

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.412/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

Aprn Enterprises Private Limited

[CIN: U21000MH1994PTC084095]

...Financial Creditor/Applicant

V/s

Sahara India medical Institute Limited

[CIN: U85110MH1997PLC10186]

...Corporate Debtor/Respondent

Order pronounced on: 30.08.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vikram Nankani, Ld. Senior Counsel a/w
Mr. Prashant Kumar Adv.

For the Respondent(s) : Mr. Gaurav Joshi, Ld. Senior Counsel a/w
Mr. Feroz Patel, Mr. Sahil Gandhi and Mr.
Ankur Kalal i/b Mr. Makrand Gandhi Adv.



ORDER

Per: Prabhat Kumar, Member (Technical)

1. This application C.P. (IB) 412/(MB)/2022 is filed by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sahara India Medical Institute Limited (CIN : U85110MH1997PLC109186), the Corporate Debtor, on 23/03/2022.

1.1. This Application has been filed by Mr. Jigar Patel, Senior Manager of the Financial Creditor in terms of Authorization dated 17.02.2022, claiming a default of Rs. 940,96,00,862/ (Rupees Nine Hundred Forty Crores Ninety Six Lakhs Eight Hundred Sixty Two Only) as on February 22, 2022.

1.2. The date of default is stated as 11.06.2018 in Parv IV of the Application on account of non-payment of principal and interest thereon, and stated are to be continuing one. The Applicant has annexed Record of Financial Information dated 03.02.2022 issued by NeSL, the Information Utility, stating the date of default as 11.06.2018 and status as "Deemed to be authenticated"; and also CIBIL report of the Corporate Debtor dated 03.02.2022 which also shows amounts under past dues of more than 24 months.

2. The Applicant/Financial Creditor is a housing finance company and is engaged in various financial services businesses. It provides both wholesale and retail funding across sectors. This loan was advanced by Dewan Housing Finance Corporation Limited ("DHFL"). On a petition moved by the Reserve Bank of India, Corporate Insolvency Resolution Process was commenced against DHFL. A Resolution Plan dated December 22, 2020, submitted by Piramal



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Capital & Housing Finance Ltd. / Applicant herein was approved by the National Company Law Tribunal, Mumbai, pursuant to which by way of reverse merger, the Applicant had merged into DHFL with effect from September 30, 2021. Thereafter, on November 3, 2021, the name of DHFL was changed to Piramal Capital & Housing, Finance Ltd i.e., the Applicant/Financial Creditor, and the Applicant/Financial Creditor remains the continuing legal entity.

2.1. During the pendency of the Company Petition, the Financial Creditor executed a Deed of Assignment on 02.08.2022 thereby assigning the loans disbursed under the financing documents together with all the rights, title, interest etc. in favour of the India Resurgence ARC Private Limited pursuant to clause 9.3 of the Agreement. Thereafter on 02.11.2022, the India Resurgence ARC Private Limited executed deed of assignment in favour of APRN Enterprises Private Limited thereby assigning the loans disbursed under the financing documents together with all rights, interest, title and interest etc. In view of this, APRN Enterprises Private Limited filed an IA 804/2023 seeking substitution of Petitioner name in main Company Petition, and same came to be allowed vide this bench order dated 06.03.2023.

3. The Corporate Debtor is a hospital and health care company incorporated under the provisions of the Companies Act, 1956. The Corporate Debtor had availed a mortgage loan amounting to Rs. 500 Crores (Rupees Five Hundred Crores only) vide Loan Agreement dated September 7, 2017 ("Loan Agreement") from DHFL, on the terms and conditions contained in the Loan Agreement and DHFL's Sanction Letter dated September 7, 2017.

3.1. In terms of the Loan Agreement, DHFL had extended financial assistance of Rs. 500,00,00,000/- (Rupees Five Hundred Crores only) to the Corporate Debtor as per the terms and conditions set forth in the said agreement and the Sanction Letter. The Loan Amount carried a floating rate of interest of



15% per annum at monthly rests, payable monthly, which was 3.20% per annum below DHFL's Retail Prime Lending Rate (RPLR) i.e., 18.20% p.a payable monthly.

3.2. The loan facility, so provided by the Applicant/Financial Creditor, is secured various securities provided by the Corporate Debtor including first and exclusive charge by way of mortgage of land situated at Viraj Khand, Gomti Nagar, Lucknow and at Village Dhanori, Taluka Havell, Lohegaon Road, District Pune; Pledge of equity and convertible preference shares of the Corporate Debtor held by Sahara Prime City Limited; Personal guarantee of Mr. Subrata Roy Sahara; Corporate Guarantee of Sahara Prime City Ltd. and Khushal City Homes MAU Pvt. Ltd.

3.3. The loan was to be repaid by the Corporate Debtor as per the Loan Agreement read with the Sanction Letter, in two repayments of Rs. 200 Crores (Rupees Two Hundred Crores Only) and Rs. 300 Crores (Rupees Three Hundred Crores Only) at the end of 42nd and 84th month from first disbursement. The first disbursement took place on 30.09.2017. Accordingly, the first repayment was due on 31.03.2021, however, the interest on such loan was payable on 15th of each month after the first disbursement and such interest was to be computed on balance on the last of preceding month. The Corporate Debtor has defaulted and failed in fulfilling its payment obligations under the Loan Agreement and has committed a default in terms of Clause 7 thereof.

