

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB) No.94/BB/2022
U/s 7 of I&B Code, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Indiabulls Housing Finance Limited

Regd. Office at M-62 & 63, First Floor,
Connaught Place,
New Delhi – 110 001.

Also at:

116, Krishna Arcade,
Between 12th & 11th Cross,
Margosa Road, Malleshwaram,
Bengaluru – 560 003.

... Petitioner / Financial Creditor

Versus

M/s. Mantri Developers Private Limited

41, Vittal Mallya Road,
Bengaluru – 560 001.

... Respondent / Corporate Debtor

Order delivered on: 28th March, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioner : Shri C.K. Nandakumar, Sr. Adv. along with
Shri Prasanth V.G. and Ms. Lekha, Advs.
For the Respondent : Shri M.S. Shyam Sundar, Sr. Adv. along with
Ms. Krutika Raghavan, Ms. Sameeksha Patil,
Mohnish Mohan, Advs.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

- 1.** The present Petition has been filed on 15.02.2022 u/s 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. Indiabulls Housing Finance Limited** (hereinafter referred to as 'Petitioner / Financial Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. Mantri Developers Private Limited** (hereinafter referred to as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.456,68,73,538/- as on 01.01.2022.
- 2.** The Corporate Debtor was incorporated on 06.12.1990 with CIN: U70102KA1990PTC027924 with its registered office situated at # 41, Vittal Mallya Road, Bengaluru, Karnataka-560001. Hence, the jurisdiction lies with this Adjudicating Authority. Its Authorised Share Capital is Rs.110,00,00,000/- (Rupees One Hundred and Ten Crores Only) and Paid-up Share Capital is Rs.46,19,33,190/- (Rupees Forty-Six Crores Nineteen Lakhs Thirty-Three Thousand One Hundred and Ninety Only).
- 3.** Brief facts of the Petition are given hereunder:
 - (a) The Financial Creditor is one of India's largest housing finance Company and provides housing finance, including home loans regulated by the Reserve Bank of India. The Corporate Debtor is a part of the Mantri Group of Companies engaged in the real-estate business in Bangalore.
 - (b) It is stated that the Petitioner sanctioned an aggregate loan to the tune of Rs.579,20,00,290/- under the five loan agreements. The aggregate disbursed loan amount under all these agreements is Rs.574,20,00,290 (Rupees Five Hundred and Seventy-Four Crores Twenty Lakhs Two

Hundred and Ninety Only) mentioned in Form-1 along with the date of default as per Form-1 is stated as 01.01.2022.

(c) The details of each loan agreements are as follows:

i. Loan Account No. S000239539:

The Applicant **sanctioned** a loan of Rs. 135 Crores to the Corporate Debtor on 29.08.2016 for construction and development of residential projects. The Applicant sanctioned the loan on the terms and conditions of the sanction letter dated 29.08.2016, and on the basis of the securities extended by the Corporate Debtor (and other obligors) stipulated thereunder. The Applicant & Corporate Debtor, accordingly, executed the Loan Agreement dated 16.09.2016 thereby accepting and acknowledging their respective obligations thereunder. The Applicant **disbursed** a sum of Rs. 130 Crores to the Corporate Debtor in five tranches on 28.09.2016, 15.12.2016, 26.12.2016, 06.01.2017 and 09.02.2017.

ii. Loan Account No. HL29000028:

The Applicant **sanctioned** a loan of Rs. 78,75,00,000/- to the Corporate Debtor and Mr. Sushil Mantri (co-borrower) on 22.03.2019 for construction / acquisition of immovable property or such other purpose as may be approved by Lender. The Applicant sanctioned the loan on the terms and conditions of the sanction note dated 22.03.2019, and on the basis of the securities extended by the Corporate Debtor (and other obligors) stipulated thereunder. Accordingly, the Applicant, Corporate Debtor and Mr. Sushil Mantri executed the Loan Agreement dated 28.03.2019 thereby accepting and acknowledging their respective obligations thereunder. The Applicant **disbursed** the entire sum of Rs. 78,75,00,000/- on 30.03.2019.

iii. Loan Account No. HL29000030:

The Applicant **sanctioned** a loan of Rs. 78,75,00,000/- to the Corporate Debtor and Mr. Sushil Mantri on 22.03.2019 for construction / acquisition of immovable property or such other purpose as may be approved by Lender. The Applicant sanctioned the loan on the terms and conditions of the sanction note dated 22.03.2019, and on the basis of the securities extended by the Corporate Debtor (and other obligors) stipulated thereunder. Accordingly, the Applicant, Corporate Debtor and Mr. Sushil Mantri executed the Loan Agreement dated 28.03.2019 thereby accepting and acknowledging their respective obligations thereunder. The Applicant **disbursed** the entire sum of Rs. 78,75,00,000/- on 30.03.2019.

