

**(2022) 04 NCLT CK 0089**  
**In the National Company Law Tribunal**  
**Case No : CP (IB)/85 / (CHE) 2022**

|                                              |            |
|----------------------------------------------|------------|
| Omkara Assets Reconstruction Private Limited | APPELLANT  |
| Vs                                           |            |
| Karaikal Port Private Limited                | RESPONDENT |

**Date of Decision :** 29-04-2022

**Acts Referred:**

Insolvency & Bankruptcy Code, 2016 — Section 7, 7(1), 7(2), 7(3), 7(5), 13(2), 14(1), 14(2), 14(3), 15, 17, 18, 19, 20, 31(1), 33  
Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 — Section 3  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 4, 4(3)  
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6

**Citation :** (2022) 04 NCLT CK 0089

**Hon'ble Judges :** Sucharitha R, Member (J); Sameer Kakar, Member (T)

**Bench :** Division Bench

**Advocate :** B.Dhanaraj, Rajkumar Jhabakh

**Final Decision :** Disposed Of

## Judgement

Sucharitha R, Member (Judicial)

1. This Application has been filed by one Omkara Assets Reconstruction Private Limited (hereinafter referred to as "the Financial Creditor") against Karaikal Port Private Limited (hereinafter referred to as "the Corporate Debtor") under Section 7 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Private Limited Company incorporated in the year 19.03.2015 under the Companies Act, 1956, registered with Reserve Bank of India as an asset reconstruction company under Section 3 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002, having its registered office at No.9, MP Nagar First Street, Kongu Nagar Extension, Tirupur 641 607, Tamil Nadu and

corporate office at C/515, Kanakia Zillion, Junction of L.B.S Road & CST Road, B.K.0 Annexe, Near Equinox, Kuria (West), Mumbai-400 070.

3. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 16.02.2006 and having its registered office at Kheezhavanjoor Village, T. R. Pattinam, Karaikal-609 606, Puducherry and CIN No. U45203PY2006PTC001945.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Rajesh Sureshchandra Sheth, (Reg. No. 188I/IPA-002/1P-N01021/2020-2021/13298).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs. 2804,55,70,549/-(Two Thousand Eight Hundred and Four Crores Fifty Five Lakhs Seventy Thousand Five Hundred and Forty Nine) which is due and payable by the Corporate Debtor and the break up of the above said amount is placed at Annexure 1(63) of the typed set of the application. Part-V of the Application discloses the list of various documents which has been placed by the applicant in Annexure AI(6) to AI(94) of the typed set of the Application.

6. It was averred in the application that the Government of Puducherry ("GOP", for short) had granted to Marg Limited (formerly known as Marg Constructions Limited), the rights to build, develop and operate the project located in the Karaikal District in the Union Territory of Puducherry in accordance with the terms of the Concession Agreement dated 25.01.2006

7. It was further averred in the application that in order to execute the project, Marg Limited had incorporated the Corporate Debtor as a 'special purpose vehicle' (SPV) on 16.02.2006. The Corporate Debtor is wholly owned subsidiary of Marg Limited, Marg Limited has assigned its rights under the aforesaid Concession Agreement dated 25.01.2006 to the Corporate Debtor as per the terms contained in the Deed of Assignment dated 06.11.2006, which was accepted by the Government of Puducherry. In pursuance to the assignment of rights under the aforesaid Concession Agreement, the Corporate Debtor has been engaged in the business of building, developing and operating the project.

8. It was further averred in the application that in connection with the construction and development of the project, the Corporate Debtor has availed various financial assistance, inter alia, under consortium from Indian Overseas Bank, Allahabad Bank, Central Bank of India, Punjab National Bank, Oriental Bank of Commerce, United Bank of India, Indian Bank, India Infrastructure Finance Company Limited, Corporation Bank, State Bank of Hyderabad and Syndicate Bank. With respect to such financial assistance, various facility documents and security documents came to be executed from time to time between the Corporate Debtor and the Lenders. Indian Bank was designated as Leader or Lead Bank of the consortium.