3.4. The Applicant/Financial Creditor had issued a notice dated November 8, 2019, recalling the amount that was outstanding under the Loan Agreement amounting to Rs. 641,77,78,051/- (Rupees Six Hundred Forty One Crores Seventy Seven Lakhs Seventy Eight Thousand and Fifty One Only). Despite service of the notice dated November 8, 2019, the outstanding dues were not paid by the Corporate Debtor. The Corporate Debtor recently, in order to repay the loan amount towards full and final settlement, by a letter dated



December 15, 2021, offered to the Applicant/Financial Creditor to handover the land situated at Pune against the entire outstanding amount owed to the Applicant / Financial Creditor. The said request was denied by the Applicant / Financial Creditor by its letter dated January 10, 2022, as, among other things, the said proposal was completely unviable for the Applicant/Financial Creditor.

3.5. In light of the above, the Corporate Debtor as of February 22, 2022, is liable to pay to the Applicant/Financial Creditor a total outstanding sum of Rs. 940,96,00,862/- (Rupees Nine Hundred Forty Crores Ninety Six Lakhs Eight Hundred Sixty Two only) which comprises of Rs. 500,00,00,000/- (Rupees Five Hundred Crores) as Principal, Rs. 293,94,91,867/- (Rupees Two Hundred Ninety Three Crores Ninety Four Lakhs Ninety One Thousand Eight Hundred Sixty Seven only) as Interest, Rs. 147,01,02,495/- (Rupees One Hundred Forty Seven Crores One Lakh Two Thousand and Four Hundred Ninety Five only) and Rs. 6,500/- (Rupees Six Thousand Five hundred only). The debt owed by the Corporate Debtor to the Applicant / Financial Creditor is not disputed in the present case. Hence, the present Petition.

4. The Corporate Debtor filed Affidavit in Reply dated 18th July, 2022 seeking invocation of the discretion vested in this Tribunal under Section 7(5)(a) and not admit the present Petition inter alia having regard to the peculiar facts and circumstances of the present proceedings. It is the case of the Corporate Debtor that –

- a. The object of the IBC is to first try and revive the company and not to spell its death knell.
- b. It is not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP.



4.1. The Respondent is not a loss making entity and has in fact, in the FY2021-2022, had a provisional EBITDA of Rs. 30.21 crores The Respondent is in good financial health and has an extremely viable business model apart from rendering life saving services to the community at large. The Respondent is indubitably financially well off and viable under the present management.

4.1.1. There has undeniably been no failure or dishonestly on the part of the Respondent. The Respondent is a highly solvent company and save and except the Petitioner, it has no other creditors. As enumerated upon hereinafter, the loan amount of Rs. 500 Crores was obtained to be deposited in the Hon'ble Supreme Court.

4.1.2. The Respondent owns and operates a hospital and the initiation of CIRP qua the Respondent would have significant difficulties that would hamper the day-to-day functioning of the hospital and as a consequence thereof in the absence of continued medical services there would be a potential to cause harm and/or endanger valuable human lives.

4.2. The Respondent forms part of the Sahara Group apropos which the Hon'ble Supreme Court has passed various orders and directions from time to time. These Orders inter alia included an Order dated 25th July 2017 directing the deposit of Rs. 1500 Crores in the SEBI- Sahara Refund Account by 7th September 2017. The Respondent had therefore obtained the present loan from DHFL with a view to comply with the directions passed by the Hon'ble Supreme Court for deposit. Admittedly, the entire loan amount has in fact been deposited by the Respondent in the designated Sahara-SEBI Account. The properties were also mortgaged to secure the said loan after the requisite compliances, inter alia, including the filing of an Affidavit dated 11 September 2017 before the Hon'ble Supreme Court.



4.2.1. Crucially, this peculiar repayment schedule was agreed to between the parties primarily due to the Hon'ble Supreme Court having imposed an embargo by an Order dated 21 November 2013, there has been a severe fund deficit in Sahara group. Therefore, in view of the Order dated 31 August 2012 passed by the Hon'ble Supreme Court containing directions for verification and return of excess payment back to Sahara Group in terms of the Order dated 5th December 2012, the present arrangement was agreed.

4.2.2. At that contemporaneous point in time, it was anticipated that SEBI would complete the verification exercise as per the directions contained in the Order dated 31" August 2012 and thereafter return the amounts in terms of the Order dated 5th December 2012. However, SEBI has till date not completed the verification exercise. The Sahara entities in the Hon'ble Supreme Court had contended that they have already repaid the investors and depositing of money in the SEBI-Sahara refund account would amount to dual payment. However, since SEBI has not completed its obligation of completion of the verification exercise and the money lying in SEBI Sahara refund account is lying unutilized.

4.2.3. In this regard, the Sahara Group entities had, on 23rd March 2021, filed an Interim Application before the Hon'ble Supreme Court inter alia seeking directions for SEBI to release the surplus balance amount of Rs. 23,056 Crores lying in the SEBI Sahara Refund Account along with interest accrued thereon till the date of making the actual refund as directed in the Order dated 5th December 2012. Due to myriad reasons including the unprecedented circumstances rendered by the Coronavirus (COVID-19) pandemic, the aforesaid Application is yet to be heard by the Hon'ble Supreme Court.



4.2.4. The Respondent has recently preferred Interim Application No. 95545 of 2022 before the Hon'ble Supreme Court, inter alia, seeking that the present proceedings be stayed during the pendency of the aforesaid Application and further that the outstanding loan amount payable to the Petitioner, be paid from the amount available in the SEBI-Sahara Refund Account. The aforesaid Interim as Application is sub-judice and pending adjudication.

