 cr was disbursed in December 2018 and further a sum of Rs. 8.00 Crore was disbursed by DHFL to ARDPL in April, 2019
- Further the sum of Rs 8 Crores where transferers because of the fact that, one Mr. Bulchandani had filled a claim before the NCLT stating that RDPL was not paying the dues of said Bulchandani.
- To satisfy the claim of Mr. Bulchandani, money was moved as under
  - DHFL paid sum of Rs 8 cr to ARDPL
  - ARDPL paid a sum of Rs 8 cr to Mr. Samir Dadia then suspended Director of Rite Developers Private Limited

26

o. Mr. Samir Dadia paid the same amount to Bulchandani and Bulchandani withdraw the petition against the RDPL the entire set of transaction was done at the specific instance of Rajendra Mirashie and who in-turn instructed Me i.e. Ritesh Shah.

- I must record again that, the amount transferred to RDPL was at the instance of said Mr. Mirashie who in turn had done so by one of the Wadhwans and said Mr. Mirashie passed the information to me aver telephone

RDPL is already covered under Section 46 application by RBI Administrator. The amounts were disbursed in RDPL as ICD during the period January 2018 to November 2018 Even the security in the form of Equitable Mortgage was created lately by another group company of DHFL. No statement of accounts etc. has been given to RDPL. An amount of Rs. 38 Crores was paid by RDPL to DHFL and that credit was lying there with DHFL. On occurrence of NPA the AREDPL requested the Corporate Guarantor to help in repaying the loan. And RDPL i.e., Corporate Guarantor who was having deposit of Rs. 38 Crore with DHFL. RDPL wrote letter to DHFL about adjusting the same 38cr against outdating of AREP. Relevant ledgers from the Books of Accounts of RDPL (duly certified by the Statutory Auditors) is enclosed.

RBPL was granted a loan of Rs 60 crores out of which RS. 52.50 were disbursed. DHFL further promised an additional sanction of Rs. 250 Crores but before that could be disbursed, the control was taken over by RBI. To accommodate this company, the amount disbursed in AREDPL was used for saving this company from trigger of CIRP at the instance of DHFL.

All these facts have already been put up before the appropriate court of law and / or government authorities/ investigating agencies.

Thanking you,

Yours truly,

Ritesh Shah

Suspended Director

Anuradha Real Estate Developers Private Limited

Encl

- Ledger of RDPL and DHFL
- NCLT admission of RDPL on 11.03.2019
- NCLT withdrawal of RDPL on -06.05.2019

57. During the course of the hearing, this Tribunal sought to expand the scope of transaction audit report and directed the RP to conduct a transaction with relation to the transaction between DHFL and Corporate Debtor. The Transaction auditor has filed its report on 09.03.2022, the report pointed out that the Corporate Debtor's debt was repaid by the Rite Developers Private Limited and hence accounting entry in the books of accounts declared that the Corporate Debtor has no liability towards the debt. The transaction auditor has also pointed out that in a prior securitisation application filed by the Corporate Debtor before DRT, Mumbai specifically contained an averment that due to failure on part of the DHFL in disbursement of the complete loan

amount, the Corporate Debtor wrote a letter to its sister concern namely RDPL seeking assistance. Further, the transaction auditor has also pointed out that RDPL directed to utilize the amount lying in the account of DHFL to settle the dues of the Corporate Debtor. The findings of the transaction audit report is reproduced below:

a. *The project which is under question is developed in Malad West. The existing road size being less than 9 meters, the height of the building will be restricted to 32 and meters. This is as per DCPR 2034 guidelines, 32 meters is around 9^{th} Floor from the ground.*

b. *The Sanction dated 01/06/2018 by DHFL have mentioned mortgage of the unsold flat till 38^{th} Floor. Even the mortgage agreement executed between the company and DHFL have mortgage the unsold flat till 38^{th} floor.*

c. *Question arises*

As per the prevalent guidelines as the width of the road was less than 9 meters, the height of the building was restricted to 9^{th} floor only. On what basis the mortgage till 38^{th} floor was done when the building can be maximum of 9^{th} floor only. The increase in the floor is directly related to the width of the road. The architect in its report has confirmed that still the width of the road is less than 9 meters and hence even today the height of the building cannot be more than 32 meters.

