

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI
CP (IB) No.942/MB/2020

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

In the matter of:

OMKARA ASSETS RECONSTRUCTION PVT. LTD.

[CIN: U67100TZ2014PTC020363]

No.9 M.P. Nagar, First Street,
Kongu Nagar Extension, Tirupur,
Coimbatore -641607
Tamil Nadu.

.....Financial Creditor

Vs.

AMEYA ECO-ZONE DEVELOPERS PVT. LTD.

[CIN: U45200MH2007PTC167389]

103, Ameya House, Rajkumar Corner,
Jayprakash Road, Andheri (West)
Mumbai -400058
Maharashtra.

.....Corporate Debtor

Pronounced:07.06.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Financial Creditor : Adv Kunal Kanungo

For Corporate Debtor : Adv Charles Desouza

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This is an Application bearing C.P.(IB) No.942/MB/2020 filed by Omkara Assets Reconstruction Private Limited, Financial Creditor through its Chief Manager, Ms. Priti Patkar on 24.02.2020 under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“AA Rules”) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Ameya Eco-Zone Developers Pvt. Ltd. (hereinafter referred to as the “Corporate Debtor”). Ms. Priti Patkar has been duly authorised in this behalf under Board Resolution dated 31.03.2018 passed by the Board of Directors of the Financial Creditor.
- 1.2 The Financial Creditor in Part-IV of the Application has claimed an amount of Rs.14,37,03,115/- to be in default as on 18.02.2020 along with further interest till realisation of outstanding dues. The Corporate Debtor had stood as a guarantor for the Overdraft Facility of Rs.12,00,00,000/- extended by New India Co-operative Bank Limited to the Principal Borrower i.e., M/s. Sarthak Developers *vide* Renewal Letter dated 11.12.2017. The Loan Account of the Principal Borrower was declared as NPA on 30.08.2018. The New India Co-operative Bank Limited issued a legal notice under Section 13(2) of SARFAESI Act, 2002 on 05.09.2018.

1.3 The said Loan Account was assigned to Omkara Assets Reconstruction Pvt. Ltd. (OARPL) by way of Assignment Agreement dated 29.11.2018. Consequently, by virtue of being the lawful assignee of the said debt, OARPL became the Financial Creditor to the Corporate Debtor within the meaning of Section 5(7) of the Code. The Financial Creditor sent a Loan Recall Notice dated 01.08.2019 to the Principal Borrower along with the guarantors including the Corporate Debtor for repayment of entire amount due and payable along with penal interest. However, no repayment of the outstanding dues was made by any of the parties.

1.4 On 18.12.2019, the Financial Creditor sent a letter to the Corporate Debtor for invocation of the guarantee and called upon the Principal Borrower and the guarantors including the Corporate Debtor to make full and final payment of the outstanding dues within sixty days. In view of non-payment of the amount due and payable despite repeated notices, the Financial Creditor has approached this Adjudicating Authority under Section 7 of the Code for initiating CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF THE FINANCIAL CREDITOR

2.1 The Financial Creditor acquired the Loan Account through an Assignment Agreement dated 29.11.2018. The initial financial debt was granted by New India Co-operative Bank Ltd. to the Principal Borrower, M/s Sarthak Developers, for an Overdraft Facility of Rs.21,00,00,000/- (Twenty-One Crore Rupees) as per the Sanction Letter dated 22.09.2015. The Principal Borrower had three individuals and two corporate entities, including the Corporate Debtor i.e., M/s Ameya Eco-Zone Developers Pvt. Ltd acting as sureties.