4.3. The Petitioner has for the loan transaction, obtained security including mortgages of land parcels as well as pledge of shares amongst other securities. As per the Petitioner's own valuation, the aggregate value of only the 2 of properties provided as security is Rs. 1300 Crores, which is much higher than the Petitioner's loan amount as well as purported claim in the present proceedings. Therefore, while the Petitioner has an array of remedies at its disposal for recovery of its alleged claim, it has opted not to file any such proceedings for obvious reasons. The Hon'ble Supreme Court has time and again reiterated that the Insolvency and Bankruptcy Code, 2016 is not intended to substitute a debt recovery forum.

4.4. The Respondent after these preliminary discussions, addressed its letter dated 21 February 2019, inter alia, seeking issuance of the aforesaid NOC for sale of the said land at Pune. Under the proposed sale, a significant amount of Rs. 350 crores being 70% of the principal would also have been repaid upon successful conclusion of the sale. Accordingly, the Petitioner issued a conditional NOC dated 30th March 2019, inter alia recording its assent for the sale of the said Land at Pune by Sahara Prime City Ltd ("SPCL") and Khushal City Homes MAU Pvt. Ltd ("Khushal") to M/s. Bunty Properties Unit No.11 ("Bunty Properties"). The aforesaid Bunty Properties, albeit belatedly, proceeded to deposit an amount of Rs. 5 crores



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with the Petitioner in three transactions between 21 May 2019 and 7th June 2019. However, due to certain unforeseen and exigent circumstances, the proposed transaction took longer than envisaged and unfortunately did not fructify.

4.4.1. Pursuant to diligent efforts, in August 2019, a new buyer viz. M/s Teerth Developers was identified for sale of the said land at Pune. Requests including by an email dated 9 August 2019 were therefore made to the Petitioner to substitute the proposed buyer and for issuance of an NOC in the name of the new proposed buyer viz. M/s. Teerth Developers. However, the aforesaid request was arbitrarily rejected by the Petitioner through its letter dated 12 August 2019.

4.4.2. The Respondent continued to pursue the Petitioner for issuance of an NOC for sale of the said land at Pune. Various discussions were held and at which time the Petitioner was yet again informed that the offer of Rs. 350 made by one M/s. Teerth Developers for purchase of the said land at Pune was still existing subject to the issuance of the NOC by the Petitioner.

4.4.3. It was highlighted in email dated 21.01.2020 that since proceedings were sub-judice before the Hon'ble Apex Court, the entire assets of the Group were frozen, due to which they were unable to service the mortgage loan taken and resultantly, the only option left was to sell the said land at Pune and pay the entire outstanding along with substantial payments towards the principal amount. Administrator clarified them that the Company is under Corporate Insolvency Resolution Process (CIRP) and alienation of security cannot be considered at this juncture.

4.4.4. In addition, the Petitioner also issued a notice dated 17th June 2020 inter alia calling upon the Respondent amongst others to show cause for declaration as a why it should not be declared a wilful defaulter.



4.5. In the meantime, pursuant to the Resolution Plan, PCHFL has merged into DHFL with effect from 30th September 2021, as contemplated under the Resolution Plan (Reverse Merger). By its letter dated 5th October 2021, the Petitioner inter alia recorded that as informed earlier, the Respondent may submit a revised proposal as the previous proposal was commercially unviable to the Petitioner.

4.5.1. While during the meetings held with the representatives of the Petitioner, it was indicated and represented to the Respondent's representative that handing over the said land at Pune in view of the entire amounts would be a workable solution, in a gross contradiction, the Respondent has, by a letter dated 10th January 2022, inter alia, for the first time recorded that the aforesaid transfer that was proposed by the Petitioner itself would be unviable and was therefore not acceptable.

4.5.2. Thereafter, by a letter dated 23 March 2022, the Respondent yet again proposed another offer for one time settlement. The Respondent proposed that the entire loan could be settled for an amount of Rs. 600 crores out of which Rs. 350 crores would be deposited within 6 to 9 months from the date of NOC to sell the said land at Pune and the remaining Rs. 250 crores would be deposited within a period of 12 to 18 months. A similar email dated 23rd March 2022 was also addressed by the Respondent to the Petitioner. However, to the chagrin of the Respondent, the Petitioner in or around April 2022 through its Advocates, served the present Petition upon the Respondent.

4.5.3. The Respondent has even after service of the present Petition, held meetings with the Petitioner including on 25th April 2022, 2nd May 2022 and 4th May 2022. inter alia providing its proposal for a one-time settlement. Illustrative emails dated 28th April 2022, 3rd May 2022 and 5th May 2022 inter alia demonstrates this fact.