iv. Loan Account No. S000241174:

Indiabulls Commercial Credit Limited ('ICCL') had **sanctioned** a loan of Rs. 160,00,00,000/- to the Corporate Debtor on 05.08.2019 for construction and development of residential projects / reimbursement of cost incurred for residential projects. The ICCL sanctioned the loan on the terms and conditions of the sanction letter dated 05.08.2019, and on the basis of the securities extended by the Corporate Debtor (and other obligors) stipulated thereunder. ICCL and Corporate Debtor, accordingly, executed the Loan Agreement dated 21.08.2019 thereby accepting and acknowledging their respective obligations thereunder. Subsequently, the loan was assigned by ICCL to the Financial Creditor herein. The Applicant **disbursed** a sum of Rs.142,72,50,000/- to the Corporate Debtor on 24.10.2019.

v. Loan Account No. S000241175 (earlier LAN 240922 of ICCL)

The Applicant **sanctioned** a loan of Rs. 150,00,00,000/- to the Corporate Debtor (and co-borrower, M/s. Mantri Castles Private Limited) on 05.08.2019 for construction and development of residential projects / reimbursement of cost incurred for residential projects. The Applicant sanctioned the loan on the terms and conditions of the sanction letter dated 05.08.2019 and on the basis of the securities extended by the Corporate Debtor (and other obligors) stipulated thereunder. The Applicant and Corporate Debtor and Mantri Castles Private Limited, accordingly, executed the Loan Agreement dated 21.08.2019 thereby accepting and acknowledging their respective obligations thereunder. The Applicant **disbursed** a sum of Rs. 138,97,50,290/- to the Corporate Debtor on 24.10.2019.

The aforementioned loans are hereinafter together referred as 'Loan Accounts' under their respective Loan Agreements.

- (d) Under Clause 3 of the Loan Agreements, the Corporate Debtor shall, *inter alia*, pay / repay the entire Loan and interest thereon to the Lender in such manner as agreed / specified by the Lender from time to time and/or as per the Repayment Schedule.
- (e) However, the Corporate Debtor (and all its Obligors) has failed to comply with the provisions of the Loan Agreements. The Corporate Debtor's failure to make payments / timely payments of the Borrower's Dues (or any part thereof, including interest) to the Applicant on the specified due dates under the Loan Agreements constitutes, *inter alia*, an Event of Default under Clause 12 of the Loan Agreement.
- (f) Accordingly, Applicant issued five separate notices dated 29.12.2021 with respect to each loan account under respective Loan Agreement(s) recalling the loan amounts thereunder, demanding outstanding amounts and giving notice of / for sale, disposing of, transfer, grant, conveyance,

and / or assignment of any / all of the securities provided in favour of the Applicant by the Borrower-Corporate Debtor ('Loan Recall Notices').

- (g) Further, the Applicant also separately issued five separate notices dated 03.01.2022 / 04.01.2022 u/s 13(2) of the SARFAESI Act, 2002 for each loan account through which the Applicant intimated the Corporate Debtor that the respective loan accounts have been declared as NPA 03.10.2021 / 04.12.2021 (as the case maybe for the respective loans) and called upon the Corporate Debtor to pay the outstanding dues.
- (h) However, neither the Corporate Debtor, nor its co-borrowers and / or guarantors, have made any payment of the outstanding amounts to the Applicant, till date. Accordingly, the total default amount of Rs.456,68,73,538/- including interest, TDS, Non-SCC charges, penal charged, etc. is due and payable by the Corporate Debtor to the Applicant i.e. there is a debt and default. Hence, the present Application.

