



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through physical hearing/VC Mode (Hybrid))

CP (IB) No.188/BB/2022

U/s. 7 of the IBC, 2016

R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Omkaara Assets Reconstruction Private Limited

Having its registered office at:

No.9, MP Nagar First Street,

Kongu Nagar Extension,

Triupur,

Tamil Nadu- 641 607.

And also at:

C-515, Kanakia Zillion,

Junction of LBS Road and

CST Road, Kurla (West) - 400 070.

... Financial Creditor/Petitioner

VERSUS

Marvel Infrabuild Private Limited,

Registered office at:

Veeraswamy Reddy Colony, Kadugodi,

Bengaluru 560 067.

... Respondent/Corporate Debtor

Order delivered on: 16th February, 2024

Coram: Hon'ble Mr. K. Biswal, Member (Judicial)

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

PRESENT:

For the Petitioner : Shri. Dhyan Chinnappa (Sr. Adv) with
Shri. Saurab Nikalje

For the Respondent : Shri. Dhananjay Joshi with
Shri Abhijith Atur.



ORDER

Per : Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 30.08.2022, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by Piramal Capital and Housing Finance Limited inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Marvel Infrabuild Private Limited (for brevity 'Corporate Debtor/Respondent').
2. However, I.A No. 360 of 2023 was filed on 07.03.2023 by Omkara Assets Reconstruction Private Limited seeking substitution of Piramal Capital and Housing Finance Limited with Omkara ARC and the Tribunal vide order dated 03.07.2023 allowed the I.A by substituting the name of 'Piramal Capital and Housing Finance Ltd' (for brevity 'erstwhile Financial Creditor')with 'Omkara Assets Reconstruction Pvt. Ltd' (for brevity 'Applicant/Financial Creditor') as the Financial Creditor of the Present Company Petition.
3. The facts of the case are discussed below:
 - a. The present application has been filed by the erstwhile Financial Creditor against the Corporate Debtor in respect of the default amount of Rs. 36,63,13,482/- (Rupees Thirty-Six Crores, Sixty-Three Lakhs, Thirteen Thousand, Four Hundred and Eighty-Two Only) as on 14.07.2022 together with the applicable interest, penal interest, charges.
 - b. It is submitted that Debt towards a project loan aggregating to INR 65,00,00,000/- (Rupees Sixty-Five Crores Only) was sanctioned by DHFL in favour of the Corporate Debtor. Sanction Letter dated 22.05.2017 was addressed by DHFL in favour of the Corporate Debtor wherein the total principal amount OF Rs. 65,00,00,000/- was sanctioned by the Financial Creditor and further Loan agreement dated 26.05.2017 was executed between DHFL and the Corporate Debtor.
 - c. Further, in terms of the sanction letter and the Loan agreement, the erstwhile Financial Creditor, sanctioned financial assistance up to Rs. 65,00,00,000/- as per the terms and conditions set forth in the Loan

Agreement and the ancillary documents executed. Pursuant to the loan agreement the amount was disbursed in the following manner:

Sr.	Date	Disbursement
01	30.05.2017	INR 460000000
02	05.06.2017	INR 200000000
03	12.07.2017	INR 500000000
04	13.12.2017	INR 300000000
05	23.02.2018	INR 100000000
06	16.03.2018	INR 400000000
07	12.06.2018	INR 200000000
08	08.01.2019	INR 195000000

- d. Subsequent to the disbursement of loan amount by the erstwhile Financial Creditor, the Corporate Debtor failed to adhere to the terms of the Loan Agreement and defaulted in making repayments. Thereafter, the Financial Creditor addressed a Demand Notice dated 29.06.2021 to the Corporate Debtor and the Personal Guarantors calling upon them to repay the outstanding amount of Rs. 30,88,46,973/- as on 11.06.2021 together with other charges and interest accrued till the date of the Loan closure within 7 (seven) days from the receipt of the Demand Notice.
- e. It is submitted that despite receipt of the demand notice, the Corporate Debtor failed to repay the outstanding amounts and thus the date of default is 08.07.2021 i.e., expiry date of Demand Notice period of 7 days from the receipt of notice. It is clarified by the Applicant that the date of default as per NeSL Report is 15.09.2020, however last part payment was received until 02.02.2021.
- f. It is submitted that Post receipt of the Legal Notice dated 29.06.2021, the Corporate Debtor has neither made any payment nor has disputed its liabilities pursuant to the Legal Notice.
- 4.** The Learned Counsel for the Respondent filed its objection stating as under:



- a. It is submitted that the Corporate Debtor entered into a Loan Agreement dated 26.05.2017 towards project loan of Rs. 65,00,00,000/- with Dewan Housing Finance Corporation Limited for its project “Marvel Sequoia”. However, the Corporate Debtor had several issues and disputes with DHFL as DHFL did not provide adequate and requisite support to the Corporate Debtor due to the ongoing CIRP against it. Due to DHFL’s failure to support the Corporate Debtor, the Corporate Debtor has incurred substantial losses and hardship.
 - b. It is submitted that the Financial Creditor has filed the instant petition without any locus as the Financial Creditor has assigned the loan to Omkara PS10/2022-23, of which Omkara Assets Reconstruction Private Limited is a trustee, vide Assignment Agreement dated 10.01.2023, with effect from 31.10.2022. further, by virtue of the Assignment Agreement, the Financial Creditor i.e., Piramal Capital ceases to be the Financial Creditor as there is no debt owed to it, even if any debt is owned.
 - c. It is further contented by the Respondent that the present petition is liable to be dismissed as the purported default is barred under Section 10A of the Code. It is a settled position of law that no application for initiation of the CIRP of a Corporate Debtor shall be filed for any default arising during the period prescribed under section 10A of the Code i.e., between 25.03.2020 to 24.03.2021.
 - d. Moreover, that even on the face of the petition, by perusing the documents filed by the Petition, the date of default falls squarely under the suspended period. Further, the date of default as per thw NESL Form D filed by the Petitioner clearly shows that the Date of default to be 15.09.2020.
 - e. It is submitted that the date of default as per the Form of Demand Notice issued in Form B by the Financial Creditor to the Personal Guarantors is mentioned as 08.07.2021. Therefore, it is abundantly clear that the date of default as per the Petition clearly falls under the suspended period provided under Section 10A of the Code.
- 5.** The Learned Counsel for the Petitioner filed rejoinder and additional rejoinder stating as follows:
- a. It is submitted that the Board of Dewan Housing Finance Limited (DHFL) was superseded on 20th November 2019 by the Reserved Bank of India as



per Section 45-IE(i) of the Reserved Bank of India Act, 1934. In view of the same an Administrator was appointed to the Board of Directors of the DHFL. Thereafter NCLT, vide its order dated 07.06.2021 allowed the reverse merger of the Piramal Capital Housing Finance Limited (PCHFL) with the erstwhile DHFL.

- b. Moreover, in view of the same the present Company Petition has been filed by PCHFL. However, the debt of the Corporate Debtor was assigned by PCHFL vide assignment agreement dated 10.01.2023 to Omkara Asset Reconstruction Private Limited (OARPL) and the same was informed to this Tribunal by filing I.A No. 360 of 2023, to substitute the name of PCHFL with OARPL.
 - c. It is further submitted that the Corporate Debtor did not inform this Tribunal about the legal notice dated 29.06.2021, which was addressed to the Corporate Debtor, demanding a payment to be made within 7 days of the receipt of the said notice. However, the Corporate Debtor has failed to reply or make good with the payment as demanded under the said notice. In view of the said recall notice, the date of default of the Corporate Debtor is 08.07.2021.
 - d. It is further pointed out that as per the Loan Agreement dated 26.05.2017, any event which after the notice or lapse of time or both would constitute an event of default.,: *“8.3 If any event of default or any event which, after the notice or lapse of time or both would constitute an event of default shall have happened, the borrower shall forthwith give to DHFL a notice thereof in writing specifying such event of default or such event”*.
 - e. Hence with the Recall Notice dated 29.06.2021, the date of default of the Corporate Debtor is 08.07.2021.
- 6.** Heard the Learned Counsels for the parties and perused the records.
 - 7.** The present petition is filed by the Petitioner M/s Piramal Capital and Housing Finance Limited (Substituted with ‘Omkara Assets Reconstructions Private Limited) against the Respondent namely, M/s Marvel Infrabuild Private Limited for a total default amount of Rs. 36,63,13,482/-as on 14.07.2022 together with interest, penal interest and charges.
 - 8.** The Corporate Debtor had entered into a Loan agreement dated 26.05.2017 with Dewan Housing Finance Corporation Limited. However, there was a




reverse merger of PCHFL with the erstwhile DHFL and the name was changed to PCHFL. It is observed that an amount of Rs. 64,95,00,000/- has been disbursed to the Corporate Debtor on 30.05.2017, 05.06.2017, 12.07.2017, 13.12.2017, 23.02.2018, 16.03.2018, 12.06.2018 and 08.01.2019.