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- 4.6. The present Petition is not maintainable as the same has been instituted on the strength of a Loan Agreement dated 7th September 2017, which document is ex-facie insufficiently stamped and/or unstamped. Additionally, the Petitioner has in the present Petition also sought to refer to and rely upon a Mortgage Deed dated 7th September 2017, Deed of Personal Guarantee dated 8 September 2017, Deed of Corporate Guarantee dated 7 September 2017 and an undated Deed of Corporate Guarantee, ("the said documents"), which documents are also ex-facie insufficiently stamped and/or unstamped. Therefore, these documents cannot be acted upon and/or enforced as enunciated upon hereinafter. 38. A bare perusal of the said documents annexed to the present Petition, which inter alia includes the aforesaid Loan. Agreement and said documents amongst other documents, would manifest that they are unstamped and therefore do not comply with the provisions of various statutes.
- 4.7. Under Section 11 of the Code, inter alia a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application is disentitled from making an application of Chapter II of the Code. Thus, the 12 month period as stipulated under Section 11 would have lapsed on or around 29 September 2022 insofar as the Petitioner is concerned. Albeit, the present Petition has been instituted on or around 23rd March 2022, which is indisputably within the 12 month period and is therefore barred by the provisions of the Insolvency and Bankruptcy Code, 2016.
- 4.8. The Respondent has ascertained that this Hon'ble Tribunal's Order dated 3 December 2019 was assailed before the Hon'ble Appellate Tribunal, which by its Order dated 27th January 2022 inter alia sent the Resolution Plan back to the Committee of Creditors for its consideration on an aspect. It appears that the aforesaid Order dated 27th January 2022 was impugned before the Hon'ble Supreme Court, which by its Order dated 11th April 2022 inter alia



stayed the operation of the Order dated 27th January 2022. In such circumstances, in the absence of the Order dated 27th January 2022 being set aside, it cannot be said that the Resolution Plan of the Petitioner has attained finality.

5. The Applicant Financial Creditor filed an Affidavit in rejoinder stating that the Respondent has sought to contend that since it is not a loss-making entity, corporate insolvency resolution process should not be imposed. In order to justify the same, the Respondent has sought to place reliance on its provisional EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortisation) of Rs. 30.21 Crores for the financial year 2021-2022. The Respondent has stated that it is a highly solvent company and save and except the Petitioner, it has no other creditors.

- a. The Respondent has failed to provide any assurance to the Petitioner/Financial Creditor in terms of repayment of the Outstanding amount.
- b. The sanction letter dated September 7, 2017, was issued by the Petitioner (erstwhile DHFL) to the Respondent for a mortgage loan of Rs. 500 Crores. The said sanction letter clearly provides that in case there is any default in repayment of the loan, the Petitioner would have the right to recall all or part of the loan or levy additional interest in an event of default /non-compliance of any of the terms and conditions. Therefore, although the sanction and disbursement to the Respondent under the aforesaid sanction letter and loan agreement, have been done after the approval from the Hon'ble Supreme Court of India, any default by the Respondent in repayment or otherwise would entitle the Petitioner/Respondent to initiate proceedings against them.
- c. The Respondent has also averred that only 2 of the properties provided as security under the Loan Agreement is of the value of Rs. 1300 Crores, which the Petitioner could have appropriated by following due process



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of law in order to recover its purported outstanding amounts. The Petitioner has an array of remedies at its disposal for recovery of claim amount, however, the Petitioner is rightfully entitled to invoke the remedies available under the Code, after a default has been committed in respect of a financial debt. In addition, it is the Petitioner's discretion to choose the remedy which it wishes to invoke, and the Respondent cannot raise any grievance in this regard.

- d. The Petitioner is a financial creditor as per Section 5(17) of the Code, on account of the financial assistance admittedly provided by the Petitioner to the Respondent, owing to which a financial debt has arisen on the failure of the Respondent to comply with its obligations.
- e. Though, the Petitioner / Financial Creditor and the Respondent/Corporate Debtor were in discussion for settlement of the outstanding amount, and exchanged letters for the same, during the period between November 2022 and March 2023, and the said settlement was subject to various terms and conditions, and more specifically successful completion of diligence on property/land situated at Dhanori, Pune by February 15, 2023 ("Long Stop Date") by the prospective buyer, but the prospective buyer was unable to consummate the sale before the Long Stop Date, and consequently the settlement discussions could not materialize between the Petitioner/Financial Creditor and the Respondent Corporate Debtor.
- f. The sequence of events as narrated in the Petition filed by the Petitioner, shows that there is no inaction on the part of the Petitioner, rather it is the Respondent which has defaulted on its commitments at various occasions.
- g. The deficiency of stamp duty which is a curable defect cannot be a bar to admission of a petition under the Code. Reference in this regard is made to the decision in Religare Finvest Ltd. Vs. Bharat Road Network



Ltd., CP (IB) No. 540/KB/2018, whereby the NCLT, Kolkata held if the Corporate Debtor wishes to pay the stamp duty not then nobody can stop but, at this stage, the Corporate Debtor being wrongster at one end cannot be allowed to take advantage of its men wrong.

- h. Reliance is also placed on a recent decision by Hon'ble NCLT. Bengaluru in Ms. Piramal Capital and Housing Finance Limited Vs. M/s. Dhammanagi Developers Private Limited, CP(IB) No. 42/BB/2021, wherein it was held that if the Respondent / Corporate Debtor is disputing the validity of any loan document on the ground of insufficient or deficient stamp duty, it is for it to approach the appropriate authority under the applicable Stamp Act and to obtain an appropriate order thereon.
- i. The Respondent has further averred that the Petition is barred under Section 11 of the Code and the Resolution Plan is yet to attain finality. It is submitted that the aforesaid submissions do not have any merit and are liable to be rejected.
6. The Applicant also filed a written submission stating that t the execution of Loan Agreement and receipt of sums has been expressly admitted by the Corporate Debtor. They contend that SEBI was expected to complete the verification exercise, which has not been done, and accordingly. money is lying unutilized in the Sahara-SEBI refund account. As per the Corporate Debtor, it has moved an application before the Hon'ble Supreme Court (1.A. No. No. 95545 of 2022 in Contempt Petition (C) No. 412 & 413 of 2012), seeking stay of the present proceedings and refund of the amount to be paid to the Applicant. It is submitted that the purpose of the loan, its deployment by the Corporate Debtor and other surrounding circumstances including ongoing litigations, cannot be used as a defence for breach of the repayment terms expressly set out under the Loan Agreement. In this regard, it is submitted that any default by the Corporate Debtor in repayment or otherwise entitles the Applicant to initiate



proceedings, as per Clause 7- Events of Default stipulation under the Loan Agreement.

