

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - I**

**CP (IB) 646/MB/2022**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**IDFC FIRST BANK LIMITED**

**[CIN: L65110TN2014PLC097792]**

KRM Tower, 7th Floor, No. 1, Harrington  
Road, Chetpet, Chennai - 600031.

... Financial Creditor /Petitioner

Versus

**MARVEL REALTORS AND DEVELOPERS  
LIMITED**

**[CIN: U70102PN2006PLC128506]**

Office No: 301-302, Jewel Tower, Survey No:  
25/H, Lane No: 5, Koregaon Park Pune -  
411001.

... Corporate Debtor /Respondent

**Order Delivered on 23.12.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Financial Creditor : Mr. Shyam Kapadia, Counsel.

For the Corporate Debtor : Ms. Natasha Bhot, Counsel.

**ORDER**

***Per: Justice P. N. Deshmukh, Member (Judicial)***

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **IDFC**

**First Bank Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Marvel Realtors and Developers Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a Public company limited by shares and incorporated on 24.05.2006 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Office No 301-302, Jewel Tower, Survey No 25/H, Lane No 5, Koregaon Park, Pune- 411001 MH. Therefore, this Bench has jurisdiction to deal with this petition.

**Submissions made by Financial Creditor by way of Application/  
Petition:**

**I. EXISTENCE OF FINANCIAL DEBT AND DEFAULT**

3. The Financial Creditor submits that the amount claimed to be in default in Part IV of the Petition is Rs.44,50,99,163/- (Rupees Forty-Four Crores Fifty Lakhs Ninety-Nine Thousand One Hundred and Sixty-Three Only). The date of default has been stipulated as 22.12.2021. The debt thus, is not time-barred.
4. The Financial Creditor submits that there are three financing documents which are germane to the adjudication of the present Petition. The first is the Sanction Letter dated 15.06.2017 annexed to Petition at *Exhibit - H @ page 63-71 of CP*. The second being the Application dated 19.07.2017 wherein the Corporate Debtor on basis of the terms and conditions set-out in the sanction letter and availed to secure the financial facility to the extent of Rs.48 Crores

for the purpose of financial assistance towards working capital and general corporate purposes. By virtue of the Sanction Letter dated 15.06.2017 and application dated 19.07.2017, the Financial Creditor sanctioned a term loan of Rs.48,00,00,000/- (Rupees Forty-eight crores only) in favour of the Corporate Debtor. The rate of interest was 17.5% p.a. The loan was to be repaid in 48 monthly instalments. The principal amount was to be repaid in 10 instalments in accordance to Schedule XIII (**Page 130, Vol I**) of the Loan Agreement. Corporate Debtor had to pay an interest amount as per the interest period, on the relevant interest payment date, at the rate of 17.5% payable monthly, on the fifth day of the quarter following month.

5. On 29.07.2017, Corporate Debtor executed a Demand Promissory Note (**Ex. N @ pg.169 of CP, Vol.1**) in favour of the Financial Creditor for an amount of Rs.48 Crores in pursuance to the Loan Agreement. Also, Deed of Guarantee of even date was executed by Marvel Sigma Homes Private Limited and Corporate Debtor (**Ex. L @ pg. 150 of CP, Vol.1**) for the said amount of loan. Deed of Hypothecation was executed by Marvel Sigma Homes Private Limited and Corporate Debtor in favour of the Financial Creditor (**Deed of Hypothecation**). On 03.08.2017, Mr. Vishwajit Jhawar being the Director and Promoter of Corporate Debtor executed a personal guarantee in favour of the Financial Creditor towards the loan amount.
6. On 07.08.2017, Corporate Debtor addressed a letter to the Financial Creditor requesting disbursement of an amount of

Rs.44,50,99,163/-. Pursuant to the disbursement request, the Financial Creditor on 09.08.2017 transferred an amount of Rs.44,50,99,163/- (Rupees Forty-four crores Fifty lakhs Ninety-nine thousand one hundred sixty-three only by way of RTGS in favour of the Corporate Debtor **(Ex. R @ Vol IV Pg.524 of CP)**

