

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303

Inv.P/9(AHM)2022 in C.P.(IB)/163(AHM)2022

Order under Section 60(5) (C) IBC,2016 r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

MukeshKumar Jayantilal Parekh & Ors

.....Intervener/Applicants

Order delivered on: 11/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

**Inv. P. No. 09 of 2022 in
CP (IB) No. 163 of 2022**

*(Application under Section 60(5) (c) of the Insolvency and
Bankruptcy Code, 2016 r/w rule 11 of NCLT Rules, 2016)*

Mr. Mukesh kumar Jayantilal Parekh & Ors.
Flatowners of Devenandan Summit
(Project of Devnandan Infracon Pvt. Ltd.)

Intervener/Applicant

IN THE MATTER OF:

**Omkara Assets Reconstruction
Private Limited**

Registered office at:
No. 9, M.P. Nagar First Street,
Kongu Nagar Extension, Tirupur
Coimbatore, Tamil Nadu.

**Petitioner/
Financial Creditor**

VERSUS

Devnandan Infracon Private Limited

Registered office at:
203, Ashirvad Complex, Dharnishar Derasar Road,
Bhatta Paldi, Vasna, Gujarat

**Respondent/
Corporate Debtor**

Order pronounced on: 11.10.2023

CORAM: SHAMMI KHAN (Member Judicial)
SAMEER KAKAR (Member Technical)

APPEARANCE:

For the Applicant: Mr. Vishal Dave, Adv in Inv. P/9(AHM)2022
For the Respondent: Mr. Jay Kansara, Adv. for Wadia Ghandy &
Co. in Inv.P/9(AHM)2022

O R D E R

1. An application under section 7 bearing C.P. No.163 of 2022 was originally filed by **PIRAMAL CAPITAL & HOUSING FINANCE LIMITED** (Formerly known as Dewan Housing Finance Corporation Limited [DHFL]) against **DEVNANDAN INFRACON PRIVATE LIMITED** – the Corporate Debtor for initiation of Corporate Insolvency Resolution Process (in short “CIRP”) for having defaulted in payment of loan amounting to Rs. 20 Crores/-. The said loan was then assigned to Omkara Assets Reconstruction Private Limited who is now the Financial Creditor in view of deed of assignment dated 10.01.2023.
2. During the pendency of the above-mentioned Application, Applicant along with other residents of the project by Devnandan Infracon Private Limited (“Corporate Debtor”) filed the present application seeking intervention and impleadment in CP(IB) 163 of

2022 and to remove properties of intervenors from the list shown as unsold units in Loan Agreement and mortgage deed dated 17.07.2015.

3. Briefly the facts are that, the Corporate Debtor had entered into loan agreement and mortgage deed dated 17.07.2015 wherein flats of the Applicants were mortgaged to avail the loan facility of Rs.20 Crores. The said flats were sold to the Applicants between 2015 to 2020 without giving any rider with respect to loan facility.
4. A public notice was issued on 09.07.2022 by Financial Creditor wherein it was stated that Corporate Debtor has defaulted in payment of loan of Rs.20 crores for which flats of Applicants were mortgaged. After the issue of said notice Applicants became aware about the default committed by Corporate Debtor and that their flats were mortgaged for said loan. Further, they were shocked to see that the mortgaged properties were stated as 'unsold'.
5. The main contention of the Applicants is that they are the rightful owners of the mortgaged properties and if the Corporate Debtor goes into CIRP then the properties of the Applicants would be considered as estate of Corporate Debtor which would cause huge trouble to the Applicants.

6. We have heard the submissions made by the Learned Counsel for the Applicants. The Applicants are seeking exclusion of properties mentioned in Para 8 of the Application from CIRP process and to allow the Applicants herein to intervene in C.P. No. 163 of 2022.

7. The counsel for the Applicants has relied upon the order passed in the case of CFM Asset Reconstruction Pvt. Ltd. Vs. Saudi Basic Industries Corporation Ltd. & Anr. in Company Appeal (AT) (Insolvency) No. 1231 of 2022 wherein specific circumstances were taken into consideration in which application was filed because the Appellant in that case had submitted that the Appellant is having exposure to extent of 99.19% of the debt of the Corporate Debtor and thus it has the right to intervene in the proceedings which has been initiated against the Corporate Debtor by the Operational Creditor. In those circumstances, it was held that “*We make it clear that our direction to permit the Appellants to intervene in Section 9 Applications has been passed on account of exceptional facts and circumstances, as noticed above and is not to be treated as any declaration of law that a Financial Creditor as a matter of right is entitled to intervene in proceedings initiated by Operational Creditor under section 9.*” Further, reliance has also been placed on the decision in the matter of Ahluwalia Contracts (India)

Limited Vs. Srishti Infrastructure Development Corporation Limited & Anr. in IVN.P. 7/KB/2021 in CP(IB) No. 2/KB/2021 in this case the application was filed for impleadment of Applicant to bring to the notice of the Tribunal the collusive and fraudulent initiation of CIRP sought by Operational Creditor vide the Company Petition. The said application was allowed only to the extent of intervention by applicant and it was further stated that *“we make it clear that this shall not construed as any manner expressing any opinion on the merits of CP 2/KB/2021.”*

In an application filed under section 7 of the IBC, the Financial Creditor and Corporate Debtor are the only necessary parties. The Adjudicating Authority, at pre-admission stage is only required to see if there is a financial debt and default on the part of Corporate Debtor. Therefore, there is no requirement for intervention of any other party before admission of application under section 7 of the Code. In view of the above facts and circumstances of the present case, the reliance placed by Counsel for the Applicants on the aforementioned decisions is totally misplaced.

8. In view of the above we are of the view that no third-party intervention is required at this stage. The present application is filed in anticipation that Corporate Debtor would be admitted into

CIRP process. The CIRP process is not yet initiated in this matter therefore, the present application is premature. Hence,

Intervention Petition No. 09 of 2022 stands dismissed.

-Sd-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Arati-LRA