



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

ITEM No.301
C.P.(IB)/375(AHM)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Omkara Assets Reconstruction Pvt. Ltd
V/s
7 Star Empire Limited

.....Applicant

.....Respondent

Order delivered on: 06/03/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent : Mr. Rashesh Sanjanwala, Sr. Advocate a/w.
: Mr. Ravi Pahwa, Advocate

ORDER
(Hybrid Mode)

Today, the case is fixed for pronouncement of the order.

However, at this stage, Ld. Sr. Counsel for the respondent/corporate debtor has requested a deferment of the pronouncement on the ground that an Appeal has been preferred against the order of this tribunal passed yesterday, dated 05.03.2025.

Since there is no order of stay/restrain, to defer the pronouncement, of Higher Authority.

Accordingly, the request is declined; the order is pronounced in the open court, vide separate order sheet.

sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB)/375 (AHM)/2024

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

*In the matter of **7 Star Empire Limited.***

Omkara Assets Reconstruction Private Limited

Registered Office at:

No. 9, M.P. Nagar First Street,
Kongu Nagar Extension, Tirapur, Coimbatore,
Tamil Nadu – 641607.

Corporate Office at:

Kohinoor Square, 47th Floor, N. C. Kelkar Marg,
R. G. Gadkari Chowk, Dadar (West),
Mumbai-400028.

...Applicant/Financial Creditor

VERSUS

7 Star Empire Limited

Registered Office at:

9006, 9th Floor, World Trade Centre,
Ring Road, Surat, Gujarat-395006.

...Respondent/Corporate Debtor

Order pronounced on: 06.03.2024



CORAM:

Sh. Shammi Khan, Hon'ble Member (Judicial)

Sh. Sanjeev Kumar Sharma, Hon'ble Member (Technical)

Appearance

For the Applicant/FC : Mr. Ameya Gokhale, Adv. a/w
: Mr. Shalin Jani, Adv.

For the Respondent/CD : Mr. Ravi Pahwa, Adv.

ORDER
(Per: BENCH)

1. The present Petition filed on 11.11.2024 by the Applicant
- **Omkara Assets Reconstruction Private Limited**
(hereinafter referred to as "Financial Creditor") against
the Respondent - **7 Star Empire Limited** (hereinafter
referred to as "Corporate Debtor") under Section 7 of the
Insolvency and Bankruptcy Code, 2016 (hereinafter
referred to as "**IBC, 2016**") read with Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016 (hereinafter referred to as "**IB**
(AAA) Rules, 2016") for initiation of Corporate
Insolvency Resolution Process (**CIRP**), to appoint Interim
Resolution Professional (hereinafter referred to as "**IRP**")

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and declare the moratorium for having defaulted payment of its outstanding dues .

2. Perusal of of Part-I of the Form-1 indicates that the Applicant/Financial Creditor is a Private Limited Company. The registered office of the Financial Creditor is situated at No. 9, M.P. Nagar First Street, Kongu Nagar Extension, Tirapur, Coimbatore, Tamil Nadu - 641607.
3. The application is affirmed by Mr. Vinod Pungliya, Assistant Vice President of the Financial Creditor, who is authorized under Board Resolution, dated 27.06.2024 placed at page-20 and marked as **“Exhibit – C”**.
4. Perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is **7 Star Empire Limited** is the Original Borrower. The date of incorporation is 08.08.2016. The registered office of the Respondent/Corporate Debtor is situated at 9006, 9th Floor, World Trade Centre, Ring Road, Surat, Gujarat- 395006.