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- 2.2 In consideration of the Overdraft against Premises Facility, the Principal Borrower provided an Undertaking and Declaration dated 16.10.2015, copies of promissory note along with letter of continuing security dated 16.10.2015 and letter of Lien and Set Off dated 16.10.2015.
- 2.3 A Deed of Guarantee dated 16.10.2015 was executed by the Corporate Debtor in favour of New India Co-operative Bank Ltd. for a sum of Rs.21,00,00,000/-. Additionally, a Deed of Mortgage dated 16.10.2015 was also entered into between the Principal Borrower, its guarantors and the Bank wherein the Corporate Debtor was referred to as the "Guarantor/ Mortgagor No.6". Nine properties were mortgaged under the Deed of Mortgage including those owned by the Corporate Debtor situated in Vadodara, Gujarat in order to secure the repayment of the amount due and payable.
- 2.4 The New India Co-operative Bank Ltd. renewed the Overdraft Facility for Rs.21 crores *vide* Renewal Letter dated 08.03.2017. In this connection, copy of Sanction Letter dated 08.03.2017 for renewal of Overdraft Facility (ODPRE) has been placed on record wherein the Corporate Debtor was mentioned as one of the five sureties. The Financial Creditor has also furnished copy of Acknowledgement of Debts and Securities dated 30.03.2017 by the Principal Borrower as well as the sureties including the Corporate Debtor *vide* which an amount of Rs.20,81,18,741/- was acknowledged as due and payable to the Financial Creditor as on 29.03.2017.
- 2.5 Later, on the request of the Principal Borrower, its existing limit was reduced to Rs.12,00,00,000/- (Twelve Crore Rupees) *vide* Sanction

Letter dated 11.12.2017 wherein the Corporate Debtor was mentioned as one of the four sureties.

- 2.6 The Principal Borrower initially paid EMI installments, but later failed to deposit even the regular installments, thereby leading to the Loan Account being declared as a Non-Performing Asset (NPA) on 30.08.2018.
- 2.7 In view of the above default, the New India Co-operative Bank Ltd. issued a Legal Notice under Section 13(2) of the SARFAESI Act, 2002 dated 05.09.2018 to the Principal Borrower and the guarantors including the Corporate Debtor calling upon them to pay the sum of Rs.12,45,60,445/- together with future interest thereon with effect from 01.09.2018 within sixty days from the date of the Notice failing which the Bank would take steps for enforcement of its security interest in the mortgaged properties.
- 2.8 Pursuant to assignment of the said Loan Account in its favour *vide* Assignment Agreement dated 29.11.2018, the Financial Creditor issued a Possession Notice dated 03.01.2019 to the Borrower and the guarantors including the Corporate Debtor under the provisions of Section 13(4) of the SARFAESI Act.
- 2.9 Thereafter, a Loan Recall notice was issued by the Financial Creditor to the Principal Borrower and the guarantors including the Corporate Debtor on 01.08.2019 demanding repayment of Rs.13,78,52,599/- along with penal interest. Despite various communications, the Principal Borrower and guarantors, including the Corporate Debtor, failed to clear the outstanding dues.
- 2.10 Subsequently, the Financial Creditor *vide* letter dated 18.12.2019 invoked the Guarantee given by the guarantors including the

Corporate Debtor and called upon the Principal Borrower and the guarantors to make full and final payment of the amount due and payable. The Financial Creditor *vide* another letter dated 21.01.2020 warned the Principal Borrower and the Corporate Debtor of legal action against the Corporate Debtor, if no settlement proposal was received by 31.01.2020.