6.1. In the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" ie, payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise [Reliance placed on *Innoventive Industries Limited v. ICICI Bank and Another, (2018) 1 SCC 407 (Para 30)* ("Innoventive Industries Case")]. Recently, the Hon'ble Supreme Court has followed the view taken by Innoventive Industries Case in the matter of M. Suresh Kumar Reddy Vs. Canara Bank and Others, 2023 SCC OnLine SC 608 (Paras 13 & 14).

6.2. APRN Enterprises Private Ltd. is presently the continuing financial creditor qua the Corporate Debtor, as per Section 5(7) of the Code, which defines it to mean any person to whom a financial debt is owed and includes any person to whom such debt has been legally assigned or transferred to. The Section 7 Application was filed by PCHFL on 23.03.2022. During the pendency of the Section 7 Application, PCHFL executed a Deed of Assignment dated 2.08.2022, assigning various loan including the loan facility under the Loan Agreement with the Corporate Debtor in favour of India Resurgence ARC Private Limited. Subsequently, India Resurgence ARC Private Limited executed a Deed of Assignment dated 2.11.2022, assigning the said loan under the financing documents, on a as is where is basis in favour of the continuing Financial Creditor / Applicant, i.e. APRN Enterprises Private Limited. The said assignment agreements are duly



stamped and registered, and accordingly the Loan Agreement stands validly assigned to the present Financial Creditor /Applicant.

6.3. An application bearing 1A No 804/2023 was filed by the Applicant under Wale 11 of the NCLT Rules, 2016 27.02.2023, seeking substitution of the present Financial Credit after serving a copy of the applications to the Respondent who were already appearing and entered appearance in the Section 7 Application on 05.05.2022 before this Hon'ble NCLT. However, the said application was listed before the Hon'ble NCLT on 06.03.2023 and the Hon'ble NCLT, after hearing the submissions of the Applicant, allowed the Substitution Application and the Applicant was substituted in place of PCIIFL Thereafter, the petition was amended by the Applicant, and a copy of the same was provided to the Corporate Debtor, and the Corporate Debtor, despite having service of IA no. 804/2023. The Corporate Debtor was aware of the aforesaid substitution order, however it failed to challenge the said order before Hon'ble National Company Law Appellate Tribunal (ENCLAT") within the prescribed period of 30 days. Thus, the said order attained finality. The malafides of the Respondent are evident from the fact that it continued to exchange letters with the present Financial Creditor/Applicant i.e. APRN Enterprises Ltd., regarding a one-time settlement ("OTS") proposals starting from November 2022 to July 2023 (Pg. 15. Rejoinder of Applicant), i.e., even prior to the order dated 6.03.2023. Therefore, the contention of the Corporate Debtor that the Loan Agreement does not stand validly assigned is merely an afterthought and the Corporate Debtor owing to its own acts and omissions is now estopped from raising such a frivolous argument. Further, the Corporate Debtor as a dilatory tactic has now approached the Hon'ble Bombay High Court challenging the order dated 6.03.2023, by which the Hon'ble NCLT had permitted the substitution of the Financial Creditor, owing to the fact that the limitation for the statutory appeal under the Code, against the order



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dated 6.03.2023 before NCLAT stood expired. So far in the said writ petition no order has been passed and the same has no bearing on the present Application under Section 7 of the Code.

6.4. It is a settled law that a party cannot approbate and reprobate. After accepting that APRN is the continuing Financial Creditor/ Applicant and sending extensive correspondences regarding OTS proposals to them, the Corporate Debtor cannot now challenge the substitution, before a Court which does not have jurisdiction. Reliance is placed on *Ideal Surgicals Vs National Company Law Tribunal, 2021 SCC OnLine Ker. 5779, Para 10*.

6.5. Notwithstanding the above, even on merits the contention / objection of the Corporate Debtor regarding the substitution are misplaced for the following reasons –

- a. As regards the issue, whether the Applicant i.e. APRN Enterprises Private Limited, is permitted to acquire loans from an Asset Reconstruction Companies (ARC), under the Companies Act, 1956, it is stated that under the Companies Act, a company is permitted to undertake such business activities which the company is authorised to carry on under its memorandum of association ("MoA").
- b. As regards the issue, whether the Applicant ie. APRN Enterprises Private Limited, is prohibited or restricted from acquiring the Loans from an ARC under the RBI Loan Transfer Directions, it is stated that as per proviso (ii) to Clause 3 of RBI Loan Transfer Directions all lenders, where permitted to acquire loans, shall only do so from a transferor specified as a lender unless specifically permitted'. The lenders have been defined in RBI Loan Transfer Directions, to include all non-banking finance companies and others. Accordingly, the lenders are permitted to acquire loans only from the lenders in accordance with the provisions of the RBI Loan Transfer Directions. This condition is however not applicable to the acquisition of loans by a person other than



a lender such as a corporate entity like the Applicant. Accordingly, the RBI Loan Transfer Directions are not applicable to the acquisition of loans by the Applicant. Further, since an ARC has not been included as 'lender' and the Chapter IV of the RBI Loan Transfer Directions are only applicable to transfer of stressed loans to ARCS and not by ARCS, the RBI Loan Transfer Directions shall not be applicable to transfer of loans by ARCS.

