

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 1217/MB/C-IV/2022

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

**Omkara Assets Reconstruction Private Limited
[CIN: U67100TZ2014PTC020363]**

C-515, Kanakia Zillion, Junction of LBS Road of CST
Road, Kurla West, Mumbai - 400070.

... Financial Creditor/Petitioner

Versus

**Gaurang Properties Private Limited
[CIN: U70102MH2009PTC196349]**

A/001, Ground Floor, Anmol CHS, Brahmin Society,
Sahakar Colony, Naupada, Thane - 400602.

... Corporate Debtor/Respondent

Order Delivered on 08.09.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Mr. Anu Jagmohan Singh

Appearances:

For the Financial Creditor : Mr. Nausher Kohli a/w Mr.
Shreyas Lavekar and Akshay
Nair, Counsels i/b Argus
Partners, Advocates.
For the Corporate Debtor : Mr. Abhishek Sawant a/w Ms.
Tanaz Kapadia, Counsels i/b
Mr. Rajesh Kimerkar, Advocate

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Omkara**

Assets Reconstruction Private Limited ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Gaurang Properties Private Limited** ("the Corporate Debtor").

2. Dewan Housing Finance Corporation Limited (hereafter referred to as "**DHFL**") was original Secured Creditor of the Corporate Debtor. On 03.12.2019, DHFL was admitted into CIRP and a Resolution Plan submitted by the Financial Creditor was approved by this Tribunal on 07.06.2021, pursuant to which DHFL was restructured through reverse merger of Piramal Capital & Housing Finance Company with DHFL, with effect from 30.09.2021. Post reverse merger, the name of DHFL was changed to Piramal Capital & Housing Finance Limited, who is the Original Financial Creditor herein.
3. The original Financial Creditor i.e. **Piramal Capital & Housing Finance Limited** has now assigned the outstanding financial debt payable to them by the Corporate Debtor, to **Omkara Assets Reconstruction Private Limited**, vide Assignment Agreement dated 10.01.2023. Pursuantly, the credit facilities granted to the Corporate Debtor, together with all rights, titles and interests under the financing documents, including all the collateral and underlying security interests and/or pledges and/or guarantees created in respect thereof, have been assigned to Omkara Assets Reconstruction Private Limited. Therefore, Omkara Assets Reconstruction Private Limited has now become the Financial Creditor to the Corporate Debtor herein.

4. The Corporate Debtor is a private company limited by shares incorporated on 08.10.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at A/001, Ground Floor, Anmol CHS, Brahmin Society, Sahakar Colony, Naupada, Thane - 400602. Therefore, this Bench has jurisdiction to deal with this petition.
5. The present Petition was filed on 25.11.2022 before this Tribunal claiming a sum of Rs.69,60,27,968/- (Rupees Sixty-Nine Crore Sixty Lakh Twenty-Seven Thousand Nine Hundred and Sixty-Eighty Only) as on 26.09.2022 which includes the principal amount and accrued interest. Details of the facilities sanctioned are as follows:

Facility No.	Date of Sanctioned	Amount Sanctioned	Amount disbursed	Date of Default	Amount in Default
I.	27.09.2017	35,00,00,000	16,37,00,000	15.04.2018	35,72,31,587
II.	27.09.2017	25,00,00,000	14,08,00,000	15.04.2018	30,47,12,404
III.	27.09.2017	5,00,00,000	1,60,00,000	15.07.2018	3,40,83,977

Computation of the total amount in default and days of default under the abovesaid credit facilities respectively is annexed as **Annexure F** to the Company Petition.

Particulars of Facilities Sanctioned:

Facility I: Project loan sanctioned vide Facility letter No. DHFL/2017-18/PF/NS/1742 for redevelopment of The Bombay-Thana CHSL (Loan Code No. 00008344).

Facility II: Project loan sanctioned vide Facility letter No. DHFL/2017-18/PF/NS/1743 for redevelopment of New Thana CHSL (Loan Code No. 00008345).

Facility III: Project loan sanctioned vide Facility letter No. DHFL/2017-18/PF/NS/1744 for redevelopment of Ganesh Krupa and Kamalja building as Gaurang Royale project (Loan Code No. 00008346).