9. It was further averred in the application that the Corporate Debtor did not adhere to the schedule of payment of instalment to the Lenders and requested consortium member banks to consider restructuring of the Term Loan, merge the loans into a single term loan and grant Funded Interest Term Loan to the Corporate Debtor The share of the Lenders in the Merged Term Loan and FITL is as under: -

Name of Lender

Merged Term Loan

FITL

Total

Indian Bank

223.95

17.79

241.74

Oriental Bank of Commerce

33.64

2.41

36.05

Allahabad Bank

191.25

12.55

203.80

IIFC Limited

36.00

0.00

36.00

Corporation Bank

16.82

1.34

18.16

State Bank Hyderabad

53.02  
3.94  
56.96  
Punjab National Bank  
172.14  
13.68  
185.82  
Syndicate Bank  
98.37  
7.82  
106.19  
Central Bank of India  
98.37  
7.82  
106.19  
United Bank of India  
196.73  
15.63  
212.36  
Indian Overseas Bank  
147.55  
11.72  
159.27  
Total  
1267.84  
94.70  
1362.54

10. It was further averred in the application that out of the aforesaid 11 Lenders mentioned hereinabove, 9 Lenders (except Corporation Bank and State Bank of Hyderabad) assigned their respective debts pertaining to the Corporate Debtor along with underlying security to Edelweiss Asset Reconstruction Company

Limited (hereinafter referred to as "EARC"), as stated hereinafter.

S.No.

Assignor

Assignee

Date of Assignment Agreement

1.

Indian Overseas Bank

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 143

28.08.2015

2.

Allahabad Bank

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 146

01.09.2015

3.

Central Bank of India

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 154

28.09.2015

4

Punjab National Bank

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 168

10.12.2015

5.

Oriental Bank of Commerce

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 173

29.12.2015

6.

United Bank of India

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 177

29.12.2015

7.

Indian Bank

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 203

29.03.2016

8.

IIFC Limited

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 207

30.03.2016

9.

Syndicate Bank

EARC, acting in its

Capacity as the

Trustee of EARC

Trust-SC 231

28.09.2016

11. It was further averred in the application that the aforesaid Assignment Agreements were lodged for registration before the Sub-Registrar, Neravy, T.R.Pattinam. The aforesaid Sub Registrar had refused to register the aforesaid Assignment Agreements. In view of this, EARC had filed Writ Petition No. 1319 of 2017 before the Hon'ble High Court of Judicature at Madras against inter alios Sub Registrar Office and the Port Department, Government of Puducherry. The aforesaid Writ Petition was in respect of the Assignment Agreement dated 28.09.2016 executed between Syndicate Bank and EARC. The Hon'ble High Court of Judicature at Madras has, vide order dated 22.02.2022, inter alia, directed the Sub-Registrar, Government of Puducherry, Neravy, T.R.Pattinam to register the Assignment Agreement with stamp duty exemption. Pursuant to the above order, the Assignment Agreements executed between the Original Lenders and EARC came to be registered with the Sub Registrar, Neravy on 16.03.2022.

12. It was further averred in the application that after acquiring the debt along with underlying securities as stated hereinabove, EARC had at the request of the Corporate Debtor, vide Restructuring Agreement dated 26.07.2018 (hereinafter referred to as "the Restructuring Agreement of 2018") restructured the debt, on the terms and conditions stated therein. The Restructuring Agreement of 2018 was executed between the Corporate Debtor, Marg Limited, Mr. GRK Reddy, Mrs. VP Rajini Reddy and EARC, which was subsequently revoked, as stated hereinafter.

13. It was further averred in the application that EARC was trying to sell its debt pertaining to the Corporate Debtor through Swiss Challenge [-Auction Method. Marg Limited had filed a W.P. No.19939 of 2021 before the Hon'ble High Court of Judicature at Madras, inter alia, praying that Reserve Bank of India may direct EARC not to hold the Swiss Challenge E-Auction as it is violative of the directions issued by it. By the said Petition, Marg Limited challenged the validity of selling the debt of the Corporate Debtor by not following the requisite procedure. The Hon'ble High Court of Judicature at Madras vide order dated 20.09.2021 dismissed the W.P. No.19939 of 2021 filed by Marg Limited.