- 2.11 Despite repeated assurances, the Principal Borrower as well as the guarantors including the Corporate Debtor failed to repay the outstanding amount. In these circumstances, the Financial Creditor preferred the present Application under Section 7 of the Code seeking initiation of CIRP in respect of the Corporate Debtor.
- 2.12 The Financial Creditor filed an Additional Affidavit on 12.12.2023 for placing on record the Board Resolution dated 03.08.2018 and the acknowledgement receipts evidencing the service of notice sent to the Corporate Debtor under Section 13(2) of the SARFAESI Act.
- 2.13 The Financial Creditor has referred to the order of co-ordinate Bench of this Tribunal at Mumbai dated 15.05.2023 in the matter of J.C. Flowers Asset Reconstruction Private Limited v. Evenness Business Excellence Services Private Limited [CP (IB) No. 692/MB-V/2022] wherein the co-ordinate Bench relying on the judgments of the Hon'ble Madras High Court in ***Spice Jet Ltd. Vs. Credit Suisse AG 2022 SCC OnLine Mad. 112*** and the Hon'ble NCLAT in ***Praful Nanji Satra Vs. Vistra ITCL (India) Ltd. & Ors. [(2022) ibclaw.in 550 NCLAT]*** took the view that any adjudication of the issue of stamping of documents is irrelevant in an application filed under Section 7 of the Code.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor has filed its Affidavit-in-Reply wherein it has raised a number of objections and opposed the present Application on various grounds.
- 3.2 At the outset, the Corporate Debtor submits that the Power of Attorney (POA) granted to Ms. Priti Patkar is based on a Board Resolution dated 31.03.2018 which authorised Mr. Manish Motilal Lalwani, Managing Director and CEO. However, the POA dated 29.06.2019 giving power to Ms. Priti Patkar contradicts the Board Resolution. This renders the POA illegal and without authority to institute proceedings under the Code. The petition is signed by Ms. Priti Patkar who lacks the authority to sign and the affidavit lacks a notarial serial number and stamping thereby violating the Notaries Act, 1952. Additionally, the address mismatch in the affidavit and verification clause deems the petition illegal under the Oaths Act, 1969. The Corporate Debtor contests the validity of the POA used for filing the petition stating that it is made on a Rs.100/- stamp paper which is deemed insufficiently stamped under the Maharashtra Stamp Act, 1958.
- 3.3 The Corporate Debtor submits that the Assignment Agreement dated 29.11.2018 transferring the alleged loan from New India Co-Operative Bank Ltd. to the Financial Creditor is not binding on the Corporate Debtor as no notice was given before the transfer.
- 3.4 The Corporate Debtor submits that loan facility to M/s. Sarthak Developers was granted not by the Financial Creditor/Assignee but by New India Co-operative Bank Limited/Assignor. It is stated that the terms and conditions of the Sanction Letter dated 22.09.2015 were

not signed and accepted by the Corporate Debtor. The Corporate Debtor further denies the execution of various agreements including the Loan/Overdraft Agreement dated 16.10.2015 stating that it is neither signed by the Corporate Debtor nor registered as per the Registration Act, 1908 and hence it is not enforceable by the Financial Creditor.

- 3.5 The Corporate Debtor denies the execution of Deed of Guarantee dated 06.10.2015. It is contended that the Deed of Guarantee was executed on challan of Rs.100/- and the same is again insufficiently stamped and cannot be considered under the Maharashtra Stamp Act, 1958. Moreover, the Deed of Guarantee is not registered as per the provisions of the Registration Act, 1908 and hence is not admissible as evidence. As regards the Deed of Mortgage dated 16.10.2015, it is contended that there is no creation and registration of charge with the RoC and, hence, it is clear that the property of the Corporate Debtor is never mortgaged to the Assignor or the Financial Creditor/ Assignee.
- 3.6 The Corporate Debtor asserts that there is a discrepancy in the amount stated in the Renewal Letter dated 08.03.2017 compared to the one mentioned in Part-IV of the Application. Further, it contends that the Renewal Letter does not bear the signature of the Corporate Debtor nor is rubber stamp affixed on it. It is claimed that the said Renewal Letter is fabricated by the Financial Creditor. Additionally, the Corporate Debtor submits that the Renewal Letter dated 11.12.2017 is also fabricated and no Board Resolution of the Corporate Debtor is annexed to the said letter. Nor is it signed by the Corporate Debtor in acceptance of the terms and conditions

contained therein. There is nothing to show that the Corporate Debtor had given guarantee for the same.

