

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

CP (IB) No. 1190/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

**Omkara Assets and Reconstruction Private
Limited**

[CIN: U67100TZ2014PTC020363]

...Financial Creditor/Financial Creditor

V/s

**Swapnil Promoters and Developers Private
Limited**

[CIN: U70101MH1990PTC056797]

...Corporate Debtor/Respondent

Order Dated: 04.07.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Saurabh A. Nikalje, Advocate.

For the Respondent(s) : None Present.

Per - Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 1190/MB/C-IV/2022 filed on 22.10.2022 by Omkara Assets and Reconstruction Private Limited, the Financial Creditor/Financial Creditor, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Swapnil Promoters and Developers Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

1.1. The total amount of default under the Loan Agreement is Rs.18,53,50,060/- (Rupees Eighteen Crores Fifty-Three Lakhs Fifty Thousand Sixty Only) as on 31.08.2022 together with the applicable interest, penal interest, charges, etc. The breakup of the amounts in default claimed by the Financial Creditor is mentioned in Part 4 of the Petition. No specific date of default is mentioned in the Part 4 of the Petition and the Financial Creditor is claiming the amount on the basis of continuous date of defaults. As per the sanction letter dated 22.06.2017, the loan was to be repaid in 24 equated monthly instalments commencing after 36 months from the date of first disbursement. Part 4 specifies first date of disbursement as 06.07.2017, accordingly, the repayment was to commence from July 2020. However, the interest was payable monthly from the date of first disbursement by 15th day of each month in advance. Part 4 further specifies that the account was classified as NPA on 01.02.2019 after the default continued for more than 90 days. The date of default as per the NeSL Report is 11.11.2018.

1.2. A statement of accounts of the Corporate Debtor maintained by the Financial Creditor is filed alongwith the Petition.

2. The Financial Creditor submits that the debt towards a project loan aggregating to INR 10,00,00,000/- (Rupees Ten Crores Only) was sanctioned by Diwan Housing Finance Limited (referred to as "DHFL")

hereinafter, The erstwhile Financial Creditor) in favour of the Corporate debtor on the terms and conditions set out therein.

2.1 A Sanction Letter dated 22.06.2017 ("Sanction Letter") was addressed by DHFL in favour of the Corporate Debtor wherein the total principal amount was sanctioned by the Financial Creditor in favour of the Corporate Debtor.

2.2 A Loan Agreement dated 03.07.2017 executed between DHFL and the Corporate Debtor ("Loan Agreement") in accordance with terms and conditions stated therein.

2.3 In terms of the Sanction Letter and the Loan Agreement, the erstwhile Financial Creditor, sanctioned financial assistance up to Rs.10,00,00,000/- (Rupees Ten Crores Only) as per terms and conditions set forth in the Loan Agreement and the ancillary documents executed in connection therewith.

2.4 The Corporate Debtor has secured its obligations to repay the loan vide the following securities:

2.4.1 Exclusive, and extension of charge created by way of equitable mortgage over the mortgaged properties ("Mortgaged Properties") in terms of the Deed of Simple Mortgage dated 03.07.2017.

2.4.2 An exclusive charge by way of a Deed of Hypothecation dated 03.07.2017 over the receivables from the Mortgaged Properties.

2.4.3 Personal guarantees of the promoters of Corporate Debtor, Mr. Vivek D. Deshpande, Mr. Shashikant D. Gosavi and

Mr. Mahesh Dabholkar, vide a Deed of Personal Guarantee dated 03.07.2017 ("Personal Guarantee").

2.4.4 Demand Promissory Note dated 03.07.2017 of an amount of INR.10,00,00,000/- (Rupees Ten Crores Only) issued by the Corporate Debtor.

2.5 Pursuant to the terms of the Loan Agreement (and the documents executed in connection with the same), a total amount aggregating to INR 9,99,90,000/- (Rupees Nine Crores Ninety-Nine Lakhs Ninety Thousand Only) was disbursed on 06.07.2017 and 18.07.2017.

2.6 As per the sanction letter dated 22.06.2017, the loan was to be repaid in 24 equated monthly instalments commencing after 36 months from the date of first disbursement. However, the interest was payable monthly from the date of first disbursement by 15th day of each month in advance.

2.7 The Corporate Debtor failed to adhere to the terms of the Sanction Letter and Loan Documents and committed defaults in payments of Pre EMIs (Equated Monthly instalment) and EMIs of the Loan, subsequent to the disbursements.

2.8 Thereafter, the Financial Creditor addressed a Recall Notice dated 11.11.2019 ("Recall Notice") to the Corporate Debtor and the Personal Guarantors inter alia calling upon them to repay the outstanding amount of INR 11,97,50,237/- (Rupees Eleven Crores Ninety Seven Lakhs Fifty Thousand Two Hundred Thirty Seven Only) as on 11.11.2019 together with other charges and interest accrued till the date of the Loan closure within 7 (seven) days from the receipt of the Demand Notice.

