

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-439/(ND)/2022

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Piramal Capital and Housing Finance Ltd.

(Erstwhile Dewan Housing Finance Corporation Ltd.)

Registered office at:

601, 6th Floor, Amiti Building

Agastya Corporate Park Kamani Junction,

Mumbai-700070

...Financial Creditor

Versus

M/s. Crystal Facilites Management Pvt. Ltd.

Registered office at:

Flat No. 2, F-50B, Madhu Vihar Extension

New Delhi-110092

...Corporate Debtor

Coram:

Shri. P.S.N. Prasad, Hon'ble Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

Counsel for Applicant :Mr. Arun Kathpalia

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date:19.01.2023

1. The present application is filed by M/s Piramal Capital and Housing Finance Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s. Crystal Facilities Management Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 53,26,52,972 (Rupees Fifty Three Crore Twenty Six Lakhs Fifty Two Thousand Nine Hundred and Seventy Two) as on 11.05.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That vide Loan Agreement dated 29.03.2018 entered into between Crystal Facilities Management Pvt Ltd ("CFMPL/Corporate Debtor")

and Dewan Housing Finance Corporation Limited, in furtherance of sanction letter dated 28.03.2018, a loan of Rs. 35 crores was approved and sanctioned to the Corporate Debtor.

ii. That pursuant to the approval of the resolution plan submitted by Piramal Capital & Housing Finance Limited in the corporate insolvency resolution process of Dewan Housing Finance Corporation Limited ("DHFL"), by the Hon'ble National Company Law Tribunal, Mumbai on 07.06.2021, Piramal Capital & Housing Finance Limited has been reverse merged into Dewan Housing Finance Corporation Limited with effect from 30.09.2021. The Certificate of Incorporation pursuant to change of name has been issued by the Registrar of Companies, Mumbai, dated 03.11.2021, wherein the name of Dewan Housing Finance Corporation Limited has been changed to Piramal Capital & Housing Finance Limited.

iii. In terms of the Loan Agreement, the Corporate Debtor was extended financial assistance of

Rs. 35 crores (Rupees Thirty-Five Crores) as per terms and conditions set forth in the Loan Agreement and other related documents.

iv. That the Corporate Debtor has defaulted and failed in fulfilling its payment obligations under the Loan Agreement read with other security documents under the clause 8 of the Loan Agreement which deals with "Events of Default". In light thereof, the Applicant / Financial Creditor is entitled to the outstanding amount due along with interest and other amounts. As per Clause 8 of the Loan Agreement, read with its First Schedule, any default in the repayment of the amounts due to the Financial Creditor under the Loan Agreement, will result in application of default interest at the rate of 24% payable monthly on the entire principal loan balance.

v. That the Applicant / Financial Creditor had issued a recall notice dated 22.02.2020 to the Corporate Debtor, for an amount of Rs. 37,17,10,172/- (Rupees Thirty Seven Crores Seventeen Lakhs Ten

Thousand One Hundred and Seventy Two) as on 22.02.2020. The said amount incorporated the principal outstanding, interest, default interest and other charges. Despite receipt of the said recall notice, the Corporate Debtor continued to be in default and failed to pay the outstanding amounts. The Corporate Debtor continues to be in default and miserably failed to discharge the said liability and the said amount remains to be paid and due. Thus, the Corporate Debtor is commercially insolvent and is not in a position to meet its liabilities.

- 2.** During the course of proceedings, it was noted that the Corporate Debtor's name had been struck off from the register of companies maintained by the RoC. However, this Tribunal vide its order dated 28.09.2022, held that the present Application filed against the Struck off Company is maintainable.
- 3.** Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of

the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 03.11.2022.

- 4.** We have gone through the documents filed the Applicant and heard the arguments made by the counsel for the Applicant. The Applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 53,26,52,972 (Rupees Fifty Three Crore Twenty Six Lakhs Fifty Two Thousand Nine Hundred and Seventy Two) as on 11.05.2022.
- 5.** Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.
- 6.** The Corporate Debtor and the Applicant executed Loan Agreement dated 29.03.2018, in furtherance of sanction letter dated 28.03.2018. Loan of Rs. 35 crores was approved and sanctioned to the Corporate Debtor out of which Rs. 28.10 Crores was disbursed. The Corporate Debtor has defaulted in repayment of loan amount as per

Clause 8 of the Loan Agreement. The Financial Creditor has reproduced its Bank Account statement as well as Loan Account statement of the Corporate Debtor depicting that the Corporate Debtor has defaulted in repayment of loan amount. The Financial Creditor has therefore, established existence of debt and default.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.

8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect. Further, for the purpose of CIRP of the Corporate Debtor, the name of the Corporate Debtor is deemed to be restored in the

register of companies maintained by the RoC. The RoC is directed to take appropriate steps in this regard.

9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant has proposed the name of Mr. Amit Vijay Karai for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-02600/2021-2022/13969. Mr. Amit Vijay Karai has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 04.05.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the IB Code, 2016* stands satisfied as debt and its default have been established by the Financial Creditor, the present application filed under Section 7 is therefore complete. The IRP has confirmed that no

disciplinary proceeding against the proposed IRP is pending.

11. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Amit Vijay Karai has submitted the declaration in Form 2 dated 04.05.2022.

12. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record

satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly shows that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

13. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

14. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

15. Mr. Amit Vijay Karai having registration number IBBI/IPA-001/IP-P-02600/2021-2022/13969 proposed by the Financial Creditor is appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim

Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 the possession of the corporate debtor.”

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings

with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

(P.S.N. PRASAD)
MEMBER (JUDICIAL)