4. In support of its submissions, the Petitioner *inter alia* filed the following documents:

- (a) *Copies of the Loan Agreements, including its amendments, waivers.*
- (b) *Copies of loan recall notices dated 29.12.2021 issued by the Applicant to the Corporate Debtor recalling the loan amount and demanding payment of outstanding dues forthwith;*
- (c) *Copies of five notices u/s 13(2) of SARFAESI Act, 2002;*
- (d) *Copy of Statement of Account;*
- (e) *Copy of Foreclosure Statement;*
- (f) *Copies of Memorandum of Entry;*
- (g) *Copies of Deed of Hypothecation;*
- (h) *Copies of certificates of registration of the abovementioned subsisting charges of the Corporate Debtor, as well as the CERSAI certificates.*

5. Respondent through its statement of objections, additional objections and written submissions filed on 13.02.2023 has *inter alia* contended as under:

- (a) In the year 2016, the Corporate Debtor-M/s. Mantri Developers Private Limited (MDPL) approached the Financial Creditor for availing a loan facility for development and execution of Projects, mainly 'Mantri Centrium' and 'Mantri Webcity'. MDPL applied for a loan to the tune of Rs.176 Crores. Pursuant to the same, the Petitioner issued a sanction letter approving disbursement of a sum of Rs.176 Crores. After the issuance of sanction letters dated 29.08.2016, 22.03.2019 and 05.08.2019, MDPL furnished the requisite documents as sought by the Petitioner and requested to immediately execute the Loan Agreement. The Financial Creditor came forward to execute the Loan Agreements on 26.09.2016 and 31.12.2019. In terms of the Agreement, Loan Accounts were also created by the Financial Creditor in the name of the Corporate Debtor.
- (b) It is contended that due to the inordinate delay on the Petitioner's part in disbursement of the loan amount, MDPL's projects' timelines were severely affected and also faced cash flow issues. Also, relying upon the assurances of Petitioner, MDPL introduced a marketing scheme which facilitated the customers to buyback with pre-EMI interest payments for their 'Mantri Webcity' Project. The said scheme was introduced for the purpose of increasing the sales and revenue for the commercial benefit of MDPL. However, MDPL incurred losses running to crores of rupees because of delay in disbursement of loan by the Petitioner.
- (c) On 03.01.2022, the Petitioner issued a notice to MDPL u/s 13(2) of the SARFAESI Act, 2002 as well as a notice dated 03.01.2022 under the Code seeking for repayment of entire outstanding amount. Thereafter, MDPL issued a reply to those notices refuting and disputing the claims

of the Petitioner in unequivocal terms and bringing to light the true state of affairs.

- (d) Furthermore, in the notices issued by Petitioner under the SARFAESI Act, to the Corporate Debtor, the date of defaults is mentioned as 04.12.2021. However, in the present proceedings the date of default is stated as 01.01.2022. The Financial Creditor has provided different dates of default for the loan accounts.
- (e) The Financial Creditor has advanced loans not just to the Corporate Debtor, but also to Mr. Sushil Mantri and Mantri Castles Pvt. Ltd., who are the co-borrowers. The Financial Creditor has filed the current proceedings, only against the Corporate Debtor and not against the co-borrowers.
- (f) There is no bar in the Code for filing simultaneously two applications u/s 7 of IBC against the Principal Borrower as well as the Corporate Guarantor or against both the Guarantors. The Financial Creditor herein has also instituted CP (IB) No.92/2022 u/s 95 of the Code, against Mr.Sushil Mantri, the Personal Guarantor, who has a substantial shareholding in the Corporate Debtor. An IRP has been appointed in the said matter and moratorium has been imposed. Therefore, the Petition cannot be admitted owing to the fact that a moratorium has been imposed on the assets of the Personal Guarantor.
- (g) It is mandatory for a Financial Creditor to submit financial information to an Information Utility. However, in the present case, the Financial Creditor has failed to comply with the provisions of the Code.
- (h) It is contended that the Financial Creditor sanctioned loans towards construction for Mantri Webcity, Mantri Centrium and Mantri Central. As a security for the above loan, the above three Projects were mortgaged to the Financial Creditor. Subsequently, the Financial

Creditor forced the Corporate Debtor to enter into an Agreement to Sell for Mantri Webcity and Mantri Centrium, units which were already mortgaged to the Financial Creditor. Furthermore, the Financial Creditor also forced the Corporate Debtor to execute a MoU whereby, the Financial Creditor agreed to pay to the Corporate Debtor, a sum of Rs.189,70,86,000/-, as consideration, by purchasing 116,500 sq. ft. of leasable area of Mantri Central Project, which was already mortgaged to the Financial Creditor, against construction loan of the same Project. The Financial Creditor disbursed money against the Agreement to Sell and used the said money towards payment of interest and principal against the project loan to prevent the loan from slipping into NPA, thereby evergreening their loan. Proceeds from Agreement to Sell were distributed by the Financial Creditor to the Escrow Account controlled by them and adjusted the same against their loan on the same day, thereby rotating the money, to avoid the loan account from slipping into NPA, even though the Corporate Debtor's Projects were stalled.

