



**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)
(Through web-based video conferencing platform)*

C.P (IB) No. 11/BB/2023

U/s 7 of the IBC Code r/w Rule 4 of
Insolvency and Bankruptcy (AAA) Rules, 2016

In the matter of:

OMKARA ASSETS RECONSTRUCTION PVT., LTD.

Registered office situated at
No.9, M.P Nagar, First Street,
Kongu Nagar Extension, Tirupur,
Coimbatore, TamilNadu-641607 --- Financial Creditor/Petitioner

Versus

DIVYA INFRA PROPERTIES PRIVATE LIMITED

Registered office situated at
No.4, Abbigere Main Road,
30, Kammagondanahalli,
Bengaluru - 560015 --- Corporate Debtor/ Respondent

Order delivered on: 31st October, 2023

Coram: 1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Angad Verma
For the Respondent : Shri Arjun Ajay

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)


1. The present petition is filed on 20.10.2022 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 **Omkara Assets Reconstruction Private Limited** (for brevity '**Financial Creditor/Petitioner**') interalia seeking Corporate Insolvency Resolution Process against **Divya Infra Properties Private Limited** (hereinafter referred as '**Corporate Debtor/Respondent**) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.47,59,12,611/- (Rupees Forty Seven Crore Fifty Nine Lakhs Twelve Thousand Six Hundred Eleven only) as on 06.09.2022.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner as follows:

- I.** The Financial Creditor is a company incorporated under the Companies Act, 1956 and registered as a Securitization and Reconstruction Company pursuant to section 3 of the SARFAESI Act, 2002.
- II.** The Corporate Debtor i.e. Divya Infra Properties Private Limited ("Divya Infra") is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of real estate construction and development.
- III.** Divya Infra had availed a project loan amounting to Rs.20 Crores (Rupees Twenty Crores only) pursuant to a Loan Agreement dated 31st January 2015 (Loan Agreement) which was executed between Dewan Housing Finance Corporation Limited ("DHFL") and the Corporate Debtor on the terms and conditions contained in the Loan Agreement and DHFL's Sanction Letter dated 30th January 2015. The Loan amount carried a floating rate of interest of 18.50% p.a. payable monthly and penal interest @24% p.a payable with monthly rests charged on the overdue amount of interest (PEMI) and/or EMI. The loan facility so provided by the Financial Creditor is secured by various securities provided by the Corporate Debtor.
- IV.** It is submitted that on a petition moved by the Reserve Bank of India, Corporate Insolvency Resolution Process was commenced



against DHFL. A Resolution Plan dated December 22, 2020 submitted by Piramal Capital & Housing Finance Limited (Successful Resolution Applicant) was approved by the National Company Law Tribunal, Mumbai on June 7, 2021 pursuant to which by way of reverse merger the Successful Resolution Applicant has merged into DHFL with effect from 30th September 2021. Thereafter, on 3rd November 2021 the name of DHFL was changed to Piramal Capital and Housing Finance Limited (“PCHFL”) which remains the continuing legal entity.

- V.** Thereafter, an assignment agreement dated 10th January 2023 (Assignment Agreement”) was executed by and between PCHFL and Omkara Assets Reconstruction Private Limited (“Applicant”) on account of which PCHFL assigned various loans including the financial assistance extended under the loan agreement together with all rights, title and interest in the financing documents and the underlying security interest, pledges and/or guarantees in respect of such loan infavour of the Applicant herein.
- VI.** Accordingly, by virtue of the Assignment Agreement all rights, claims, title interest, business, loans and advances whether recoverable in cash or in kind or in value to be received etc. by PCHFL stand transferred to and vested in Omkara i.e. the Applicant/Financial Creditor herein.
- VII.** The principal amount under the loan agreement was to be repaid in 36 equated monthly instalments commencing after 24 months from the date of first disbursement. The Corporate Debtor has defaulted and failed in fulfilling its payment obligations under the Loan Agreement and has committed a default in terms of Clause 7. In accordance with Part IV of Form No.1 the date of default is mentioned as 15.09.2016.
- VIII.** It is stated that as on 6th September 2022, the Corporate Debtor is liable to pay to the Financial Creditor a total outstanding sum of Rs.47,59,12,611/- which comprises of Rs.17,13,03,598/- as principal and Rs.30,46,09,013/- as interest, additional interest

and other charges. The debt owed by the Corporate Debtor to the Petitioner is not disputed in the present case. Hence the Petition.

