

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**COURT - 2**

ITEM No.302

**CP(IB)/92(AHM)2023**

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Omkaara Assets Reconstruction Private Limited

.....Applicant

Vs.

Satyasankalp Buildcon LLP

.....Respondent

**Order delivered on: 13/03/2024**

**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 the order. The order is pronounced in the 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 NO.II)**

**IN**

**CP(IB) No. 92 / NCLT / AHM / 2023**

[Application Under Section 7 of the IB Code, 2016 & read with Rule 4 of the Insolvency Resolution Process “Under Chapter II of Part II under Chapter IV of Part II of the Code]

**IN THE MATTER BETWEEN**

Omkaara Assets Reconstruction Pvt. Ltd. ... Financial Creditor

V/s

Satyasankalp Buildcon LLP .... Corporate Debtor

**Order pronounced on:13.03.2024**

**Coram:**

**MRS. CHITRA HANKARE,  
HON’BLE MEMBER (JUDICIAL)  
DR. VELAMUR G. VENKATA CHALAPATHY,  
HON’BLE MEMBER (TECHNICAL)**

## **MEMO OF PARTIES**

Omkara Assets Reconstruction Pvt. Ltd

Having registered office at  
No.9, M P. Nagar, First Street,  
Kongu Nagar, Extension, Tirupur,  
Coimbatore, Tamil Nadu

And

Corporate office at  
C/515 Kanakia Zillion,  
Junction of LBS Road and CST Road  
BKS Annexe, Nr. Equinox,  
Kurla (West) Mumbai-400070

... Financial Creditor

Versus

Satyasankalp Buildcon LLP  
Having its registered office at  
Dharmadev House, 419, B/s Jain Derasar,  
Shyamal Char Rastra,  
Ahmedabad-380015

... Corporate Debtor

### **Appearance:**

For the Applicant : Ms. Nisha Ojha, Adv. a.w Mr. Jay Kansara,  
& Ms. Adrita Bhuyan, Adv.

For the Respondent : Mr. Saurabh Soparkar, Senior Adv. a/w Mr.  
Dhruvin N. Dossani, Adv.

## **ORDER**

1. The Financial Creditor herein is the successful resolution applicant of DHFL vide Order dated 7th June, 2021 passed by the Hon'ble National Company Law Tribunal in the matter of Reserve Bank of India v. DHFL in Interim Application No. 449/C-II/2021 in Company Petition (IB) No. 4258/MB/C-II/2019, whereby the resolution plan submitted by the Financial Creditor herein i.e., Piramal Capital & Housing Finance Limited in the CIRP of DHFL was approved.

2. The Financial Creditor i.e Piramal Capital and Housing Finance Ltd. has been reverse merged into DHFL with effect from 30<sup>th</sup> September, 2021. The Certificate of incorporation pursuant to the name change has been issued by the Registrar of Companies, Mumbai dated 3<sup>rd</sup> November, 2021 wherein the name of DHFL has been changed to Piramal Capital & Housing Finance Ltd. The Corporate Debtor (Respondent) is Satyasankalp Buildcon LLP, registered (LLPIN) AAH-9580, incorporated on 6<sup>th</sup> December 2016 with registered office at Dharmadev House 419, B/s Jain Derasar, Shyamal Char Rasta Ahmedabad, Gujarat 380015.
3. As per the petition filed through Form 1 under Sec 7 of IBC 2016, the applicant had disbursed an amount of the loan of Rs 680 crores vide sanction letter dated April 9, 2018. These amounts were disbursed on various dates from 31 March 2018 to 15.1.2019 for a total amount of Rs.749,42,18,493 as per table provided in Page 6 of the application. The total amount of default is stated to be Rs.575,95,05,818 as on 31 January 2023 and a copy of statement of account(ledger), date of disbursement and defaults were annexed as Annex E to the application. As per the application the date of default is reckoned as 15<sup>th</sup> June 2021.
4. The applicant further stated that upon the CD seeking loan facility, the applicant (DHFL) sanctioned vide reference No.DHFL/2018-19/PF/PF/0086 dated 9<sup>th</sup> March 2018 on certain terms and conditions and the amount was enhanced to Rs. 750 crores. As per the sanction, the amount of Project term loan sanctioned was at rate of interest at 5.70% below DHFL's