- 3.7 The Corporate Debtor challenges the legality of the declaration of Loan Account as NPA on 30.08.2018 and the validity of SARFAESI proceedings, contending that these were not in accordance with RBI guidelines and the mandatory provisions of the SARFAESI Act.
- 3.8 It is contended that instead of exhausting the remedy under the SARFAESI Act, the Financial Creditor has chosen to file the present Application under the Code and is thus trying to abuse the process of law. The Financial Creditor is substituting other remedies available under law and using the Code as a debt collection mechanism with malicious intent so as to force the Corporate Debtor to pay the amount.
- 3.9 The Corporate Debtor denies receiving several letters as mentioned in Part-IV of the Application including the Loan Recall Notice dated 01.08.2019 and calls upon the Financial Creditor to produce the proof of its service on the Corporate Debtor. It is claimed that there are discrepancies in the amount claimed by the Financial Creditor by stating that outstanding amount as per the Loan Recall Notice dated 01.08.2019 is Rs.11,99,81,843/- while as per the Demand Notice dated 05.09.2018, it is Rs.12,45,60,444.66.
- 3.10 The statement of Bank Account of the Principal Borrower maintained with New India Co-operative Bank Limited annexed to the Application fails to specify the applicable interest rate. It is evident that the Financial Creditor has imposed an exorbitant rate of interest, penal interest and various illegal charges. Additionally, the said statement has not been issued in accordance with the provisions of the Banker's

Book Evidence Act, 1891. Furthermore, both the Assignor and the Petitioner/ Financial Creditor have neglected to provide a certificate for the statement presented by the Petitioner/Financial Creditor. Consequently, the said statement is not admissible under the law.

- 3.11 The Corporate Debtor disputes the correctness of the Valuation Report provided by the Financial Creditor, asserting that the market value of mortgaged properties has been undervalued. It is claimed that the value of the properties is sufficient to repay the alleged loan. The Corporate Debtor has annexed copy of Valuation Report prepared by it and also contended that a prospective purchaser is ready to buy the property for a much higher price and pay the money to the Financial Creditor.
- 3.12 It is contended that the Financial Creditor has already initiated proceedings before the Debt Recovery Tribunal (DRT) against the Principal Borrower and thus, the present Application cannot be admitted without DRT adjudicating the loan transaction.
- 3.13 It is contended that the Corporate Debtor is a running company and is capable of repaying the amount from the property. Moreover, the value of the mortgaged security is in excess of the alleged outstanding debt of the Financial Creditor which is using the Code as a tool to recover debt. In these circumstances, it is submitted that the present Application is liable to be dismissed.
- 3.14 In the Additional Affidavit filed on 20.11.2023 to bring on record certain additional facts, the Corporate Debtor has stated that from May, 2022 onwards it has been making sincere efforts for sale of Vadodara land to intending purchasers so that the dues of the creditors including the present Financial Creditor could be settled out

of the total sale consideration of said land. It is also stated that the Corporate Debtor made a formal OTS proposal of Rs.8.5 crores to the Financial Creditor in January, 2023 but the same was rejected by the Financial Creditor in May, 2023.

4. ANALYSIS AND FINDINGS

- 4.1 Upon hearing the Ld. Counsel for both parties and having carefully gone through the materials available on record, our findings in the matter are as under:-
- 4.2 It is first proposed to deal with the preliminary objection raised by the Corporate Debtor with regard to the validity of the POA granted to Ms. Priti Patkar to file the Application. The Financial Creditor has *vide* Additional Affidavit dated 12.12.2023 filed certified true copy of a Board Resolution dated 03.08.2018 authorising Mr. Girish Sinha, Chief Operating Officer, on behalf of the Financial Creditor to execute, sign and issue Power of Attorney(s) or any other agreements, deeds, documents, legal documents and writings as may be required for the day-to-day operation of the Financial Creditor. He was also authorised to delegate some of his powers to any employees or officers of the Financial Creditor. Accordingly, he had issued power of attorney dated 29.06.2019 in favour of Ms. Priti Patkar, Chief Manager who had filed the present Application on behalf of the Financial Creditor. In view of this, the contention raised by the Corporate Debtor regarding validity of POA fails and is rejected.
- 4.3 As regards the objection raised by the Corporate Debtor concerning assignment of loan to the Financial Creditor, it is pertinent to note that Section 5(1)(b) of the SARFAESI Act, 2002 provides that any asset