7. On 23.11.2017, under the Loan Agreement, an additional disbursement request of an amount of Rs.30,00,000/- (Rupees Thirty Lakhs Only) was made by Corporate Debtor to the Financial Creditor. Pursuant thereto, Financial Creditor transferred an amount of Rs.30 Lakhs by way of RTGS on 24.11.2017.
8. By end of December 2017, the Corporate Debtor's account became irregular and interest payments were overdue. On 02.01.2018, the Financial Creditor through their Advocate addressed a demand notice to Corporate Debtor and others calling upon Corporate Debtor to pay an amount of Rs.2,04,29,701/- (Rupees Two Crores Four lakhs Twenty-Nine Thousand Seven Hundred and One Only), including penal interest, which was due and payable towards outstanding payment of interest for the period from 05.10.2017 to 05.12.2017, as agreed under Loan Agreement, within 10 days from the receipt of the aforesaid notice.
9. The Financial Creditor, through its Advocate, addressed a Recall Notice to Corporate Debtor and others calling upon the entire outstanding facility of Rs.47,54,40,767/- (Rupees Forty-seven crores fifty-four lakhs forty thousand seven hundred and sixty-

seven only) as on 10.01.2018 to be paid along with interest within 7 days of receipt of the aforesaid notice.

10. Since Corporate Debtor failed to make payment as per the Facility Agreement, the Financial Creditor filed Commercial Suit (L), No.224 of 2018 before the Hon'ble High Court of Bombay against Corporate Debtor and others for the outstanding loan amounts. Corporate Debtor and others entered Consent Terms on 03.05.2018 (**Ex.Y @ Vol. IV Pg.578 of CP**) in the said Commercial Suit (L) No.224 of 2018 and accordingly the Suit was disposed off in terms of the Consent Terms.
11. In spite of issuance of email dated 16.07.2018, Notice dated 09.10.2018 and 14.03.2019 thereby calling upon the Corporate Debtor to make payments, it has not repaid the defaulted amount under the Consent Terms.
12. On 26.12.2019, the Financial Creditor filed a Petition being CP(IB)4681 of 2019 under section 7 of the IBC against the Corporate Debtor and Guarantors. During the pendency of the Company Petition, the Corporate Debtor addressed an email dated 14.02.2020 to the Financial Creditor for settling the outstanding dues with the Financial Creditor. Accordingly, the Financial Creditor and the Corporate Debtor executed a Settlement Letter dated 23.02.2021 for paying settlement of Rs.35 crores. Based on the Settlement Letter, the Financial Creditor and the Corporate Debtor entered into Consent Terms dated 08.06.2021 thereby capturing the terms of the Settlement Letter.

13. The Financial Creditor filed an Application being IA No.1252 of 2021 for withdrawal of the Company Petition No.4681 of 2019 basis the Consent Terms. By an order dated 08.07.2021 this Tribunal allowed the Interim Application and disposed off the Company Petition as withdrawn with liberty to file fresh Company Petition in case of default on behalf of the Corporate Debtor (**Exh. FF – Vol V Pg. 754 of CP**).
14. On 16.12.2021, the Corporate Debtor by reminder email requested Corporate Debtor that the payment of Rs.15 crore was to be completed on or before 22.12.2021 as per the Settlement Letter dated 23.02.2021, for which the Financial Creditor would not be able to provide any extension. Further, the Financial Creditor clarified that in case of default of payment by the Corporate Debtor by the stipulated date, the terms of the Settlement Letter would be void and the payment terms as per the Loan Agreement would be reinstated, including payment of penal interest and retaining of the security by the Financial Creditor. The Corporate Debtor failed to provide any response or make payment towards the outstanding amount (**Exh.MM – Vol V pg.764 of CP**).
15. Due to the failure on part of the Corporate Debtor to pay adhere to the terms of the Settlement Letter and the Consent Terms, the Financial Creditor was constrained to issue Demand Notice dated 29.12.2021, thereby informing that due to default, the Settlement Letter stood cancelled and the original payment terms as per the Loan Agreement were reinstated. (**Exh. QQ-Vol V Pg.770**).

