



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-317/ND/2022**

U/S. 7 of the IBC, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

**IN THE MATTER OF**

**PIRAMAL CAPITAL & HOUSING FINANCE LIMITED**

**Registered office at:**

**601, 6<sup>th</sup> Floor, Amiti Bldg..**

**Agastya Corporate Park Kamani Junction,**

**Opp. Fire Station , LBS Marg,**

**Mumbai – 400070**

...Financial Creditor

**Versus**

**ANDES TOWN PLANNERSPRIVATE LIMITED**

**Regd. Office:**

**F-50-B, F-No. 2, Madhu Vihar,**

**New Delhi – 110092**

...Corporate Debtor

*Delivered on: 02.03.2023*

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Dr. Binod Kumar Sinha**

Hon'ble Member (Technical)

**Appearances:**

**Financial Creditor : Arun Kathpalia, Sr. Advocate**



Corporate Debtor : None

## **ORDER**

**Per: Dr. Binod Kumar Sinha, Member (Technical)**

1. This instant application bearing IB-317/ND/2022 is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor, M/s Piramal Capital & Housing Finance Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Andes Town Planners Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP') in view of default committed by the Corporate Debtor in regard of debt of Rs. 1,56,16,92,505/- that was due and payable by the Corporate Debtor to Financial Creditor. The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is, therefore, within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Applicant has averred as follows: -

- a. It is submitted that, the Financial Creditor is engaged in the business of providing loans such as retail home loans, mortgage loans, SME Loans, project loans and financial services to its



customers. The Corporate Debtor is engaged in the business of real estate projects.

- b. It is submitted that, on 29.09.2014, M/s Andes Town Planners (Borrower) Corporate Debtor, M/s Rohtas Project (Co-borrower) and Financial creditor entered into a loan agreement and in pursuance of the sanction letter dated 10.09.2014, a loan of Rs. 90 crores were approved and sanctioned to the Corporate Debtor for a duration of 60 months (5 years).
- c. It is further submitted that, pursuant to the loan agreement, the Financial creditor extended loan facility to the Corporate debtor relying on the representations and warranties of the Corporate debtor.
- d. It is averred that thereafter, in view of the non-payment of the term loans by Corporate debtor, the Financial creditor issued a Loan Recall Notice upon the Corporate debtor dated 1.02.2020 to pay the entire remaining dues amount. Corporate debtor had failed to respond to the notices. Hence, this application.
- e. It is submitted that for the purpose of proving the existence of debt and default following documents have been annexed with the petition:-



- a. Copy of Loan Recall notice marked as Annexure – A-13.
- b. Copy of a statement of Account of the Corporate Debtor/table depicting the default and amount marked as Annexure – A-14.
- c. Copy of record of default duly authenticated by NeSL marked as Annexure – 15.
- d. Copy of Bank Account Statement of Financial Creditor marked as Annexure – 18.

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 06.05.2022. Since there was no representation on behalf of the Corporate Debtor, despite being given specific and definite opportunities to file Vakalatnama and Counter affidavit, this Adjudicating Authority is constrained to pass this order on the basis of Financial Creditor's arguments only.

4. The Financial Creditor's claim is based on the facts that, Corporate debtor had approached the 'Applicant' to avail loan facility of Rs. 90,00,00,000/- out of which Rs. 88,35,13,404/- was disbursed to the Corporate debtor in nine tranches between 1.10.2014 and 30.12.2017. Thus, on consideration of the request made by the Corporate Debtor, the Applicant extended financial assistance as per terms and conditions set forth in the Loan Agreement, which was to be repaid as per the said terms. However, the Corporate Debtor failed to repay the said loan as per agreed terms thereby committing default, leading to issue of recall Notice dated 01.02.2020.



5. We do not have the benefit of assistance from the Corporate debtor. However, in this matter, before deciding the issue of admission of the Corporate debtor into Insolvency proceedings on the basis of the instant Application filed u/s 7 of the code, we are required to check whether this instant application is filed within the limitation period and have to decide the validity and authenticity of documents Annexed by the Financial creditor. The Part – IV of the Form – 1 does not contain the details of date of default. However, the Applicant has annexed true copy of NeSL report marked as Annexure A-15 to the instant application wherein Date of Default is mentioned as 01.05.2018. As in the instant case, application U/s 7 was filed on 31.03.2022 which is beyond three years, of the date of default reflected in the Record of Default registered with NeSL (IU), we require to look into the same. It is pertinent to note that, Hon'ble Supreme Court has extended the period of limitation vide its orders in Suo Motu Writ Petition (C) No. 3 of 2020. The extracts of the order dated 10.01.2022 in this regard is reproduced below:

*“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.....*

*II....*



*III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

6. Further, the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 936 of 2021 in the matter of ***M/s Essjay Ericsson Private Limited vs. M/s Frontline (NCR) Business Solutions Pvt. Ltd*** dated 10.01.20220 have specifically held that:

*“12. When the Hon'ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon'ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon'ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing*



*suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.*

*13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.”*

7. In the normal circumstances, the limitation of the Applicant would have expired on 01.05.2021. However, on account of directions passed by Hon'ble Supreme Court the Applicant had got the benefit of the extended limitation. As per which it had 90 days from 01.03.2022 to file the present application. Since, the present application is filed on 31.03.2022 i.e., within 90 days from 01.03.2022 therefore, the instant application is filed within the limitation period for the purpose of Section – 7 of IBC, 2016, and is maintainable on the point of limitation.



8. We have heard Ld. Counsel for the applicant herein and perused the records. It is seen from documents annexed with the instant Application that in lieu of the Loan Agreement, a total sum of Rs. 88,35,13,404/- was disbursed by the Financial Creditor in the following manner:-

Date	Amount
01.10.2014	Rs. 27,35,13,404/-
20.11.2014	Rs. 17,50,00,000/-
31.12.2014	Rs. 50,00,000/-
24.04.2015	Rs. 15,00,00,000/-
15.06.2015	Rs. 5,00,00,000/-
31.07.2015	Rs. 5,00,00,000/-
28.10.2016	Rs. 6,00,00,000/-
27.03.2017	Rs. 2,50,00,000/-
30.12.2017	Rs. 5,00,00,000/-
	<b>Rs. 88,35,13,404/-</b>

9. It is pertinent to note that pursuant to the Loan Agreement, the Financial creditor and Corporate debtor executed the Mortgage Deed dated 01.10.2014 and Hypothecation Deed dated 29.09.2014 along with Escrow Agreement dated 29.09.2014 against the loan amount due under the aforementioned Loan Agreement respectively marked as Annexure 10, Annexure 8 and Annexure 9 in the instant Application filed by Financial creditor. Further, the Loan statements for the period 05.09.2013 to 11.11.2019 marked as Annexure – 3 in this instant petition, is reproduced below for reference:-



Annexure-3 9

PIRAMAL CAPITAL & HOUSING FINANCE LTD				Lucknow		INDIVIDUAL LOAN STATEMENT			09-May-2022	
Loan Code	00001801	Loan Sanctioned	900000000	San. Int. Type	Variable	Salary Deduction	No			
Cust Code	01048787	App. No.	00904921	Purchase Type	Project Loan - Residential	Sanctioned Date	09-Sep-2014			
File No.	00003400	Scheme Name	CORPORATE/PROJECT LOAN 1 TO 20 YRS VARIABLE-MONTHLY(JAN 14)			Period	5 Years			
Email No.		Scheme Group	Corporate/ Project Loan - Residential				2022-2023			
Name	Andes Town Planners Pvt Ltd Rohtas ,									
Co-Name										
Property Address	Tcg 3/3, Vibhuti Khand , Gomiti Nagar Scheme , Lucknow , Lucknow Pincode- Tel No-5222204884 Mobile :9838503405			Employment Details	Andes Town Planners Pvt Ltd ( Rohtas)27/18,Raja Ram Mohan Roy,LucknowLucknow Tel No-2204884					
Disbursement		EMI Details			Interest Rate					
Date	Amount	Date	Due Type	Amount	Type	Rest Type	Date	Rate		
01/10/2014	273513404	01/11/2017	Monthly	39175084	Variable	Monthly	01/04/2019	22.17		
20/11/2014	175000000	01/06/2019	Monthly	53246128	Variable	Monthly	15/11/2018	21.82		
31/12/2014	50000000				Variable	Monthly	10/08/2018	21.57		
24/04/2015	150000000									
15/06/2015	50000000									
31/07/2015	50000000									
28/10/2016	60000000									
27/03/2017	25000000									
30/12/2017	50000000									
Total	883513404									
Loan Opening Balance							0			
EMI Opening Balance							767,552,576			
Additional Interest on PEMI opening Balance							36283979			
Additional Interest on EMI Opening Balance							796225578			
Cheque Return / Other Charges Opening Balance							8000			
PEMI Upto :	Dec-2017			PEMI/EMI Due : 10th Of Every Month :			EMI Upto :		Nov-2019	
Transaction Details										
Date	VOUCHER	Account Head	Receipt No.	P. Slip No.	Chqno	Chq Dt.	Chq Drawn on	Clear Dt	Dr. Amt	Cr. Amt
05/09/2013	00005075 JV	Processing Fees (Regular Loan)	0			01/01/0100			0	1800000
05/09/2013	00005075 JV	Service Tax - Collection	0			01/01/0100			0	222480
01/10/2014	00001914 BP	Loan (disb.)	1		1	01/10/2014		01/10/2014	169513404	0
01/10/2014	00001915 BP	Loan (disb.)	1		1	01/10/2014		01/10/2014	104000000	0
01/10/2014	00004484 BR	Processing Fees (Regular Loan)	00004820	00000598	044105	25/09/2014	Karnataka Bank	04/10/2014	0	6295675
01/10/2014	00004484 BR	Service Tax - Collection	00004820	00000598	044105	25/09/2014	Karnataka Bank	04/10/2014	0	778145



