

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

CP (IB) 4578/MB/C-I/2018

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Mr. Nitin Suresh Satghare and 99 Ors.

402, Om Siddhi CHS Ltd. Near Ajit Park CHS LTD,
Somwar Bazar, Malad (W) Mumbai - 400064.

... Financial Creditors /Petitioners

Versus

Pancard Clubs Limited

[CIN: U91900MH1997PLC105363]

111-113, Kaliandas Udyog Bhavan, Century Bazaar,
Prabhadevi, Mumbai-400025.

... Corporate Debtor /Respondent

Order Delivered on 09.09.2022

Coram:

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

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

Appearances:

For the Financial Creditor : Mr. Nausher Kohli, Counsel.

For the Corporate Debtor : None present.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. [This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Mr. Nitin Suresh Satghare & 99 Ors.** ("hereinafter referred to as Petitioners"), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **Pancard Clubs Limited** ("hereinafter referred to as Respondent").

2. The Corporate Debtor is a Private Limited company incorporated on 24.01.1997 under Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its registered office situated at 111-113, Kaliandas Udyog Bhavan, Near Century Bazaar, Prabhadevi, Mumbai-400025. Therefore, this Bench has jurisdiction to deal with this Petition.
3. The present Petition was filed before this Adjudicating Authority on the ground that the Respondent has defaulted in repayment of monies to the tune of Rs.1,55,12,880/- (Rupees One Crore Fifty-Five Lakh Twelve Thousand Eight hundred and Eighty Only) invested by the Petitioners.
4. The particulars of debt of the Petitioners is detailed as under:

Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
1.	Nitin Suresh Satghare	402, Om Siddhi CHS Ltd. Near Ajit Park CHS LTD, Somwar Bazar, Malad W Mumbai 400 064 9223253629	ASDPS10588	72,000	156,000	580
2.	Anil Rajaram Gaikwad	Narayan Nagar Chawl, Jijamat Marg, PumpHouse, Andheri (e)	AFQPG2319P	31,500	44,100	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Mumbai 400093				
3.	Ramchandra Daji Salaskar	221/25, Geet Gunjan CHS, RSC-3, Sector No.2 Charkop, Kandivali (W) Mumbai-400067	AUFPS8710E	49,500	54,600	580
4.	Uday Vithoba Sawant	D-301, Chandresh Shakti CHS LTD. Nr. Saibaba Temple, Shankeshwar Nagar, Achole Road, Nalasopara East. Vasai-401209	AXHPS6331C	445,500	649,140	580
5.	Sahadev Laxman Gothankar	B-11, Shivkripa Rahivasi Seva Sangh Adarsh nagar, Nr. Ganesh Chowk, Kandivali West, Mumbai 400 067	AFEPG8319K	20,700	28,980	580
6.	Shivram Krishna Avere	39-Shivkripa Chawl, Adarsh Nagar, Nr. Ganesh Chowk, Charkop Poisar Link road,	AEKPA8011M	2,700	5,400	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Kandivali (W) Mumbai-400067				
7.	Ashok Shivram Birje	B-304, Ashish Co Op. Hsg. Soc. Amrut Nagar Ghatkopar W, Mumbai 400 086	AAIPB5250B	200,700	280,980	580
8.	Surendranath Pandurangnath Gosavi	9/107, Maratha Colony Rahivasi Sangh, Golibar Road, Near Maratha Colony Bus Stop, Santacruz East, Mumbai 400 055	ANKPG4494M	151,200	211,680	580
9	Deepak Atmaram Pawar	1/24, Maratha colony, Golibar Road, Tulas Galli, Santacruz E, Mumbai – 400 055	BETPP5944J	35,100	70,200	580
10	Shyam Ankush Parab	Room No. 3, Babulnath Pandey Chawl No.6, near Jay Javan Krida mandal, Shivtekdi Jogeshwari E,	APUPP3860J	459,900	674,100	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Mumbai – 400060				
11	Suresh M Bhoir	Wamanrao Bhoir House, Wamanrao Bhoir Road, Kandar Pada, Dahisar W Mumbai 400068	AOGPB5095Q	111,600	2,017,040	580
12	Rajendra Parshuram Mhatre	B/206, Yashwant Apartment, Behind Chaitanya Nursing Home Goulwada Vasai Gaon Bassein Thane 401201	ARSPM9978Q	47,700	68,900	580
13	Varsha Vilas Kundekar	Sanjivani Co.Op. Hsg. Soc., Golibar road, Near Hanuman Temple, Santacruz E, Mumbai – 400055	BEDPK7041B	36,000	48,800	580
14	Vilas Shantaram Kundekar	Sanjivani Co.Op. Hsg. Soc., Golibar road, Near Hanuman Temple,	AXHPK4813F	11,700	24,300	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Santacruz E, Mumbai – 400055				
15	Sujata Subhash Kulaye	Room No.3, Jivdani Krupa Chawl, Chandansar, Virar, East, Thane - 401303	DFUPK0493F	36,000	48,000	580
16	Subhash Anaji Kulaye	Room No. 322, 3 rd Floor, Ashtavinayak Apartment, Near Petrol Pump, Sainath Nagar, Virar E, Tal. Vasai pin 401 305	ARGPK3331F		64,260	580
17	Ajay Devendra Pandit	Pandi Wadi, Near Shri Swami Samarth mandir, Vasalai , Vasai W, Dist. Thane 401 201	AZIPP6473D	10,800	15,120	580
18	Sudhakar Suresh Mali	B/203, G.M. Tower, Narangi Road, Virar E, pin 401 303	EHAPM7502J	9,000	12,600	580
19	Ramchandra Gopal Hatankar	B-2, mahalaxmi CHS LTD, Cross Rd. No. 2, Near Maa Vidya mandir, Singh Estate, Kandivali East,	ACPPH9081H	73,800	104,580	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Mumbai 400101				
20	Kusum Kishore Patel	Room No.2 Santoshi Niwas Chawl, Opp. Saibaba Mandir, Devipada, Borivali Mumbai 400066	ATWPP5604N	157,500	220,500	580
21	Prakash Vasant Patole	B/19, Sitaram Jadhav Chawl, Sevalal Nagar, Tulji road, Nalasopara E, Thane – 401209	BGNPP8797D	50,400	100,800	580
22	Shripat Suresh Mali	Tulshi Tiwari Chawl, Romm No. 7, Samshan Tekdi, Pratap Nagar, JVLR, Jogeshwari E, Mumbai 400060	ARDPM3036A	100,800	302,400	580
23	Vinita Shripat Mali	Tulshi Tiwari Chawl, Romm No. 7, Samshan Tekdi, Pratap Nagar, JVLR, Jogeshwari E, Mumbai 400060	AITPM3550E	152,200	456,300	580

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Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days default
24	Mangesh Dinkar Mangaonkar	23 Jankiram CHS LTD. N.S. Mankaikar Marg, Chunabhatti W, Sion, Mumbai 400 022	AACPM9185E	5,400	10,800	580
25	Digambar Mahadev Sawant	19A/603, Sarvoday CHS LTD. Bimbisar Nagar, Mhada colony Goregaon, East, Mumbai, 400 065	AMMPS2384K	141,300	282,600	580
26	Suresh Laxman Padye	Dattatray Seva Mandal, Datta Nagar, Behind Suman Nagar, V.N. Purav Marg, Chembur, Mumbai 400 071	AUYPP2540G	20,700	28,980	580
27	Sanjay Dagadu Sapkal	Laxman Murda Chawl, Hanuman Tekadi Seva Mandal, Behind Raheja complex Tanaji nagar, Kurar Village, Malad E Mumbai 400 097	BKFPS7008L	36,000	50,400	580

Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days defa ult
28	Dattaram Mahadev Veer	Room No. 4, Renuka Prasad Building, 2 nd Floor, Achalkar Compound, V.P. Road, Near Joshi High School, Pendse Nagar, Dombivali E, 421 201	ADVPV9720C	2,700	3,780	580
29	Atmaram Bhikaji Dhuri	4, Borchi Wadi, Shradhhanand Road, Vileparle E, near Kanhaya Bhuwan, Mumbai – 400 057	AFCPD1186R	50,400	100,800	580
30	Vilas Keshav Utekar	1/23 Santacruz Polis Line, Juhu Road, Santacruz W, Mumbai 400 054	AAHPU9231C	2,700	5,400	580
31	Vitthal Dattatray Tawde	703/A Wing, Riddhi Siddhi complex, M.G. road, Sukur Wadi, Borivali E, Mumbai – 400 066	AAMPT9141P	100,800	201,600	580
32	Sudhir Raghunath Vengulekar	Siddhivinayak Rahivashi Vikas Mandal,	AFMPV5891D	62,100	86,940	580

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		Devipada, Borivali E, Mumbai 400 066				
33	Umesh Vasant Sawant	Yogeshwar, CHS Plot NO. 40, Room No. 301, RSC 19, Opp- Maratha Sahakari Bank, Gorai, Borivali W Mumbai 400 091	AMNPS3188G	100,800	201,600	580
34	Asha Mallappa Patil	A/104, Sai Ratnadeep Apt, Balkum Pada No. 2, Thane West 400 608	BADPP9853L	100,800	141,120	580
35	Kumud Sudam Lone	R/6, Sunder Nagar, Swami Vivekanand Road, malad West, Mumbai 400064	ABCPL5634J	106,200	148,680	580
36	Chhaya Chandrakant mane	Darshan CHS, Plot No. 429 Room No. 20, Sector- 4 Charkop, Kandivali West Mumbai 400067	AHNPM4462A	25,200	35,280	580
37	Rutuja Rajesh Palav	17/C, 401 Shiv Kankan CHS, Ashokvan,	ATDPP2752J	25,200	35,280	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
		Borivali East, Mumbai 400066				
38	Sudesh Shankar Bhowar	G Wing, Plot No. 302, Gayatri Dham, Phase 2, Mira Bhayaner East, Mira Road East, Thane 401107	AEMPB3847G	50,400	70,560	580
39	Ramakant Anant Manjrekar	C 201, Sulochana HSG> Soc., Yashwant Nagar, Vakola Church, Santacruz , Mumbai 400055	ABTPM7332B	150,640	292,420	580
40	Ramesh Atmaram Nevarekar	113/A/3, Kalna Kolivery Village road, Santacruz East, Mumbai 400098	AAYPN9898D	54,000	75,600	580
41	Rajaram Ramchandra Gade	702, Vakratund CHS, C wing, Sambhaji Nagar, Sahar Road, Andheri East, Mumbai 400069	AJXPG7284Q	100,800	201,600	580

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Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days default
42	Kamini Shreekrishna Rawgol	Room No.1, laxmi Nivas, Jambhli pada, Kalina, Santacruz (E), Mumbai 400029	AOKPR9302Q	11,700	23,400	580
43	Tejaswini Tukaram Khadapkar	A D Chawl, Kalina Kolivera village Road, Santacruz East, Mumbai 400098	AREPK9508N	153,900	275,940	580
44	Kanchan Keshav Dhuri	B-605, Adarsh Apt, yashwant Nagar, Vakola, Santacruz East, Mumbai 400055	AUWPD7687E	36,000	50,400	580
45	Dilip Yashwant Dali	Shankar Apt, A/3/304, next Sudhir Apt. Yashwant Nagar, Santacruz East, Mumbai 400055	ALAOD9641F	126,000	252,000	580
46	Amit Ashok Bhat	B 603, Adarsh Apt, Yashwant Nagar, Vakola Pipeline Santacruz East, Mumbai 400055	ALWPB5983A	110,700	154,980	580

Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days defa ult
47	Subhash Bhagwan Pujare	Hanuman Chawl, Waghri Wada, Dutt Mandir Road, Vakola Bridge, Santacruz East, Mumbai 400055	AVGPP2817D	50,400	100,800	580
48	Shubhangi Subhash Pujare	Shivganga Chawl, Waghari WADA, DM Road, Vakola Bridge, Santacruz East, Mumbai- 400055	AXAPP6524F	50,400	70,560	580
49	Babu Deu Gawade	Plot No. 6-3- C/4, Triveni Nagar, Niwar Soc, Gen A K Vaidya Marg, Goregaon East, Mumbai 400065	AOPG2578R	36,000	48,000	580
50	Jayram Krushna Waghe	Room No. 3 Bhimrao Chawl, B/H Jagruti Mitra Mandal, Dutt Mandir Road, Vakola Bridge, Santacruz East, Mumbai 400055	AAOPW0451D	228,600	320,040	580

