

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.700/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

**PIRAMAL CAPITAL & HOUSING FINANCE
LIMITED**

[CIN: L65910MH1984PLC032639]

...Financial Creditor/Applicant

V/s

**MANPREET DEVELOPERS PRIVATE
LIMITED**

[CIN: U74999MH2015PTC270181]

...Corporate Debtor/Respondent

Order Dated: 11.01.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Nausher Kohli, Advocate.
For the Respondent : Ex-parte.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.700/MB-IV/2022 filed by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Manpreet Developers Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. This application is filed by Mr. Sagar Seth, Authorised Signatory of the Financial Creditor vide its Board Resolution, claiming a total default of Rs. 1121,35,48,624/- (Rupees one thousand one hundred and twenty-one crore thirty-five lakh forty-eight thousand six hundred and twenty-four only). The Date of Default as mentioned in the Petition is 31.03.2019.
3. The computation chart showing the total amount in default due to the Financial Creditor by the Corporate Debtor is stated as follows:

Sr. No	Particulars	Amount (In Rupees)
1.	Outstanding Principal Amount	619,95,00,000/-
2.	Outstanding Interest as on 31-03-2022	397,07,92,510/-
3.	Default/ Additional Interest	104,00,83,262/-
4.	Cheque Return/Other Charges	31,72,852/-
	Total	1121,35,48,624/-

4. The case of the Financial Creditor is as under:
 - i. The Dewan Housing Finance Limited is taken over by the M/s Piramal Capital & Housing Finance Limited i.e. Financial Creditor

which had sanctioned in favour of the Corporate Debtor, a loan in the sum of Rs. 620 crores, on the terms and conditions contained under Sanction Letter dated 22nd March 2016.

- ii. The Loan Agreement was executed by and between MDPL and DHFL dated 11th April 2016 DHFL, granted loan facility to MDPL on the terms and conditions with respect to disbursement of sanctioned loan amount of Rs.620 crores.
- iii. Pursuant to the of the aforesaid Loan Agreement the Corporate Debtor executed several documents namely Simple Mortgage, Escrow Agreement, Deed of Hypothecation and a Demand Promissory Note inter-alia, securing the loan sanctioned by the Financial Creditor in favour of the Corporate Debtor.
- iv. During April 2016 to July 2017 the Financial Creditor disbursed a total sum of Rs. 619,95,00,000/- to the Corporate Debtor. Under the revised Sanction Letter dated 24th March 2017, an interest moratorium of 15 months with effect from 1st January 2017 was provided with annual servicing of interest. First such annual interest servicing was to be made on 31st March 2018.
- v. In June 2018, the Corporate Debtor paid the Pre-EMI due and payable on 31st March 2018. The Corporate Debtor defaulted in payment of Pre-EMI due and payable on 31st March 2019, thereby constituting an event of default. Apart from the payment of pre-EMI as aforesaid, the Corporate Debtor has not made any other payment to the Financial Creditor towards repayment of loan.

- vi. On 10.06.2022, when the matter was listed, this Court Notice was issued. However, on 14.07.2022, the Ld. Counsel for the Financial Creditor submits that the notice sent to the Corporate Debtor was returned with an endorsement “unclaimed/undelivered”. Therefore, this Bench inclined to issue directions to take out substituted service. On 15.09.2022, Ld. Counsel for the Financial Creditor submits despite substituted service in two daily leading newspapers, the Corporate Debtor did not appear, therefore the Corporate Debtor proceeded *ex parte*.

