

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT III**

**C.P. No. (IB) 589/MB/C-III/2023**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Omkara Assets Reconstruction Pvt. Ltd.**

***Acting in its capacity as a trustee of Omkara 28/2023-24 Trust***

*Having office at:*

47<sup>th</sup> Floor, Kohinoor Square, N. C. Kelkar Marg, R. G. Gadkari Chowk, Shivaji Park, Dadar (West), Mumbai - 400028

***...Financial Creditor/Petitioner***

Vs.

**Sigtia Constructions Private Limited**

*Having office at:*

Shop No. 80, HDIL Harmony Mall, Goregaon Link Road, Goregaon (West), Mumbai 400104

***...Corporate Debtor/Respondent***

**Order pronounced on: 07.02.2025**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

For the Financial Creditor : Adv. Vikram Nankani a/w Adv. Nausher Kohli;



Adv. Shyam Kapadia a/w Adv. Aneesa Cheema, Adv. Nanki Grewal, Adv. Manasi Joglekar, Adv. Yesha Badani i/b Wadia Ghandy & Co.



**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

1. This Petition was filed by Piramal Capital & Housing Finance Limited (**Piramal/ erstwhile Financial Creditor**) to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Sigtia Constructions Private Limited (**Respondent/Corporate Debtor**) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an alleged default in repayment of loan.
2. As per the averments in the Petition, by and under a Loan Agreement dated 11.09.2019 ("Loan Agreement) executed between the Corporate Debtor and Dewan Housing Finance Limited (**DHFL**) read with the Sanction Letter dated 16.08.2019, a loan of Rs. 1910,00,00,000/- (Rupees One Thousand Nine Hundred and Ten Crores only) was sanctioned by the Financial Creditor to the Corporate Debtor on the terms mentioned therein.
3. Out of the said loan, Rs. 1900,45,84,913/- (Rupees One Thousand Nine Hundred Crore Forty-Five Lakh Eighty-Four Thousand Nine Hundred and Thirteen only) was disbursed by DHFL in multiple tranches.
4. The details of the disbursement amount are tabulated below:

<b>Sr. No.</b>	<b>Date</b>	<b>Disbursement Amount</b>	<b>Document executed with respect to disbursement</b>
1.	05.06.2018	29,85,00,000/-	These disbursements were made under a Loan Agreements dated 30.05.2018 and 31.10.2018 executed
2.	13.06.2018	40,00,00,000/-	
3.	19.06.2018	30,00,00,000/-	
4.	29.06.2018	200,00,00,000/-	



5.	12.07.2018	42,00,00,000/-	between DHFL and the Corporate Debtor. However, the same was replaced by the Loan Agreement dated 11.09.2019.	
6.	24.07.2018	26,80,00,000/-		
7.	29.08.2018	55,55,00,000/-		
8.	06.09.2018	10,00,00,000/-		
9.	27.09.2018	20,00,00,000/-		
10.	30.10.2018	77,50,00,000/-		
11.	17.01.2019	50,00,00,000/-		
12.	18.01.2019	50,00,00,000/-		
13.	21.06.2019	529,00,00,000/-		
14.	30.08.2019	739,75,84,913/-		This disbursement was made pursuant to the sanction letter dated 16.08.2019 read with the Loan Agreement dated 11.09.2019.
	<b>Total</b>	<b>1900,45,84,913</b>		

5. Further, the Loan amount as mentioned above were secured through the following documents:

- i. *Deed of Simple Mortgage dated 11.09.2019 registered with the office of Sub-Registrar of Assurances under Serial No. BDR/17/10701/2019 executed by and between the Corporate Debtor (“Mortgagor”) and the Financial Creditor (“Mortgagee”) whereunder an exclusive charge was created by the mortgagor in favour of the Mortgagee in the property described in the Schedule II therein.*
- ii. *Deed of Hypothecation of Receivables dated 11.09.2019 executed by the Corporate Debtor (“Borrower”) in favour of the Financial Creditor (“Lender”), whereunder all the receivables from the sold and unsold flats/units in the property described in the Schedule therein was hypothecated in favour of the Financial Creditor.*