- (i) It is contended that the Petitioner is providing further financial facilities after filing of the above proceedings are by their own conduct admitting that the Mantri conglomerate is not in any financial distress.
- (j) It is contended that though the Financial Creditor has been discussing the possibility of a settlement and various settlement agreements were agreed between parties, none of them materialised and that it has instituted the present proceedings only with a view to gain leverage in the settlement talks, with the Corporate Debtor.
- (k) Mantri Infrastructure Private Limited (MIPL) had issued 5,800 secured, unrated, unlisted, redeemable and non-convertible debentures of face value of Rs.10 Lakhs each, issued in a dematerialized form at par, in a single series aggregating upto Rs.580 Crores to M/s. Wisdomworld Projects Private Limited (WWPL) for cash on a private placement basis,

which were constituted under a Debenture Trust cum Mortgage Deed dated 09.11.2022, executed between the MIPL and IDBI Trusteeship Services Ltd. On 09.11.2022, the Financial Creditor having already initiated proceedings u/s 7 of the Code, entered into an Option Agreement with WWPL, whereby WWPL was entitled to call upon and require the Financial Creditor to purchase from WWPL the Option Debentures subject to terms and conditions therein. If the Financial Creditor was of the belief that CD didn't have liquidity, they wouldn't have entered into such an agreement with WWPL.

- (l) It is also contended that there is no valid Board Resolution of the Financial Creditor produced with the Petition. The Board Resolution produced with the Petition besides being seemingly fabricated, does not speak of anything wherein they have resolved to initiate IBC proceedings amid the settlement which was almost finalised and it is a mere authorization letter.
- (m) Furthermore, the interest charged by the Petitioner is unwarranted and in contravention to the terms of the Agreement. The claims of the Petitioner to the tune of Rs.235,65,49,226/- is arbitrary and without any lawful basis.
- (n) Although the Corporate Debtor is willing to make payments towards the debt by realising the values of the additional securities, the Financial Creditor is not willing to release the additional securities and allow the Corporate Debtor to make necessary payments. Since, there is no default, or debt or much less a financial debt as defined under the Code, mere recovery attempts made by the Financial Creditor ought not to be entertained. Hence, the foremost ingredient of 'Financial Debt' is absent since the disbursal is not against the consideration for time value of money.

(o) The relationship between the Parties is governed by loan agreements which provide for resolution of disputes by arbitration, after attempts by discussion fail. The Agreements contain arbitration clause which bind the Parties. The Financial Creditor has not invoked the Arbitration Clause but filed the proceedings before this Tribunal prematurely.

(p) In support of its contentions, the Respondent had relied upon the following decisions:

- i. *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353;*
- ii. *Amber Joshi v. Noble Co-operative Bank Ltd. & Anr., (2019) SCC OnLine NCLAT 1047;*
- iii. *Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd., (2017) SCC OnLine NCLAT 266;*
- iv. *Rushabh Civil Contractors Pvt. Ltd. v. Centrio Lifespaces Ltd., (2020) SCC OnLine NCLT 7213;*
- v. *Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352;*
- vi. *Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401.*

6. In response to the order dated 31.01.2023, the Petitioner has filed written submissions *vide* Diary No.978 dated 21.02.2023 by *inter alia* further stating as under:

(a) The Financial Creditor had sanctioned and disbursed the following Five Loan facilities to the Corporate Debtor (CD). The details of all such Loan Agreements along with date of defaults are given hereunder:

Loan Account Number	LAN S000239539	LAN HL29000028	LAN HL29000030	LAN S000241174*	LAN S000241175
Date of Sanction Letter	29.08.2016	22.03.2019	22.03.2019	05.08.2019	05.08.2019
Date of Loan Agreement	16.09.2016	28.03.2019	28.03.2019	21.08.2019	21.08.2019
Disbursement Date	28.09.2016; 15.12.2016;	30.03.2019	30.03.2019	24.10.2019	24.10.2019

	26.12.2016; 06.01.2017; 09.02.2017				
Amount Sanctioned (Rs)	135 Crores	78.75 Crores	78.75 Crores	160 Crores	150 Crores
Amount Disbursed (Rs.)	130 Crores	78.75 Crores	78.75 Crores	147.72 Crores	138.97 Crores
Declaration of NPA	04.12.2021	03.10.2021	03.10.2021	03.10.2021	03.10.2021
Loan Recall Notice	29.12.2021	29.12.2021	29.12.2021	29.12.2021	29.12.2021
Date of Default	03.01.2022	03.01.2022	03.01.2022	03.01.2022	03.01.2022

* The loan was originally sanctioned by Indiabulls Commercial Credit Limited to the Corporate Debtor. The loan facility was later assigned to the Financial Creditor.