RPLR (at present at 18.2% p.a.) i.e. 12.50% at monthly rests, payable monthly in 24 equated monthly instalments commencing after 36 months from the date of first disbursement. Addl Interest @24% p.a. payable at monthly rests will be charged on the overdue amount of interest (PEMI) and/or EMI. Apart from other terms and conditions on default, it also specified that certain properties were charged by way of mortgage at village Kholwad, Sub district & taluka of Kamrej, comprising the project "Swaminaraan Green City" along with the present and future construction including but not limited to Booked, Unsold and Sold residential/commercial units mentioned in annex of sanction letter. It also had exclusive charge by way of hypothecation on the receivables of sold/booked and unsold units in the project. The personal guarantees obtained included Mr Umang Thakkar, Mr Neel Thakkar and Mr Kanth Thakkar. There were various other conditions specified in the sanction letter under reference appended to this application. A detailed list of units to be mortgaged were annexed. A loan agreement has been executed on 4<sup>th</sup> May 2018, along with deed of simple mortgage, deed of hypothecation, demand promissory note and irrevocable deed of personal guarantee between the partners and the financial creditor on the same date, have been enclosed. Also a copy of supplemental mortgage deed dated 17<sup>th</sup> September 2018 has been enclosed. A detailed mention has been made of the properties on the Schedule I & Schedule II of the document executed.

5. The financial creditor has issued a legal notice dated 20<sup>th</sup> August 2020 (DHFL/PF/2020-21/August/DW1) issued by DHFL to the

CD on account of the defaults in making payments followed with a legal notice dated 6<sup>th</sup> Feb 2021 for invocation of Personal Guarantees. It is stated in the letter that on account of the borrower/mortgagor failing to pay 15 EMIs/Pre EMIs amount to Rs.66,50, 63, 443, the financial creditor exercised his rights to recall the loan and calls upon the applicant to pay an aggregate amount of Rs. 386,10,82,858 (outstanding as on 18 August 2020) together with additional further interest and other charges within 7 days failing which action would be initiated under the provisions of both IBC 2016 and SARFESI Act 2022. A legal notice was also issued on the same date 6.2.2021 to all the personal guarantors(3). It further states that of the total sanctioned limit of Rs.750 crores, an amount of Rs.749,42,18,493 was disbursed of which an amount of Rs.405,63,15,322 was due and payable within 15 days of the notice. Further it is mentioned in the notice that the loan has been classified as NPA as on 1 April 2019.

6. The applicant has enclosed a Form D (Notification with NeSL) where the default amount is mentioned as Rs 482,36,74,277 on a total outstanding amount of Rs.550,80,95,349 and the date of default as 15.6.2019. It further states that the a principal outstanding to be Rs.295,76,61,183 and an interest of Rs 131,92,18,446 and the amount of last repayment was Rs 4,20,500 on 17.12. 2019. The default filing (Form C) are mentioned to be as 25<sup>th</sup> Nov 2022 with reminders issued on dates 1, 5 & 9 Dec 2022 respectiely to the CD.
7. Further, from the documents submitted by the applicant , it is observed that the board of directors of original Corporate Debtor

who was financed the stated facility was superceded by RBI vide its order dated 20.11.2019 in exercise of powers conferred under Sec 45-IE (2) of the RBI Act owing to governance concerns and defaults by the CD in meeting various payment obligations and an administrator was appointed along with a 3 member advisory committee. The Administrator on 29.11.2019 submitted an application for initiation of CIRP under Company Petition CP (IB) 4258/MB/2019 before NCLT Mumbai which was admitted on 3.12.2019 and the Administrator was himself appointed as RP. Further on approval of the COC during the 18<sup>th</sup> COC meeting on Dec 22, 2020, the Administrator submitted a Resolution Plan in IA 449 of 2021 in CP 4258 of 2019. The Hon'ble NCLT vide its order dated 7.6.2021 approved the stated resolution plan whereby the present applicant became the Successful Resolution Applicant.