- c. As regards the issue as to whether the Applicant i.e. APRN Enterprises Private Limited, is prohibited or restricted from acquiring the Loans from an ARC under the SARFAESI, it is stated that the said Act deals with acquisition of financial by asset an ARC and it does not deal with or prescribe any prohibition or restriction on a corporate entity like the Applicant to acquire financial assets from an ARC in addition, while the SAREAEST Act does not deal with acquisition of loan by a corporate entity, SARFAESI Act does not har the applicability of other laws. Therefore, provisions of Transfer of Property Act, 1882 (TP Act) which is general legation on transfer of property will continue to apply on the transfer of much properties whether covered or not covered under the SARFAESI Act. Accordingly, the Applicant is not prohibited or restricted from acquiring the Leans from an ARC and such acquisition does not need to be under the SARFAESI Act and can be under the relevant provisions of TP Act.
- d. Therefore, the Loan Agreement was validly assigned to the Applicant Le, APRN Enterprises Private Limited, and the Applicant is a financial creditor under Section 5(7) of the Code. In any event, the assignment and consequent substitution has now attained finality pursuant to the order dated 6.03.2021, passed by this Hon'ble Tribunal.

6.6. As mentioned in Part IV of the Section 7 Application, the defaults committed by the Respondent are of a continuing nature which commenced



from 11.06.2018, on account of non-payment of principal and interest under the Loan Agreement. In addition, the NPA Date as stated in Part IV is 1.11.2018. A notice recalling the amounts due under the Loan Agreement was sent on 8.11.2019. It is the case of the Applicant, that the Section 7 Application, is within the limitation period. As per Section 60(6) of the Code, 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. In this matter, the original Lender i.e. DHFL was undergoing corporate insolvency resolution process and consequently a moratorium operated from 3.12.2019 to 7.06.2021 i.e. 1 year 6 months 4 days. Therefore, as per Section 60(6), for the purpose of computing limitation, the period between 3.12.2019 and 7.06.2021, is statutorily and mandatorily required to be excluded. In this regard, reference is made to the decisions in the case of (i) *New Delhi Municipal Council Vs. Minosha India Ltd.*, (2022) 8 SCC 384 (para 34); (ii) *PCHFL Vs. Manpreet Developers Pvt. Ltd.*, CP(IB) No. 700/MB-IV/2022 (para 11).

6.7. In addition, it is a settled law that an application under the Code would not be barred by limitation if there was acknowledgment of debt before expiry of limitation of three years and in such case the period of limitation would get extended by the further period of three years, and OTS offers are clearly an acknowledgment of liability. There have been numerous OTS offers by the Respondent, thus clearly admitting the liability and extending the period of limitation, including letter dated 15.12.2021 (Pg. 264, Vol. 2), 11.11.2022 (Pg. 15, Rejoinder of Applicant) and subsequent OTS made until July 2023

etc.



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7. The Corporate Debtor filed an additional affidavit in reply stating that the Respondent also wishes to place on record the fact that it has filed a Writ Petition before the Hon'ble Bombay High Court challenging the Order dated 6th March, 2023, by which order this Hon'ble Tribunal had permitted the substitution of the Financial Creditor in the name of the APRN Enterprises Pvt. Ltd. The Writ Petition has been inter alia filed since the Application for substitution was in itself unsustainable since the Deeds of Assignment by Piramal Capital & Housing Finance Limited to India Resurgence ARC Trust V was hit by RBI regulations and further the Assignment by India Resurgence ARC Trust V to the Financial Creditor is contrary to the provisions of the Factoring Regulation Act, 2011 and also void since the primary assignment was void in the eyes of law.

7.1. In light of the aforesaid coupled with all that is stated in the said Affidavit in Reply, it is just, equitable and in the interest of justice that the Respondent be protected by this Hon'ble Tribunal in its discretion, and no orders be passed until the Hon'ble Supreme Court has heard and decided the pending Interim Application No. 95545 of 2022, filed by it before the Hon'ble Supreme Court of India.

8. This Bench heard the Counsel and perused the material available on record.

8.1. There is no dispute that there exists a financial debt in excess of Rs. 1.00 Crores and there is default in payment thereof. The present petition is within limitation period of 3 years, as extended vide various OTS offers constituting the acknowledgement of the debt by the Corporate Debtor.

8.2. The principal grounds raised by the Corporate Debtor are (a) it is awaiting release of certain sums lying unutilised with SEBI in 'Sahara Depositors Refund Account', and it has moved an application before Hon'ble Supreme Court seeking release of certain sums therefrom so as to liquidate the debt owed to the Applicant Financial Creditor as well stay on the present proceedings; (b) The loan documents are insufficiently stamped,



accordingly, can not form the basis of present proceedings; and (c) the deed of assignment in favor of M/s APRN Enterprises Private Limited by Piramal Capital & Housing Finance Limited, the original applicant is not legally permissible, hence the APRN Enterprises, presently substituted as the Applicant can not maintain the present application.

