



**ORDER**

*Per:* Justice V. G. Bisht (Retd.)

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Piramal Capital & Housing Finance Limited** ("hereinafter referred to as Applicant/ Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Prashul Real Estate Private Limited** ("hereinafter referred to as Respondent/Corporate Debtor").
2. The Corporate Debtor is a Private Limited company incorporated on 09.06.2015 under Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its registered office being situated at Office no. 612, B2B, Centre Cabin B, 6<sup>th</sup> Floor, Behind Malad Industrial Estate, Kachpada, Malad West, Mumbai -400064. Therefore, this Bench has jurisdiction to deal with this Petition. The Authorised share capital of the Corporate Debtor is Rs. 1,00,000/- whereas the paid up capital is Rs. 1,00,000/-.
3. The Corporate Debtor is a company involved in the business of construction and investors, developers in real estate and purchase, trading of land and properties, building, etc., among other businesses.
4. The present Application was filed before this Adjudicating Authority on the ground that the Respondent has defaulted to repay an amount of Rs. 990,97,18,320/- (Rupees Nine Hundred Ninety Crores Ninety-Seven Lakhs Eighteen Thousand Three Hundred Twenty only) as on 31.03.2023.
5. The date of Default is stated to be 31.03.2019 whereas the particulars of debt of the Applicant is detailed as under:

- The total amount of default to the Financial Creditor by the Corporate Debtor is Rs. 990,97,18,320/- (Rupees Nine Hundred Ninety Crores Ninety-Seven Lakhs Eighteen Thousand Three Hundred Twenty only), which includes the principal amount of Rs. 464,99,00,000/- (Rupees Four Hundred and Sixty-Four Crore and Ninety-Nine Lakh only) and outstanding interest thereon as on 31.03.2023 of Rs. 367,92,33,386/- (Rupees Three Hundred Sixty-Seven Crores Ninety-Two Lakhs Thirty Three Thousand Three Hundred Eighty Six only) along with default/additional interest of Rs.157,74,32,082/- (Rupees One Hundred Fifty Seven Crores Seventy Four Lakhs Thirty Two Thousand Eighty Two only), cheque return/other charges of Rs. 31,52,852/- (Rupees Thirty-One Lakhs Fifty-Two Thousand Eight Hundred Fifty Two only)
6. By and under a loan agreement dated 23<sup>rd</sup> May 2016 ("Loan Agreement") executed between the Corporate Debtor and the Financial Creditor, a loan of Rs. 465,00,00,00,00/- (Rupees Four Hundred and Sixty Five Crore only) was granted by the Financial Creditor to the Corporate Debtor. Out of the said Loan, Rs. 464,99,00,000/- (Rupees Four Hundred and Sixty Four Crore and Ninety Nine Lakh Only) is stated to be disbursed by the Financial Creditor till date in multiple tranches.
  7. Various securities obtained to secure the loan as set out in Part V of the present Company Petition and are stated to be validly created in favor of the Financial Creditor.
  8. The Corporate Debtor committed its first event of default under the Loan Agreement on 31<sup>st</sup> March 2019. Thereafter, the Corporate Debtor has committed various other events of default under the said Loan Agreement, which are still subsisting.

9. In light of the various events of default, the Financial Creditor by and under an email issued a notice dated 23<sup>rd</sup> April 2020, thereby calling upon, *inter-alia*, the Corporate Debtor to forthwith repay the said Loan together with additional/ further interest, legal charges, cost incurred. A legal notice dated 14<sup>th</sup> September 2020 was also issued by the Advocates of the Financial Creditor, *inter-alia*, to the Corporate Debtor thereby calling upon the Corporate Debtor to pay the said Loan together with additional / further interest, legal charges, cost incurred
10. Despite the notices dated 23<sup>rd</sup> April 2020 and 14<sup>th</sup> September 2020, the Corporate Debtor failed to repay the outstanding amount together with additional / further interest, legal charges, cost incurred. Accordingly, the Advocate for the Financial Creditor issued a legal notice dated 21<sup>st</sup> July 2023 to the Corporate Debtor, thereby, once again calling upon the Corporate Debtor to repay the said Loan and all amounts due and payable thereon forthwith and in any event, not later than 3 days from the date thereof.
11. However, the Corporate Debtor has failed to repay the outstanding amount as well as has failed to reply to the notices, till date.
12. Thus, an amount of Rs. 990,97,18,320/- (Rupees Nine Hundred Ninety Crores Ninety Seven Lakhs Eighteen Thousand Three Hundred Twenty only as on 31st March 2023 is due and payable to the Financial Creditor by the Corporate Debtor.

