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**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2**

ITEM No.301
C.P. (IB)/294/AHM/2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

CFM ASSET RECONSTRUCTION PRIVATE LIMITED
Vs.
BHAGIRATH CONSTRUCTION COMPANY PRIVATE
LIMITED

.....Applicant

.....Respondent

Order delivered on: 06/08/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

Company Petition (IB) No.294/7/AHM/2023

(An application under Section 7 of Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

CFM Asset Reconstruction Private Limited

....Petitioner
(Financial Creditor)

Versus

Bhagirath Construction Company Private Limited

....Respondent
(Corporate Debtor)

MEMO OF PARTIES

CFM Asset Reconstruction Private Limited
Having Address at Block No. A/1003,
West Gate, Near YMCA Club,
Sur No. 835, 1+3, S.G. Highway,
Makarba, Ahmedabad

...Petitioner

Versus

Bhagirath Construction Company Private Limited
33 Raj Ratna Complex Third Floor
Nr. Navrangpura Bus Stand
Navrangpura, Ahmedabad

...Corporate Debtor

Order pronounced on 06.08.2025

sd/-

sd/-

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Arjun Sheth, Adv.
For the Respondent : None

JUDGEMENT

1. The present application is filed by the financial creditor under section 7 of IBC, 2016 read with Rule 4 of IBBI (AAA) Rules, 2016 to initiate corporate insolvency resolution process (hereinafter referred to "CIRP") against the Corporate Debtor viz., Bhagirath Construction Company Private Limited for the total default amount of Rs.28,48,40,687/- along with interest as on 30.07.2023. The default date is stated to be 05.02.2020.
2. The case of the Financial Creditor is that the Corporate Debtor had availed credit facility provided by the Mehsana Urban Co-operative Bank Ltd *vide* credit approval letter dated 22.03.2024 for an amount of Rs.4,00,00,000/- at 13% rate of interest. The CD availed further loan *vide* loan application dated 21.01.2005 for



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an amount of Rs.1,00,00,000/- at 12% rate of interest. The acceptance of both credit facilities against immovable property entered between the applicant and the CD on 31.03.2004 and 20.01.2005 has been placed on record. It is submitted that the accounts of the corporate debtor became NPA on 31.12.2004 and 20.04.2005 on account of default committed by the CD for both the loans.

3. It is submitted that the bank initiated recovery proceedings for the defaulted amount of Rs.6,66,60,925.89/- and Rs.1,57,42,466.06/- before the Court of Board of Nominees, Mehsana, and decrees were passed in Summary Lavad Suit Nos. 278/2014 and 279/2014 *vide* order dated 05.02.2020 in favour of the Bank. Thereafter, the debt was duly assigned to the Applicant through an Assignment Agreement dated 26.03.2021. As per assignment agreement the total outstanding amount is Rs.2059.55 lacs as on 28.02.2021. The total amount in default as of 30.07.2023 is claimed at Rs.28,48,40,687/-, inclusive of interest.



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Sd/-

4. The applicant by way of affidavit dated 30.06.2025 submitted that the CD has not challenged the order dated 05.02.2020 passed by the Court of Board of Nominees in Summary Lavat Suit No. 278/14 and 279/14 before any court of law and the same continues to remain in force till date. It is submitted that the limitation period starts from 05.02.2020 on which the order passed by the court of Board of Nominees in Summary Lavat Suit. The applicant has further relied upon the judgment of Hon'ble Supreme Court in the case of Dena Bank Vs. C Shiv Kumar Reddy and another (Civil Appeal No. 1650 of 2020) wherein it was held that a judgment passed by a court in favour of Financial Creditor would give rise to a fresh cause of action to initiate proceeding under Section 7 of the Code of within 3 years from the date of the judgment.



5. The applicant by way of pursis further submitted the communication dated 02.01.2024 between the officer of NESL stating that the authentication status of the CD could not be categorized. The applicant has relied upon the judgment of Hon'ble NCLAT in the matter of Vijay

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Kumar Singhania Vs. Bank of Baroda and others, Company Appeal (AT) Insolvency No. 1058 of 2023 and the judgment of Hon'ble Supreme Court in the matter of Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited (2018) 2 SCC 674. It was held that the date of default can be proved by placing reliance on other documentary evidences other than record of default.

6. The application is supported by documentary evidence, including:
 - a. Credit approval letter dated 22.03.2004;
 - b. Letter of acceptance of credit against immovable property dated 31.03.2004 and 20.01.2005;
 - c. Assignment agreement dated 26.03.2021;
 - d. Order dated 05.02.2020 passed by the Ld. Court of Board of Nominees, Mehsana;
 - e. Bank statements;
 - f. Demand promissory notes dated 31.03.2004 and 20.01.2005;
 - g. Guarantees dated 31.03.2004 and 20.01.2004;
 - h. Declaration dated 14.10.2011 provided by the directors of CD.



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7. The Corporate Debtor despite various services and issuance of public notice failed to respond and appear. Therefore, this Tribunal decided to proceed *ex-parte vide* order dated 05.05.2025.
8. Heard the submissions of applicant and perused the documents on record. It is noted that the Corporate Debtor had availed two separate loan facilities sanctioned by Mehsana Urban Co-operative Bank Ltd., both of which were secured by immovable properties and supported by promissory notes and guarantees. The loan accounts were classified as Non-Performing Assets (NPA) on 31.12.2004 and 20.04.2005 respectively. It is further noted that decrees were passed in favour of the Bank in Summary Lavad Suit Nos. 278/2014 and 279/2014 by the Court of Board of Nominees, Mehsana on 05.02.2020. It is seen that these decrees were not challenged by the Corporate Debtor. Subsequently, the debt was assigned to the present applicant *vide* an Assignment Agreement dated 26.03.2021. As of 30.07.2023, the total amount in default claimed is Rs.28,48,40,687/-, inclusive of interest. Based on the



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facts, the date of default is taken as 05.02.2020, i.e., the date of the decree passed by the Court of Board of Nominees. Since the present application under Section 7 has been filed on 09.08.2023, it falls well within the limitation period considering COVID exemption.

9. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt. Further, inspite of service of this application, the corporate debtor has neither appeared nor filed any reply to object the application.
10. In light of the above facts, we pass the following orders:

ORDER

- I. CP (IB) No.294 of 2023 is allowed.
- II. The CIRP is ordered to be initiated against the corporate debtor - Bhagirath Construction Company Private Limited.
- III. The applicant has proposed the name of Mr. Dhaval C. Khamar, having Registration No. IBBI/IPA-001/IP-P-02574/2021-2022/13944; email id: ca.dhavalkhamar@gmail.com as the Interim Resolution



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Professional (IRP) who has also filed his consent in Form 2. Mr. Dhaval C. Khamar, is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- IV. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.



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V. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

VI. The Registry is directed to communicate this order to the applicant, IRP and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.



DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Prachi-LRA

Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

Sd-

Certified to be True Copy of the Original

Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

Raj V. Vaidya
07/08/23

Prepared by Bhanik

Signature [Signature]

Date 07/08/23