

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

CP (IB) No.1238/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

**Omkara Assets Reconstruction Private
Limited**

[CIN: U67100TZ2014PTC20363]

...Financial Creditor/Petitioner

V/s

**M/s Dunnimaa Engineers & Divers
Enterprises Private Limited**

[CIN: U2920MH1996PTC099909]

...Corporate Debtor/Respondent

Order pronounced on: 24.11.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Kunal Kanungo a/w
Ms. Tanushree Sogani,
Advocates

For the Respondent(s) :

Mr. Nishant Chothani i/b
Ketan Chothani, Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 1238/NCLT/MB/C-IV/2021 filed by Omkara Assets Reconstruction Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s Dunnimaa Engineers & Divers Enterprises Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Petition is filed by Mr. Abhishek Shelar, authorized by the Financial Creditor vide Board Resolution dated 02.07.2021, claiming default amount of Rs.30,02,60,411.95 (Rupees Thirty Crore Two Lakh Sixty Thousand Four Hundred Eleven and Ninety Paise) as on 31.07.2021 inclusive of interest @ 14.65% in Term Loan account and @13.95% in Cash Creditor Account.
3. The case of the Financial Creditor is as under:
 - a) It is submitted that the Financial Creditor/Petitioner is a Company incorporated under Indian Companies Act, 1956 and is registered with Reserve Bank of India (RBI) as an Assets Reconstruction Companies u/s 3 of SARFAESI Act, 2002. The Corporate Debtor is a Non-Government Company incorporated on 30.05.1996 under the Companies Act, 1956 and is engaged in the business of manufacturing (metals, chemicals and products thereof) for the last 25 years.
 - b) The Corporate Debtor approached the Bank of India (“*Principal Lender*”) for grant/sanction of Term Loan of Rs. 18,17,00,000/- (Rupees Eighteen Crores Seventeen Lakhs Only), Cash Credit facility

of Rs. 1,00,00,000/- (Rupees One Crore only) and non-fund-based facilities for an amount of Rs.2,00,00,000/- (Rupees Two Crores only) in the year 2008. The Bank of India (“principal lender”) consider the request of the Corporate Debtor and granted/sanctioned aforesaid credit facilities vide sanction letter dated 24.10.2008. To secure the aforesaid credit facilities, the Corporate Debtor through its Directors alongwith Guarantors executed various loan and security documents on 27.10.2008 in favour of the principal lender Bank of India.

- c) The Financial Creditor/Petitioner states that the Corporate Debtor/Respondent approached them for reconstruction/renewal of credit facilities from time to time. The Financial Creditor/Petitioner considered the request of the Corporate Debtor and renewed/restructured the credit facilities availed by them vide sanction letters dated 26.09.2009, 15.04.2010, 30.05.2011, 26.11.2013 and 09.09.2014. To secure the aforesaid credit facilities, the Corporate Debtor/Respondent executed various loan and security documents i.e. (a) Hypothecation-cum-loan agreement, (b) Supplemental Hypothecation Agreement, (c) Deed of Guarantee, (d) Letter of Undertaking, (e) Demand Promissory Note, and (f) Deed of Covenant in favour of the Financial Creditor/Petitioner on 29.09.2009, 16.04.2010, 24.11.2011, 29.11.2013 and 08.09.2015.

Type of facility	Sanctioned limit	Outstanding dues
Working Capital Term Loan	567.00	611.00
Term Loan Facility	1250.00	1346.00
Cash Credit facility	100.00	105.00
Non-Fund Based Facility	200.00	0.00

- d) The Financial Creditor/Petitioner further submits that the Corporate Debtor availed and enjoyed the aforesaid credit facilities but failed to repay the dues as a result of which the accounts of the Corporate Debtor/Respondent are declared a Non-Performing Assets (NPA) on 31.12.2016 as per Reserve Bank of India prudential norms.
- e) Since, the Corporate Debtor failed to repay the dues, the Petitioner/Financial Creditor issued Demand Notice u/s 13 (2) of SARFAESI Act, 2002 demanding for repayment of Rs. 2062 Lakhs with further interest @14.95% p.a. for WTCL and @14.20 % p.a. for cash credit facilities. The Financial Creditor/Petitioner also issued notice u/s 13(2) of the SARFAESI Act, 2002 on all the personal guarantors on 17.01.2017. Despite receipt of said Demand Notice, the Corporate Debtor/Respondent neither replied nor repay the outstanding dues.
- f) The Petitioner/Financial Creditor submits that one Mr. Om Prakash Yadav, has filed Company Petition No. 414/2016 u/s 433(e), 434 and 439 of the Companies Act,2013 before the Hon'ble Bombay High Court seeking winding up of the Corporate Debtor due to inability to pay its dues. It appears that there were other connected petitions bearing Nos. 415/2016, 416/2016, 417/2016 and 420/2016 already filed before the Bombay High Court for the same relief. Therefore, vide order dated 02.08.2018, the Hon'ble Bombay High Court pleased to pass an order of winding up and had appointed provisional liquidator to act as the official liquidator of the Corporate Debtor.
- g) Being aggrieved from the aforesaid order dated 02.08.2018, the Corporate Debtor filed an Appeal on 29.08.2018 before the Hon'ble High Court of Bombay, which is still pending for adjudication.