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5. Perusal of Part-III of the Form-1 reveals that the Applicant/Financial Creditor has nominated Mr. Bishwanath Choudhary, having Registration No. IBBI/IPA-002/IP-N00597/2018-2019/12042 (Email: choudhary_bishwanath@rediffmail.com) to act as Interim Resolution Professional (“**IRP**”). He has filed his written communication annexed with the Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
6. Perusal of Part-IV of the Form-1 reveals that the Applicant/Financial Creditor has provided a loan facility to the Corporate Debtor and the total amount in default is claimed to be **Rs.202,56,98,960/-** of including interest as on 12.09.2024. The date of default is mentioned as variable events, the date of default is 15.11.2019.
7. It is stated that the Corporate Debtor was sanctioned an amount of Rs.100,00,00,000/- as a Loan as per Sanction



Letter No. DHFL/2017-18/PF/NS/1741 on 27.09.2017.

In furtherance of issuance of sanction letter and the execution of loan agreement dated 29.09.2017 entered into between the Corporate Debtor and Diwan Housing Finance Limited (DHFL) dated 29.09.2017 an amount of Rs.89,50,00,000/- was disbursed to the Corporate Debtor. The said amount was disbursed by DHFL in various Tranches spanning between 04.10.2017 to 18.01.2019. The copy of the Sanction Letter dated 27.09.2017 and Loan Agreement Dated 29.09.2017 are annexed as **“Exhibit F” and “Exhibit G”**.

8. That, despite providing of the facility and, the Corporate Debtor failed and neglected to comply with the terms of the loan documents and also failed to pay the dues on the respective due dates of the various facilities. In view of the persistent default, a loan recall notice was issued by the DHFL on 08.11.2019, recalling the entire outstanding loan of Rs. 89,06,23,492/- along with the interest accrued. After the issuance of the loan recall notice, the Corporate Debtor had paid an amount of Rs.



32,12,000/- toward the outstanding principal amount on 22.01.2020. However no further payments were made by the Corporate Debtor thereafter. The copy of Loan Recall Notice is annexed as **“Exhibit H”**.

9. That, the lender i.e. Diwan Housing Finance Limited (DHFL) was admitted to CIRP and Piramal Capital & Housing Finance Limited (PCHFL) submitted a Resolution Plan qua DHFL which was approved by the Adjudicating Authority on 07.06.2021.
10. That, PCHFL filed a Company Petition being CP(IB) No. 267 of 2022 under Section 7 of IBC, 2016 against the Corporate Debtor on 31.08.2022. During the pendency of the said petition the loan extended to the Corporate Debtor was assigned by PCHFL to the present Financial Creditor through an Assignment Agreement dated 10.01.2023. The copy of the Assignment Agreement dated 10.01.2023 is attached at **“Exhibit J”**.
11. Pursuant thereto, an Amendment Application No. 828 (AHM) of 2023 was filed by the present Applicant seeking



to be substituted as the petitioner in place of PCHFL in the company petition being C.P. (IB) No. 267 of 2022. A copy of the order dated 1st August, 2023 as passed by this Hon'ble Tribunal allowing the amendment is annexed as **"Exhibit K"**.

12. That, a Settlement Agreement was entered into between the parties on 30.10.2023 in which it was decided between the parties that an amount of Rs. 45,45,00,000/- will be paid by the Corporate Debtor as one time settlement. The said One Time Settlement was annexed at **"Exhibit L"**. In lieu of the said Settlement Agreement this Tribunal dismissed the CP(IB) No. 267 of 2022 vide an order dated 06.11.2023. The copy of order dated 06.11.2023 is attached at **"Exhibit M"**.

13. That, the Corporate Debtor has paid an amount of Rs. 19,06,53,270/- to the Applicant pursuant to the said Settlement Agreement. But post that no payment has been made by the Corporate Debtor and in light of the same the Applicant has addressed an e-mail dated



01.04.2024 through which the said Settlement was revoked by the Applicant.