(b) A breakup of the outstanding financial debt is as below:

<i>Principal Amount</i>	INR 387,17,91,477/-
<i>Interest</i>	INR 20,12,17,998/-
<i>Accrued Interest</i>	INR 1,27,44,840/-
<i>Default Interest</i>	INR 10,86,36,039/-
<i>TDS</i>	INR 19,30,89,690/-
<i>Total outstanding debt as on 21.01.2022</i>	INR 456,68,73,538/-

(c) CD availed loan facilities from the Financial Creditor against payment of interest. The loan facilities were availed for purposes of construction, development or acquisition of immovable property for residential projects etc., and hence these loans were availed as consideration for the time value of money. The CD was required to repay the entire loan amount and interest thereon as per the re-payment Schedule contained in the Loan Agreements.

(d) Under the Loan Agreements, non-payment of dues constitutes an 'Event of Default'. The consequence of it is that the Financial Creditor had the right to cancel / recall the entire loan amount. In view of the CD's non-payment of dues under the Agreements, Loan Recall Notices

were issued to the CD to repay the entire outstanding dues, within three days. However, the CD defaulted in repayment thereof. Accordingly, this Petition contains the key ingredients for admitting the CD into CIRP.

- (e) As regards the Arbitration Clause, it is stated that there is no 'dispute' about the CD's default in payment of outstanding dues to the Financial Creditor. The default is (i) established by the loan accounts being declared NPAs and (ii) admitted by the Corporate Debtor in its reply to the Petition stating that the CD proposed an OTS / Settlement to the Financial Creditor for the outstanding financial dues. The very fact that a settlement was offered by the Corporate Debtor to the Financial Creditor constitutes an admission of liability to pay. Thus, there is no 'dispute' to be referred to arbitration. Moreover, the Hon'ble Supreme Court has settled the position in the case of *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436*, in which it was held that the Adjudicating Authority was duty bound to first decide the application u/s 7 of the Code if there was a debt and a default; even when an application u/s 8 of the Arbitration Act was pending.
- (f) As regards the settlement discussions, the fact that the CD has offered an OTS itself constitutes an admission of the debt and the default by the CD. Moreover, the Corporate Debtor had sought adjournments before this Tribunal on 02.08.2022, 30.09.2022 and 15.11.2022 on account of settlement discussion. However, there has been no reasonable settlement offered by the Corporate Debtor to the Financial Creditor, till date.
- (g) As regards the objection raised by the Respondent that the Financial Creditor delayed the disbursement of loan amount to the Corporate Debtor, it is stated that the CD has never raised this objection during the term of the loan or objected at the time of purportedly delayed

disbursement. The aforementioned Table [at para 6(a) above] establishes that there isn't any delay in the disbursement of the loan amounts. The amounts were disbursed in time starting within one month from the date of sanction, hence, there was no dilution of the time value of money. This was reiterated in the table reproduced by the Applicant.

- (h) As regards the contention raised by the Respondent that it was forced to enter into Loan Agreements with unilateral terms, it is stated that it was the CD who approached the Financial Creditor for availing loan facilities and accordingly, the Financial Creditor sanctioned several loan facilities as per the terms of sanction letter, which were accepted by the CD with its own free will, without any force or coercion. Hence, once the Parties have voluntarily signed on agreed terms of an Agreement, without any coercion or threat, they cannot deny their obligations under the Agreement.
- (i) As regards the interest issue raised by the Respondent, it is stated that the interest being charged by the Financial Creditor is within the contours of the Loan Agreements. As per the re-payment schedule and Schedule-I of the Loan Agreements, the CD had an obligation to pay interest to the Financial Creditor from time to time. With regard to Loan Recall Notices issued under the SARFAESI Act, it is stated that the issuance of the notice cannot be contended to be premature as the Notice was issued in terms of the provisions of the Loan Agreement, and the right to recall arose as soon as the default occurred.
- (j) As regards the contention that the Financial Creditor is still offering to extend loan facilities to the Mantri Group of Companies, it is stated that the Financial Creditor has not been extending further loan facilities to the Mantri Group after it has defaulted on the Financial Creditor's loan repayment obligations. Further, the supply of additional securities by

the Corporate Debtor to the Financial Creditor was in compliance of its obligations under the Loan Agreement.