The applicant has duly annexed the additional loan statement which clearly enumerates that on 11.11.2019. The applicant had received a part payment of Rs. 9,00,00,000/- from Corporate Debtor.

Transaction Details										
Date	VOUCHER	Account Head	Receipt No.	P. Slip No.	Chqno	Chq Dt.	Chq Drawn on	Clear Dt	Dr. Amt	Cr. Amt
13/06/2019	00022241 JV	EMI Received	IBT		003123	01/01/0100		13/06/2019	0	150000
13/06/2019	00022242 JV	EMI Received	IBT		645335	01/01/0100		13/06/2019	0	250000
27/09/2019	00046084 JV	EMI Received	IBT		270919	01/01/0100		27/09/2019	0	5127000
11/11/2019	00058304 JV	EMI Received	IBT		111119	01/01/0100		11/11/2019	0	90000000



These transactions as shown in the above Loan statements are also reflected in the Bank Statement of the Applicant which has been annexed to the instant Application as Annexure – A 18. Thus, on the proof of the loan statements/ Bank Statement as well as the ROD issued by NeSL (IU), it is evident that there exists a ‘debt’ in favour of the Financial Creditor and the said debt qualifies to be a ‘financial debt’ as defined under section – 5 (8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said ‘financial debt’ which is due and payable to the Financial Creditor. It is also pertinent to mention that the nature and scope of enquiry for the purposes of admission and initiation of the CIRP under Section 7 of the Code has already been well settled and laid down by the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd vs. ICICI Bank and Anr.(2018) 1 Supreme Court Cases 407***. The Hon'ble Supreme Court has laid down that the scope of enquiry by the Adjudicating authority under Section 7 of the Code is confined only to two issues i.e. (1) completeness of the application with respect to the form and manner prescribed under the Code along with the requisite fee and (2) occurrence and existence of financial default on the basis of evidence produced by the financial creditor. Apart from this, no other issue or question is required to be examined for admission of an application under Section 7 of the Code. In paragraph 28 to the said judgement Hon'ble Supreme Court laid down as under:-

*"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in*



*respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

10. In the light of the decision referred to ***supra***, when we consider the submissions of the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate debtor, it appears to us that the failure of the Corporate debtor to make payment of the Loan amount will be considered as



'Default'. By analysing the facts of the case and referring decision of the Hon'ble Supreme Court we are inclined towards the view that present petition is maintainable u/s 7 IBC code, 2016. Further, the Financial Creditor has placed adequate evidence to establish that there exists a Financial Debt of an amount exceeding the threshold provided U/s 4 of the code. Accordingly, we hereby admit the instant application filed by Financial Creditor U/s 7 of the IBC, 2016.

10. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Ashok Kumar Gupta having Regn. No. IBBI/IPA-003/IPN00010/2016-17/10072 as IRP. The IRP has also given his written consent in Form 2 and Authorisation for Assignment filed with this Application is valid. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

11. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
  
- e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".



12. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

13. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

14. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect so that IRP could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

15. Further, the Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.



16. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.

17. The order is pronounced by this Adjudicating Authority in Open Court

18. Accordingly, the instant Application bearing IB-317/ND/2022 stands ***admitted.***

**SD/-**

**Dr. BINOD KUMAR SINHA**

**MEMBER (T)**

**SD/-**

**BACHU VENKAT BALARAM DAS**

**MEMBER (J)**