



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

**CP. (IB) No. 32/CB/2022**

***In the Matter of:***

An application filed under Section 7 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016;

**-And-**

***In the Matter of:***

**Omkara Assets Reconstruction Pvt.Ltd. having registered office at- No.9, M.P. Nagar First Street, Kongu Nagar Extension Tirupur Coimbatore 641 607, Tamilnadu;  
...Financial Creditor**

**-Versus-**

**GEEKAY Colonizers and Builders Limited, Shop No.6&7, sector-1, Steet-A, Geekay Township, Siltara, Raipur, Chhattisgarh, 492 001.**

**...Corporate Debtor**

***Appearances (through video Conference):***

For the Applicant : Mr. Ratnakaro Banerjee, Sr. Advocate,  
For Venugopal Mahapatra Advocate.

For the Respondent : Mr. Umesh Chandra Sahoo, Advocate.

**Order reserved on: 06.11.2023  
Order pronounced on: 29.11.2023**

Coram:

Shri P. Mohan Raj, : Member (Judicial)  
Shri Kaushalendra Kumar Singh : Member (Technical)

**ORDER**

1. This petition is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.



**2. Brief facts of the petition are as follows:** The petitioner/financial creditor M/s. Omkara Assets Reconstruction Pvt Ltd is an assignee of Piramal Capital & Housing Finance Limited. The assignor Piramal Capital & Housing Finance Limited originally filed this petition for initiation of corporate resolution process against the corporate debtor/respondent. The project loan was sanctioned to the corporate debtor by DHFL (Dewan Housing Finance Limited) for a sum of Rs.94,00,00,000/- on 19.01.2012. The corporate debtor executed a loan agreement on 30.01.2012 and availed a loan of Rs.69,00,00,000/- out of sanctioned loan of Rs. 94,00,00,000/- The loan was disbursed in three parts viz Rs.24,67,00,000/- on 31.01.2012, Rs.37,33,00,000/- 6.02.2012 and Rs.7,00,00,000/-on 30.09.2015. The loan amount was repayable by the corporate debtor in 24 equal monthly instalments after 48 months from the date of first disbursement. The interest was payable on 1<sup>st</sup> day of every month in advance. When the respondent failed to pay the instalment the original lender DHFL recalled the entire loan and demanded Rs.57,43,10,538/-payable by corporate debtor as on 15.01.2016. The corporate debtor even failed to pay the amount as per the repayment plan OTS proposal submitted by it on 13.03.2018.

3. In the meanwhile, the Reserve Bank of India initiated a corporate Insolvency Resolution process against DHFL before NCLT-Mumbai. On 3.12.2019 petition filed by the Reserve Bank of India against DHFL was admitted by NCLT- Mumbai Bench. The resolution plan submitted by Piramal Capital & Housing Finance Limited was approved by NCLT-Mumbai by order dated 07.01.2021, pursuant to which by way of reverse merger Piramal Capital & Housing Finance Limited had merged into DHFL with effect from 30.09.2021. Then on 03.11.2021, the name of company DHFL has been changed into the Piramal Capital & Housing Finance Limited. This petition was filed under section 7 of IBC by the Piramal Capital & Housing Finance Limited on 05.07.2022 against the corporate debtor. When the petition was pending on 10.01.2023 the present petitioner Omkara Assets Reconstruction Private Ltd, and Piramal Capital & Housing Finance Ltd entered into an assignment agreement. The Omkara Assets



Reconstruction Private Ltd as an assignee filed I.A.No.70/CB/2022 for substitution of the Omkara Assets Reconstruction Pvt, Ltd in the place of Piramal Capital & Housing Finance Ltd, the said substitution petition was allowed on 11.07.2023. Thus, the assignee M/s. Omkara Assets Reconstruction Private Ltd with the leave of this Authority continues the petition against the corporate debtor.

4. **Brief facts of the Reply are as follows:** The corporate debtor developed a township project under the name “KALPVRIKSH”. The term loan of Rs. 94 crore was sanctioned by DHFL on 19.01.2012, however out of said sanctioned loan a sum of Rs.62 crore was only disbursed to the corporate debtor by DHFL at 21% interest. The term loan was repayable in 24 monthly instalments commencing after 48 months from the date of first disbursement. That due to shortage of funds, the corporate debtor and its directors entered into MOU dated 13.07.2012 with effect from 23.06.2012 with Mr. Vinod Kumar Jain and Mr. Vijay Nagpur. Under the MOU Mr. Vinod Kumar Jain and Mr. Vijay Nagpur agreed to take over the project “Kalpvriksh” It was agreed to open a separate Bank account to deposit all the sale proceeds of the plots under the said project. It was also agreed to utilize the sale proceeds of the plots to pay the interest and principal of loan availed from DHEF. The corporate debtor authorized Mr. Vinod Kumar Jain to execute and register the sale deeds in favour of the buyers of plots on behalf of the corporate debtor. The said Mr. Vinod Kumar Jain fraudulently executed power of attorney in favor of Mr. Vijay Nagpur authorizing him to execute and register the sale of plots of the corporate debtor. The said Mr. Vinod Kumar Jain and Mr. Vijay Nagpur with dishonest intention and without any authorization from the corporate debtor opened several bank accounts in the name of corporate debtor. Mr. Vijay Nagpur without authorization of the corporate debtor sold various plots and villas and not utilized the said sale proceeds to pay of the interest and principal of the loan availed from DHEF in violation of MOU. The corporate debtor filed a criminal complaint against Vijay Nagpure and Vinod Jain. That due to the siphoning of funds by Vijay Nagpure and Vinod Jain, the corporate debtor could not pay the debt. The DHFL then