16. In view of non-payment of the amount of Rs.15 crores, the Financial Creditor addressed a letter dated 07.03.2022 *inter alia* revoking the Settlement Letter due to the default on behalf of the Corporate Debtor (**Exh. XX - Vol. V Pg.787**). Hence the present petition was filed before this Tribunal.
17. In furtherance to the above, reliance is placed on the decision of the Hon'ble Supreme Court of India in *Swiss Ribbons v. Union of India*, (W.P.(C) No.99/2018) wherein the Apex Court was pleased to observe as follows:
- “A Financial Creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a — default occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the Corporate Debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the Corporate Debtor. Under Section 7(4), the Adjudicating Authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the Adjudicating Authority, has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred.”*
18. Similarly, in *Innoventive Industries v. ICICI Bank*, [(2018) 1 SCC 407] the Apex Court had observed as follows .....

*“28. When it comes to a Financial Creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor — it need not be a debt owed to the applicant Financial Creditor. Under Section 7(2), an application is to be made under subsection (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a Financial Creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the Corporate Debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the Adjudicating Authority by registered post or speed post to the Registered office of the Corporate Debtor. The speed, within which the Adjudicating Authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This, it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the Adjudicating Authority is to be satisfied that a default has occurred, that the Corporate Debtor is entitled to point out that a default has not occurred in the sense that the — debt, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to*



*rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority.....”.*

19. We have heard the arguments of Financial Creditor and Corporate Debtor and perused the records.
20. Record reveals that by Order of this Bench dated 04.07.2022, one week's time was granted to the Corporate Debtor to place on record Affidavit in Reply by duly serving a copy to the Counsel appearing on behalf of the Financial Creditor. Despite the same, the order of this Bench has not been complied with by the Corporate Debtor. Thereafter the matter was listed on Board on two occasions; on which dates, none was present for the Corporate Debtor. In that view of the matter, we thus find no reason to grant further time to the Corporate Debtor to place on record the Affidavit in Reply. However, liberty was given to the Corporate Debtor to place on record short written submissions, if they so desire to place the same on record, within a period of two weeks from the last date of hearing on 26.09.2022. However, no written submission has been filed by the Corporate Debtor.
21. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a

‘debt’ and ‘default’ is proved, the adjudicating authority is bound to admit the petition.

22. We also consider the facts of the case in the lights of the Order passed by Hon’ble Supreme Court in *Innoventive Industries v. ICICI Bank*, [(2018) 1 SCC 407] upholding the Constitutional validity of IBC. The Financial Creditor has filed the Petition under relevant Section 7 of the IB Code, followed the process and ‘debt’ and ‘default’ is proved, the adjudicating authority is bound to admit the petition.
23. Upon perusal of records, this Bench is of the considered opinion that the Corporate Debtor is in default of debt and owes money to the Financial Creditor.
24. The Financial Creditor has proposed the name of **Mr. Manoj Kumar Mishra** , Registration No. IIBI/IPA-001/IP-P01152/2018-2019/11902, 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 along with a copy of his Certificate of Registration. Hereto annexed as **Exh-G (pg. 60-63 of CP)**.
25. 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 more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there

is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

26. It is, accordingly, hereby ordered as follows: -

- (a) The Petition bearing **CP (IB) 646/MB/2022** filed by **IDFC First Bank Ltd.**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Marvel Realtors and Developers Ltd. & Ors. [CIN: U70102PN2006PLC128506]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, regarding 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) 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 IB Code.
- (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. Manoj Kumar Mishra, Registration No. IIBI/IPA-001/IP-P01152/2018-2019/11902**, having address at Room No.1406, Building 4B, New Hind Mill, MHADA Sankul, Ram Bhau Bhogale Marg, Ghodapdev, Mumbai - 400033, Email: manojkmishra95@gmail.com, 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 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/- 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).

- (i) 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/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

23.12.2022  
SAM/Jenny

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**