

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

ITEM No.165

TP 75 of 2019 [CP(IB) 60 of 2018]

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Omkara Assets Reconstruction Pvt Ltd  
V/s  
Powerage Towers Ltd

.....Applicant

.....Respondent

**Order delivered on 05/05/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

  
**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-sd-  
**MADAN B. GOSAVI**  
**MEMBER (JUDICIAL)**

Braj Mohan / A. Bhadauria

**BEFORE THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**CP(IB) 60/2018**

*[An application filed under Section 7 of the Insolvency  
and Bankruptcy Code, 2016]*

**In the Matter of:**

**Omkara Assets Reconstruction Private Limited**

A Company Incorporated under the  
Companies Act, 1956,  
Having its registered office at:  
9, M.P. Nagar, First Street,  
Kongu Nagar Extention,  
Tirupur- 641607

And

Corporate Office at:  
C/515, Kanakia Zillion,  
Junction of C.S.T. Road and L.B.S. Road,  
B.K.C. Annexe, Near Equinox,  
Kalina, Kurla (West)  
Mumbai- 400070  
Maharashtra

**...Applicant/Financial Creditor**

**Versus**

**Powerage Towers Limited,**

Having its registered office at:  
101 to 103, Indore Trade Center,  
2/3, South Tukoganj,  
Indore- 452001  
Madhya Pradesh

**...Respondent/Corporate Debtor**





**Order Reserved On: 24.03.2022**  
**Order Pronounced On: 05/05/2022**

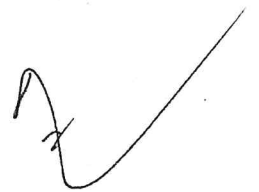
**Coram:**

**MADAN B. GOSAVI,  
HON'BLE MEMBER (JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH,  
HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Applicant: Mr. Anip Gandhi, Adv.  
For the Respondent: Mr. Pawan S Godiawala,



**ORDER****Per: Bench**

1. This application is filed by M/s Omkara Assets Reconstruction Private Limited ( initially filed by M/s L & T Finance Limited ) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“the IB Code”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **“AA Rules”**) to initiate Corporate Insolvency Resolution Process (hereinafter referred to as **“CIRP”**) against M/s. Powerage Towers Limited (hereinafter referred to as **“Corporate Debtor”**). The default amount stated by Applicant is Rs. 3,02,76,344/- including interest and the default date stated by Applicant is 10.06.2016. The name of the present applicant was substituted in place of M/s L & T Finance Limited vide order dated 06.02.2020 passed by this Adjudicating Authority in IA 23 of 2020.

2. The Corporate Debtor is a limited company incorporated under the provisions of the Companies Act, 1956, having CIN No. U31300MP2005PLC017880, its registered address is 101 to 103, Indore Trade Centre, 2/3, South Tukoganj, Indore, Madhya Pradesh 452001. The Registered Office of the Corporate Debtor is situated in Indore (MP) and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application.



3. The Applicant Company submits that it has sanctioned 2 term loans and 1 vendor finance facility to the Corporate Debtor. The details of aforesaid credit facilities along with the default date as under;

**i.** Term Loan- 4,00,00,000/- (Rupees Four Crore)

Date of Sanction- 02.07.2013

Disbursed amount- 4,00,00,000/-

Date of Default- 10.06.2016

**ii.** Vendor Finance Facility- 2,50,00,000/-

Date of Sanction- 04.12.2014

Disbursed amount- 2,33,15,765/-

Date of Default- 20.09.2016

**iii.** Refinance- Asset Backed Term Loan-  
51,00,000/-

Date of Sanction- 16.12.2014

Disbursed amount- 51,00,000/-

Date of Default-01.08.2016

4. The Applicant further submitted that for securing the aforesaid credit facilities necessary securities and guarantees were also furnished by the Corporate Debtor. The Applicant also submitted that the Corporate Debtor has failed to honor the terms and conditions of the credit facilities granted by the Financial Creditor. Hence, this present application was filed by the Financial Creditor for initiation of the Corporate Insolvency Resolution Process.

5. The Corporate Debtor filed its reply dated 02.04.2018 before this Adjudicating Authority and oppose the present

KIA

4 | Page

application. Following submissions are made by the Corporate Debtor:

**i.** It is submitted by the Corporate Debtor that the present application is not maintainable on the ground that the amount claimed under this application is not a debt.

**ii.** It is also submitted by the Corporate Debtor that an agreement was formed by and between the L&T Limited and Power Grid Corporation of India (hereinafter referred to as "PGCIL") on 24.10.2013 for fabrication and galvanization tower by the L&T Limited with increased capacity from 95,000 MTPA to 1,19,000 MTPA. The L&T Limited assigned a work of manufacturing of 24000 MTPA to the Corporate Debtor. For the execution of the work a license deed dated 22.01.2014 came to be executed between L&T and the Corporate Debtor.