- 2.9 Despite repeated requests, the Corporate Debtor and the Personal Guarantors continued to default for more than 90 days and the loan account was classified as a Non-Performing Asset on 01.02.2019. The Financial Creditor sent the Statutory Demand Notice dated 26.09.2020 under Section-13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) calling upon the Borrower i.e. Corporate Debtor, Personal Guarantors and Mortgagors to pay the outstanding amount of INR 13,73,08,164/- payable as on 26.09.2020 for Loan Code 00008710 with further interest, non-compliance charge, incidental expenses, costs and any other charges from 27.09.2020 within (60) sixty days from the date of receipt of this notice.
- 2.10 On the failure of the Corporate Debtor, Personal Guarantors and Mortgagors to pay the outstanding amount within the given time, the Financial Creditor invoked the Deed of Guarantee amounting to INR 14,60,17,699/- as on 09.02.2021 executed by them in favour of the Financial Creditor.
- 2.11 The Borrower (Corporate Debtor), Personal Guarantors and Mortgagors failed to comply with the Section- 13(2) demand notice and thereafter the Financial Creditor had to issue a Section-13(4) notice under the SARFAESI Act for the possession of Secured Assets and hence served possession notices dated 23.02.2021 in exercise of the powers conferred to it.
- 2.12 The Financial Creditor in the petition has annexed the NeSL Report dated 26.07.2022 of the Corporate Debtor. The Financial Creditor also issued Form B notice dated 27.09.2022 (under Section 95 read with Rule 7(1) of the Code) to the Personal Guarantors.

- 2.13 Despite receiving all the aforesaid notices, the Corporate Debtor has failed to repay the amount.
3. The Corporate Debtor was served court notice by this Bench vide its order dated 17.11.2022 directing him to file reply within 14 days. On the next date of hearing i.e. 18.01.2023, the Counsel for the Corporate Debtor requested for another 2 weeks' time and again on 06.03.2023, a further 2 weeks time was granted to him. Finally, on 25.04.2023, the Corporate Debtor was granted one final opportunity to file reply within 10 days, failing which, this Bench informed in the order that the matter shall be proceeded based on verbal arguments and material available on record. This Bench finds that neither the corporate Debtor filed any reply nor was represented on 13.06.2023. This matter was heard and reserved for order.
4. M/s. Piramal Capital Housing Finance Limited was merged into DHFL consequent upon resolution in the matter of DHFL and DHFL was renamed as M/s. Piramal Capital Housing Finance Limited. Thereafter, it assigned its debt to M/s. Omkara Assets Reconstruction Private Limited vide Assignment Agreement dated 10.01.2023. Pursuant to such Assignment, Omkara Assets Reconstruction Private Limited filed an IA 1657-2023 under Rule 11 of NCLT Rules, 2016 to substitute its name as the Financial Creditor in place of Piramal Capital and Housing Finance Limited. This Bench allowed the prayer vide order dated 28.04.2023.
5. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.
- 5.1 We find that there exists a "financial debt" within the meaning of Sec. 5(8) of the Code, as the debt under the Loan Agreement dated 03.07.2017 executed between DHFL and the Corporate Debtor was a financial debt in the nature of the amount paid towards project loan

granted by DHFL to the Corporate Debtor which later got assigned to the present Financial Creditor. This Bench is of considered view that there exists a financial debt, in repayment of which the corporate debtor has defaulted.

- 5.2 As per the sanction letter dated 22.06.2017, the loan was to be repaid in 24 equated monthly instalments commencing after 36 months from the date of first disbursement. Part 4 specifies first date of disbursement as 06.07.2017, accordingly, the repayment was to commence from July 2020. However, the interest was payable monthly from the date of first disbursement by 15th day of each month in advance. This Bench finds that the Corporate Debtor defaulted in payment of monthly interest on the outstanding loan, which was due and payable immediately after the first date of disbursement. The Financial Creditor states that the Corporate debtor failed to pay such interest and account was classified as NPA on 01.02.2019 after the default in payment of interest continued for more than 90 days. This Bench also finds that the repayment of the principal amount and the monthly interest thereon was to commence from July 2020. However, due to continued default in payment of monthly interest, the whole of loan amount together with interest accrued till that date amounting to Rs. 11,97,50,237/- was recalled on 11.11.2019 asking the corporate Debtor to pay the said amount within 7 days from the receipt of the notice. The said amount included the Principal debt amounting to Rs. 9,99,90,000/-. Accordingly, a sum of Rs. 9,99,90,000/- became in default on or around 20.11.2019 (assuming 48 hours to be time for delivery of speed post). The present petition is filed on 22.10.2022 which is within 3 years from the date of default in relation to the said amount.

- 5.3 Since, the Corporate Debtor have been appearing through Counsel and never filed any reply nor disputed the existence of “financial debt” and default in repayment thereof as claimed in the Petition, this Bench is of considered view that the present petition deserves to be allowed.
6. The Applicant has proposed the name of Mr. Amit Vijay Karia, a registered insolvency resolution professional having Registration Number-IBBI/IPA-001/IP-P-02600/2021-2022/13969 and Email Id.- amit.karia@yahoo.co.in; and has submitted his consent letter dated 15.02.2023 u/s. 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

This Application being C.P. (IB) No. 1190/NCLT/MB/C-IV/2022 filed under Section 7 of I&B Code, 2016, filed by Mr. Omkara Assets and Reconstruction Private Limited, Financial Creditor against Swapnil Promoters and Developers Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 Operational 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 possession of the corporate debtor.
 - e) That 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 I&B Code shall not apply to-
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- III. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- V. That this Bench hereby appoints Mr. Amit Vijay Karia, a registered insolvency resolution professional having Registration Number -IBBI/IPA-001/IP-P-02600/2021-2022/13969 and Email Id.- amit.karia@yahoo.co.in as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VI. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

VIII. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA-Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)