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51	Jayshri Jayram Waghe	Chawl, Jagruti Mtra Mandal, Vakola Bridge, Datt Mandir Road, Santacruz East, Mumbai 400055	ABSPW12668	100,800	201,600	580
52	Vijay Vitthal Velonde	Room No14/5, Parmar Chawl, D Mello Compound, Datt Mandir Road, Vakola Bridge, Santacruz East, Mumbai 400055	AGFPV4298L	75,600	119,880	580
53	Karishma Dilip Dali	Shankar Apt, A/3/304, Next Sudhir Apt, Yashwant Nagar, Santacruz East-Mumbai-400055	BQOPD9723N	145,800	204,120	580
54	Nita Ashok Bhat	B 603, Adarsh Apt Yashwant Nagar, Vakola Pipeline, Santacruz East Mumbai-400055	BNQPB9856H	101,700	141,180	580

Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days defa ult
55	Ketan Shrikrishna Rawool	Room NO 1, Laxmi Nivas, Jambhli Pada, Kalina Santacruz (E), Mumbai 400029	BCHPR1560C	6,300	13,500	580
56	Vinaya Dilip Dal	Shankar Apt, A/3/304, Next Sudhir Apt, Yashwant Nagar, Santacruz East, Mumbai-400055	ALUPD8746R	162,900	228,060	580
57	Vinti Dilip Dali	Hankarapt, A/3/304, Next Sudhir Apt, Yashwant Nagar, Santacruz East, Mumbai-400055	CHBPD2830F	63,000	88,200	580
58	Rajeshree Rajaram Gade	702, Vakratund Chs, C Wing, Sambhaji Nagar, Sahar Road, Andheri East, Mumbai 400069	AQOPG2819H	50,400	100,800	580
59	Manisha Ramakant Manjrekar	C 201, Sutochana Hsg. Soc., Yashwant Nagar, Vakola Church,	AHDPM7364D	100,240	304,300	580

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		Santacruz (E), Mumbai 400055				
60	Vanita Sakhara Jadhav	B4, Mahatma Fule Nagar Ag Khan Road, Opp. Worli Dairy Colony, Worli, Mumbai-400018	AQOPI80116G	5,400	7,560	580
61	Namita Mahadev Rahate	Sai Niketan Chawl, Near Gurudwara, Ketki Pada Dahisar East, Mumba 400068	APLPR2589H	71,100	102,780	580
62	Yogesh Pandurang Bavkar	Sai Vinayak Nagar Bldg No-3, R0om No -303, Nr Mother Mary School, Nallasopara East, Thane 401209	AWEPB6799H	101,700	143,820	580
63	Suryakannt Gangaram Ambre	Om Pooja Apt, Room No A-002, Nangindas Pada Nallasopara East Thane	ADFPA6511N	55,800	78,120	580
64	Prakash Laxman Khapare	Om Shiv Baba Nagar Ganesh Chawl No -2	ALBPP8085G	7,200	10,080	580