- (k) As regards the contention that the Petitioner not filed the information of the default with the information utility, it is submitted that as per Section 7(3) of the Code, a Financial Creditor is required to furnish the record of default with the information utility "*or such other record or evidence of default as may be specified*". With regard to the allegation that the Applicant is in the practice of evergreening its loans, it is stated that the CD apart from making a vague allegation, has failed to substantiate the same with cogent reasons or relevant documents. Moreover, the CD has failed to make reference to any law / rule that has been violated.
- (l) The Corporate Debtor raised an objection with respect to admission of insolvency proceedings against Sushil Mantri in *Indiabulls Housing Finance Ltd. v. Sushil Mantri*, CP (IB) No.92 of 2022. However, this objection does not warrant any consideration in view of the fact that CP (IB) No.92 of 2022 is filed by a different financial creditor, namely, Indiabulls Commercial Credit Limited and therefore, the CP arises out of separate loan agreements. Therefore, the CD herein is in default for an amount of Rs.458 Crores, which is more than the threshold limit.
- (m) In support of its submissions, the Petitioner had relied upon the following decisions:
- i. Kotak Mahindra Bank Limited v. Kew Precision Parts Private Limited & Ors., (2022) 9 SCC 364;*
 - ii. Tata Consultancy Services Limited v. SK Wheels Private Limited, (2022) 2 SCC 853;*
 - iii. Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund & Ors., (2021) 6 SCC 436;*

- iv. *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors., (2011) 5 SCC 532;*
 - v. *E.S. Krishnamurthy v. Bharat Hi-Tecch Builders Private Limited, (2022) 3 SCC 161;*
 - vi. *Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17;*
 - vii. *Bharti Defence and Infrastructure Limited v. Edelweiss Asset Reconstruction Company Limited, CA (AT) (Ins) 71 of 2017;*
 - viii. *Univalu Projects Pvt. Ltd. v. Union of India & Ors., (2020) SCC OnLine Cal 1452;*
 - ix. *Indiabulls Housing Finance Limited v. Hanumesh Realtors Private Limited, CP (IB) 3164/IB&BP/MB/2018;*
 - x. *Indiabulls Housing Finance Limited v. Mithiya Developers Private Limited, CP (IB) 3243/IB&BP/MB/2018;*
 - xi. *Sandeep Garg & Anr. V. DMI Finance Pvt. Ltd., CA (CA) (Ins.) 321 of 2021.*
- 7.** Heard Shri C.K. Nandakumar, learned Senior Counsel for the Petitioner and Shri M.S. Shyam Sundar, learned Senior Counsel for the Respondent and perused the pleadings on record.
- 8.** It is seen from the Petition that the present case is filed by M/s. Indiabulls Housing Finance Limited seeking to initiate CIRP against the Corporate Debtor - M/s. Mantri Developers Private Limited. As per Form-1 of the Petition it is seen that the Financial Creditor had sanctioned Five Loan facilities to the Respondent-Corporate Debtor aggregating to an amount of Rs. 579,20,00,290/-, out of which Indiabulls Commercial Credit Limited (ICCL) *vide* Loan Account No. S000241174 has sanctioned a loan of Rs.160 Crores to the Corporate Debtor on 05.08.2019 for construction and development of residential projects, etc., which was subsequently assigned by ICCL to the Financial Creditor herein. The aggregate disbursed loan amount under the Five Loan Agreements is Rs. 574,20,00,290/- (Rupees

Five Hundred and Seventy-Four Crores Twenty Lakhs Two Hundred and Ninety Only). Copies of all the Loan Agreements have been annexed to the Petition as Annexure B to Annexure F. Vide Clause 3 of the said Loan Agreements, the Corporate Debtor shall, *inter alia*, pay / repay the entire Loan and interest thereon to the Lender in such manner as agreed / specified by the Lender from time to time and/or as per the Repayment Schedule.

9. In this context, it is pertinent to refer **Clause 3 of the Loan Agreement(s)** which provides for **Repayment/Payment**, and the relevant portion of which is reproduced as under:

"3.1.1 The Borrower(s) shall repay/pay the entire Loan and interest thereon to the Lender in such manner as agreed/specified by the Lender from time to time and/or as per the Payment/Repayment Schedule. Subject to Clause 3.1.2, the Borrower(s) agree to pay to the Lender interest on the Loan or such part thereof as may be outstanding from time to time at such Interest Rate(s) as mentioned in Schedule I of this Agreement. Unless otherwise specified by the Lender from time to time, (a) interest shall be payable every month by the Borrower(s) on the Due Date(s) mentioned in the Payment/Repayment Schedule; (b) interest shall accrue from the Date of Disbursement; (c) interest shall be computed on the basis of a year of 360 days and the actual number of days elapsed; (d) interest shall be computed on monthly rests or on such periodic rests as may be decided by the Lender from time to time; and (e) in case of any payment default on the Due Date(s) by the Obligor(s) under the Loan Documents, interest shall be compounded (at the prevailing Interest Rate(s)) every month on the overdue amount and the Obligor(s) shall be liable to pay such compounded interest to the Lender."