Findings

5. We have prudently gone through the pleadings available on record and observed as under:
6. On the request of the Corporate Debtor, the DHFL (now Financial Creditor herein) had granted/sanctioned/enhanced the various credit facilities from time to time. The Corporate Debtor availed and enjoyed the credit facility but failed to repay the dues on time. Further, the Financial Creditor also issued recall notice on 14th September 2020, thereby recalling and demanding for outstanding dues to the tune of Rs. 786,28,30,102/- as on 31.03.2020.
7. During the Course of Final Arguments, this Bench had pointed out that date of default as mentioned in Part-IV of the Petition is 31.03.2019 and the Petition was filed on 25.05.2022. Therefore, the petition is clearly barred by limitation.
8. Ld. Counsel for the Financial Creditor vehemently argued to clear the issue with regard to limitation and relied on the Judgement of Hon’ble Supreme Court i.e. Order dated 10th January 2022 passed in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 which specifically excludes the period of 15th March 2020 to 28th February 2022, i.e. 1 year 11 months and

13 days for the purposes of computing limitation. The relevant extract is reproduced as under:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 to 28.03.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-Judicial proceedings...

...IV. It is further clarified that the period from 15.03.2020 to 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 294 of the Arbitration and Conciliation Act, 1996, Section 124 of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribed period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings"

9. Further, the Ld. Counsel for the Financial Creditor also categorically relied on the judgement of Hon'ble Supreme Court in *New Delhi Municipal Council vs. Minosha India Ltd.*, (2022) 8 SCC 384:

"34. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place shall be excluded. For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used We have already undertaken the

task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words any suit or application. This is apart, no doubt, from the words 'by a corporate debtor. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute.'

10. Further, the Financial Creditor has submitted that, the captioned Petition has been filed within limitation for the following reasons:

A. EXCLUSION OF MORATORIUM PERIOD WHILE COMPUTING PERIOD OF LIMITATION:

- (i) Section 60 Sub-section 6 of the Insolvency and Bankruptcy Code, 2016 ("the Code") provides that in computing the period of limitation specified for any application by corporate debtor for which an order of moratorium was made, the period during which such moratorium is in place shall be excluded. Section 60 Sub-section 6 reads as under:

*"60. Adjudicating Authority for corporate persons. -
(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."*

- (ii) The Petitioner (erstwhile Dewan Housing Finance Corporation Limited) was undergoing a moratorium between the period 3 December 2019 (date of commencement of Moratorium) and 7th June 2021 (date of approval of Resolution Plan) i.e., 1 year 6 months 4 days.
- (iii) Therefore, on the reading of Section 60 Sub-section 6 of the Code, for the purposes of computing limitation, the period between 3rd December 2019 and 7th June 2021 i.e. 1 year 6 months 4 days is statutorily and mandatorily required to be excluded. In the present matter, the period between 3rd December 2019 and 7th June 2021 would have to be excluded while calculating limitation. The date of default in the present case is 31 March 2019 and accordingly, the period of limitation of 3 years (after excluding the period during which the Petitioner was undergoing moratorium) would expire on 4th October 2023. Therefore, ex-facie, the Petition filed on 23rd May, 2022 is sufficiently within limitation and has been filed prior to the expiry of the period of limitation.
- (iv) The abovementioned position has also been affirmed by the Hon'ble Supreme Court in *New Delhi Municipal Council vs. Minosha India Ltd.*, (2022) 8 SCC 384. The relevant paragraph in the said matter is set out hereunder:

"34. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place

shall be excluded. For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used We have already undertaken the task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words any suit or application. This is apart, no doubt, from the words 'by a corporate debtor Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute."

11. Therefore, after excluding the said period of 1 year 11 months and 13 days, the date for expiration of the limitation period from the date of default of the Respondent/Corporate Debtor being, 31st March 2019 comes to 13th March 2024. As per the given fact that the captioned Petition has been filed on 23rd May 2022, the same has been filed way before the expiry of the limitation period on 13th March 2024. Hence, for the aforesaid reason as well, the captioned Petition is within limitation.
12. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is hereby admitted.

13. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
14. The Applicant has proposed the name of Mr. Jayesh Natvarlal Sanghrajka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00216/2017-2018/10416] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being **CP(IB) No.700/MB/2022** filed under Section 7 of I&B Code, 2016, presented by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Manpreet Developers Private Limited, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench appoints Mr. Jayesh Natvarlal Sanghrajka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00216/2017-2018/10416] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Manoj Kumar Dubey
Member (Technical)
11.01.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)