The loan was sanction ignoring this main aspect of the project and the mortgage was done till 38^{th} floor whereas the given current conditions the construction cannot be more than 9^{th} floor.

Dispute in the matter of the repayment of the Loan of Anuradha Real Estate Developers Private Limited

- *As stated earlier in the report, the loan which was sanctioned to the Corporate Debtor ARDEPL was repaid by Rites Developers Private Limited (Source: Books of Accounts of Anuradha Real Estate Developers Private Limited). The said accounting entry was passed in the Books of Accounts of Corporate Debtor on dated 31/03/2021).*
- *The Lender DHFL has denied to loan repayment of AREDPL and have informed that RDPL is not only a Corporate Guarantor for the loan availed*

by the AREDPL from the DHFL but has also availed a separate mortgage loan of Rs. 758,51,98,790/- under Loan Account Code No. 00034776 from the erstwhile DHFL. DHFL (Piramal) further submitted that the payment made by RDPL was towards the part payment of the sold loan and not for the loan availed by the AREDPI.

- *As the amount of the repayment of the loan of the AREDPL by RD PL is disputed by the DHFL and accordingly the Corporate Debtor has filed application with Debt Recovery tribunal, Mumbai with Case No: SA/74/ 2021 dated 30th April 2021.*
- *It has also been observed in the Securitisation Application filed by the AREDPL in the DRT, Mumbai, it is specifically averred that due to failure on part of DHFL in disbursing the complete loan amount, the AREDPL decided to repay the said loan to DHFL and therefore, the AREDPL wrote a letter to its sister concern i.e. RDPL seeking assistance. The Company AREDPL states that RDPL informed the Corporate Debtor that an amount of Rs 38,51,98,790 was lying as credit in the account of the DHFL and directed to utilize the same to settle its dues with DHFL because RDPL is also a Corporate guarantor in the loan sanctioned by DHFL to Corporate Debtor and the process was carried out.*

The matter being subjudice as to the repayment of the loan amount of AREDPL by RDPL to DHFL and also that the AREDPL has already filed application with DRT, Mumbai and hence, we are not in position to comment on the same

CONCLUSIONS

1) Sanction of Rs. 100.00 Crore Term Loan to Corporate Debtor with Net worth of Rs.2.10 Crores.

The Corporate Debtor was sanctioned term loan of Rs. 100.00 Crores when the Corporate Debtor was having Net worth of Rs. 2.10 Crores only. It is clear that the Corporate Debtor had weak financial condition, did not possess sound past track record and the asset base, Net worth sufficient to qualify loan of Rs. 100.00 and did not possess the repayment capacity.

2) Violation of the terms and Conditions of the Sanction Letter:

It can be seen from that the Corporate Debtor has not complied with the Terms and Conditions of the Sanction Letters. Apart from the Company it was also the responsibility of the DHFL to see that the Terms and Conditions *of the Sanction letter are followed in true spirit. Opening of Escrow Account as per the Sanction letter was one of the critical requirements for the loan transactions in case of the company involved in the real estate development projects. Non opening of the escrow account is itself a red flag transaction. It is very surprising indeed DHFL being a financial institution have ignored this and have not forced for the opening of Escrow Account.*

3) Disbursement of the Loan after the Account was classified as NPA:

It has been observed that the account of Corporate Debtor was classified as NPA in November 2018 itself. The first loan disbursement was made on 11/06/2018 and the last disbursement was made on 10/04/2019 after the account was classified as NPA. Total of Rs. 9.50 Crores have been disbursed after the account was classified as NPA by the DHFL. As per the information provided by the Resolution Professional, this amount of Rs. 8.00 Crores was transferred from the Corporate Debtor account to Samir Dadia and from Samir Dadia the same was transferred to Mr. Bulchandani as Mr. Bulchandani has filed case against the Company Rites Developers Private Limited and to satisfy the claim of Mr. Bulchandani this transaction of Rs. 8.00 Crores was undertaken. It can be seen the loan amount was not used for the purpose for which the loan was sanction. This tranche of Rs. 9.50 Crores was disbursed even when the other conditions mentioned in Page 6 of 26 of Sanction letter remained non-complied. As informed by the erst while management of the Company the said transaction was undertaken on behest of DHFL.

4) Mortgage till 38th floors whereas the building height cannot be more than 32 meters:

It has been stated by the Architect that the width of the road in the area in which the project is situated is less than 9 meters and hence the construction of the building cannot be more than 32 meters i.e. 9 floors. Whereas the sanction letter and mortgage agreements shows that mortgage of the flat was done till 38th floor. Question arises how one can mortgage the floors which cannot come into existence looking to the situation of the project.

Regarding Sanction

Apart from non-compliance of terms and conditions of the Sanction Letter and diversion of the fund for the purpose other than the one for which the loan was sanction& disbursed, the one observation which proves the dubious nature of the transaction and the collusion of the lender and borrower is the mortgage of the unsold unit till 38th floors whereas the given condition and situation shows that the building cannot go above 9th floor. The loan was sanction ignoring this main aspect of the project. Loan transaction is fraudulent in nature and void ab initio from the beginning.

Regarding Usage of Loan amount

It can be seen that a total of Rs 32.50 crores have been disbursed by the DHFL to the Corporate Debtor. Out of that a total of Rs. 27.085 Crores have been used for the purpose other than the one for which the loan was sanction. The funds have been transferred to other entitles which is strictly against the terms and conditions for which the loan was sanctioned. The loan amount seems to be deliberately allowed to be used for other than the work for which the loan was sanctioned, which is fraudulent in nature.

58. It is relevant to refer to the bank statements of Rite Developers Private Limited which records two entries on the same day namely disbursement by RTGS by Dewan Housing Finance Corporation Limited and a reverse entry of the same amount by RDPL, however, the counsel for the Applicant Piramal Capital & Housing Finance Limited disputed the claim that the monies were repaid by the RDPL. The internal communication marked between the Corporate Debtor and the RDPL was not marked to the applicant herein. Therefore, he claimed that in the books of accounts of Piramal Capital & Housing Finance Limited the liability of repayment of loan is still outstanding and hence has filed the present claim.

59. This bench notes that the Resolution Professional under section 18 of the Code is not empowered to adjudicate the claim of the

Applicant herein and is bound to collate the claims on the basis of the available documents. The internal correspondence between the Corporate Debtor and the RDPL demonstrate that the outstanding loan of DHFL has been repaid by RDPL and consequently, it can be seen that the balance sheet for the year 31.03.2021 does not record the outstanding liability of DHFL.

60. Be that as it may, the series of correspondence and exchange of letters between the Corporate Debtor and its sister concern RDPL establish the fact that RDPL has provided financial assistance to the Corporate Debtor and consequently, the amounts lying in the account of DHFL were adjusted towards the repayment of the loan of the Corporate Debtor. This Bench takes on record the internal correspondence between Corporate Debtor and its sister concern namely RDPL and the books of accounts of Corporate Debtor dated 31.03.2021. It is not the case of the applicant that his right of repayment of the outstanding amounts is lost by this adjustment. The applicant can exercise and enforce the debt outstanding from the RDPL.

61. In view of the aforesaid, this Bench is of the view that the claim of the applicant namely Piramal Capital & Housing Finance Limited cannot be admitted.

62. The court doth orders as follows:

    i. I.A. 182 of 2022 is dismissed
    ii. All interim prayers thus stands vacated
    iii. I.A. 308 of 2022 is disposed of.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)