- 14.** Total financial debt due and payable from Respondent/Corporate Debtor as stated in the Form-1 is **Rs.202,56,98,960/-** including interest as on 12.09.2024. The copy of statement of accounts as on 12.09.2024 of the Corporate Debtor as maintained by the petitioner is annexed as **“Exhibit O”**.
- 15.** The Applicant has also attached the Record of Default under Form-D issued by the NeSL at **“Exhibit T”**.
- 16.** That the notice was issued in the Petition by this Tribunal to the Respondent/Corporate Debtor vide an order dated 28.01.2025 which was duly served on through E-Mail on 04.02.2025. That on service of the notice, the Corporate Debtor appeared on next date during the hearing dated 19.02.2025 though it's Counsel but neither Vakalatnama was filed nor any reply was filed within seven days from the date of service of the notice or on the date fixed.



17. The Ld. Counsel for the Respondent on 19.02.2025 undertook to file a Vakalatnama in three days and also sought more time for filing reply within 10 days extended time from the date of the order. Further, on the next hearing dated 05.03.2025 the Respondent again appeared through its Counsel who only tendered the Vakalatnama across the bar and again sought further time for filing the reply despite of two prior opportunities already granted for filing the reply. Since, despite availing sufficient opportunities, the Corporate Debtor failed to file any reply within stipulated period. Hence, vide order dated 05.03.2025 its right to file reply was closed.

18. We have heard the submissions of the Ld. Counsel for the Applicant as well as the Respondent whose Counsel was when given an opportunity to extend his oral submissions, requested the Tribunal to adjourn the hearing of this matter which was disallowed by this Tribunal and proceeded with the matter. We have also



perused the material available on record. The Observations of the Tribunal are followed as under: -

- i. The Corporate Debtor was extended loan facility for an amount of **Rs.89,50,00,000/-** by DHFL under a Loan Agreement dated **29.09.2017**.
- ii. Upon default of Corporate Debtor the loan recall notice was issued by Financial Creditor on dated **08.11.2019**.
- iii. The Corporate Debtor then paid an amount of Rs. **32,12,000/-** as a pre-payment towards the outstanding principal amount on 22.01.2020.
- iv. That the lender in the present case i.e, Diwan Housing Finance Limited (DHFL) was taken over by Piramal Capital & Housing Finance Limited (PCHFL) through a Resolution plan being approved during the CIRP proceedings of DHFL.
- v. On account of the default by the Corporate Debtor, PCHFL filed CP(IB) No. 267 of 2022 for initiation of CIRP of the Corporate Debtor and the Company Petition was allowed to be withdrawn by this



Tribunal vide an order dated 06.11.2023, on account of settlement being agreed between the parties for an amount of **Rs.45,45,00,000/-** as a full and final settlement.

vi. That after the said settlement agreement the Corporate Debtor had paid an amount of Rs. **19,06,53,270/-** but has not paid the balance amount as stated in the settlement agreement and the Applicant by an E-Mail dated 01.04.2024 revoked the said settlement agreement.

vii. That the applicant had attached the Form-D as issued by NeSL as a Record of Default in which the status of Authentication by Debtor is shown as "Disputed" and the date of default is shown as **01.07.2019.**

viii. Hence, there is a debt exceeding the threshold of Rs, 1,00,00,000/- on the part of the Corporate Debtor and it has defaulted in payment of the said debt.

19. Therefore, the present application is complete in terms of Section 7(5) of the Code. The Applicant/Financial



Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

20. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4,



the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy

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itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

21. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

22. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -

i. The Respondent/Corporate Debtor- **7 Star Empire Limited** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

ii. As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

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. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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.*
- 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 IBC, 2016, as the case may be.*



- iv. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, 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.
- v. As proposed by the Financial Creditor, we appoint **Mr. Bishwanath Choudhary**, having Registration No. IBBI/IPA-002/IP-N00597/2018-2019/12042 (Email: choudhary_bishwanath@rediffmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional ("**IRP**") of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- vi. The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.



- vii. The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- viii. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- ix. The IRP shall be under a 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 Code.



- x. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor
- xi. The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who



are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

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

26. Accordingly, **CP (IB)/375 (AHM) 2024** stands **Admitted**.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)
RS

sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)