*iii. Demand Promissory Note dated 11.09.2019 executed by the Corporate Debtor in favour of the Financial Creditor.*



6. The Corporate Debtor committed its first event of default under the Loan Agreement on 15.03.2019. Thereafter, the Corporate Debtor has committed various other events of default under the said Loan Agreement, which are still subsisting.
7. In the meantime, DHFL was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide order dated 03.12.2019 in CP/4258/MB/2019.
8. In light of various events of default by the Corporate Debtor, DHFL by and under an email issued a notice dated 24.08.2020, thereby calling upon, inter-alia, the Corporate Debtor to forthwith repay the said Loan together with additional/further interest, legal charges, cost incurred.
9. A legal notice dated 17.09.2020 was also issued by the Advocates of DHFL, inter-alia, to the Corporate Debtor thereby calling upon the Corporate Debtor to pay the said Loan together with additional/further interest, legal charges, cost incurred.
10. Despite the notices dated 24.08.2020 and 17.09.2020, the Corporate Debtor failed to repay the outstanding amount together with additional/further interest, legal charges, cost incurred.
11. Subsequently, the Resolution Plan submitted by the Financial Creditor was approved by this Tribunal vide order dated 07.06.2021 whereunder the Financial Creditor has reverse merged into and with DHFL, and the resultant entity, upon completion of the merger, has been renamed as “Piramal Capital & Housing Finance Limited” (**the erstwhile Petitioner**).
12. The Advocates for the erstwhile Petitioner also issued a legal notice dated 06.06.2023 to the Corporate Debtor, thereby, once again calling upon the



Corporate Debtor to repay the said Loan and all amounts due and payable thereon forthwith and in any event, no later than 3 days from the date thereof. However, the Corporate Debtor failed to repay the outstanding amount as well as has failed to reply to the notices, till date.

13. In view of the above background the present petition has been filed under section 7 of the Code for default on the part of the Corporate Debtor to repay an amount of Rs. 3176,24,43,358/- (Rupees Three Thousand One Hundred Seventy-Six Crores Twenty-Four Lacs Forty-Three Thousand Three Hundred and Fifty-Eight only) as on 31.03.2023. The **date of default is stated as 15.03.2019.**

### **FINDINGS/OBSERVATIONS**

14. Heard the Ld. Counsel and perused the documents placed on record.
15. As per the records, the registry of this court as well as the Applicant issued notices to the Corporate Debtor but the notices sent to the Respondent through Registry was returned with an endorsement 'Addressee Left'.
16. As the service of the notice was not complete, upon request by the Petitioner, this bench permitted the substituted service vide order dated 04.09.2023. Further, the Financial Creditor filed a service affidavit attaching copy of newspaper cutting (English and Marathi) dated 16.09.2023 by way of substituted service.
17. Despite service, none appeared for the Corporate Debtor. The Corporate Debtor failed to be present on various occasions. Moreover, the Corporate Debtor has not filed any reply to the petition and was set **ex-parte** on 21.12.2023.
18. After hearing the Ld. Counsel for the Petitioner/ Financial Creditor, the matter was reserved for order on 22.12.2023. Thereafter, on 18.01.2024, the matter was listed for clarification and the Petitioner was directed to


provide the details about the date of loan agreement and the date of default.



19. While the clarification sought was awaited, the debts of Piramal was assigned to Omkara Assets Reconstruction Private Limited (**Omkara/Petitioner**) vide Assignment Deed dated 13.02.2024. In view thereof, IA/2266/2024 was filed seeking amendment in the Company Petition to replace the name of the Petitioner from 'Piramal Capital & Housing Finance Limited' to 'Omkara Assets Reconstruction Private Limited'. The said IA/2266/2024 was allowed vide order dated 05.09.2024.
  
