

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI
CP (IB) No. 915/MB/2023



*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED
(Formerly known as Dewan Housing Finance Corporation Limited)

[CIN- L65910MH1984PLC032639]

Registered Office: 601, 6th Floor, Amiti Building
Agastya Corporate Park, Kamani Junction
Opposite Fire Station, LBS Marg, Kurla (West)
Mumbai-400070, Maharashtra.

...Financial Creditor

V/s

NOTION REAL ESTATE PRIVATE LIMITED

[CIN- U70102MH2015PTC265416]

Registered Office: Shop No. 80, HDIL Harmony Mall
Goregaon Link Road, Goregaon (West)
Mumbai-400104, Maharashtra.

...Corporate Debtor

Pronounced: 09.01.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

[Hearing: Hybrid]

Appearances:

Financial Creditor: Sr. Adv. Vikram Nankani, Adv. Nausher Kohli a/w Adv.
Nanki Grewal & Manasi Joglekar i/b M/s. Wadia
Ghandy & Co.


Corporate Debtor: None (*ex parte*).

ORDER**[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. Background**

1.1. This Company Petition bearing C.P. (IB) No. 915/MB/2023 (Application) was filed on 01.09.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) by Piramal Capital and Housing Finance Limited, the Financial Creditor (FC), through Mr. Sagar Seth, Representative of the FC, authorised *vide* Board Resolution of the FC dated 23.08.2023 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Notion Real Estate Private Limited, the Corporate Debtor (CD).

1.2. The total amount of default involved is Rs. 767,27,03,620/- (Seven Hundred Sixty-Seven Crores Twenty-Seven Lakhs Three Thousand Six Hundred Twenty Rupees) as detailed below:

Sr. No.	Particulars	Amount (In Rupees)
1.	Outstanding Principal Amount	359,99,00,000/-
2.	Outstanding Interest @ 15% p.a. as on 31.03.2023	284,84,20,886/-
3.	Default/Additional Interest @ 24% p.a.	122,12,30,082/-
4.	Cheque Return/Other Charges	31,52,652/-
Total Amount		767,27,03,620/-





The aforesaid amount is in default of repayment of the Loan Agreement dated 23.05.2016, executed by the CD, which remained unpaid despite notifying the CD by the FC on various occasions.

1.3. The date of default as mentioned in the Part IV of the Application is 31.03.2019, i.e., after the date on which the CD committed its first default under the Loan Agreement. Hence, the FC prays that CIRP be initiated in respect of the CD under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

2. Contentions of FC

2.1. The FC submits that the CD had approached the Dewan Housing Finance Corporation Limited (DHFL) for a project-loan regarding Slum Redevelopment Authority (SRA) project at Irla, Vile Parle, Mumbai. The DHFL by agreement for loan dated 23.05.2016 (Loan Agreement) executed with the CD, sanctioned along with a revised Sanction Letter dated 23.05.2023 (Sanction Letter), a loan of Rs. 360,00,00,000/- (Three Hundred Sixty Crores Rupees Only) (Loan Amount) to the CD. Out of the said loan amount, the amount of Rs. 359,99,00,000/- has since been disbursed by the DHFL. As per the terms of the Loan Agreement, the repayment was to be done in 36 (thirty-six) equated monthly installments commencing after 48 (forty-eight) months from the date of first disbursement and the due date of repayment was 15th day of every month.

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- 2.2. Pursuant to the Loan Agreement, the CD executed several documents, namely, Simple Mortgage, Escrow Agreement, Deed of Hypothecation and a Demand Promissory Note, *inter-alia*, securing the loan sanctioned by the FC.
- 2.3. On 23.05.2016, the FC disbursed a total sum of Rs. 359,99,00,000/- to the CD. Under the revised Sanction Letter dated 24.03.2017, 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 31.03.2018.
- 2.4. The FC submits that the CD defaulted in payment of Pre-EMI due and payable as on 31.03.2019, thereby constituting an event of default. In fact, the CD had not made any repayment at all towards the loan.
- 2.5. The Counsel for the FC submits that DHFL, which had sanctioned the aforesaid loan was acquired by the FC herein as Successful Resolution Applicant *vide* order dated 07.06.2021, passed by Bench II of this Tribunal, in I.A. No. 449/MB/C-II/2019 in C.P.(IB) No. 4258/MB/C-II/2019. Following the approval of resolution plan, name of DHFL was changed to Piramal Capital & Housing Finance Limited i.e., the FC *vide* the Certificate of Incorporation by the Registrar of Companies, Mumbai dated 03.11.2021.
- 2.6. The FC further submits that it has produced the record of default by the CD from the Information Utility (IU) dated 24.06.2023 and the date of default as mentioned in the Part- IV of the Application is the same as reflected in the IU record annexed to the present Application. Further, the FC has submitted CIBIL Report dated 21.03.2023 and the Central Registry of Securitisation



Asset Reconstruction and Security Interest of India (CERSAI) records, generated on 02.08.2023, evidencing creation of security interest to the tune of Rs. 360,00,00,000/- by the CD. The date of creation of security interest as shown in CERSAI record is the same date, viz. 23.05.2016.


