

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1409/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

**Pegasus Assets Reconstruction
Private Limited**

...Financial Creditor

v/s.

Radiance Properties (India)Private

...Corporate Debtor

Order Pronounced on: 26.11.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Kunal Kanungo a/w Ms. Tanushree Sogani and
Mr. Atishay Jain, Advocates.

For the Respondent: Mr. Gauraj Shah a/w Mr. Sachit Kumar, Advocates.

ORDER

Per: Suchitra Kanuparthi (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Pegasus Assets Reconstruction Private Limited**, ("the Financial Creditor"), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **Radiance Properties (India) Private Limited** (“the Corporate Debtor”), [CIN: U70102MH2007PTC169926]. The Corporate Debtor is a company incorporated on 17.04.2007 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Office No. 905/906, Level-9, Maithili’s Signet, Plot No. 39/4, Sector-30A, Vashi, Navi Mumbai – 400 705. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Petition.

2. The original Lender viz. Abhyudaya Co-operative Bank Ltd. on 30.6.17 assigned, transferred, and released in favour of the present petitioner all the rights under 8 Term Loans agreement. The total outstanding debt claimed by the Petitioner is Rs.106,89,33,111/- under all the various term loans granted as on date of default of 31.7.2013. The last payment of Rs. 52,68,633/- was made on 30.3.2016. However, the petition also records that another payment of Rs. 88,60,000/- in discharge of the debt paid as on 29.9.2016.
3. Originally, the petitioner claimed that there is a delay of 443 days in filing the present petition.
4. The particulars of security as held by the Petitioner are as follows:

I. **Term Loan Facility of Rs. 1 Crore**

Primary Security: Shop No. F-22, admeasuring 13223 sq. ft. carpet area, 1st Floor, Ripplez Mall, Plot No. 6A, Sector 7, Airoli, Navi Mumbai.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel
- iii) Mr. Dinesh Devji Patel

II. **Term Loan Facility of Rs. 15 Crores**

Primary Security: Registered Mortgage of units/spaces to be constructed therein namely the Food Court area, Bank Space, Office No. 1,2,6,7,8,9 and 10.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet, Unit No. F-21 in the Ripplez Mall owned by the Corporate Debtor.
- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel
- iii) Mr. Dinesh Devji Patel

III. **Term Loan Facility of Rs. 10 Crores**

Primary Security: Registered Mortgage of land & building to be constructed on Plot No. 64 & 64-A.

Personal Guarantors:

- i) Mr. Ramesh D. Patel

ii) Mr. Vijay Premji Patel

IV. **Term Loan Facility of Rs. 10 Crores**

Primary Security: Registered Mortgage of land & building to be constructed on Plot No. B-2.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet, Unit No. F-21 in the Ripplez Mall owned by the Corporate Debtor.
- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel

V. **Term Loan Facility of Rs. 20 Crores**

Primary Security: Sr. No. 150, 175, 174, 180-2, 182, Village Shivkar, Tal. Panvel, Dist. Raigad.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet, Unit No. F-21 in the Ripplez Mall owned by the Corporate Debtor.
- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel

VI. **Secured Over Draft Facility of Rs. 3 Crores**

Prime Security: Shop No. S-19 and S-20, 2nd Floor, Ripplez Mall, Sector 7, Airoli, Navi Mumbai owned by the Corporate Debtor and Room No. G-2, ground Floor, New Horizon CHS Ltd., Sector 46, Nerul, Navi Mumbai owned by the Personal guarantor.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet, Unit No. F-22 in the Ripplez Mall owned by the Corporate Debtor.
- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor, Plot of land bearing Survey Nos. 150, 175, 174, 180-2, 182 at village Shivkar, Plot No. 8-2 at village Ulwe, Plot No. 64 A & 64-A at village Ulwe, Navi Mumbai.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel

VII. **Term Loan Facility of Rs. 8 Crores**

Primary Security: Mortgaged by M/s. Retro Realtors, 15 flats and 4 commercial units in the building known as Retro Avenue to be constructed on Plot No. 56, sector 2-A, Kopar Khairane, Navi Mumbai.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet and Shop Nos. S-19 and S-20 and Shop No. F-22 in the Ripplez Mall, Plot Nos. B-2

village Ulwe, Plot No. 64 A & 64-A at village Ulwe owned by the Corporate Debtor.

- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor, Plot of land bearing Survey Nos. 150, 175, 174, 180-2, 182 at village Shivkar, Room No. G-2, New Horizon CHS Ltd. owned by the Personal Guarantor.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel
- iii) M/s. Retro Realtors

VIII. Term Loan Facilities of Rs. 18 Crores

Primary Security: Hypothecation of machineries to be purchased.

Collateral Security:

- i) Office No. 905 and 906 in Maithili's Signet and Shop Nos. S-19 and S-20 and Shop No. F-22 in the Ripplez Mall, Plot Nos. B-2 village Ulwe, Plot No. 64 & 64-A at village Ulwe owned by the Corporate Debtor.
- ii) Office No. 904 in Maithili's Signet, Unit No. G-1 in New Horizon CHS Ltd. and Flat No. F-31 in Grain Merchants CHS Ltd. owned by the Personal Guarantor, Plot of land bearing Survey Nos. 150, 175, 174, 180-2, 182 at village Shivkar, Room No. G-2, New Horizon CHS Ltd. owned by the Personal Guarantor.

Personal Guarantors:

- i) Mr. Ramesh D. Patel
- ii) Mr. Vijay Premji Patel

Copy of Certificate for Registration of Charges on the website of Registrar of Companies is annexed to the Petition and marked as Annexure-5.

5. The petitioner has filed statement of accounts showing the outstanding liability as on 4.11.2020 being Rs 106,89,33,111.32. The original lender has issued recall notice dated 12.8.2013 and invoked the personal guarantee calling for payment of outstanding amount due.
6. The Petitioner had also filed an OA 413/2013 before Hon'ble DRT Mumbai and a decree was passed confirming the debt due on 12.3.19. The recovery certificate was issued by the DRT Mumbai on 10.2.2020.
7. The Petition came for hearing on 20.09.2021 wherein the petitioner was directed to amend form 1 in view of the issuance of recovery certificate dated 10.2.2020 which gives the fresh limitation of 3 years to initiate proceedings under Sec.7 of IBC.
8. Counsel for the Corporate Debtor has not filed any reply.
9. When the matter came up for hearing on 22.09.2021, both parties were heard and the matter was reserved for orders.
10. The judgment of Hon'ble Supreme Court in *Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Anr.* at para 139 has categorically held

that date of issuance of recovery certificate grant fresh limitation. The relevant para of the judgment of Hon'ble SC is reproduced below:

"139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant bank, would not be barred by limitation at least till 24th May, 2020".

11. This Bench is of the considered opinion that in view of the issuance of recovery certificate by the Hon'ble DRT on 10.02.2020, the right to file petition under Sec. 7 starts from 10.02.2020 and extends till 09.02.2023. The bench also notes that the default is crystallized by the issuance of Recovery Certificate, therefore it is concluded that the Petitioner has demonstrated a clear evidence of debt and default as required u/s 7 of IBC. Hence the Petition is **admitted**.
12. The Financial Creditor has proposed Mr. Anuj Bajpai as Interim Resolution Professional (IRP) in the matter.
13. The Application bearing **CP(IB)-1409(MB)/2020** filed under Section 7 of I&B Code, 2016, presented by **Pegasus Assets Reconstruction Private Limited**, Financial Creditor/ Petitioner against **Radiance Properties (India) Private Limited [U70102MH2007PTC169926]**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
 - I. That this Bench as a result of moratorium, prohibits:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process

or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Anuj Bajpai, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-P00311/2017-2018/10575 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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).

15. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Rajesh Sharma
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)

26.11.2021/pvs