Submissions made by the Financial Creditor:

6. The Corporate Debtor is a company engaged in real estate business, more particularly carrying out development redevelopment of residential and commercial projects in Maharashtra.
7. In and around 2017, the Corporate Debtor approached the Financial Creditor seeking financial assistance for redevelopment projects undertaken by them in Thane, Maharashtra (hereinafter referred to as "said projects"). Accordingly, the Financial Creditor sanctioned the said Credit Facilities in favour of the Corporate Debtor pursuant to which various security documents were executed between the Financial Creditor and Corporate Debtor.
8. As per the terms of the Facility Letters, the Credit Facilities were to be repaid by the Corporate Debtor in twenty-four (24) equated monthly instalments commencing after thirty- six (36) months from the respective dates of first disbursement, and interest at the rate of 15% p.a. payable with monthly rests, which was 3.20% per annum below DHFL's Retail Prime Lending Rate (RPLR) i.e., 18.20% p.a payable monthly on the said Credit Facilities.
9. Further, in case of default, additional interest at the rate of 24% p.a. became payable at monthly rests on the overdue amount of interest (PEMI and/or EMI) and instalments. A copy of the Loan Agreement dated October 17, 2017, executed between the

Financial Creditor and the Corporate Debtor is annexed hereto Annexure I.

10. However, the Corporate Debtor defaulted in repayments under the said Credit Facilities and consequently, the Credit Facilities were declared as Non-Performing Assets (hereinafter referred to as "NPA").
11. Thereafter, the Credit Facilities were recalled by the Financial Creditor through issue of the following recall notices (hereinafter referred to as "Recall Notices"):
 - (i) Recall Notice bearing no. DHFL/2019-20/Recall/1953 dated November 11, 2019 for outstanding amount of Rs.21,53,63,451/- (Rupees Twenty- one Crores Fifty-three Lakhs Sixty-three Thousand Four Hundred Fifty-one Only) under Facility I;
 - (ii) Recall Notice bearing no. DHFL/2019-20/Recall/1956 dated November 11, 2019 for outstanding amount of Rs.18,37,93,055/- (Rupees Eighteen Crores Thirty-seven Lakhs Ninety-three Thousand Fifty- five Only) under Facility II, and
 - (iii) Recall Notice bearing no. DHFL/2019-20/Recall/2006 dated November 11, 2019 for outstanding amount of Rs.2,05,24,688 (Rupees Two Crores Five Lakhs Twenty-four Thousand Six Hundred Eighty- eight Only) under Facility III.

Copies of the abovesaid Recall Notices dated November 11, 2019 are annexed hereto as Annexure J-1, Annexure J-2 and Annexure J-3.

12. The Corporate Debtor failed to comply with the Recall Notices, following which the Financial Creditor was constrained to issue a Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (hereinafter referred to 2002 as "SARFAESI Act") dated February) 18, 2020 whereby the Corporate Debtor was called upon to pay the outstanding debt of Rs. 43,98,56,884/- (Rupees Forty-three Crores Ninety-eight Lakhs Fifty-six Eight Hundred Eighty-four Only) (hereinafter referred to as "SARFAESI Notice"). Copy of the SARFAESI Notice dated February 18, 2020 is annexed to Petition as Annexure K.
13. The Corporate Debtor responded to the SARFAESI Notice vide their Advocate's letter dated March 3, 2020 wherein the Corporate Debtor admitted and acknowledged their liability to repay the Financial Creditor and further informed the Financial Creditor that they were in the process of availing additional financial assistance from another financial institution and were ready and willing to repay the dues of the Financial Creditor. However, till date no monies have been received from the Corporate Debtor in furtherance of abovesaid letter dated March 3, 2020. Copy of the said letter dated March 3, 2020 is annexed to Petition as Annexure L.
14. Since no steps were taken by the Corporate Debtor to discharge the outstanding debt demanded under the SARFAESI Notice, the Financial Creditor proceeded to issue Possession Notice dated October 19, 2020 under Section 13(4) of SARFAESI Act. An application under Section 14 of the SARFAESI Act has also been filed by the Financial Creditor against the Corporate Debtor. Copy

of the Notice of Possession to the Corporate Debtor dated October 24, 2020 along with Possession Notice published dated October 19, 2020 is annexed to Petition as Annexure M.