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		Room No 10, Kaju Pada Orivali East, Mumbai- 400066				
65	Yogesh Soma Kanagal	Jarior Chawl, Room No 5, Old Dongri, Lane No- 1, Sahar Road, Andheri East, Mumbai - 400069	APRPKB761J	40,500	81,000	580
66	Sandeep Harischandra Purav	At Makane, Umbarpada, Tal-Dist Palghar, Safale 401102	BQHPP1716J	36,000	50,400	580
67	Vjay Yadav Patil	Yashoda Bhavan Near Lake At Post- Nandgaon Taluka - Palghar Dist - Thane Boisar - J401501	AJUPP0975A	549,000	768,600	580
68	Vijayata Vijay Patil	Yashoda Bhavan Near Lake At Post- Nandgaon Taluka - Palghar Dist - Thane Boisar - 401501	BRFPP6355J	10,800	15,120	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
69	Vivek Ramnik Patil	At Post-Nandgaon Taluka – Dist. Palghar 401501	BGPPP2873L	351,000	491,400	580
70	Rekha Rajaram Patil	At Pasthanaka, PO-TAPPS House No. 2180, Shahu Maharaj Vasahat Boisar, Tal, Palghar, Thane 401 504	BDMPP1185R	75,600	105,840	580
71	Rajaram Raghunath Patil	At Pasthanaka, PO-TAPPS House No. 2180, Shahu Maharaj Vasahat Boisar, Tal, Palghar, Thane 401 504	ARKPP1931A	36,000	48,000	580
72	Safikulali Sukurali Sekh	Gini Silk Mills Plot No. G-30, Tal Palghar, Dist. Thane Boisar 401501	EFSPS4209Q	20,700	28,980	580
73	Ashish Atmaram Patil	At Post-Nandgaon Taluka - Palghar Dist - Thane Boisar – 401501	AXXPP5097Q	100,800	201,600	580
74	Kalpana Kamalakar Patil	At Post Nandgaon, City Boisar Tal	EEGPP2092D	35,100	105,300	580

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Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days default
		Palghar, Dist. Thane 401501				
75	Rakesh Anant Thakur	At Post Nandgaon Tq. Dist. Palghar 401501	AGYPT9623J	100,800	141,120	580
76	Kishor Bhagwat Patil	At Post Nandgaon Tq. Dist. Palghar 401501	AMVPP7846G	86,400	148,800	580
77	Prasad Omprakash Kini	At Post Nandgaon Tq. Dist. Palghar 401501	AYXPK1908Q	50,400	100,800	580
78	Omprakash Harichandra Kini	At Post Nandgaon Tq. Dist. Palghar 401501	ACVPK9395B	99,900	139,860	580
79	Asha Omprakash Kini	At Post Nandgaon Tq. Dist. Palghar 401501	AFUPK9737P	386,100	666,540	580
80	Heramb Omprakash Kini	At Post Nandgaon Tq. Dist. Palghar 401501	AXCPK3608H	150,300	210,420	580
81	Sadanand Pandurang Patil	At Sagave, Post- Maswan, Tal- Palhgar, Dist. Thane 401404	AYHPP6642C	50,400	100,800	580
82	Pratik Chandrakant Gharat	1567, Near Swadhyay Temple	AJMPG7855J	103,500	144,900	580

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		Sarawali, Boisar Palghar, Thane 401501				
83	Vikas Vishnu Mali	At Padghe, Post- Umroli, Tal Palghar, Dist- Thane- Boisar 401404	AVJPM1028N	5,400	10,800	580
84	Suresh Laxman Prahad	At Rawate Post- Borsheti, Tal, Palghar, Boisar, 401501	BGEOPP8939N	10,800,	15,120	580
85	Sunil Ankush Pansare	Pragati CHS LTD RH -23 Flat No. 9, Vidya Nagar Sarivali, Boisar Palghar 401501	AWZPP5850G	50,400	70,560	580
86	Ramchandra Bhimrao Khot	B-4, Darshan Niwas, Khodram Bag, Behind State Bank of India, Nawapur Boisar, Tal- Palghar 401501	ATPPK0120P	50,400	100,800	580
87	Ratish Subhash Patil	At Post Chinchani Patil Pada, Boisar, Tal- Dahanu 401503	BUAPP6265M	22,500	31,500	580
88	Sudhir Tulsidas Keni	At Post Dandi, Tal- Dist-	AVGPK2378A	51,300	73,260	580