8.3. The Hon'ble Supreme Court, in the case of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC*, has held at Para 10 that “*Thus, even the nonpayment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application*”. The Hon'ble Court distinguished the decision of Co-ordinate Bench in the case of *Vidarbha Industries((2022 (8) SCC 352))* and held at para 13 that “*Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries(((2018) 1 SCC 407)) and E.S. Krishnamurthy(((2022) 3 SCC 161)). The view taken in the case of Innoventive Industries(((2018) 1 SCC 407)) still holds good.*” Finally at Para 18 of the decision, the Hon'ble Court dismissed the appeal holding that “*Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7.*”

8.3.1. In the present case, we find that there is no dispute that the debt is due and there have been defaults in payment of interest obligations also, even though there was moratorium of 42 month on payment of



principal. The contention of positive EBIDTA can not come to the rescue of the Corporate Debtor in the light of default in total interest payment amounting to Rs. 88,00,46,385/- as on commencement of principal repayment (end of 42 months). Further, the failure of the corporate debtor to dispose off the Pune property despite NOC from the Financial Creditor also prohibits us from exercise of discretion, even if we consider that we can to do so.

8.3.2. As regards contention of the Corporate Debtor that it can pay the outstanding debt provided the money lying in 'Sahara Depositor Refund Account' is release by the Hon'ble Supreme Court, we find that even though the Financial Creditor had granted loan knowing fully well that this amount shall go towards meeting the obligation of Sahara Group under Supreme Court directives, but the sanction letter does not link the repayment of said loan, including interest, on the release of money from such account. The plea of being a solvent company also does not satisfy us in view of default in meeting the interest obligations itself.

8.3.3. This Bench also finds from the orders passed by Hon'ble Supreme Court in the matters connected with refund of depositor's money. One such order came to be passed on 21.11.2013 in Contempt Petition (Civil) No. 260 of 2013 in CA No.8643 of 2012 titled S.E.B.I. V/s Sahara India Real Estate Corpn. Ltd and Ors., where Sahara Group of companies were restrained/stayed from parting away with movable and immovable properties until further orders. Subsequently, the Hon'ble Supreme Court vide order dated 04.06.2014 permitted sale of immovable properties owned by Sahara Group of Companies situated in nine different cities with an estimated value of Rs.2,500 Crores and directed deposit of sale consideration with court. In view of this order, the Corporate Debtor approached the Hon'ble Supreme Court for further direction to meets its liabilities due to the Income Tax



Department, Banks/Financial Institutions, Electricity and Water Department, and Landlords of Tenanted Premises, which was rejected by the Hon'ble Supreme Court the Hon'ble Supreme Court to pay certain pressing liabilities of the Corporate Debtor, stating that

8.3.4. *"we are of the opinion that the stage for making such prayers has not ripened as yet. The Sahara group companies want to meet their statutory and other liabilities from the surplus that would be available after complying with the Order dated 26.03.2014. As soon as there is compliance with the said Order, the Court shall consider at that stage the availability of the surplus funds along with other facts and then pass appropriate Orders on these applications. It is necessary to mention that even after the Order dated 26.03.2014 is complied with, there is a huge deficit in the form of balance amount that would still be required to be deposited by the applicants/contemnors in Order to comply with the directions contained in the Order dated 31.08.2012 and 05.12.2012 passed by this Court in the civil appeals. Therefore, the Orders on the prayers made in IA Nos. 59-61 of 2015 are deferred for the time being".*

8.3.5. This Bench is of considered view that the Resolution Process under IBC is for the benefit of the Corporate Debtor and its stakeholders and is not detrimental to its interest, though it may be adversarial qua the management of the Corporate Debtor who may be responsible for the situation, the Corporate Debtor is in. The object behind seeking change in the ownership and management of the Corporate Debtor is to infuse new life into the Corporate Debtor, which may otherwise slip into deep distress on account of morass, the existing owners and management of the Corporate Debtor may be in.

8.3.6. In view of the foregoing discussion, we do not find any merit in the contention of the Corporate Debtor that the present application seeks to push a solvent company into Resolution Process, which may cause prejudice to the interest of the Corporate Debtor, or such application is



in realm of recovery proceedings. Had the Applicant contemplated recovery of its debt as the only objective, it could have taken action under SARFAESI Act, and realised its security interest so as to recover its dues. However, despite this, the act of filing of present application only substantiate the belief that object of the Financial Creditor is to seek the resolution of distress of the Corporate Debtor and nothing else.

8.4. As regards insufficiently stamped loan documents, this Bench has held in the case of *Bd And P Hotels (India) Private Limited C.P. (IB)/226(MB)2022*, that insufficiency of stamp on the loan documents is not a relevant factor for consideration while deciding the Application u/s 7 of the Code, so long as there is no dispute qua existence of debt and default in payment thereof. This decision was rendered by this Bench after considering the decision of Hon'ble Supreme Court in the case of *N.N. Global Mercantile Private Limited 2023 SCC OnLine SC 495*. Further, this Bench agrees with the decision of Kolkata Bench that if the Corporate Debtor wishes to pay the stamp duty not then nobody can stop but, at this stage, the Corporate Debtor being wrongster at one end cannot be allowed to take advantage of its men wrong. accordingly, can not form the basis of present proceedings. Accordingly, we reject this contention also as not maintainable.