14. It was further averred in the application that Marg Limited approached the

Hon'ble Supreme Court of India by way of Special Leave Petition SLP(C) No.16208 of 2021 challenging the order dated September 20, 2021 passed by the Hon'ble High Court of Judicature at Madras While disposing of the aforesaid SLP(C) No.16208 of 2021, the Hon'ble Supreme Court passed the following order:

"... The petitioner is granted liberty to approach this court in the event of the dismissal of the review petition, by challenging the review petition as well as the judgment dated 20.09.2021."

15. Further, Marg Limited again approached the Hon'ble High Court of Judicature at Madras by way of Review Application No.152 of 2021 in W. P. No.19939 of 2021. The Hon'ble High Court of Judicature at Madras vide order dated 10.11.2021 dismissed the aforesaid Review Application No.152 of 2021.

16. Thereafter, Marg Limited filed Special Leave Petition (C) No.19555-19556 of 2021 against EARC and others challenging the order dated September 20, 2021 passed by the Hon'ble High Court of Judicature at Madras in W. P. No.19939 of 2021 and order dated 10.11.2021 passed in Review Application No.152 of 2021. Marg Limited has subsequently sought withdrawal of the aforesaid Special Leave Petition, as stated hereinafter.

17. The Corporate Debtor is represented by the Ld. Counsel Mr. Rajkumar Jhabakh has filed vakalath on 27.04.2022. Ld. Counsel for the Respondent admits "debt and default", however, not the entire quantum of debt as claimed by the Applicant in the Application.

18. Further, the Applicant had executed various deeds of hypothecation of the movable properties and mortgage of the immovable properties in favour of the lender. The project is also guaranteed by the corporate guarantee of Marg Limited and personal guarantee of Mr. G.R.K.Reddy and Mrs. Rajini Reddy.

19. Heard the submissions made by Learned Counsels of both the parties and perused the records including the pleadings placed on record. From the records it is seen that the Applicant had placed the Record of Default dated

26.11.2021 registered with the Information Utility and the copy of records of Financial Information - Form-C, submitted by the Financial Creditor with National E-Governance Services Limited (NESL) in respect of the Corporate Debtor, as downloaded on March 2022 from the website of NESL which is attached at Annexure I(91) of the typed set of the application. Record of default registered with NeSL is taken as prima facie proof of debt and default.

20. Further it is relevant to point out that Section 7 of the IBC provides for the initiation of CIRP by a financial creditor or a class of financial creditors and the same is extracted hereunder:

"7 Initiation of corporate insolvency resolution process by financial creditor.—(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central



Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred:

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under subsection (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

21. Further, it is from the records that the Corporate Debtor had issued five letters dated 29.03.2022 to the Financial Creditor, acknowledging the outstanding debt liability payable by the Corporate debtor to the Financial Creditor which is placed at Annexure 1(94) of the of the Typed of the application. Thus, this Tribunal is of the considered view that there are a debt and default on the part of the Corporate Debtor and the present application filed by the applicant is well within the period of limitation.

22. Apropos, the Hon'ble Supreme Court in the case of Innoventive Industries Limited v. ICICI Bank Limited, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the

proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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.

23. In view of the facts as stated supra and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

24. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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

respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

25. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

26. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate

Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

27. The Financial Creditor has proposed the name of Mr. Rajesh Sureshchandra Sheth, (Email ID: rajeshshethsbi@gmail.com) (Reg. No. IBBI/IPA-002/1P-N01021/2020-2021/13298 as the Interim Resolution Professional (IRP) who has also filed her consent in Form - 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 20.12.2022.

28. The .IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

30. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

31. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

33. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

34. Post this CP/IB/85/CHE/2022 for hearing on 13.06.2022.