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		Palghar - 401501				
89	Pradip Jaganth Kamali	At Pasthal Near MSEB colony, Tal Palghar - 401504	AYWPK3006C	35,100	105,300	580
90	Bhupendra Dilip Patil	At Post-Akkarpatti, Tal, Palghar, 401504	BCQPP7118H	18,000	24,000	580
91	Hitendra Suresh Thakur	At Post- Kudan Chinchpada, Tal, Palghar, Boisar 401502	AGOPT7474P	10,800	15,120	580
92	Sagar Bhalchandra More	At post Ghivali, Tal Palghar Boisar 401502	ATPPM4058G	25,200	76,500	580
93	Himmatrao Motiram Patil	At Post Shivaji Nagar, Po-Salwad, Boisar, 401501	CBBPP3534N	35,100	105,300	580
94	Housarao Bapu Garud	At Pasthal Naka, Po-TAPPS House No. -2111, Shahu Maharaj Vasahat Boisar, Tal- Palghar, Thane 401504	AKUPG1110F	5,400	7,560	580
95	Ramchandra Sitaram Jadhav	At New Raut Wadi Sidhivinay Society Tal-Palghar Boisar 401502	ASPPJ5768B	36,000	48,000	580

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Sr. No.	Name	Address	Pancard	Total membership amount	Total surrender value	No. of days default
96	Supriya Santosh Telgade	At New Raut Wadi Sidhivinay Society Tal-Palghar Boisar 401502	AEPPT2348B	25,300	50,400	580
97	Suchas Shankar Bachate	Kaveri Bldg. No.1 Room No. 507, Ram Nagar, Chincholi Bundar road Malad W Mumbai 400 064	AMXPB1838N	35,100	105,300	580
98	Dashrath Narayan Nakti	R No. B/5 Ismail Rana Chawl P M Road, Vile Parle Mumbai 400056	AGTPN1227H	21,600	30,240	580
99	Ravindra Visnupant Pawar	B-606, Pavanputra CHS LTD, Shivallabh Road, Ashokvan Dahisar E Mumbai 400 068	AUPP5972H	100,800	141,120	580
100	Neha Nitin Mohite	603, Sai Siddhi CHS, Pratap Nagar, Vikhroli Link Road, Jogeshwari (E),	AKOPM0843R	200,700	280,980	580

Sr. No.	Name	Address	Pancard	Total members hip amount	Total surrender value	No. of days defa ult
		Mumbai 400 060.				
Total				8,277,280	15,512,880	

Submissions made by the learned Counsel of the Petitioner:

5. The Financial Debt has arisen in respect of investments made by the Petitioners in a Collective Investment Scheme (“CIS”) operated by the Respondent under the guise of time share business. The Petitioners collectively invested a sum of Rs. 1,55,12,880/- (Rupees One Crore Fifty-Five Lakh Twelve Thousand Eight Hundred and Eighty Only).
6. Further, the Securities Exchange Board of India (SEBI) by way of an Order dated 29.02.2016 directed the Respondent to refund monies to the tune of Rs.7035 Crore of the investors of its Collective Investment Scheme (CIS) within three months of passing of the said order and directed the CIS to be wound up. Thereafter, the Respondent herein preferred an appeal before the Hon’ble Securities Appellate Tribunal (SAT) and sought to challenge the Order dated 29.02.2016 of SEBI. SAT has upheld the Order dated 29.02.2016. (Annexure “1-3” at pages 82 to 108)
7. The Petitioners submits that upon the perusal of the Orders passed by SEBI and SAT it is abundantly clear that the investments made by over 50 lakh investors was accepted by the respondent under the guise of time share scheme for purchase of room nights in various properties and resorts owned by the Respondent. The Petitioners submit that the scheme was in fact a collective investment scheme made by the

Respondent for the purpose of earning returns on their investments against a consideration for time value of money.

8. In light of the above facts, the financial debt owed to the Petitioners became due pursuant to SEBI's order dated 29.02.2016.

IA 1894 of 2019

Submissions advanced by learned counsel for the Applicant

9. The above stated Application is filed by Securities Exchange Board of India (SEBI) seeking inter alia dismissal of the present Company Petition on the ground that the Applicant vide its Order dated 29.02.2016 declared that the schemes operated by the Corporate Debtor were in nature of CIS and directed that the amount collected from investors be refunded. The Hon'ble SAT upheld the Applicant's Order with directions to the Corporate debtor and its directors to comply with the Order dated 29.02.2016.
10. Thereafter, recovery proceedings were initiated by the Applicant and in furtherance of the same E-Auction notices were issued for sale of various properties of the Corporate Debtor by way of E-Auction. The said E-auction notices were assailed before the Hon'ble Bombay High Court vide Order dated 09.01.2019 wherein the auction of properties was stayed until further orders.
11. The Applicant submits that since the schemes operated by the Corporate Debtor run in violation of Section 11AA of SEBI Act and CIS Regulations, the recovery proceedings are initiated by the Applicant. Therefore, the initiation of CIRP would be detrimental to recovery proceedings already on-going.