reconstruction company may acquire financial assets/loans of any Bank or Financial institution by entering into an agreement for the transfer of such financial assets/loans on agreed terms and conditions. Section 5(2) of the SARFAESI Act lays down that where the bank or financial institution is a lender in relation to such financial assets/loans, the asset reconstruction company shall on such acquisition be deemed to the lender and all the rights of such bank or financial institution shall vest in such company in relation to above financial assets/loans. Section 5(3) makes it clear that pursuant to assignment, all contracts, agreements etc. relating to said financial assets shall be of as full force and effect against or in favour of the asset reconstruction company and may be enforced fully and effectually as if in the place of the said bank or financial institution, asset reconstruction company had been a party thereto or as if they had been issued in favour of the asset reconstruction company. The SARFAESI Act does not mandate notifying the debtor at the time of assignment of financial asset. We, therefore, hold that the assignment of debt neither causes any prejudice to the Corporate Debtor nor affects its liability to discharge the debt. It is just that the Financial Creditor/Assignee steps into the shoes of New India Co-operative Bank Limited (erstwhile lender and assignor) by virtue of the Assignment Agreement dated 29.11.2018 executed in its favour. It is clear that the assignment of debt is essentially a transaction between the Creditor and the Assignee which is recognised by the Code as a valid mode of transfer of debts and rights relating thereto and the entity receiving the assigned debt falls within the category of a 'Financial Creditor' as defined in Section 5(7) of the Code. Thus, the Corporate Debtor's contention that the assignment of its loan to the Financial Creditor (an asset reconstruction company) is not binding

on the Corporate Debtor is devoid of merit and deserves to be rejected.

- 4.4 On perusal of the records, it is noticed that an aggregate amount of Rs.21,00,00,000/- was advanced by New India Co-operative Bank Ltd. by way of overdraft facility to M/s. Sarthak Developers, the Principal Borrower *vide* Sanction Letter dated 22.09.2015. The aforesaid overdraft facility was guaranteed by the Corporate Debtor under the Deed of Guarantee dated 16.10.2015 executed with the Bank. This implies unequivocal and unconditional acceptance of the terms and conditions of the Deed of Guarantee. The Corporate Debtor's Board Resolution dated 06.10.2015 confirming its role as a guarantor has also been placed on record. On perusal of the said Deed of Guarantee, it is noticed that the guarantee was payable to the Bank "on demand". Owing to default on the part of the Principal Borrower in repayment of outstanding dues, the corporate guarantee was invoked through an invocation letter dated 18.12.2019 issued by the Financial Creditor *vide* which the Financial Creditor called upon the guarantors including the Corporate Debtor to make the payment before January, 2020. Consequently, the Corporate Debtor/ Guarantor along with the Principal Borrower became jointly and severally liable to the Financial Creditor for the outstanding amount. Thus, the Corporate Debtor's denial of execution of Deed of Guarantee as well as liability thereunder is found to be only self-serving and bereft of merit and cannot be countenanced.
- 4.5 As regards the Corporate Debtor's contention in relation to insufficient stamping of Deed of Guarantee and other loan documents, it is recognised that insufficiency in stamping of loan documents is not

relevant for admissibility of a petition under Section 7 of the Code and that objection as to stamping of documents cannot be determined in summary proceedings under Section 7 of the Code. Moreover, it has been held by a seven-Judge Bench of the Hon'ble Supreme Court in a recent judgment ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*** that the purpose of the Stamp Act is to protect the interests of revenue and not to arm litigants with a weapon of technicality by which they can delay the adjudication of the dispute. Insufficiently stamped documents suffer from only a technical deficiency which cannot be a ground to reject an application under Section 7 of the Code. This is also based on the equitable principle that a person cannot take advantage of his own wrong. With regard to the Corporate Debtor's contentions that the Deed of Guarantee is not properly stamped, it is observed that the same bears stamp duty of Rs.100/- as prescribed under the Maharashtra Stamp Act, 1958 and thus the same is not only admissible in evidence but also valid and legally enforceable. Therefore, the contention of the Corporate Debtor regarding insufficient stamping of Deed of Guarantee is found to be untenable and is accordingly rejected.

