

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P. No. 222 of 2023

Under Section 95 of the Insolvency and Bankruptcy Code,
2016 read with Rule 7(2) of the Insolvency and Bankruptcy
(Application to Adjudication Authority) Rule 2019

In the matter of

Piramal Capital and Housing Finance Limited

(Erstwhile Dewan Housing Finance Corporation Limited).

Having its address at: 4th Floor, Piramal Tower, Peninsula
Corporate Park, G K Marg, Lower Parel, Mumbai- 400013

.....Petitioner/ Financial Creditor

V/s.

Mr. Chhaganlal Patel

Having its address at: Plot No. 901, Flat No. B02, Kamal
Palace, Central Bazar Road, Near Tuli Imperial Hotel,
Ramdespeth, Shankar Nagar, Nagpur- 440010

.....Respondent/ Personal Guarantor

Order Pronounced on: 10.07.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Nausher Kohli a/w. Adv. Astha Ojha i/b.
DSK Legal
For the Personal Guarantor : Mrs.. Dipti Thite

Per: - SHRI CHARANJEET SINGH GULATI MEMBER (T)

ORDER

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") by **Piramal Capital and Housing Finance Limited (Erstwhile Dewan Housing Finance Corporation Limited)** for initiating Insolvency Resolution Process against **Mr. Chhaganlal Patel ("Personal Guarantor")**.
2. Pursuant to approval of the resolution plan submitted by Piramal Capital and Housing Finance Limited in the corporate insolvency resolution process of Dewan Housing Finance Corporation Limited by the National Company Law Tribunal, Mumbai on 07.06.2021, Piramal Capital and Housing Finance Limited has been reverse merged into Dewan Housing Finance Corporation Limited with effect from 30.09.2021.
3. The payment obligation arises out of a Deed of Guarantee dated 27.09.2017 executed by Mr. Chhaganlal Patel and Mrs. Durgaben Patel in favor of the Financial Creditor ("Deed of Guarantee") to secure the Facility sanctioned to the Corporate Debtor i.e. Gigeo Construction Company Pvt. Ltd. (GCCPL). The Deed of Guarantee secures *inter alia* the performance of payment obligations of the Corporate Debtor and any failure to discharge such obligations renders Mr. Chhaganlal Patel liable to pay such amounts in terms of his obligations under the aforesaid Deed of Guarantee.
4. Dewan Housing Finance Corporation Limited (now Piramal Capital & Housing Finance Limited) at the request of the Corporate Debtor sanctioned a Project Term Loan ("Facility") of up to Rs. 50,00,00,000 vide sanction letter dated 26.09.2017.

5. Pursuant to the Sanction Letter, a Loan Agreement dated 27.09.2017 was entered into between the Corporate Debtor and Financial Creditor, in terms of which the parties crystallized the terms and conditions for the grant of the Facility to the Corporate Debtor.
6. In terms of the Sanction Letter and Loan Agreement, the Facility was to be utilized by the Corporate Debtor for the purposes of construction and development of a real estate project.
7. In terms of the Loan Agreement read with the Sanction Letter, the Facility was to be repaid by the Corporate Debtor by way of 24 (twenty-four) equated monthly instalments, commencing after 36 (thirty-six) months from the date of first disbursement, along with interest at the rate of 3.20% below the Financial Creditor's Retail Prime Lending Rate viz. 18.20% per annum, i.e. effective interest rate of 15% per annum with monthly rests. The disbursement of the Facility was at the sole discretion of the Financial Creditor.
8. In terms of the Loan Agreement read with the Sanction Letter, the Corporate Debtor was required, even during the first 36 months from the date of first disbursement, to pay interest/Pre-Equated Monthly Installments (PEMI) on the Facility. Any default in payment of interest (or principal) for 2 (two) consecutive months was agreed to be construed as a violation of the terms of the sanction and the entire Facility could be recalled at the discretion of the Financial Creditor.
9. Pursuant to the terms of Sanction Letter and Loan Agreement, an amount of Rs. 49.20,00,000/- was disbursed to the Corporate Debtor by the Financial Creditor.
10. Subsequent to the disbursement, the Corporate Debtor failed to adhere to terms of the Loan Agreement and failed to pay interest / PEMI. Accordingly, the Corporate Debtor committed default on 15.04.2018 and

the account of the Corporate Debtor with the Financial Creditor was classified as an NPA on 14.07.2018.

11. In view of the Corporate Debtor's default, a Recall Notice dated 11.11.2019 was addressed by the Financial Creditor to the Corporate Debtor, the Guarantor herein and one Mrs. Durgaben Patel.
12. Despite the issuance of Recall Notice, the Financial Creditor invoked the Deed of Personal Guarantee dated 27.09.2017 on 16.02.2021 demanding payment of outstanding amounts from Mr. Chhaganlal Patel.
13. Despite that as no payments were forthcoming vide its Advocates' Letter dated 13.11.2021, the Financial Creditor once again called upon inter alia the Corporate Debtor, Mr. Chhaganlal Patel and one Mrs. Durgaben Patel to make payments of the outstanding amount.
14. However, Mr. Chhaganlal Patel (Guarantor herein) have not responded to the Invocation Notice, nor has any payment been made by him in discharge of his contractual obligation under the Deed of Guarantee.
15. As on 28.09.2022, a sum of Rs. 1,07,54,52,792/- towards the Disbursed Loan and the interest due thereon is due and payable by the Corporate Debtor to the Financial Creditor.
16. As per the terms of the Deed of Guarantee, the liability of Mr. Chhaganlal Patel is joint, several, irrevocable and coextensive with that of the Corporate Debtor. Since the Corporate Debtor has defaulted upon its payment obligations, Mr. Chhaganlal Patel in its capacity as the Personal Guarantor is liable to pay the entire Outstanding Amount without any delay and demur to the Financial Creditor.
17. Owing to the aforesaid default and consequential non-payment by Mr. Chhaganlal Patel, the Financial Creditor was constrained to issue the demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process