8.5. We find that this Bench allowed the substitution of M/s APRN Enterprises in place of Piramal Capital & Housing Finance Limited vide order dated 6.3.2023, which came to uploaded on DMS portal on 17.03.2023. Vide this order, M/s APRN Enterprises was directed to make necessary amendments and serve a copy thereof to the Corporate Debtor. The Counsel for the Corporate Debtor appeared on 21.4.2023, and submitted that the Financial Creditor has amended the Petition but the amended copy of the Petition has not yet been submitted and this service is desirable to verify whether the amendment has been carried out in proper manner or not. Even though the



Ld. Counsel was aware of IA 804/2023, a copy of which was served to them on 27.02.2023 and said IA contained the assignment deed dated 2.8.2022 & 17.11.2022, the Corporate Debtor didn't chose to appear on 6.3.2022. Moreover, the fact of assignment came to be recorded as early as in January, 2023 vide daily order dated 12.1.2023 also.

8.5.1. The Corporate Debtor, after knowing the fact of substitution having been allowed, appeared through Counsel on the 11.5.2023 and sought adjournment. The Counsel again appeared on 5.6.2023 and submitted that "the discussion for settlement is already in the advanced stage and is likely to be agreed soon, the Corporate Debtor is awaiting release of certain sums". Again on 14.7.2023, the adjournment was sought on the ground that "the Corporate Debtor needs some time to respond to the terms and conditions put forth by the Financial Creditor on 02.06.2023, and it was confirmed by both the Counsel confirms that the parties are negotiating the settlement amount and their still exist difference of about 8% in the settlement value. Further, the final terms of settlement are pending for want of consensus on the terms attached thereto". These facts suggest that the Corporate Debtor had no objection to the substitution, and not raised this ground even on two occasions after the said substitution having been allowed.

8.5.2. Nonetheless, the Corporate Debtor didn't chose to file any appeal even after communication of the Order 06.3.2023 on 17.3.2023. Instead, it filed a Writ Petition No. (L) 14865/2023 before Hon'ble Bombay High Court on challenging the order dated 06.03.2023 and the same is pending. We feel that this Writ came to be filed as alternate efficacious remedy available to the Corporate Debtor under the Code could not have been availed as the time for filing appeal before NCLAT had expired. Even if it is assumed that the order allowing substitution is a nullity, the said order could have been rectified by this Bench in terms



of powers under Rule 11 of NCLT Rules, as held by Hon'ble Supreme Court in the case of *Union Bank of India Vs. Financial Creditors of M/s. Amtek Auto Ltd. & Ors (2023) ibclaw.in 85 SC*.

8.5.3. Nonetheless, this Bench also finds support from the decision of Hon'ble NCLAT in the case of *Surender Singh Vs. Yes Bank Limited (2023) ibclaw.in 131 NCLAT* that "On account of failure of assignee to file application to continue the proceedings, the application could not have been dismissed, the original Financial Creditor could have continued the proceeding for the benefit of assignee". Accordingly, this Bench is of considered view even if order substituting APRN Enterprises as assignee of debt is set aside by the Hon'ble Bombay High Court, the present proceeding shall continue to survive.

8.5.4. It is interesting to note that the Corporate Debtor had written a letter dated 11.11.2022 making an offer for settlement to M/s APRN Enterprises Private Limited in reference to letter dated 7.11.2022 written by India Resurgence ARC Private Limited, the successor of Piramal Capital and predecessor of APRN Enterprises. Further, the OTS terms came to be accepted by the Corporate Debtor thereafter, though said terms came to be withdrawn vide letter dated 24.3.2023, as advised by APRN Enterprises Private Limited later on account of failure of prospective buyer to consummate the sale transaction of Pune Property by 15.2.2023. These facts clearly suggest that the Corporate Debtor is indulging into contrary position and cannot be allowed to approbate and reprobate.

8.5.5. Further, even if the contention of the Corporate Debtor in relation to legality of the assignment is accepted and it is assumed for the sake of argument that such assignment will not stand the test before Hon'ble Bombay High Court, in such case, the original applicant shall stand restored on the petition, who was undisputedly financial creditor at the



time of filing of the application. There is no dispute that the application was not filed by a financial creditor u/s 7 of the Code. This Bench is of the considered view that the fact of legality of assignment cannot make the loan outstanding to cease. It is undisputed legal proposition that the assignee is successor in interest of the predecessor, and in case the claim of successor is challenged on ground of invalid transfer, the claim restores to the predecessor.

8.5.6. In view of the foregoing, this Bench does not find any substance in this argument also.

8.6. Accordingly, this Bench is of the considered view that this Petition under section 7 filed by the Financial Creditor to initiate the CIRP in the matter of the Corporate Debtor **deserves to be admitted** under section 7(4) of the Insolvency and Bankruptcy Code, 2016.

9. 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] and Email Id.- jayesh@jsandco.in; and has submitted his consent letter dated 09.03.2022 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

10. The petition bearing CP (IB) No.412/MB-IV/2022 filed under section 7 by Piramal Capital & Housing Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sahara India Medical Institute Limited is **Admitted**.

a) 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, -
- (v) 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;
- (vi) 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 Tribunal 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) The bench hereby appoints Mr. Jayesh Natvarlal Sanghrajka, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00216/2017-2018/10416 and email- jayesh@jsandco.in. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant 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).



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- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Operational 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.
- (k) A copy of this Order be sent 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)
30.08.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 01/09/2023

P.R.S. Senad
Deputy Registrar
National Company Law Tribunal Mumbai Bench