**iii.** It is also submitted by the Corporate Debtor for the execution of the work assigned by L&T Limited. During the lease period, the applicant advanced a term loan for acquiring specific machine to be utilized for the purpose of executing the contract that L&T Limited had with PGCIL. The L&T limited terminated the agreement on 29.06.2016 thereafter the machines which were purchased from the funds obtained from the applicant which is a subsidiary company of the L&T Limited was became idle. Finally, a settlement dated 20.02.2017 took place

KD

between L & T Limited and Corporate Debtor after revocation of bank guarantee by the L & T Limited and proceedings arrived therefrom and after initiation of arbitration proceedings bearing No. 227 of 2017 by the L & T limited. As per the settlement, the Corporate Debtor is not liable to pay any amount to the L & T Limited as the said agreement was a full and final settlement.

6. The Applicant in its written submission dated 04.01.2022 made the following rebuttal submission:

**i.** That the present Applicant is not a party in the settlement agreement executed between L & T Limited and the Corporate Debtor.

**ii.** That the Arbitration Petition is pending between the original Applicant i.e., M/s L & T Finance Limited, and the Corporate Debtor, however, it has not commenced and even if there are parallel proceedings or any other remedy availed under any law, it would not bar the proceedings filed under the Code.

**iii.** That the Corporate Debtor even after the reply has admitted its liability by offering an amount of Rs. 50 Lacs towards one-time settlement, same was accepted by the petitioner vide letter dated 31.03.2021. The Corporate Debtor failed to make the payment and the settlement was revoked vide letter dated 29.04.2021.



6 | Page

**iv.** That a revised settlement was offered of Rs. 52 Lacs payable by 31.12.2021. The said revised settlement offer was rejected by the Applicant.

7. Heard the Learned Counsel of both the parties and perused the record. Following are the observations:

**i.** It is noted that the total amount of Rs. 6,84,15,765/- was sanctioned to the Corporate Debtor and after securing the aforesaid credit facility/loan amount the Corporate Debtor executed various guarantees but due to the non-compliances of terms the account of the Corporate Debtor classified NPA. At the present amount of Rs. 3,02,76,344/- is to be paid by the Corporate Debtor to the Applicant. Moreover, there is no dispute raised by the Corporate Debtor with respect to the said outstanding amount.

**ii.** It is noted that the Corporate Debtor has raised an objection that the claim amount is not financial debt in the light of an agreement between L & T Limited and Corporate Debtor for the execution of work and the settlement agreement between aforesaid both companies that Corporate Debtor is not liable to pay any amount to the L & T Limited which is a holding company of L & T Finance Limited is not valid though the L & T Finance Limited subsidiary of L & T Limited but both the Company are different entities if any settlement agreement or work agreement execute between L & T Limited and

*JKD*

*A* 7 | Page

Corporate Debtor the same cannot be enforced against the Applicant without any express or implied agreement.

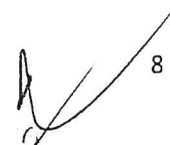
**iii.** It is further noted that the Corporate Debtor has furnished 3 promissory notes to the Applicant for the payment of the various financial services availed. It clears that the amount is payable by the Corporate Debtor.

**iv.** It clearly establishes that the Corporate Debtor had defaulted to make the payment of outstanding amount to the Applicant which is well within the limitation as the application was filed on 19.01.2018 which also meets the threshold limit under Section 4 of IB Code, 2016.

**v.** The present application is otherwise complete in terms of section 7 IB code. In view of evidence and material on record, we hold that this application is allowed. We pass the following order:

### **ORDER**

1. Corporate Debtor M/s Powerage Towers Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Dhiren Shantilal, registration no. IBBI/IPA-001/IP-P00220/2017-2018/10419 under section 13(1) (c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 22.04.2022 till the completion of



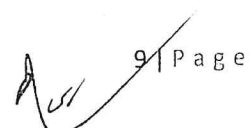
8 | Page

Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

4. That the Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the

 9 | Page

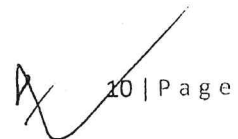
IRP as and when he takes charge of assets and management of the Corporate Debtor.

7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.

8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 1,00,000/- as fees & expenses till the COC decides about his fees / expenses.



10 | Page

11. The Registry is directed to communicate this order to the Applicant-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

13. This Application CP(IB) 60 of 2018 is allowed and disposed of.



**Kaushalendra Kumar Singh**

**Member (Technical)**



**Madan B. Gosavi**

**Member (Judicial)**

KN