8. The respondent in his reply through Mr Neel Umangbhai Thakkar (one of the Personal Guarantors) who has been authorised by the board to file its reply. It is further stated that the right of respondent to file reply came to be closed vide order dated 7.12.2023 passed by this Tribunal. Against this order, they approached by Hon'ble NCLAT by way of filing Company Appeal (AT) (Ins) 294 of 2024 which was allowed on 21.2.2024 to file a reply within 3 days and accordingly the reply was filed on 26 Feb 2024. The main objections raised in the reply are:

a) The present applicant as financial creditor has filed under Sec 7 of IBC 2016 before this Tribunal, while the original lender had already filed an application under Sec 7 of CIRP of IBC 2016 against the applicant. The applicant became

the successful resolution applicant of Dewan Housing Finance Corporation upon approval of plan (93.65% majority of COC) submitted before Hon'ble NCLT Mumbai in IA 449 of 2021 in CP IB 4258 of 2019. It is further stated that as per the Resolution Plan approved there were certain recoveries made from avoidance applications filed against the respondents (suspended management) under Sec 45, 60(5) & 66 of the IBC (with ascribed value of Rs 1) which were filed in IA 257 of 2021 in CP IB 4258 of 2019 before Hon'ble NCLT Mumbai. The said application is still pending disposal. It is observed from the application that there is a total principal outstanding dues amounting to Rs 4,793.36 crores and interest amount of Rs.576.73 crores and the respondent CD had disbursed various loans to several borrowers stated to be DLAP entities. The respondents to this application before NCLT Ahmedabad have contested that when Sec 66 application is being pursued the applicant should not have pursued a separate application under Sec 7 before this tribunal as the financial debt has not been established and or there are insufficient documents to prove the debt.

- b) Further, the orders approving the resolution plan of Piramal by NCLT Mumbai came to be challenged before Hon'ble NCLAT New Delhi in the matter of Company Appeals (AT) (I) 454, 455 and 750 of 2021 titled as "63 Moons Technologies Ltd V Administrator of DHFL and others, whereby the clause permitting Piramal (present applicant) to appropriate recoveries from avoidance application under Sec 66 of IBC 2016 came to be set aside by the Hon'ble NCLAT vide its order dated 27.1.2022. The

applicant (Piramal) is further stated to have preferred an appeal against this order before the Hon'ble Supreme Court of India in Civil Appeal No.1632-1634 of 2022 which is still pending adjudication wherein certain respondents including Administrator and CoC are made a parties.

- c) The respondents have stated that when the Resolution Plan approved has been reverted back to the CoC for reconsideration, the present financial applicant who is the SRA should not have filed an application under Sec 7 of IBC before this Tribunal and is required to be dismissed as their right to act in that capacity is in jeopardy if the orders of Hon'ble NCLAT is upheld. In view of the same the substitution of the application IA 873 of 2023 filed and approved in Order dated 8.11.2023, it has no locus standi to pursue captioned petition before the Tribunal.
- d) Further it is stated that the applicant has suppressed above facts while he submitted the application before this Tribunal and hence same is to be counted itself to be required to be dismissed at threshold. Further, it was also not right for Piramal to have assigned its debt to Omkara ARC Pvt Ltd due to the stay order of Hon'ble Apex Court and proceedings at large are still pending.
- e) The respondents have contended that there is material suppression of vital facts by the applicant. It includes only submitting selective documents like recovery notice to guarantors while not submitting their replies as part of the application. It includes not providing details of the

rejection of plan approved by Hon'ble NCLAT and the case before Hon'ble Supreme Court.

- f) There have been conflicting date of defaults mentioned in the application, as provided in NeSL and the notice sent by erstwhile DHFL dated 4.3.2021 As per the Learned Counsel for the respondent there are three different date of defaults submitted in order to submit a wrong application which also is fraudulent(lega) before this Tribunal. This is also done to escape the rigors of limitation.
- g) Further it is stated that the CD is presently developing project at Surat called "Swaminarayan Green City" admeasuring 53,629 sq metres having 1500 residential units and employing various staff and it is not proper to admit CD in to insolvency as it is a going concern who is only facing financial crunch which took place during and post pandemic andis on the verge of recovering from the same financially.
- h) Further the mortgage document is invalid as the loan amount involved is Rs 680 crores while stamp duty is only for Rs.11,20,000 and is not enforceable. Further, the application is not filed as per NCLT rules and the necessary evidence of disbursement of loan to the CD have not been enclosed, and the respondent denies that the account is NPA as no certificate is enclosed as per Bankers Book Evidence Act and the application is barred by limitation.