15. In view of the above default, the personal guarantees provided by Mr. Deepak Sane and Mrs. Sayali Sane i.e. directors of the Corporate Debtor, through Deed of Guarantee dated October 17, 2017, were also invoked by the Financial Creditor vide letters dated February 11, 2021 and November 13, 2021 issued through their Advocate. Copy of the letters dated February 11, 2021 are annexed hereto as Annexure N-1, Annexure N-2 and Annexure N-3. Copy of the letters dated November 13, 2021 are annexed to Petition as Annexure 0-1, Annexure 0-2 and Annexure 0-3.
16. It is evident from the above facts and circumstances that the Financial Creditor has extended several opportunities to the Corporate Debtor to repay their outstanding dues, however the Corporate Debtor has failed and neglected to satisfy the same till date. In view thereof, the Corporate Debtor is liable to pay a total outstanding sum of Rs. 69,60,27,968/- (Rupees Sixty-nine Crores Sixty Lakhs Twenty-seven Thousand Nine Hundred Sixty-eight Only) as due and payable on September 26, 2022 to the Financial Creditor. Copies of account statements reflecting the outstanding debt under each Credit Facility is annexed to Petition as Annexure P-1, Annexure P-2 and Annexure P-3 respectively.
17. Pertinently, the Corporate Debtor has admitted its liability towards the Financial Creditor in its audited balance sheets for Financial Years 2017-18 and 2018-19. The Corporate Debtor has further acknowledged its liability to repay the Financial Creditor under the abovesaid letter dated March 3, 2020. Copies of the

balance sheets for Financial Years 2017-18 and 2018-19 are annexed to Petition as Annexure Q-1 and Annexure Q-2.

18. Without prejudice to the fact that the present Application is within limitation, it is stated that in view of COVID-19 Pandemic, the Hon'ble Supreme Court vide their order dated January 10, 2022 passed in Suo Motu Writ Petition (C) No. 3 of 2020, has directed to exclude the period from March 15, 2020 to February 28, 2022 from computation of period of limitation for filing all proceedings. The period of limitation for filing the present Application expired in and around June 14, 2021. In view of the above said order the period of limitation for filing the present/ Application from March 15, 2020 to June 14, 2021 stands extended and computable from March 1, 2022, i.e. till May 31, 2023. Therefore, the present Application has been filed within limitation. Further, said order dated January 10, 2022 passed by the Hon'ble Supreme Court is annexed to Petition as Annexure R.

Submissions made the Corporate Debtor:

19. Sometime in the year 2015 the Corporate Debtor had obtained a loan from Cosmos Bank. On sanctioning, an amount of Rs.16 crores was disbursed by Cosmos Bank in favour of Corporate Debtor. Subsequently in the year 2017 Cosmos Bank assigned its debt in favour of DHFL.
20. In the year 2017 the Directors of the Corporate Debtor had approached DHFL to sanction a loan of Rs.65 crores for upcoming projects as stipulated in the Facility Sanction letters annexed at Exhibit D- 1, D-2 and D-3 of the said Petition.

21. It was agreed that the loan will be disbursed as mentioned in Loan Agreement dated 17th October, 2017 annexed at Exhibit-I of the said Petition. During the period from 2017 till 2019, the Financial Creditor had advanced only an amount of Rs.31,98,79,642/- (Rupees Thirty-One crores Ninety eight lakhs Seventy Nine Thousand Six Hundred and Forty two only) to the Corporate Debtor instead of sanctioning the full loan amount of Rs.65 crores.
22. Since DHFL failed to disburse the remaining sanctioned loan amount of Rs.33,01,20,358/-, (Rupees Thirty Three crores One Lakh Twenty Thousand Three hundred and Fifty eight only) the Corporate Debtor by its letter dated 30 January, 2019 addressed to the Manager of DHFL (i.e. the original Lender) interalia, called upon DHFL to release the remaining loan amount to the Corporate Debtor. Also due to the non- disbursement of the remaining loan the projects had come to standstill. Instead of fulfilling their obligation to pay the remaining loan amount, to the utter shock and surprise, the Corporate Debtor received recall notices from DHFL for repayment of the said loan amounts.
23. The Corporate Debtor through its Advocate's letter dated 3rd March 2020 replied to the said recall notices clearly stating that out of the total loan of Rs.65 crores, DHFL had advanced only an amount of Rs.33,01,20,358/- (which includes debt assigned from Cosmos Bank) to the Corporate Debtor and the remaining balance was pending from their end. By the said reply the Corporate Debtor also called upon DHFL to withdraw its recall notices. The Corporate Debtor had paid an amount of Rs.3,90,00,000/- to DHFL towards the repayment of instalments of the said loan. The said reply is already annexed as Exhibit- L of the Petition. Exhibit

C annexed to Reply is a copy of the proof of payment of Rs.3,90,00,000/- to DHFL.

