IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1089/MB-IV/2022
Under Section 7 of the I&B Code, 2016

In the matter of:
Omkara Asset Reconstruction Company Limited
[CIN: U67100TZ2014PTC020363]
…Financial Creditor/Applicant
V/s
Ashapura Options Private Limited
[CIN: U70200MH2005PTC156606]
...Corporate Debtor/Respondent

Order Dated: 30.03.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Saurabh Nikalje i/b Vidhi Partners, Ld. Counsel.

For the Respondent(s) : None Present

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1089/NCLT/MB/C-IV/2022 filed by Omkara Asset Reconstruction Company Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ashapura Options Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Gautam Ingale, Authorised Representative of Financial Creditor vide its Board Resolution dated 29.06.2020, claiming total default amount of Rs.65,30,77,490 /- (Rupees sixty five crore thirty lakh seventy seven thousand four hundred ninety only).

3. The date of Default is 31.12 .2019.

4. The case of the Financial Creditor is as under:

4.1. The Corporate Debtor is a partner of M/s Charmee Enterprises, a partnership firm under the Indian Partnership Act, 1932("Borrower").

4.2. The Borrower had availed credit facilities amounting to Rs. 40,00,00,000/- (Rupees forty Crores Only) from ECL Finance Limited ("Original Lender"). The said amount was sanctioned by Sanction Letter dated 08.12.2016. Vide the said sanction letter an amount of Rs. 5,00,00,000/- was sanctioned for Corporate Cost and Rs. 35,00,00,000/- was sanctioned towards construction cost at the interest rate of 15% p.a. payable on the 30th or last day of each quarter, whichever is earlier to the Borrower.

4.3. The Applicants also submits that the repayment of the entire loan was secured by a) Registered Mortgage b) Demand Promissory Note dated 23.05.2017 issued by Borrower in favour of original lender, c) Guarantee agreement dated 23.05.2017executed by the Corporate Debtor herein favour of Original Lender, d) Guarantee Agreement dated 23.05.2017 executed by Mr. Pravin G Chamaria in favour of the Original Lender.

4.4. Further, it is stated that the terms of the sanction letter were amended vide Amendment Sanction Letter dated 22.05.2017 whereby *inter alia* the availability period of the loan was amended to 30.06.2018.

4.5. It is further submitted by the Applicant that a total sum of Rs. 26,28,00,0000/- was disbursed from the period of June 2017 to November 2019.

4.6. It is also submitted by the that the Borrower first defaulted in repayment of loan on 31.12.2019

4.7. The Original Lender vide Assignment Agreement dated 11.05.2021 registered under serial no. BDR17-9889 of 2021 assigned the debt to the Financial Creditor.

5. The Applicant had issued loan recall notice dated 31.12.2021 for *interalia* to the Borrower and the Corporate Debtor herein who is the Corporate Guarantor of the loan, recalling the entire loan, with the outstanding sum due as on 31.08.2021 amounting to Rs. 19,57,88,342/- along with further interest, default interest and other monies payable thereon at the contractual rate, till payment and/or realisation.

6. The Financial Creditor issued another Demand Notice dated 07.09.2021 *interalia* to the Borrower and the Corporate Debtor herein who is the Corporate Guarantor of the loan, recalling the entire loan, with the outstanding sum due as on 31.08.2021 amounting to Rs. 19,57,88,342/- along with further interest, default interest and other monies payable thereon at the contractual rate, till payment and/or realisation.

7. On 13.10.2022, the Registry was directed to issue Court Notice to the Corporate debtor clearly indicating the next date of hearing and was also directed to file reply. However, no reply was filed by the Corporate Debtor and hence again on 22.12.2022 the counsel for Corporate Debtor was directed to file reply, failing which the right to file reply will be forfeited. As no reply was received nor there was any representation on behalf of the Corporate Debtor, on 15.02.2023, the right to file reply of the Corporate Debtor was forfeited.

Findings:

8. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
   8.1. It is observed that, the said Application is filed within Limitation and thus, this Bench has jurisdiction to adjudicate on the matter.
   8.2. We have prudently gone through the pleadings available on record. Vide Sanction Letter dated 08.12.2016 the Borrower i.e. M/s Charmee Enterprises was sanctioned a loan of Rs. 40 Crore on @ the rate of interest of 15% p.a. for a period till 31.03.2018.
   8.3. We have also perused the Guarantee Agreement dated 23.05.2017 executed by the Corporate Debtor in favour of the Original Lender i.e. ECL Finance Limited whereby the Corporate Debtor irrevocably agreed, undertook and guaranteed with the Original Lender that in the event of any default on part of the Borrower i.e. M/s Charmee Enterprises, in payment/repayment of the loan amount or in default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants, the Guarantor i.e. the Corporate Debtor herein shall upon demand forthwith pay to the Original Lender without demur all the amounts payable by the Borrower.

8.4. The said Loan was assigned to the Applicant vide Assignment Agreement dated 11.05.2021 a/w letter of Amendment thereto dated 08.06.2021 and the Applicant stepped into the shoes of the assignor i.e. the original lender. Thus, the money owed by the borrower is recoverable by the assignee from the Corporate Debtor, as a guarantor to the Principal Borrower, pursuant to the Assignment Agreement. There is no objection from the Corporate Debtor challenging the assignment.

8.5. The Financial Creditor recalled the said Loan by notice dated 31.08.2021 asking the principal borrower to repay the principal along with interest within 7 days from the date of notice. A copy of this notice was also marked to the Corporate Debtor. Thereafter, the Financial Creditor invoked the Guarantee Agreement dated 23.05.2017 calling upon the Corporate Debtor to make good the default of the Principal Borrower within 7 days of the notice vide notice dated 07.09.2021.

8.6. The date of default is clearly stated in part IV as 31.12.2019. However, we feel the correct date of default is 15.09.2021 i.e. after expiry of 7 days from the date of loan recall notice. There is no dispute that the Principal borrower has committed default in payment of debt.

9. On perusal of the documents submitted by the Applicant, financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only), being the threshold limit as specified in the notification no. S. O. 1205 (E) dated 24.03.2020 issued under section 4 of the Code, is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find it

a fit case to allow the application filed for initiation of CIRP u/s 7 of the Code against the corporate debtor.

10. The Applicant has proposed the name of Mr. Bijendra Kumar Jha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00712/2017-2018/11227] 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

This Application being **CP(IB) No.1089/MB/2022** filed under Section 7 of I&B Code, 2016, presented by Omkara Asset Reconstruction Private Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ashapura Options Private Limited, Corporate Debtor for initiating corporate insolvency resolution process 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. 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).

VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VII. That this Bench appoints Mr. Bijendra Kumar Jha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00712/2017-2018/11227] as an 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.

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 within 7 days.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

30/03/2023