by letter dated 15.06.2016 recalled the loan. Subsequently, DHFL went into CIRP and during that period the loan was recalled hence the petition is barred by limitation. The present petitioner is not entitled to file this petition since the loan is barred by limitation. The Piramal Capital and Housing Finance Limited submitted a resolution plan which was approved by Authority, and then the management of DHFL comes under the SRA Piramal Capital and Housing Finance Limited. In the present petition date of default is arbitrarily fixed as 30.06.2022 which is incorrect. In part IV of the petition, the petitioner stated that after the payment of Rs.29,95,00,000/-the date of default is 11.12.2016. There is no acknowledgment of debt by the corporate debtor. The financial creditor failed to file the petition within three years period as provided under Article 137 of Limitation Act, 1963 from 11.12.2016. The financial creditor Piramal Capital and Housing Finance Limited, does not have any locus to file and pursue the present petition, in the absence of any specific provision made in the resolution plan. Hence the petition is liable to be dismissed.

**5. Brief facts of the rejoinder are as follows:** The present petitioner/Financial creditor Omkara Assets Reconstruction Private Limited effectively stepped into the shoes of Piramal Capital and Housing Finance Ltd. The original lender DHFL never ceased to exist under the terms of the resolution plan submitted by PCHFL which was approved by NCLT-Mumbai by order dated 07.06. 2021. That DHFL continued as an individual entity under the plan in fact PCHFL merged into DHFL with effect from 30.09.2021. Thereafter on 3.11.2021, the name of DHFL was changed to Piramal Capital and Housing Finance Limited, which filed the present petition. It is incorrect to state that the date of default is provided in the petition as 30.06.2022, it is the date of affirmation made by the authorized signatory of the petitioner. It is denied that the financial creditor has only provided the date of default in part IV of the application as 11.12. 2016. The financial creditor elaborated in part IV of the petition that the default shifted from time to time. The first date of default is 22.06.2016 thereafter 11.12.2016 and thereafter by virtue of acknowledgement of debt shifted to 28.06.2018. The



sequence of events proves that the petition is filed in time. The respondent failed to pay monthly instalments consecutively for three months from October 2015 to December 2015. The account of the corporate was declared as NPA by DHFL on 1.1.2016. The amount paid subsequently were adjusted for previous outstanding EMIs. The DHFL issued notice dated 15.06.2016 by which recalled the loan granting seven days' time by 22.06.2016. The corporate debtor thereafter submitted repayment plan OTS vide letter dated 14.02.2018 proposed to pay Rs.43,00,00,000/--by 28.06.2018. In pursuance of OTS proposal, the corporate debtor paid a sum of Rs.29,95,00,000/- and failed to pay the balance amount. As per the terms of OTS proposal, since the corporate debtor not paid the entire amount within stipulated time the OTS proposal stood automatically revoked and the corporate debtor is liable to pay entire amount as there was no OTS proposal. In the situation, the petition is filed in time.

**The points for consideration are:**

1. Whether the present petitioner M/s Omkara Assets Reconstruction Private Ltd has locus standi to maintain this section 7 IBC 2016 petition?
2. Whether the petition is barred by limitation?

**Point No.1:** The present petition was originally filed by Piramal Capital & Housing Finance Limited. During the pendency of petition, the present petitioner Omkara Assets Reconstruction Pvt Ltd entered into an assignment agreement dated 10.01.2023. On the strength of Assignment agreement application, I.A.No.70/CB/2023 was filed by the present petitioner for substitution, the said application was allowed on 11.07.2023. The assignment agreement empowers the present petitioner to proceed with the petition. There is no much dispute in this regard. The main contention of the respondent is the original petitioner/assignor the Piramal Capital & Housing Finance Limited, itself is not a competent person to file the petition as a financial creditor of the respondent because the Piramal Capital & Housing



Finance Limited, has not lent any financial assistance to the corporate debtor, in fact the corporate debtor availed loan only from DHFL.