of Personal Guarantor to Corporate Debtors) Rules, 2019 read with Section 95 of Insolvency and Bankruptcy Code 2016 dated 30.09.2022 calling upon the guarantor to pay the outstanding amount of INR 1,07,54,52,792/- as on 28.09.2022.

18. In view of the aforesaid, it is submitted that the Respondent has defaulted in repaying the total outstanding amount & is unable to pay the debts within the meaning of the provisions of the Insolvency and Bankruptcy Code, 2016.
19. The copy of the petition has been served on the Personal Guarantor/Respondent.
20. The Hon'ble Supreme Court in ***Dilip B Jiwarajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021*** decided on 09.11.2023 held as follows:-

Quote

- i. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*
- ii. *The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

Unquote

21. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant had proposed the name of the Insolvency Professional, Ms. Dipti Amit Thite in the petition. However, during the pendency of the Company Petition, the Omkara Assets Reconstruction Pvt. Ltd filed an

application bearing **I.A. 2634 of 2024** for replacement of IRP with CA Pankaj Bhattad.

22. From the perusal of the record, it is revealed that I.A. 1598 of 2024 has been filed for substitution of the Financial Creditor i.e. Piramal Capital & Housing Finance Limited with Omkara Assets Reconstruction Pvt. Ltd with regard to the Assignment Deed dated 10.01.2023. The said IA is still pending for substitution of the name and also listed for hearing on 23.08.2024. In these circumstances, this bench is appointing the RP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI).
23. Accordingly, we appoint **CA Rajan Garg** with registration no. **IBBI/IPA-001/IP-P-02397/2021-2022/13624**, **email** **id-fcarajangarg@gmail.com**, **Mobile No. 9810041732**, as Resolution Professional ("RP").
24. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.
25. This Bench also directs for an advance payment of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
26. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** from uploading of this order.

27. Further, the Registry is hereby directed to communicate this order to both the parties and to RP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.
28. List the matter for report of the RP as and when the report of RP is filed.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

---Rajeev. PS---

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

I.A. 2634/2024

IN

C.P. No. 222 of 2023

Omkara Assets Reconstruction Private Limited

(Acting in it's capacity of a trustee of Omkara PS 10/2022-23 Trust)

Having its address at: Kohinoor Square, 47th Floor, N.C. Kelkar Marg, R. G. Gadkari Chowk, Dadar (West), Mumbai-400021

.....Applicant

In the matter of

Piramal Capital and Housing Finance Limited (Erstwhile Dewan Housing Finance Corporation Limited).

Having its address at: 4th Floor, Piramal Tower, Peninsula Corporate Park, G K Marg, Lower Parel, Mumbai- 400013

.....Petitioner/Financial Creditor

V/s.

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Having its address at: Plot No. 901, Flat No. B02, Kamal Palace, Central Bazar Road, Near Tuli Imperial Hotel, Ramdespeth, Shankar Nagar, Nagpur- 440010.

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Order Pronounced on: 10.07.2024

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Applicant : Adv. Nausher Kohli a/w. Adv. Astha Ojha i/b.
DSK Legal

For the Personal Guarantor : Mrs.. Dipti Thite

Per: - SHRI CHARANJEET SINGH GULATI, MEMBER (T)

ORDER

1. The Present Application has been filed by **Omkara Assets Reconstruction Private Limited** under rule 11 of the NCLT, Rules, 2016 seeking following reliefs;

- a) *That the Hon'ble Tribunal be pleased to allow the present application;*
- b) *That the Hon'ble Tribunal be pleased to pass necessary directions replacing the proposed Interim Resolution Professional with Mr. Pankaj Bhattad;*
- c) *That this Hon'ble Tribunal be pleased to take on record the Form A dated February 23, 2024, of the new proposed interim resolution professional i.e., Mr. Pankaj Bhattad; and*
- d) *That this Hon'ble Tribunal be pleased to pass such order and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

2. It is submitted that the Financial Creditor i.e. Piramal Capital & Housing Finance Limited on 11.11.2022 filed the Company Petition 222 of 2023 against the Personal Guarantor under section 95 of the IBC, 2016.
3. During the pendency of company petition, I.A. bearing No. 1598 of 2024 was filed under Rule 11 of the NCLT Rules, 2016 seeking substitution of the Financial Creditor i.e. Piramal Capital & Housing Finance Limited with Omkara Assets Reconstruction Pvt. Ltd pursuant to the Assignment Deed dated 10.01.2023. However, the said IA is still pending and listed for hearing on 23.08.2024. As the substitution application is still pending, the applicant in the present I.A. is not the competent party to seek prayers as mentioned above. However, since RP is being appointed in CP 222 of 2023 from the list of Insolvency and Bankruptcy supplied by IBBI, this IA becomes infructuous.
4. In view of the above facts and circumstances, the above application has become **infructuous** and stands **disposed of**.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

--Rajeev, PS--

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**