9. It is the contention of the Petitioner that subsequent to the disbursement of loan amount by the financial creditor, the Corporate Debtor failed to adhere to the terms of the Loan Agreement and defaulted in making repayments.
10. However, the Petitioner submits that the date of default is 08.07.2021 (which is outside 10A period) and clarifies that the Petitioner has addressed a Demand Notice dated 29.06.2021 to the Respondent to repay the outstanding amount of Rs. 30,88,46,973/- as on 11.06.2021 within 7 (seven) days from the receipt of the Demand Notice, and accordingly the date of default has been taken as per the expiry date of Demand Notice period of 7 days i.e., 08.07.2021.
11. As per the NeSL record of default in Form 'D', the date of default is 15.09.2020, which is in contradiction to the date of default claimed by the Petitioner. In view of the above, it becomes necessary to examine as to what constitutes the '**Event of Default**' and accordingly, the '**date of default**'. As per the loan agreement dated 31.05.2017 (date of stamp paper being 26.05.2017), a total amount of Rs.65 crores was approved to be paid by DHFL (the name is subsequently changed to PCHFL as discussed above) and, on account of the assignment of the loan, the substitution of PCHFL with M/s. Omkara Asset Reconstruction Private Limited was allowed in I.A No.360/2023 vide order dated 3.07.2023.
12. It is noted that the Respondent in its reply has not disputed that fact that default has occurred. The main objection raised by the Respondent is that the default has occurred during the 10A period.
13. On a perusal of the loan agreement at Page 147 of the C.P, it is noticed that, under the heading "Repayment of Loan" it is stated as under:

"3. REPAYMENT OF LOAN"

3.1 Period of Repayment: The Borrower agrees to repay the said loan together with interest accrued thereon at the rate and manner stipulated in the Schedule I hereunder written. The



interest payment to be made by the 15th day of each month in advance for the respective month. It will be payable monthly from the date of first disbursement”.

14. Further in the Schedule given at Page 181 onwards in the C.P under Column-H, for Repayment of Loan, it is specified as under:

.”H. Repayment of Loan: In 24 equated monthly installments commencing after 36 months from the date of first disbursement. The due date of repayment will be the 15th day of every month”.

15. Moreover, at Page 161 of the C.P, in the Loan agreement at Para 8, ‘Event of Default’ has been specified as under:

“8. Event Of Default

8.1. Notwithstanding anything to the contrary contained in this agreement or other documents/writings, the whole of the loan shall become forthwith due and payable by the Borrower to DHFL and DHFL can enforce the security created in its favour upon the happening of one or more of the events specified in this clause (hereinafter called Events of Defaults).”

a) If there is a default in payment of any of interest or principal for two consecutive months; or

b) If there is any breach or violation of any of the terms of sanction of the said loan;

16. On a careful perusal of the above definitions and specifications regarding the Repayment schedule, Due dates of the repayment and the Event of default as per the loan agreement, it is clear that the due date of repayment commences after 36 months from the date of first disbursement, which is 30.05.2017 as mentioned above in Para 3(c). The date of first disbursement at Sl. No.1 was 30.05.2017, and accordingly the scheduled repayment date would commence from 15.06.2020, since it is to be the 15th day of every month in accordance with the loan agreement as stated above. Further, the definition of ‘Event of default’ stipulates that the whole of loan shall become due and payable if



there is a default in the payment of principal or interest for two consecutive months. Thus, the event of default as per definition would occur if there is default in the payment of the first two installments due on 15.06.2020 and 15.07.2020 for a period of two consecutive months. Accordingly, we are of the considered view that the date of default mentioned in the 'Record of default' in Form No. D issued by the NeSL as 15.09.2020 is on a firm footing; since the first two due dates of repayment were 15.06.2020 and 15.07.2020, and the Event of default is to be determined if there is a default in payment of the principal or interest for two consecutive months. Therefore, the date of default which has been stated to be 15.09.2020 by the NeSL in the Form 'D', after the expiry of two months from 15.07.2020, is proper.

- 17.** The contention of the Petitioner that since the last part-payment was received by the Corporate Debtor on 02.02.2021 (this was the only payment received after the above mentioned due dates of the installments), the date of default is taken by it on the basis of the subsequent legal notice dated 29.06.2021 issued to the Corporate Debtor, giving a period of the seven days from the date of the receipt of the notice for the payment of the outstanding debt. Since the debt was not paid, the date of default was taken to be 08.07.2021, after the period of seven days from the receipt of the notice. Such a contention is not legally tenable, since part payment on a subsequent date can only help the Corporate Debtor for the extension of limitation by treating the part payment as an acknowledgement of debt given by the Corporate Debtor, but not for the determination of the 'Date of default'.
- 18.** For considering the maintainability of the present Petition, the provisions of Section 10A of the IBC is being reproduced herein for the sake of clarity:

“Section 10A

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a Corporate Debtor for the said default occurring during the said period.



Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

- 19.** Further, the period specified in Section 10A was subsequently extended by Government Notification up to 24.03.2021 vide Notification number S.O 4638(E) dated 22nd December, 2020. Therefore, in accordance with this Section, no proceedings under Sections 7, 9 and 10 of the IBC can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021. The legislative intent is reflected in the Proviso to Section 10A of the Code which stipulates that "*no application shall ever be filed.....*" for the initiation of the CIRP "*for the said default occurring during the said period*". It is **abundantly** clear that the intention of the legislature is to completely bar the institution of any application ever for initiation of CIRP for the default having occurred during the period 25.03.2020 till 24.03.2021.
- 20.** In this case, the above detailed analysis of the Loan Agreement which has clearly specified the "*Event of Default*", consequent to the prescribed Schedule for the repayment of loan, which has also been separately and clearly specified, establishes the fact that the default in this case has clearly occurred during the period specified in Section 10A of the Code, i.e. between 25.03.2020 to 24.03.2021. Once the default has occurred in the said period, the claim of the Petitioner that it gets shifted to a date which is outside the specified period under Section 10A of the Code because of one particular part payment of the loan made on 02.02.2021, doesn't have any legal basis. Not only that, the Financial Creditor/Petitioner has chosen to issue a legal notice on 29.06.2021, and therefore, claimed that the date of default is now 08.07.2021, i.e. after the period of seven days from the receipt of such legal notice; which is not an acceptable argument legally. **If such an interpretation is made, the provisions of Section 10A of the Code would become meaningless and redundant. If such an argument is allowed to be accepted, in every such case where the default has occurred during the period specified under Section 10A, the Financial/ Operational Creditor would issue a legal notice as per their will and convenience,**



and opt to shift the date of default, which would enable them to defeat the provisions of Section 10A of the Code read with its Proviso.

21. Once a default has already occurred during the said period, there is no way that later on any notice under any legal provisions can be issued to restore the right of the Petitioners to file an application for initiation of CIRP. **The interpretation of a statutory enactment cannot be allowed to be made in such a manner which acts towards making it meaningless and redundant.** Therefore, the contention of the Petitioner, which would have the effect of negating the legislative bar under Section 10A of the Code against the filing of an application for initiation of CIRP cannot be treated to be legally tenable, and accordingly is liable to be rejected. It is also not understood that when the Petitioner wants to base its claim on part payment of the debt on 02.02.2021, what is the rationale of issuing a legal notice as late as 29.06.2021, which has been relied upon as the basis for selecting a “Date of Default”. As already discussed above, such a part payment of loan can at most be treated as an acknowledgment of the debt, which can be utilised for extension of limitation; but not for the purpose of deciding the occurrence of default and the date of default.

22. In this connection, it would be relevant to place reliance on the following decisions:

- (i) The Hon’ble NCLAT in the matter of “SLB Welfare Association v. PSA Impex Limited & others, C.A (AT)(INS)No. 905/2022 order dated 04.11.2022 held that *“the reason given by Adjudicating Authority for rejecting argument of Section 10A was based on alleged acknowledgment letter dated 03.06.2021 received from Corporate Debtor when the date of default given by Operational creditor in Section 9 Application is 31.03.2020, the mere fact that acknowledgment has been given by Corporate Debtor on 03.06.2021 accepting the debt, shall not change the date of default. We, thus, do not agree with the reasons given by the Adjudicating Authority that since acknowledgment is dated 03.06.2021, the date of default will become 03.06.2021. **The date of default and acknowledgment are two different events and date of default is not dependent on acknowledgment of debt**”.*



- (ii) The coordinate Bench of NCLT, New Delhi vide order dated 31.10.2023 in the case of “ *M/s DB Power Limited v Kreate Energy (I) Private Limited, in CP(IB)- 521/ND/2022* has held that “*the submission of the applicant that the dates of acknowledgement of liability towards the operational debt, the date of the last part payment, the date of issuance of cheque, the date of dishonour of the said cheque, the date of sending the demand notice, and consequential failure of the Respondent to pay the operational debt, having fallen after the period stipulated under Section 10A of the Code i.e., after 24.03.2021 and each of the said events gave rise to a fresh cause of action, being new date of default on the part of the Corporate Debtor to pay the operational debt to the Applicant, for preferring the present proceedings under Section 9 of the Code, 2016 cannot be accepted.*”

23. Accordingly, this Tribunal is of the considered view that the date of default stated by the Petitioner cannot be accepted in accordance with the above analysis of the definitions and specifications given in the Loan agreement; which clearly stipulated the “Repayment schedule”, and what constituted the “Event of Default”. It is therefore held that the default in this case clearly occurred during the exclusion period prescribed by Section 10A of IBC. Therefore, we are of the considered opinion that the date of default as stated in the R.O.D in Form ‘D’ issued by the NeSL is perfectly in order, which clearly demonstrates that the date of default is 15.09.2020, which falls within the ambit of the period excluded u/s 10A of the IBC, 2016.

24. Hence, the present petition bearing **CP (IB) No. 188 of 2022 is not maintainable and is hereby dismissed.**

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(K BISWAL)
MEMBER (JUDICIAL)