- h) In the meanwhile, before the order of winding up i.e. on 02.08.2018, the Corporate Debtor had sent a letter on 01.08.2018 requesting for one-time settlement of the loan accounts with the principal lender Bank of India with waiver of interests applicable and settlement of principal loan amounts for Rs.5.55 crores. The said letter dated 01.08.2018 was never accepted by the principal lender Bank.
- i) Thereafter, during the pendency of the matter before the Hon'ble High Court, the debt was assigned to the Omkara Assets Reconstruction Private Limited, the Financial Creditor herein by the principal lender Bank of India vide Assignment Agreement dated 07.01.2020. Pertinently, the Financial Creditor/Petitioner had also filed the Interim Application No. (L) 10278/2021 on 20.04.2021 seeking transfer of Company Petition No. 414/2016 alongwith all connected company petitions before the Hon'ble High Court to National Company Law Tribunal in accordance with provisions of Section 434(1)(c) of the Companies Act, 2013. In response to the above interim application, the Official Liquidator filed affidavit in reply wherein the Official Liquidator also mentioned that the Petition be transferred only from the stage of or after the order of admission and moratorium and the appointment of Interim Resolution Professional.

Affidavit in Reply

4. The Corporate Debtor filed affidavit in reply through Mr. Ajay Raj Singh Rathore, Director/Authorised signatory.
5. The Corporate Debtor submits that it is an admitted position that the Corporate Debtor has defaulted in servicing the financial obligations, including the debt of the Financial Creditor. Thus, there is no denial to

the fact of default in repayment of debt by the Corporate Debtor towards its creditors including the Financial Creditor herein.

6. In view of the Corporate Debtor being under winding up for a period of 4 years and the custody of assets of the Corporate Debtor being with the liquidator, the Corporate Debtor has not been and is no position, financial or otherwise, to carry on any business for this long time. The Corporate Debtor submits that in view of interest of all stakeholders/creditors, they do not want to contest the present petition and does not raise any objection with respect to the initiation CIRP against the Corporate Debtor.
7. The Corporate Debtor further submits that due to the pendency of the present petition, the Corporate Debtor is unable to enter any negotiations for its debt resolution and revive the business of the Corporate Debtor.
8. Thus, in view of aforesaid, the Corporate Debtor admits and acknowledges the debt and default as set out in the captioned petition.

Findings:

9. Ld. Counsel the Financial Creditor/Petitioner had filed an Interlocutory Application No. 626/2022 removing the name of liquidator as Respondent/Corporate Debtor. Therefore, this Adjudicating Authority on 13.04.2022 heard the application and directed the Financial to remove the name of the liquidator as Respondent because he is not a necessary party in view of the transfer order of the Hon'ble High Court of Bombay dated 13.10.2021.
10. We have heard and prudently gone through the pleadings available on record. The Financial Creditor/Petitioner Bank of India, Principal Lender has granted/sanctioned the credit facilities in favour of

Corporate Debtor. Despite receipt of notice u/s 13(2) of the SARFAESI Act, 2002 dated 25.04.2017, the Corporate Debtor failed to repay the outstanding dues.

11. The Corporate Debtor has sent an OTS letter dated 01.08.2018 requesting the Financial Creditor/Petitioner for One Time Settlement in full to the tune of Rs.5.55 crores. The said OTS proposal was rejected by the Financial Creditor. The date of default as mentioned in Part IV of the petition is 01.08.2018 and the date of filing of this Petition is 12.10.2021 and the limitation prescribed u/s 18 of the Limitation Act, 1963 is 3 years and the same expired on 30.07.2021. The Financial Creditor submit that due to the onset of the Covid-19 pandemic, the Financial Creditor was not able to institute the present Petition within the time framed u/s 18 of Limitation Act, 1963. However, in the order dated 08.03.2021, the Hon'ble Supreme Court passed a *suo-moto* order in W.P. (Civil) No. 3 of 2020 excluding the time period lost in Covid-19 pandemic. Hence, this petition is filed within Limitation and this Bench has jurisdiction to deal with this present Company Petition.
12. On perusal of records its reveals that the Petition in complete in all aspects and the debt claimed in the Petition has fall under section 5(8) of the Code. Thus, in view of the above admission of debt by the Corporate Debtor, this Petition deserves to be admitted.
13. The Financial Creditor has proposed the name of Mr. Kamal Rajkumar Sharma, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01850/2019-2020/12870] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

a) This Application being C.P. (IB) No. 1238/NCLT/MB/C-IV/2021 filed by Omkara Assets Reconstruction Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Dunnimaa Engineers & Divers Enterprises Private Limited, 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 this 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. Kamal Rajkumar Sharma, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01850/2019-2020/12870] 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.
- VII. 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).

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. 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/-
Manoj Kumar Dubey
Member (Technical)

24.11.2022

NP

Sd/-
Kishore Vemulapall
Member (Judicial)