IA 668 of 2022, IA 997 of 2022 and IA 1491 of 2022

12. None present for Applicants at the time of hearing. It is observed that the above stated Applications are filed by intervenors who are supporting the cause of Financial Creditor.

Findings

13. The Respondent was served court notice dated 19.02.2019. Further, vide order dated 03.04.2019 service by way of paper publication was ordered and the same was complied with. Therefore, it is clear that the Respondent since inception has chosen not to defend the matter. Hence, the Respondent is proceeded ex-parte.
14. We have heard the Ld. counsel appearing on behalf of the Petitioner and the Ld. Counsel appearing for the Applicant in IA 1894 of 2019 and perused the records.
15. At the outset, it is noted that predecessor bench in CP No. 593 and 1085 of 2017 Shobha Limited vs Pancard Club Ltd. has in detail dealt with the nature of the scheme adopted by Respondent. Further, the said matter was filed under Section 9 of the Code and was inevitably dismissed as there was pre-existing dispute. The matter went in appeal and the Hon'ble NCLAT in Sobha Limited vs Pancard Clubs Ltd. Company Appeal (AT) (Insolvency) No. 162 of 2017, has laid down the following:

“ 11. Having heard learned counsel for the appellant, while we agree that initiation of ‘Corporate Insolvency Resolution Process’ under ‘I&B Code’ cannot be nullified by any order passed by SEBI nor can be a ground to reject an application under Section 9 of the ‘I&B Code’ but as there is an ‘existence of dispute’ with regard to the invoices raised by the Appellant- ‘Operational Creditor’, we hold that the application under Section 9 of the ‘I&B Code’ was not maintainable.”
16. On plain reading of the findings of the Hon'ble NCALT it is crystal clear that an Order passed by SEBI is no bar to initiation of CIRP against the Corporate Debtor. Therefore, the contention of the Applicant i.e. SEBI

in IA 1894 of 2019 that initiation of CIRP will be detrimental to recovery proceedings initiated vide order dated 29.02.2016 cannot be considered.

17. The present Petition is filed under Section 7 of the Code. The Hon'ble Apex Court in *E.S. Krishnamurthy vs Bharath Hi-Tecch Builders (P) Limited 2022 3 SCC 161* has held as under:

“24. On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the expression “it may, by order” while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available.

25. In Innoventive Industries (supra), a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held that the Adjudicating Authority only has to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through Justice Rohinton F Nariman, the Court has observed:

“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 sub-section (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 24 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. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. [...]

30. On the other hand, as we have seen, 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” i.e. 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.” (emphasis supplied)

18. In the present case the documents annexed with the Petition, it is seen that the Financial Creditors have disbursed the money against time value of money which in the instant case means that the Petitioners were to receive a value higher than the invested amount, which has all the characteristics of Financial Debt. Further, the Petitioners have placed on record bank statements and financial contracts to prove the same.
19. Further, it is established by the Petitioners that the Respondent has failed to honour the contract, hence the repayable amount is in default.
20. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default 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
21. The Financial Creditor has proposed the name of **Mr. Rajesh Sureshchandra Sheth**, Registration No. IBBI/IPA-002/IP-

No1021/2020-2021/13298, 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.

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

- (a) The petition bearing CP (IB) 4578/MB/C-I/2018 filed by **Nitin Suresh Satghare & Ors.**, the Financial Creditors, 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 **Pancard Clubs Limited [CIN: U91900MH1997PLC105363]**, the Corporate Debtor, is admitted.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Rajesh Sureshcandra Sheth**, Registration No. IBBI/IPA-002/IP-No1021/2020-2021/13298, having address at, B-55, Shatdal Society, 7th Floor, Azad Lane, Off S.V Road, Andheri West, Near Shopper Stop, Mumbai-400058 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

09.09.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)