10. Further, it is seen that **Clause 4 of the Loan Agreement(s)** provides for **Default Interest** & **Clause 12** deals with **Events of Default**. More specifically, Clause 12.1.1 of the Agreement states that *"The Borrower(s) does/do not pay by the Due Date(s) the Borrower's Dues (or part thereof)*

and/or any amount payable pursuant to a Loan Document.” The consequence of an Event of Default is that the Financial Creditor had the right to cancel/recall the entire loan amount. In this regard, **Clause 12.2** which provides for **Consequence of an Event of Default** is given hereunder:

“12.2. On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator, (i) cancel/recall the Loan whereupon the Borrower’s Dues shall become immediately repayable / payable by the Obligor(s);”

- 11.** Since the Corporate Debtor defaulted in payments of its dues, the Financial Creditor issued Loan Recall Notices and called upon the Corporate Debtor to repay the entire outstanding dues under the Loan Agreement(s). It is appropriate to refer Section 5(8) of the Code which defines a ‘*financial debt*’ as a debt along with interest which is disbursed (i) against the consideration for the time value of money, and (ii) includes money borrowed against the payment of interest... etc.
- 12.** In view of the foregoing, the Corporate Debtor has availed loan facilities from the Financial Creditor against payment of interest and it defaulted in repayment of such ‘*financial debt*’ which has become due and payable. Thus, the first ingredient of ‘*debt*’ has been satisfied as required under the Code. During the course of hearing, Ld. Senior Counsel for the Respondent has contended that out of the five sanctioned loan facilities, three loans were sanctioned not only to the Corporate Debtor herein but also to other co-borrowers, who were not made Parties to the CP and thus CP is not maintainable. In this regard, this Bench is of the view that even though three such loan facilities were granted to the Corporate Debtor as well as to other co-borrowers who were not made as Parties to the CP, if we take the aggregate amounts disbursed in the other two Loan A/c Nos.

S000239539 and S000241174, which were disbursed only to the Corporate Debtor one directly by the Petitioner and the other one by ICCL to the Corporate Debtor; which was assigned by ICCL to the Petitioner; since the default in repayment by the Corporate Debtor in respect of these two loan accounts is well above the threshold limit of Rupees One Crore, the default is established as required under the Code.

- 13.** As regards Limitation, Hon'ble NCLAT in *Manesh Agarwal v. Bank of India & Ors.*, (2020) ibclaw.in 241 NCLAT, wherein the Hon'ble NCLAT relied on *Jignesh Shah* ruling, **to hold that a one-time settlement offer amounts to acknowledgment of liability and would lead to fresh limitation period.** The date of default as mentioned in Form-1 is 01.01.2022 and the instant Company Petition has been filed on 15.02.2022, which is within the period of limitation.
- 14.** The Respondent in its reply has contended that despite Respondent's continuous efforts to complete their projects on time, they were unable to do so, due to the Petitioner's failure in disbursing the loan amount on time and it further contended that the Company is having sufficient assets and means to meet its debts, and thus it cannot be liquidated summarily merely at the instance of a frivolous creditor and the Corporate Debtor cannot be held liable for such debts and since there is a clear indication of settlement, the discretion must be exercised to facilitate such settlement to conclusively close the transactions between the Parties. However, we are of the considered view that the said contentions are not tenable in law and in this regard it is apt to refer the decision of the Hon'ble NCLAT Chennai in *Drip Capital Inc. v. Concord Creations (India) Pvt. Ltd.* (2021) ibclaw.in 505 NCLAT wherein it was held that an initiation of CIRP does not amount to recovery proceedings and that the Adjudicating Authority at the time of determination as to whether to admit or reject an application u/s 7 of the

Code is not to take into account the reasons for the Corporate Debtor's default. Further, the Hon'ble Supreme Court in *E.S. Krishnamurthy & Ors. v. M/s. Bharath Hi-Tecch Builders Pvt. Ltd. (2021) ibclaw.in 173 SC* has opined that the Adjudicating Authority must either admit or reject the application filed u/s 7 of IBC, it cannot compel a party to the proceedings before it to settle the dispute.