20. Subsequently, the Petitioner filed an additional affidavit dated 16.10.2024 in response to the clarification sought by this Tribunal regarding the date of loan agreement and date of default. By this affidavit, the Petitioner placed the following additional facts on record:
  - i. In and around May 2018, the Corporate Debtor approached Dewan Housing Finance Limited (DHFL) for advancement of a credit facility. Accordingly, DHFL approved a loan facility of Rs. 450,00,00,000/- (First Loan) and under a sanction letter dated 30.05.2018 (First Sanction Letter) executed between the Corporate Debtor and DHFL, DHFL sanctioned the First Loan in favour of the Corporate Debtor on the terms and conditions mentioned therein.
  
  - ii. On the same day i.e. 30.05.2018, a loan agreement (First Loan Agreement) was executed between the Corporate Debtor and DHFL in respect of the First Loan. The 'Rate of Interest' clause under the First Sanction Letter and the schedule of the First Loan Agreement, provides as follows:

*“Rate of Interest... Interest calculate on principal outstanding on last day of previous month for the current month, Payable yearly -due date is 15<sup>th</sup> of every March of*

*the financial year. First interest payment is due on 15<sup>th</sup> March 2019.”*


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- iii. Thereafter, in and around October 2018, the Corporate Debtor again approached DHFL requesting for an enhancement to the First loan. Accordingly, DHFL approved an enhancement of Rs. 725,00,00,000 (Second Loan) to the First Loan. Subsequently, by and under a sanction letter dated 31.10.2018 (Second Sanction Letter), executed between the Corporate Debtor and DHFL, DHFL sanctioned the Second Loan in favour of the Corporate Debtor, on the terms and conditions mentioned therein. On the same day i.e. 31.10.2018, a Loan Agreement (Second Loan Agreement) was executed between the Corporate Debtor and DHFL, in respect of the Second Loan. Therefore, the total loan amount granted to the Corporate Debtor stood at Rs. 1,175,00,00,000/- which was an aggregate of the First Loan and the Second Loan. The First Loan and Second Loan are together referred to as “First Consolidated Loan”.
- iv. It is submitted that the Second Sanction Letter and the schedule of the Second Loan Agreement clearly mentions that the Second Loan was an enhancement to the First Loan. The said clause is extracted hereinbelow from the Second Sanction Letter as well as the schedule of the Second Loan Agreement:
- “2. Loan Limit: Existing 450 cr plus enhancement Rs 725 cr = Rs. 1175 Crores.”*
- v. Further, the ‘Rate of Interest’ clause under the Second Sanction Letter and the schedule of the Second Loan Agreement, provides as follows:
- “Rate of Interest... Interest calculate on principal outstanding on last day of previous month for the current month, payable yearly- due date is 15<sup>th</sup> of every March of*

*the financial year. First interest payment is due on 15<sup>th</sup> March 2019.”*




- vi. Once again, in and around August 2019, the Corporate Debtor approached DHFL requesting for an enhancement to the First Consolidated Loan by Rs.735,00,00,000/- (Last Loan). DHFL approved the said Request and under a sanction letter dated 16.08.2019 (Last Sanction Letter), executed between the Corporate Debtor and DHFL, DHFL sanctioned the Final Consolidated Loan in favour of the Corporate Debtor on the terms and conditions mentioned therein. Thereafter, on 11.09.2019, a loan agreement was executed between the Corporate Debtor and DHFL (Last Loan Agreement).
- vii. It is submitted that the erstwhile management of the Financial Creditor approved the consolidation of Last Loan with the First Consolidated Loan for ease of administration. Accordingly, under the Last Sanction Letter, it was also recorded that:
- “With reference to your application for financial assistance, Dewan Housing Finance Corporation (DHFL) is pleased to approve consolidation of Loan of Rs. 1910 crores in favour of the company, Sigtia Construction Pvt. Ltd...”*
- viii. Further, the ‘Rate of Interest’ clause in the Last Sanction Letter and the Last Loan Agreement, provides as follows:
- “Rate of interest / Type / Interest rest.. Interest calculated on principal outstanding on last day of previous month for the current month, payable yearly - due date of 15<sup>th</sup> of every March of the financial year. First interest payment is due on 15<sup>th</sup> March 2019.”*
- ix. The statement of accounts dated 31.03.2023 of DHFL, also reflects the following:



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- a. On 30.08.2019 i.e. pursuant to the Last Sanction Letter, DHFL had disbursed an amount of Rs. 739,75,84,913/- towards the Last Loan.
  - b. All the disbursements made by DHFL to the Corporate Debtor prior to 30.08.2019 were in consonance with the First Loan and Second Loan.

21. The Petitioner has also annexed all the relevant documents to evidence the submissions made above and in view of the above facts brought on record, the Petitioner submits that the Last Loan given under the Last Loan Agreement was only an enhancement to the First Consolidated Loan and that the terms and conditions mentioned in the sanction letters and loan agreements provided that the date of payment of interest would remain 15.03.2019.
22. Ld. Counsel for the Petitioner submits that the Corporate Debtor failed to make the payment of the interest due as on 15.03.2019, and therefore, default occurred on that date. The date of default accordingly is 15.03.2019.
23. As regards Exhibit F of the Company Petition which states that the First Loan Agreement and the Second Loan Agreement were 'replaced' by the Last Loan Agreement, it is submitted that replacement of the previous agreements is a natural and legal consequence of consolidation of all the loans into one account. Therefore, the Last Loan Agreement was merely 'enhanced and consolidated' with the First Loan Agreement and the Second Loan Agreement and further, as a matter of record, the Last Loan Agreement for enhancing the limit to Rs. 1,910,00,00,000/- was entered into by the previous management / erstwhile promoters of the Financial Creditor and amounts were also disbursed after the date of default. However, the default has occurred under valid and subsisting loan agreements and debt or default does not extinguish on this ground. The same can also be borne out of the Last Loan Agreement which provided that no delay or omission to exercise any right or remedy would impair or



prejudice the Financial Creditor or be construed as a waiver or acquiescence on part of the Financial Creditor.


24. All the sanction letters and loan agreements have been placed on record and we have perused all the documents. It is seen that the first loan amounting to Rs. 450 crores was sanctioned in May 2018 and disbursed to the Corporate Debtor in accordance with the Sanction Letter and Loan Agreement dated 30.05.2018. Thereafter, an enhancement of Rs. 725 crores to the first loan was approved and disbursed as per the Sanction Letter and Loan Agreement dated 31.10.2018. The loan amount granted to the Corporate Debtor stood at Rs. 1,175,00,00,000 after the enhancement. Subsequently, another enhancement of Rs. 735 crores was approved by DHFL in August 2019 and disbursement was made as per the Sanction Letter and Loan Agreement dated 11.09.2019. Thus, the total loan amount disbursed to the Corporate Debtor is Rs. 1910 crores.
25. We observe that these subsequent loan agreements are merely in the form of enhancement of the Loan Agreement dated 30.05.2018. Further, in all the loan agreements i.e. executed on 30.05.2018, 31.10.2018, 11.09.2019, the events of default in clause (a) states that:
- “a) If there is a default in payment of any of interest or principal for two months after due date; or the Borrower fails to pay any amount due under this Agreement or under any other agreement between the Borrower and Lender.”*
26. Notably in all the loan agreements, the first interest payment due date is stated to be 15.03.2019. Since the Corporate Debtor failed to pay the first interest amount, according to clause (a) of the Event of Default, the default has occurred two months after the due date i.e. default occurred on 15.05.2019.
27. The Petitioner has also annexed Record of Default issued by NeSL wherein date of default is mentioned as 15.03.2019. Moreover, the NeSL has

remarked the default as 'Deemed to be Authenticated' in its Record of Default.