- IX.** In support of its case, the Petitioner has filed the following:
- a. *Sanction letter dated 30.01.2015 issued by the Financial Creditor to the Corporate Debtor at Page 46 to 71 of the petition.*
 - b. *Loan Agreement dated 31.01.2015 between Divya Infra Properties Private Limited and Deewan Housing Finance Corporation Limited;*
 - c. *Copy of the Demand notice dated 19.02.2021 issued under Section 13 (2) of the SARFAESI Act and the notice of possession under Section 13 (4) of the SARFAESI Act;*
 - d. *Copy of the email communication dated 02.03.2021 in which the Corporate Debtor acknowledged debt towards Financial Creditor.*
 - e. *Copy of the Financial Statements for the FY. 2018-2019 along with the bank statement showing the part payment made by the Corporate Debtor acknowledging the debt to be due.*
 - f. *Record of default report dated 12.09.2022 issued by Information Utility – NeSL.*

3. Heard the Learned Counsel for the Petitioner and perused the records available.
4. On 08.02.2023, notice was issued to the Corporate Debtor and the Financial Creditor was directed to file the affidavit of service along with tracking report within two weeks. Pursuant to the notice, the Ld. Counsel for the Corporate Debtor appeared on 11.04.2023 and requested time to file its objections. However, even after giving sufficient opportunities for the Corporate Debtor to file their reply, the same was not filed. Therefore, on 02.08.2023, this Adjudicating Authority forfeited the right to file the reply by the Corporate Debtor and the matter was decided to be proceeded with.



5. On 26.06.2023, the Ld. Counsel for the Petitioner was directed to give clarification on the limitation issue since the first date of default in Form-1 is mentioned as 15.09.2016. Pursuant to the same, the Ld. Counsel for the Petitioner has filed the affidavit vide Dy. No.1936 dated 10.04.2023 explaining the limitation issue. Further, the Petitioner Counsel during his submissions on 25.09.2023 explained that as per the balance sheet dated 31.03.2019 of the Corporate Debtor which is attached to the C.P, towards the outstanding amount, the name of DHFCL is clearly shown. Further, DHFL was merged by reverse merger with M/s. Piramal Capital Housing and finance Limited (PCHFCL), the original lender in the case. It is further submitted that there is a letter of acknowledgement of the Corporate Debtor dated 02.03.2021 which is filed at Page 275 of the petition in which the debt is acknowledged. Therefore, the limitation aspect is taken care of.
6. Further, while reserving the C.P for orders on 25.09.2023, the Ld. Counsel for the Respondent was permitted to file his written submissions within one week; however the same has not been filed.
7. The present petition is filed by the Financial Creditor i.e. Omkara Assets Reconstructions Private Limited under Section 7 of the IBC, 2016 to initiate Corporate Insolvency Resolution Process against Divya Infra Properties Private Limited on the ground that the Corporate Debtor has committed default for a total amount of Rs.47,59,12,611/- as on 06.09.2022.
8. It is observed that the amount in default as per Part IV of Form-1 is Rs.47,59,12,611/- which is well within the threshold limit prescribed. The other issue for consideration is whether present application is filed within the limitation. The first date of default is mentioned in Part-IV of Form-1 as 15.09.2016. The Balance sheet of the Corporate Debtor for FY.2018-19 which is attached to the C.P at Page 289 reflects the liability of the Corporate Debtor towards the Financial Creditor which shows the outstanding amount in the name of DHFL at Page 302. It is



already stated above that PCHFL is merged with DHFL following the order of NCLT, Mumbai and the name of DHFL was changed to PCHFL. Therefore, the reflection in the Balance Sheet of FY 2018-2019 of this amount in the name of DHFL will be treated as acknowledgement of debt as on 31.03.2019. Moreover, the Corporate Debtor vide email dated 02.03.2021 has also acknowledged the debt was due and outstanding amounts were to be paid to the Financial Creditor and request for settlement was also made, hence the fresh limitation will be counted from this date and the present company petition is filed on 20.10.2022. Hence the petition is filed within the period of limitation.

9. In view of the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore only), the petition is **admitted** in respect of the Respondent **Divya Infra Properties Private Limited** under section 7 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- 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 the possession of the Corporate Debtor.*
- e. *It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- f. *The provisions of Sub- Section (1) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
- g. *The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;*
10. The Financial Creditor has proposed the name of Mr.Prakul Thadi, a qualified Insolvency Professional having Registration No.IBBI/IPA-002/IP-N01149/2021-2022/13086 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written consent given by the IRP in Form-2 dated 13.07.2022 has been filed along with C.P at Page: 362-363 wherein it is declared that he is eligible to be appointed as IRP in respect of the Corporate Debtor and no disciplinary proceedings are pending against him with the Board or The Indian Institute of Insolvency Professional of ICAI.
11. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Prakul Thadi there is nothing adverse against him. In view of the above, the Bench appoints **Mr. Prakul Thadi**, having Registration No. IBBI/IPA-002/IP-N01149/2021-2022/13086 with address at Flat No.1405, J Block, Rainbow Vistas, Green Hills Road, Moosapet, Hyderabad-5600018 Email id:



prakulthadi@hotmail.com, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.

12. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two 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.
13. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
14. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd-

**T.KRISHNAVALLI
MEMBER (JUDICIAL)**