**Observations:**

- a) The Application was admitted and in the first order on hearing dated 26 April 2023, it is observed that the Learned Counsel for the respondent/CD stated that there were settlement talks going on, which was not in the knowledge of the applicant. On 19 July 2023, the applicant stated that the debt has been assigned to M/s Omkara Assets Reconstruction Pvt Ltd and sought time to file appropriate application. The same was filed on Aug 5, 2023. The substitution was allowed on 8 November 2023 in IA 873 of 2023, wherein the learned counsel for respondent stated that he had no objection and accordingly the same was allowed. On 7 December 2023, it was observed by this Tribunal that the respondent had not submitted any reply in the matter though settlement talks were stated to be going on since April 2023. Hence right to reply was closed. It was brought to the notice on 21 Feb 2024 that they have moved NCLAT against this order. There are two other IAs No.405 of 2024 and Intervening Petition 6 of 2024 which are listed for further consideration on 22.4.2024 (filed by Omkara Assets Reconstruction P Ltd).
- b) DFHL has been admitted to CIRP on 3 Dec 2019 through an application preferred by the Administrator of DHFL before NCLT Mumbai. This application is preferred by an assignee of financial debt who is also the Successful Financial Applicant approved in the CIRP by the NCLT Mumbai on 7 June 2021. Incidentally this financial creditor (Assignee) was incorporated only on 3 November

2021(due to reverse mortgage approved) took over the asset from the original applicant before NCLT.

- c) The applicant further assigned the debt to M/s Omkara Financial Reconstruction Company.
- d) The stated assignment has taken place took place after the approval of Resolution Plan which has been reverted back to CoC vide orders of NCLAT on 27 January 2022 and the matter seems to be pending before CoC and also the CIRP process before NCLT Mumbai on which further information has not been provided. The matter has been further escalated by an appeal to Hon'ble Supreme Court of India against the Hon'ble NCLAT order which is pending disposal, however no interim order seems to have been passed from documents produced.
- e) An application was filed for initiating CIRP before Honble NCLT on 29 Nov 2019 which was admitted on 4 Dec 2019. An approval of Resolution Plan was reverted back to CoC on 27 January 2022 and there is further appeal before Hon'ble Supreme Court. This application was filed before this Tribunal on 22 Feb 2023. From the facts argued and recorded and the documents submitted these facts have not been brought to the notice of this Tribunal.
- f) The incorporation of this applicant based on an order of the Honble NCLT has been registered with ROC vide order dated 3 Nov 2021. The applicant has taken forward a debt assigned either as the Successful Resolution Applicant or as the Financial Creditor (DHFL acquisition), but has filed the application when the matter is pending further

adjudication before the Hon'ble NCLT It is not clear whether the COC has re considered the Resolution Plan on which there is a proceeding before the Hon'ble Supreme Court. No further documents have been provided as to whether the Resolution Plan has been approved to this Tribunal and whether the applicant is a Successful Resolution Applicant.

- g) There are inconsistencies in the documents submitted regarding the date of NPA and Default. The applicant has not given proof of disbursement through bank account statement and the Form D filed before the NESL gives a different date of default. There are 3 different dates of default mentioned in the application.
  
- h) In case the Hon'ble NCLAT has ordered the COC to reconsider the Resolution Plan which was approved with such exclusion, there are no further arguments or submissions or document if the moratorium continues or if the plan is being modified and submitted by the applicant. However, he has preferred to submit a separate application before this for a part of the debt owed to DHFL ignoring the fact that the same CD has been made a party before the Hon'ble NCLT, Mumbai on account of preferential transactions/ fraudulent transactions, even though the proceedings in the matter are standstill or subjudiced, as argued by respondent, and the appeal before the Hon'ble Supreme Court.