28. The Hon'ble NCLAT in **Gp. Capt Atul Jain (Retd.) vs. Tripathi Hospital Pvt. Ltd. [Company Appeal (AT) (Ins) No. 655/2020]**, decided on 27.07.2023 observed that *"under the statutory scheme of IBC, record of information utility which falls in the category of "deemed to be authenticated" even if not sacrosanct but still is relevant to establish default in terms of Section 3(12) of the IBC."*
29. To summarize, the Corporate Debtor has failed to repay the loan amount despite repeated reminders from the Financial Creditor. As already discussed above, according to the loan agreements, failure in paying the interest constitutes *"event of default"* and since the Corporate Debtor defaulted in paying the first interest itself, the date of default is 15.05.2019. The default is also recorded with the Information Utility.
30. We note that though the last loan sanction was given on 16.08.2019 and disbursement was made thereafter but date of default continues to be 15.03.2019. Thus, it is apparent that the enhancement of loan was sanctioned without recovering the outstanding interest which fell due on 15.03.2019.
31. Be that as it may be, it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

*"28. ... 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 receipt of a notice from the adjudicating authority."*



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 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.”*

32. Similarly, the Hon’ble NCLAT in **M. K. Dhir vs. Punjab National Bank [Company Appeal (AT) (Ins) No. 453/2021]**, decided on 18.01.2022, held that *“the criteria for initiation of the CIRP under the Code is limited to three things, (i) there is a debt due and payable in law and has not been paid, (ii) Default has occurred and (iii) Default is recorded with the Information Utility.* Since in the present case, all the three criteria are met, we are satisfied that the present Petition is maintainable.
33. As regards the issue of limitation, we note that the date of default is 15.03.2019 and the present petition has been filed in June 2023. However, considering the extension of limitation granted by Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 In Re: Cognizance For Extension of Limitation**, we hold that the present petition is within limitation.
34. We note that the total amount disbursed to the Corporate Debtor under the First Loan Agreement dated 30.05.2018 was Rs. 450 crores and under the Second Loan Agreement dated 31.10.2018, Rs. 725 crores were further distributed. It is seen that by consolidation of the two Loans, the total principal amount given to Corporate Debtor aggregated to Rs. 1175 crores as on 15.03.2019 when the first interest payment was due as per the loan agreements. The agreed rate of interest was 12.50% per annum which as on 15.03.2019 would stand at around Rs. 150 crores which is above the threshold of Rs. 1 crore specified in section 4(1) of the Code.



35. We also note that the Corporate Debtor despite issuing multiple notices and numerous opportunities failed to revert back. Hence, none of the facts and submissions covered above are controverted.

36. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 589 of 2023 is **admitted** and ordered as follows:

**ORDER**

- i) The above Company Petition No. (IB) 589 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sigtia Constructions Private Limited**.
  
- ii) The Petitioner has proposed the name of **Mr. Jayesh Natvarlal Sanghrajka**, Registration No. IBBI/IPA-001/IP-P00216/2017-2018/10416, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 15.06.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 10.10.2023. Upon verification, we note that the AFA of the proposed IRP is valid upto 31.12.2025. Accordingly, **we appoint Mr. Jayesh Natvarlal Sanghrajka (jayesh.sanghrajka@incorpadvisory.in) as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
  
- iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.



- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
- 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.
- v) 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.
- vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of pronouncement 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 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.



viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.

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

37. This Tribunal while reserving the order on 22.12.2023 had also directed for status quo qua the properties of the Corporate debtor to be maintained till the pronouncement of the order. However, with the admission of this Petition, the status quo imposed vide order dated 22.12.2023 stands vacated.

38. Accordingly, the Company Petition No. 589 of 2023 is **allowed**.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Sd/-

**Lakshmi Gurung**  
**Member (Judicial)**

Uma, LRA