- 4.6 We observe that existence of debt and default need not be evidenced only by a loan agreement. It can be proved by other means as well such as record of default available with the information utility or such other record or evidence of default as may be specified. Further, the AA Rules prescribe Form-1 for making an application under Section 7 of the Code by a Financial Creditor. Part V of Form-1 requires particulars of financial debt including documents, records and evidence of default to be stated by the applicant. In the present case,

the Financial Creditor has provided copies of the Sanction Letter dated 22.09.2015, Renewal Letter dated 08.03.2017, Sanction Letter dated 11.12.2017, Acknowledgment of Debts and Securities dated 30.03.2017 by the Principal Borrower and the guarantors including the Corporate Debtor, Undertaking dated 16.10.2015, promissory notes dated 16.10.2015, Statement of Account of the principal borrower with New India Co-operative Bank Ltd., Deed of Guarantee dated 16.10.2015, notice under Section 13(2) of the SARFAESI Act dated 05.09.2018, possession notice dated 03.01.2019, Loan Recall Notice dated 01.08.2019 and letter dated 18.12.2019 invoking the corporate guarantee etc, in order to establish the existence of debt and default in repayment thereof. It is not the case of the Corporate Debtor that the aforesaid documents require payment of stamp duty under the Maharashtra Stamp Act. An additional affidavit filed by the Corporate Debtor states that an OTS proposal of Rs.8.5 crores was made in January, 2023 which was later rejected by the Financial Creditor. It is well-settled that an OTS proposal or offer made by a corporate debtor signifies admission of liability and a willingness to settle the debt.

- 4.7 Coming to the objection raised by the Corporate Debtor with regard to validity of loan documents, it is noticed that both the Sanction Letter dated 22.09.2015 and the Loan Agreement dated 16.10.2015 were addressed to M/s. Sarthak Developers, the Principal Borrower and were not at all required to be signed by the Corporate Debtor in its capacity as corporate guarantor. This cannot be a valid ground to wriggle out of the liability under the said loan documents. Further, as per the Maharashtra Stamp Act, 1958, it is not the lender but the borrower who is responsible for paying the stamp duty on loan

agreement at the time of its execution and such agreement must be registered with the Sub-Registrar of Assurances. In the instant case, it was for the Principal Borrower which is a related entity of the Corporate Debtor to get the Loan Agreement registered. The Principal Borrower having failed to do so, the Corporate Debtor cannot escape liability on this count.

- 4.8 As regards the Corporate Debtor's contention that the NPA declaration as well as the SARFAESI action in its case are illegal, it is pertinent to note that such objections are beyond the scope of summary jurisdiction of this Adjudicating Authority. In a summary proceedings under Section 7 of the Code, it is outside the ambit of this Adjudicating Authority to go into the question whether the declaration of loan account of the Corporate Debtor as NPA was in accordance with the relevant RBI guidelines or whether the SARFAESI action initiated by the Financial Creditor was in consonance with the mandatory provisions of the SARFAESI Act, 2002. Similarly, as regards the Corporate Debtor's plea challenging the Valuation Report of the mortgaged property and claiming that the value of the property is sufficient to repay the loan, it is pertinent to note that the correctness of Valuation Report also cannot be determined in summary proceedings under Section 7 of the Code. Finally, with regard to the Corporate Debtor's plea that the Renewal Letters dated 08.03.2017 and 11.12.2017 are fabricated, it again cannot be adjudicated in a summary proceeding like the present one. Surprisingly enough, it is noticed on perusal of Renewal Letters dated 08.03.2017 and 11.12.2017 that both these documents have been signed by M/s.Sarthak Developers, the Principal Borrower and three guarantors including the Corporate Debtor. The allegation of

fabrication of documents requires determination by a competent court of law and cannot be the subject matter of a summary proceedings under Section 7 of the Code. It is well-accepted that issues of fraud, manipulation, fabricated documents, false statements etc, cannot be decided by this Tribunal in exercise of its summary jurisdiction as these require examination of elaborate evidence.