i) From a perusal of the documents there are various other facts noticed regarding the date, amount of default and the period of default which has been stated to have been on 15 June 2019. However, the application further states that the disbursements started on 31 March 2018 to 15.1.2019 for a total amount of Rs.749,42,18,493. As per the sanction the repayment schedule was fixed after a period of payable monthly in 24 equated monthly instalments commencing after 36 months from the date of first disbursement. This reinstates the submission of the respondent who has stated that they are a going concern and reckoning of an account as NPA is contrary to the terms and conditions of sanction and cannot be within such a short period of disbursement, with different dates being quoted as date of default in the application, which makes it inconsistent, purported to defraud the legal system by moving a parallel application before another Tribunal when a composite debt has been moved before the Honble NCLT Mumbai where there are certain adjudicated legal proceedings taking place which have been hidden in the application while submissions. Also the debt has and due date is not identifiable whether has been barred by limitation, even if fallen due during period of COVID, there was a unilateral recall of the loan. There are properties which have been mortgaged and there are various stake holders who have brought flats in the stated property, either waiting for allotment of their share. One of the representative appeared before this Tribunal during the last hearing stating that the stake of these flat owners would be

jeopardised and would be a huge loss if the CIRP is ordered at this stage.

- j) The Learned Counsel for respondent has also not raised any of these issues during the admission of the application, nor did they object or file any reply when the Omkara Assets Reconstruction Pvt Ltd filed for substitution in IA 873/2023 by taking over the debt through Assignment Deed dated 30 June 2023 but on allowing the substitution appealed before the NCLAT and also filed a reply when their right to file reply was closed. They had also led this tribunal to believe earlier that certain settlement talks were going on.
  
- k) The role of the financial creditor applicant M/s Piramal Capital & Housing Limited was that of the Successful Resolution Applicant who had submitted a successful Resolution Plan and took over the entire assets of the CD. Having been referred back to the COC on his Resolution Plan, the so called Successful Resolution Applicant as a financial creditor has moved this Tribunal Under Section 7 against the Corporate Debtor which has been objected by the respondents due to two different proceedings in NCLT Mumbai and Ahmedabad for recovery and insolvency.
  
- l) The intention of bringing CIRP and resolution in time before Honble NCLT Mumbai against DHFL has been defeated by the role of the applicant Piramal Capital & Housing Limited (SRA) has taken up parallel proceedings when his Plan has been reverted back to COC and to have preferred this application and in the meantime also

transferred its debt to M/s Omkara Assets Reconstruction Limited.

- m) The orders approving CIRP (time taken to adjudicate) was taken within a short time given the gravity of the issue and so was the Resolution Plan which had a large majority to approve. Intention could be to continue the entity as a going concern, but there are many preferential transactions which are disputed and the Hon'ble NCLAT has reverted back to COC as it did not agree with the SRA recovering those from the CD. There is no clarity either in application or subsequent affidavits or hearings.
- n) During hearing there is now new entity who has neither provided the disbursal data (bank statements) nor has been able to clarify the variations in the date of default. The applicant has not clarified from his oral submissions or in any of his submissions or by documents as to whether he is now the successful Resolution Applicant and as to whether the pending IAs before the NCLT Mumbai have been adjudicated. The respondents have objected to this by stating that the entire plan is now pending implementation for approval of CoC. In view of the same the maintainability of the application has not been supported by valid documents as to whether the applicant continues to be SRA (Resolution Plan has been approved after considering the orders of Hon' ble NCLAT) and whether the pending applications were disposed off against the respondent. Also reasonable ground for continuing parallel proceedings have neither been argued nor presented.

o) At the time of pronouncement of order on 12 March 2024, the Learned Counsel for applicant appeared and sought to raise certain issues and sought to submit a rejoinder in the matter for which a separate IA was stated to have been filed. Said IA No. 438 of 2024 was heard. Learned Counsel for the Applicant as well as respondent were heard and separate order is passed in the IA.

After hearing the matter from both the counsels, we have paused in pronouncing the order to review the matter and decide based on submissions and documents produced by both the parties. As there is no clarity on the date of debt due and default, and the proceedings against the same Corporate Debtor for recovery, we are passing the following orders.

### **ORDERS**

The CP(IB) 92/NCLT/AHM/2023 is rejected.

**SD/-**

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

**SD/-**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**