24. Thereafter DHFL issued Notice of Possession along with Possession notice u/s 13 (4) of SARFESI Act. The Corporate Debtor by a letter dated 30th October, 2020, requested and assured DHFL that the Corporate Debtor ready and willing to repay the loan amount but due to the outbreak Covid-19 pandemic, the CEO Mr. Sane was hospitalized and was admitted in the hospital for 45 days. Mr. Sane had explained to the Financial Creditor that his health had deteriorated and was very serious but somehow, managed to recover. Mr. Sane was discharged from the hospital on 27th August, 2020 but advised by the doctors to take treatment which required 20 hours of oxygen every day. Mr. Sane requested DHFL to give him some time to arrange the funds as it was not possible for him to move out of the house and make any arrangements to repay the loan.
25. It is submitted that the reason for DHFL not disbursing the remaining loan amount was due to their own mismanagement of funds and administration. Due to this failure of DHFL the Corporate Debtor could not complete its projects and thereby bringing all the projects of the Corporate Debtor to a standstill. the Corporate Debtor suffered major losses due to shortage of funds to complete all the ongoing projects. The financing of all the projects was dependent on the remaining loan amount from DHFL. Due to non- compliance on behalf of the Corporate Debtor to meet the deadlines of the various projects.
26. The affairs and administration of the Corporate Debtor came to a standstill as Mr. Same being the CEO and Director could not carry

any further work due to ill- health. The Corporate Debtor's upcoming projects were totally dependent on the loan which PCHFL was supposed to advance, since they failed to do so it affected the business of the Corporate Debtor.

27. Mr. Sane suffered a major brain stroke on 12th March, 2023 due to which he was hospitalized. Mrs. Sayali Sane who is also a director was occupied in taking care of Mr. Sane and visiting hospital during such period. Mr. Sane was discharged from the hospital on 19th March 2023 and was advised complete rest at home for one month. Due to the brain stroke multiple complications took place in Mr. Sane's body and now liver has been affected. Further, during the course of hearing it is submitted that Mr. Sane was passed away in June 2023.
28. The Corporate Debtor submits that they are willing to share feasibility report of the pending projects so as to show their bonafides in repaying the dues of the Financial Creditor. On completion of all the three projects the corporate Debtor will regain its good position and thereby repay the debts.

Findings:

29. Heard the Ld. Counsel for the Financial Creditors and perused the records.
30. The following facts are not in dispute:
 - 30.1. At the request of the Corporate Debtor, the Financial Creditor granted Rs.65/- Crores and disbursed Rs.32,05,00,000/- (Rupees Thirty-Two Crore Five Lakh Only) in favour of the Corporate Debtor.

- 30.2. Pertinently, the Corporate Debtor has admitted its liability towards the Financial Creditor in its audited balance sheets for Financial Years 2017-18 and 2018-19. Further acknowledged its liability to repay Financial Creditor vide letter dated 03.03.2020.
- 30.3. Several letters and notices have been issued to the Corporate Debtor calling upon the repayment of the debt.
- 30.4. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
- 30.5. At the outset, we note that there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
31. It is the case of the Corporate Debtor that they could not make payment because of ill health of the CEO Mr. Sane. As per records available the Corporate Debtor requested for further time to repay, therefore it is clear that the Corporate Debtor had defaulted in repayment.
32. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

33. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor.
34. The Financial Creditor has proposed the name of **Ms. Palak Swapnil Desai**, Registration No: IBBI/IPA-001/IP-P-01517/2019-20/12515, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
35. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
36. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 1217/MB/C-IV/2022** filed by **Omkara Assets Reconstruction Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Gaurang Properties Private Limited** [CIN:

U70102MH2009PTC196349], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

- (i) 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;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be

notified by the Central Government in consultation with any sectoral regulator;

- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Ms. Palak Swapnil Desai**, Registration No: IBBI/IPA-001/IP-P-01517/2019-20/12515, having address at BKC Centre, 31-E Laxmi Industrial Estate, New Link Road, Andheri West, Mumbai - 400053, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of

the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs 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 (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

08.09.2023
SAM

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)