- 15.** As regards the contention of the Respondent that any dispute between the Parties can only be resolved by way of Arbitration as per the Arbitration Clauses in the Agreement and this Tribunal ought to refer the above matter for arbitration as per Section 8 of the Arbitration and Conciliation Act, 1996, we are of the view that Section 238 of the Code is having overriding effect over the Arbitration and Conciliation Act, 1996.
- 16.** The aggregate amount claimed to be in default as per Part-IV of Form-1 is Rs.456,68,73,538/- (Rupees Four Hundred and Fifty-Six Crores Sixty-Eight Lakhs Seventy-Three Thousand Five Hundred and Thirty-Eight Only) as on 01.01.2022 i.e., more than the threshold limit of Rs.1 Crore. As discussed above, even if the two instances of Loan to the CD itself (without any co-borrower) are considered, the amount is well above the threshold requirement of Rs.1 Crore. In response to the notices received under the Code and SARFAESI Act, 2002, the Corporate Debtor *vide* letter dated 16.01.2022 (which is placed on record as Annexure-2 to the Reply dated 19.10.2022) has addressed to the ICCL and Indiabulls Housing Finance Limited wherein it *inter alia* stated that as negotiations in respect of the OTS are underway, and the terms of the OTS is being captured under definitive agreements, we request that all parties concerned undertake not to engage in any precipitative actions against the others, pending execution of the said definitive agreements. It is noticed from the above reply that the CD has neither disputed the claim nor denied the Agreements entered into between the Parties. However, the Ld. Senior Counsel for the Petitioner

stated that the non-payment of financial debt till date which is due and payable proves that the default is established.

17. Further, we have also gone through the Board Resolution dated 11.02.2022 filed by the Petitioner authorising Ms. Usha M., as an Authorised Representative of the Petitioner Company, on behalf of the Company, to appear for and/or represent the Company before the NCLT, Bengaluru/ DRT, Chennai for the cases pertaining to IBC, 2016 filed by / against the Company from time to time. We find that the said Board Resolution is in accordance with Law. It is seen that the main Petition is also filed by Ms.Usha M., Legal Manager, Indiabulls Housing Finance Limited. Copy of the said Board Resolution is at Page 1278 of the Petition. In light of the above discussion, the C.P. is liable to be admitted.

18. We have carefully considered the arguments of the respective Senior Counsels. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the **Petition is admitted** in respect of **Respondent-Mantri Developers Private Limited** under Section 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(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 the possession of the Corporate Debtor;*
- (e) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- (f) The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor;*
- (g) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.*

19. The Financial Creditor has proposed the name of Mr. Ahsan Ahmad, a qualified insolvency professional having Registration No. IBBI/IPA-002/IP-N00987/2020-2021/13183 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent given by the IRP in Form 2 dated 12.02.2022 has been filed along with the C.P at Page

Nos.1279-1281, wherein, it was declared he is eligible to be appointed as IRP in the case of the Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or the ICSI Institute of Insolvency Professionals. However, since the Authorisation for Assignment (AFA) shown in Form-B was expired on 22.09.2022, the IRP shall file the copy of renewed AFA within one week from the receipt of copy of this order.

- 20.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Ahsan Ahmad, and there is nothing adverse against him. In view of the above, the Bench appoints Mr. Ahsan Ahmad, bearing Regn. No.IBBI/IPA-002/IP-N00987/2020-2021/13183 with registered address at B-31, DDA HIG Flats, Pocket-9A, Jasola Vihar, New Delhi-110025, Mobile: +91-9891652751, Email: ahsan_123ahmad@yahoo.co.in as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
- 21.** The Financial Creditor shall deposit a sum of **Rs.2,00,000/-** (Rupees Two 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.
- 22.** The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

- 23.** A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioners shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.
- 24.** Further, IA No.25 of 2023 filed by M/s. Mantri Developers Private Limited against the Financial Creditor-M/s. Indiabulls Housing Finance Ltd. under Section 8 of the Arbitration and Conciliation Act, 1996 read with Rule 11 of the NCLT Rules, 2016 seeking to refer the parties to arbitration in terms of Clause 22 of the Agreements dated 16.09.2016, 28.03.2019 & 21.08.2020 becomes infructuous in view of the aforesaid admission order passed in the main CP. Accordingly, **IA No.25 of 2023 is deemed to be disposed of.**

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

Sd/-
T. KRISHNAVALLI
MEMBER (JUDICIAL)

jsr