6. On the respondent side admitted that it availed a term loan of Rs.62 crore from DHFL out of sanctioned loan amount of Rs.94 crores dated 19.01.2012. As per the terms of loan agreement the corporate debtor shall repay the loan amount in 24 equal monthly instalments. The repayment of loan commences after 48 months from the date of first disbursement of loan amount.

7. The Reserve Bank of India initiated Corporate Insolvency Proceeding against the financial sector DHFL as provided under Rule 5(a)(i) of Insolvency and Bankruptcy (Insolvency and Liquidation proceedings of financial service providers and Application to Adjudicating Authority) Rules 2019, before the NCLT-Mumbai. The said petition was admitted on 3.12.2019 and CIRP was initiated against DHFL. The Piramal Capital & Housing Finance Limited submitted a resolution plan it was approved by NCLT-Mumbai on 07.01. 2021. The NCLT-Mumbai while approving the resolution plan granted permission for reverse merger of the successful Resolution applicant Piramal Capital & Housing Limited into and with DHFL the corporate debtor. As per the plan approved by the NCLT-Mumbai bench DHFL continued as a juristic person, the resolution applicant Piramal Capital & Housing Finance Limited merged with DHFL with effect from 30.01.2021. After some time, the name of the company DHFL was changed as Piramal Capital & Housing Finance Limited, after the name change the petition was filed in the changed name of DHFL i.e., Piramal Capital & Housing Finance Limited. Thus, DHFL continues in operation, only its name has been changed into Piramal Capital & Housing Finance Limited with effect from 3.11.2021. The DHFL financial creditor continued as such and now with the changed name as Piramal Capital & Housing Finance Limited, filed the section 7 IBC petition, because of initiation of CIRP by RBI against the DHFL its rights not extinguished, further because of merger of Piramal Capital & Housing Finance



Limited, with DHFL also not altered its position, hence it is concluded that petition originally filed by the Piramal Capital & Housing Finance Limited as a financial creditor and continues by the present petitioner Omkara Assets Reconstruction Pvt Ltd is valid thus this point is answered.

**Point No.2:** The primary defense of the respondent/corporate debtor is the petition is barred by limitation. There is no acknowledgment of debt by the corporate debtor. To decide the limitation, the following dates and events are necessary. The original financial creditor Dewan Housing Finance Corporation Limited DHFL sanctioned a term loan of Rs94,00,00,000/- to corporate debtor on 19.01.2012. The loan agreement was executed on 30.01.2012. Out of sanctioned loan amount a sum of Rs.69,00,00,000/- was disbursed in three parts. The first part amount of Rs.24,67,00,000/- was disbursed on 31.01.2012. As per the sanctioned letter the interest of 21.00% p.a payable monthly on 1<sup>st</sup> day of every month. The equated monthly installments commence after 48 months from date of first disbursement. When the respondent failed to pay the monthly instalments for three consecutive months from October 2015 to December 2015 its account was declared as non-performing assets NPA on 01.01.2016. The DHFL the original lender recalled the loan by notice dated 15.06.2016 granting a week time till 22.06.2016. The corporate debtor later submitted OTS proposal by e-mail dated 14.02.2017, the DHFL after considering the OTS proposal of the respondent, agreed for a sum of Rs.43,00,00,000/- by 28.06.2018. The acceptance of OTS proposal communicated to the respondent by letter dated 13.03.2018 Annexure R of the petition. In pursuance of it, the respondent paid a part payment of Rs.29,95,00,000/- but failed to pay the remaining amount within the stipulated time. Then the petition is filed under section 7 of IBC 2016 for the principal due amount of Rs.29,67,42,363 and for interest and other charges of Rs.70,24,85,286/- in total for a sum of Rs.99,92,27,649/- as on 30.04.2022.



8. The respondent at first defaulted in payment of amount on 1.10.2015, when default continued for two subsequent months, then the account of the corporate debtor was declared as NPA on 1.1.2016. In that event limitation started from the first default dated 01.10.2015, before the expiry of three years the respondent submitted OTS proposal for a sum of Rs.43,00,00,000/- by e-mail on 14.02.2018 *Annexure B of additional document* for a sum of Rs.43,00,00,000/- it was accepted on 13.03.2018, in pursuance of submission of OTS proposal the respondent paid a sum of Rs.15 crores on 16.02.2018. The receipt of the said amount from the sale consideration of project Kalpvirksh is admitted/acknowledged by DHFL in the OTS acceptance letter dated 13.3.2018 *Annexure R of petition*. The corporate debtor thus acknowledged the debt by submitting OTS by e-mail dated 14.02.2018 and also acknowledged the debt by making part payment of Rs.15 crore on 16.02.2018. Further before the expiry of three years from 14.02.2018/16.02.2018 the corporate debtor acknowledged the debt by another OTS proposal dated 7.02.2021 submitted on 12.02.2021. This petition has been filed on 05.07.2022. Thus, the corporate debtor acknowledged debt by submitting OTS proposals and making part payments by which limitation period is extended and the petition is filed within three years period of limitation. Thus, it is answered to the point that the petition is not barred by limitation.