**Submissions made by the Learned Counsel of the Applicant :**

13. The Applicant submits that the present petition is filed within limitation since the Company Petition for insolvency resolution in the case of Applicant, earlier known as Diwan Housing Finance Limited (DHFL) came to be admitted on 03.12.2019 as a result of which a moratorium was declared under S.14 of the IBC and which

came to be lifted on 07.06.2021 when the resolution plan of the Petitioner was approved. Hence, the time period between 03.12.2019 (commencement of moratorium) and 07.06.2021 (lifting of moratorium) i.e., 1 year 6 months 4 days shall stand excluded in computation of limitation period in respect of the present petition under S.60(6) of the IBC, the relevant portion thereof is reproduced hereunder:

*“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.*

14. The Applicant has relied upon the decision of the Hon'ble Supreme Court in *New Delhi Municipal Council v. Minosha India Limited, (2022) 8 SCC 384* for this proposition.
15. The Applicant further submits that by virtue of the order passed by the Hon'ble Supreme Court dated 10.01.2022, the period between 15.03.2020 to 28.02.2022 was excluded for the purposes of limitation on account of outbreak of COVID-19 pandemic. The date of default in the present matter arose on 31.03.2019. 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 comes to 13.03.2024. The present petition has been filed on 01.09.2023 which has been filed before the expiry of the limitation period on 13.03.2024. The Applicant has relied on the decision given by this bench in *CP (IB) 700/2022* for this proposition.
16. Neither the Corporate Debtor nor its authorized representative has appeared before us on hearings dated 19.10.2023, 07.11.2023, and

23.11.2023. In view of this, the present petition against the Corporate Debtor was proceeded ex parte. Further no reply has been filed by the Corporate Debtor.

**Order :**

17. Heard learned Counsel and perused the material available on record.
18. We note from the record that the Corporate Debtor has acknowledged & admitted its liability towards the debt outstanding and payable to the Financial Creditor during the Limitation period multiple times which is evidenced by way of loan account statement of the Corporate Debtor as on 31.03.2023. Further, the audited financial statement reflects the debt due from applicant.
19. Further, after occurrence of the default on 31.03.2019, the Applicant was admitted into CIRP on 03.12.2021 which got concluded on 07.06.2021. Accordingly, this period is liable to be excluded after exclusion of this period the limitation would expire on 30.10.2023. The present petition is filed on 1.9.2023 is within limitation. Alternatively, the Applicant is also entitled to exclusion of period on account of COVID-19 in terms of Hon'ble Supreme Court Order, which would also make the present Application within limitation.
20. It is clear from the records produced before this Tribunal that the financial debt amounting to more than Rs. 1,00,00,000/- (Rupees One Crore Only) is due & payable by the Corporate Debtor as on the date of filing the present Company Petition. Further, there is admission of default and outstanding liability by the Corporate Debtor in various correspondences annexed to the Company Petition.

21. The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) of the Code are proved by the Financial Creditor beyond reasonable doubt in the present case.
22. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view thereof, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
23. The Financial Creditor has proposed the name of Mr. Jayesh Natvarlal Sanghrajka, Registration No. IBBI/IPA-001/IP-P00216/2017-18/10416, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
24. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP (IB) 987/(MB) 2023 filed by **Piramal Capital & Housing Finance Limited**, the Financial Creditor, under section 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Prashul Real Estate Private Limited** [CIN: U70102MH2015PTC265360], the Corporate Debtor, is admitted.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) 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;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of



Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Jayesh Natvarlal Sanghrajka, Registration No. IBBI/IPA-001/IP-P00216/2017-18/10416, having registered address at 405-407, Hind Rajasthan Building, DS Phalke Road, Dadar (E), Mumbai – 400014, Email ID : jayesh@jsandco.in is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs 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). The remuneration of the IRP shall be such as is fixed by the Applicant till constitution of CoC and thereafter the constituted CoC shall decide the remuneration payable to the IRP.

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**Prabhat Kumar**  
Member (Technical)

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Sd/-

**Justice V. G. Bisht (Retd.)**  
Member (Judicial)