4.9 It is well-established that pendency of proceedings before the DRT or other forum is not a bar for the Financial Creditor to initiate CIRP against the Corporate Debtor. The Adjudicating Authority need not wait for decision of DRT while rendering its findings. It is now settled that the provisions of Section 7 of the Code can be invoked even after issuance of Recovery Certificate by the DRT [***Tottempudi Salalith Vs. State Bank of India & Ors. (2023) ibclaw.in 123 SC***]. It has also been held by Hon'ble Supreme Court in ***Kotak Mahindra Vs. A. Balakrishnan and Another [(2022) 9 SCC 186]*** that the recovery certificate itself would give rise to a fresh cause of action entitling a Financial Creditor to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Thus, the plea taken up by the Corporate Debtor in this regard is found to be devoid of substance and is accordingly rejected.

4.10 With regard to the alleged discrepancy in the debt amount claimed in the recall notice and the guarantee invocation letter, it deserves to be noted that at this stage, the Adjudicating Authority is not concerned with the dispute between the Financial Creditor and Corporate Debtor regarding the quantum of financial debt. It is a matter to be ascertained by the Resolution Professional when a claim is made by the Financial Creditor during CIRP. All that the Adjudicating Authority is required to do is to ascertain whether the debt in question is a

financial debt and whether there is any default and whether the liability of the Corporate Debtor is more than the threshold limit prescribed under Section 4 of the Code. If all these conditions are satisfied, the Adjudicating Authority has to admit the application under Section 7 of the Code and such application cannot be rejected merely on technical or venial or extraneous grounds. That the Corporate Debtor is a running company which has taken steps for settlement of Financial Creditor's dues or made efforts, albeit unsuccessful, for sale of Vadodara land are not material or relevant considerations in the process of adjudication. No doubt, the Adjudicating Authority is required to exercise its judicial discretion in accordance with law and based on the facts, evidences and circumstances of the given case.

4.11 It is well-established that for the purpose of admission of Section 7 Application, what is paramount is the occurrence of default. As held by the Hon'ble Apex Court in ***Innoventive Industries*** (supra), the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted. It is of no matter that the debt is disputed so long as the debt is due and payable unless interdicted by some law. We find that the Financial Creditor in the present case has placed on record necessary evidence to demonstrate the existence of the debt exceeding the minimum threshold of Rs.1 crore prescribed under Section 4 of the Code due and payable by the Corporate Debtor as well as the default in repayment thereof by the Corporate Debtor. The Application has been filed in the prescribed form and is complete. The Corporate Debtor has not adduced any evidence to show that the debt in question is interdicted by any law in India. The Financial Creditor has proposed the name of Mr. Avinash Ambikaprasad Shukla, as the Interim

Resolution Professional (IRP) to carry out the functions as mentioned under the Code and has provided his valid AFA in Form B and also given his declaration in Form 2 dated 01.12.2023, *inter alia*, stating that no disciplinary proceeding is pending against him. Therefore, we find that all pre-requisites of Section 7(5)(a) of the Code are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission under Section 7 of the Code.

ORDER

This Application bearing **C.P. (IB) No.942/MB/2020** filed under Section 7 of the Code by Omkara Assets Reconstruction Private Limited, the Financial Creditor for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Ameya Eco-Zone Developers Pvt. Ltd., the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-

- I. We prohibit-
 - 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 Securitisation 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 possession of the Corporate Debtor.
- II. 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.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Avinash Ambikaprasad Shukla**, a registered Insolvency Professional having **Registration Number IBBI/IPA-003/IP-N00243/2019-2020/12839** and e-mail address avinashshukla1708@gmail.com and valid Authorisation for Assignment up to 07.01.2025 as the IRP to carry out the functions under the Code.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

- VII. That 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 or Section 25 of the Code, as the case may be. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the Insolvency and Bankruptcy Board of India for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K.R. SAJI KUMAR
MEMBER (JUDICIAL)

Deepa & JNK