3. Contentions of CD

3.1. The FC served notice dated 06.10.2023 to the CD through post which went undelivered due to shifting of CD's address. Pursuant to the order of this Bench dated 19.10.2023, paper publication was done on 31.10.2023. However, the CD chose not to appear before this Adjudicatory Authority. Therefore, *vide* order dated 10.11.2023, we decided to proceed against the CD *ex-parte* and to adjudicate the matter on the basis of available documents and pleadings.

4. Analysis & Findings

4.1. We have perused the records and heard the Ld. Counsel for the FC.


The date of default mentioned in the Part IV of the Application is 31.03.2019; however, the present application is filed on 01.09.2023. On the face of it, the said Application seems to be barred by limitation on account of the said Application being filed after expiry of three years from the date of default. However, upon perusal of documents, we find that DHFL was under CIRP in C.P. (IB) No. 4258/MB/C-II/2019 before Bench II of this Tribunal and moratorium under Section 14 of the IBC was imposed on it *vide* order dated 03.12.2019 by the said Bench,



which continued till the date of approval of resolution plan dated 07.06.2021. In view of the above, in terms of Section 60(6) of the IBC, total period of one (1) year six (6) months and four (4) days shall be excluded for calculating the period of limitation. The date of default in the present case is 31.03.2019, and, accordingly, the period of limitation of 3 years (after excluding the period during which the FC was under moratorium) would have expired on 04.10.2023. Therefore, *ex-facie*, the Application filed on 01.09.2023 is sufficiently within period of limitation.

4.2. On perusal of the documents, it is seen that on the request of the CD, DHFL had granted/sanctioned/enhanced various credit facilities from time to time. The CD availed of the credit facility, but failed to repay the dues on time. Further, the FC also issued recall notice on 23.04.2020, thereby recalling and demanding for outstanding dues to the tune of Rs. 456,55,21,915/- as on 31.03.2020. Subsequently, another recall notice was issued by the Advocate for the FC on 14.09.2020 for an outstanding of Rs. 482,73,24,645/-. However, there was no response from the CD to this notice. Finally, the CD was yet again called upon to repay the outstanding amount *vide* FC's Advocate's notice dated 25.08.2023 for Rs. 767,27,03,620/- but again there was no response at all from the CD.

4.3. From the above, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (One Crore Rupees) is due and payable by the CD to the FC herein and is not paid and hence, defaulted by the CD in



payment of debt amount within the definition of Section 5(8) of the IBC. Considering the facts and law as discussed above, this Bench is of the view that in such circumstances, it is imperative that CIRP is only to be initiated in respect of the CD.

4.4. The Application is complete and has been filed under the proper form.

The debt amount is more than One Crore Rupees and default of the Corporate Debtor has been established and the application filed under Section 7 of the Code deserves to be admitted.

4.5. The FC has proposed the name of Mr. Jayesh Natvarlal Sanghrajka, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P00216/2017-2018/10416 as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has given its written consent and the same is placed on record.


ORDER

It is accordingly, ordered as follows:

- a) The Application bearing C.P. (IB) No. 915/MB/2023 filed by Piramal Capital and Housing Finance Limited, the FC, under Section 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in respect of Notion Real Estate Private Limited, the CD is **admitted**.
- b) There shall be a moratorium under Section 14 of the IBC.




- c) The order of Moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicatory Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of the CD under Section 33 of the IBC, as the case may be.
- d) That public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other Rules and Regulations made thereunder.
- e) This Adjudicatory Authority hereby prohibits the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, and further prohibits every authority from transferring, encumbering, alienating or disposing of any of the CD's assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, 2002, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.
- f) The supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- g) That we hereby appoint Mr. Jayesh Natvarlal Sanghrajka, a registered Insolvency Professional having Registration Number- IBBI / IPA-001 / IP-



P00216 / 2017-2018 / 10416 and his email-jayesh.sanghrajka@incorpadvisory.in as the Interim Resolution Professional (IRP), having valid Authorisation for Assignment up to 25.09.2024, to carry out the functions under the IBC in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Professional) Regulations, 2016.

- h) The fee payable to IRP/RP, shall be in accordance with such Regulations, Circulars and Directions as may be issued by the IBBI. The IRP shall carry out his functions as contemplated under the provisions of the IBC.
- i) During the CIRP Period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The CD is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/IP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- j) In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the FC is directed to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The



expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- k) The IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the CD.
- l) The Registry is directed to immediately communicate this order to the FC, the CD and the IRP by way of Speed Post and email and WhatsApp, not later than two days from the date of this Order.
- m) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- n) The Registrar of Companies shall send a compliance report in this regard to the Registry within seven days from the date of receipt of a copy of this order.
- o) This C.P. shall come up on 13.02.2024 for filing the periodical report of the IRP before the Bench and as may be notified by the Registry.
- p) Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//Tanmay Jain//