9. On the respondent side also submitted that the petitioner has arbitrarily given the date of default and the date of default is not specifically mentioned in part IV of the petition. In the petition, Part IV (2) the petitioner has not precisely given the date of default. It is mentioned at page No.21 of the petition that the corporate debtor defaulted to pay the installments consecutively from October 2015 till December 2015. Then it is stated that the account of the corporate debtor termed as NPA on 1.1.2016. By notice dated 15.06.2016, the loan was recalled granting time till 22.06.2016. Then it is stated that the date of default is 11.12.2016. In NeSL certificate also date of default is mentioned as 11.12.2016. Further, on the basis of OTS proposal, the date of default is claimed as 28.08.2018. The petitioner stated that account of the respondent was



declared as NPA on 1.1.2016, then the date of default must be prior to NPA but here the date of default is claimed on 11.12.2016 subsequent to NPA. The NPA follows default, not vice versa. As correctly pointed out by the respondent counsel the date of default is not specifically given in the petition. The point is whether such a failure to mention the date default in part iv of the petition is fatal to the petition. From the records available it is made clear that the respondent committed default to pay the instalment for the month of October 2015 it leads to declare the account of corporate debtor as NPA on 1.1.2016. When the particulars and materials are available to ascertain the date of default, it will not be fatal. In this regard the Hon'ble NCLAT in its order in *Mr. Manmohan Singh Jain Vs. M/s. State Bank of India & another (Company Appeal (AT) (CH) (INS) No. 97 of 2021)* wherein the Hon'ble NCLAT held that: -

*52) Further the Learned Counsel for the Appellant relied upon the Judgment of the Hon'ble Supreme Court in Surendra Trading Co. v Juggilalkamlapat Jute Mills Co., 2017 85 taxmann.com 372 SC to show that the timelines under Section 7(5) of the Insolvency and Bankruptcy Code are not mandatory however the defect has still to be removed. As stated above, the Respondent/Financial Creditor had stated the date of default in the pleadings and in other documents which the Corporate Debtor has received and acknowledged, therefore as held supra the non-mentioning of the date of default in Col. IV is not fatal to the application and on the sole ground, the application cannot be rejected mere taking a technical impediment as held by the Hon'ble Supreme Court that 'it is only a directory'.*

10. In the aforementioned case the Hon'ble NCLAT clearly stated that the absence of a default date in the Part IV of the application will not be a reason for the dismissal



of an application. Therefore, the contention of the Corporate Debtor regarding flaw in non-mentioning of specific date of default in Part IV of Petition is not fatal.

11. In these circumstances in view of the answers arrived to the points framed we inclined to admit the petition. The financial creditor has taken consent from **Mr. Arun Kumar Gupta**, registration No. IBBI/IPA-001/IPP00013/2016-2017/10037, having contact address, P-15 Bentinck Street, 3<sup>rd</sup> Floor, Kolkatta 700001, Email: [guptaarunkumar2001@yahoo.com](mailto:guptaarunkumar2001@yahoo.com) an insolvency Professional to become interim Resolution Professional (IRP) of the Corporate Debtor in FormNo.2 and that no disciplinary proceedings are pending against him.

12. We therefore consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor.

13. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

(i) The Corporate Debtor **GEEKAY Colonizers and Builders Limited**, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

*(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 Securitisation 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 the possession of the corporate debtor.*

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) As approved by the Financial Creditor, we appoint **Mr. Arun Kumar Gupta**, Registration No. IBBI/IPA-001/IPP00013/2016-2017/10037, having contact address, P-15 Bentinck Street, 3<sup>rd</sup> Floor, Kolkatta 700001, Email: guptaarunkumar2001@yahoo.com to act as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) 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. The corporate debtor to provide effective assistance to the



IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) 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 under section 19 of the Code extending 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.

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

(ix) The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and to the concerned Registrar of Companies, of IBBI after



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completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

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

14. Interim Resolution Professional shall file 1<sup>st</sup> Progress Report within six weeks from the date of this order.

15. Thus, the corporate debtor **Geekay Colonizers and Builders Limited**, CP (IB) No.32/CB/2022 is admitted into CIRP.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**KAUSHALENDRA  
KUMAR SINGH**

Digitally signed by  
KAUSHALENDRA KUMAR SINGH  
Date: 2023.11.29 12:41:21 +05'30'

**PANDIAN MOHAN  
RAJ**

Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2023.11.29 15:30:48 +05'30'

**Kaushalendra Kumar Singh**  
**Member (Technical)**

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this, 29<sup>th</sup> day of November, 2023.

*Supriya\_P.S*