

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – V**

**C.P. (I.B) No. 506/MB/2022**

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

*In the matter of*

**Omkara Assets Reconstruction Company  
Private Limited,**

Having its Corporate office at Kohinoor Square,  
47<sup>th</sup> Floor, N.C. Kelkar Marg, R.G. Gadkari  
Chowk, Dadar (West), Mumbai - 400028  
(Maharashtra)

**...Petitioner/Financial Creditor**

*Vs*

**Goldsouk Infrastructure Private Limited**

Having its registered office at 103/104, 1<sup>st</sup> Floor,  
Orbit Plaza, New Prabhadevi Marg, Mumbai -  
400025 (Maharashtra)

**... Respondent/Corporate Debtor**

**Order Dated: 24.03.2025**

**Coram:**

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

**Appearances:**

For the Petitioner: Counsel for the Petitioner

For the Corporate Debtor: Adv. Reena Jain Malhotra (VC)

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**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

- I. This Company Petition is filed by **Omkara Assets Reconstruction Company Private Limited** (hereinafter referred as “**Petitioner/Financial Creditor**”) on 27.04.2022 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Goldsouk Infrastructure Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 40,39,20,414/-** with the date of default being **10.10.2022**.

II. **Facts of the Financial Creditor-**

1. The Financial Creditor filed the present Company Petition due to the Corporate Debtor's inability to repay the debt aggregating to Rs. 40,39,20,414/- as on February 21, 2022.
2. DMI Finance Private Limited (DMI FPL) (the original Petitioner) and DMI Housing Finance Private Limited (DMI HFPL) sanctioned a Term Loan Facility for an aggregate amount of Rs. 16,21,00,000/- to the Corporate Debtor under a Term Loan Agreement dated 31.05.2016 (TLA). The said Term Loan Agreement was executed by and amongst the Corporate Debtor as the Borrower, Aerens Goldsouk International Limited and Visage Properties Private Limited as corporate guarantors, Amit Gupta and Ashish Gupta as personal guarantors,

along with DMI FPL and DMI HFPL as lenders, with DMI HFPL acting as the security trustee.

3. The relevant Clauses of the said Term Loan Agreement are Clauses 2.1, 2.5, 3, and 7. Clause 2.1 explicitly provided for the sanctioned Term Loan amount, Clause 2.5 provided for interest rates (18% per annum with additional interest of 1% on default and penal interest at 10% on outstanding amounts), Clause 3 provided for securities and guarantees to secure repayment, and Clause 7 stipulated events of default and their consequences.
4. The sanction and disbursal of the Term Loan Facility is further established through various documents executed on 31.05.2016, including the Security Trustee Agreement, Deeds of Hypothecation, Deeds of Corporate and Personal Guarantees, and Notices of Drawal for Rs. 15,96,06,671/- issued by the Corporate Debtor to DMI FPL and Rs. 10,00,000/- issued to DMI HFPL.
5. As stated by the Financial Creditor, after making certain repayments, the Corporate Debtor defaulted in adhering to the terms of the Term Loan Agreement. Consequently, the Corporate Debtor's loan account was classified as a Non-Performing Asset (NPA) with effect from 14.06.2018. Despite repeated reminders and follow-ups, the Corporate Debtor failed to comply with the demands raised by DMI FPL and DMI HFPL.
6. DMI FPL and DMI HFPL issued a statutory demand notice dated 16.07.2018 under Section 13(2) of the SARFAESI Act calling upon the Corporate Debtor, corporate guarantors, and personal guarantors to pay an outstanding amount of Rs. 18,68,94,348/- as on 13.07.2018, along with further interest at the contractually agreed rate. The Corporate Debtor made a representation to this notice which was dealt with by DMI HFPL.
7. As alleged, as the Corporate Debtor failed to repay the outstanding amount, the Security Trustee initiated further measures under the SARFAESI Act and took physical possession of the mortgaged property situated at Jaipur (Secured Asset) on 12.04.2019.

8. The Financial Creditor further submitted that to recover outstanding dues, a Lease Agreement was executed on 22.07.2019 between the Corporate Debtor, DMI FPL, DMI HFPL as Security Trustee, Metroline Townships Private Limited as Sub-lessor, Aerens Gold Souk International Limited as Lessors, and Bundl Technologies Private Limited as Lessee, regarding the Secured Asset. As per the Lease Agreement, the Lessee was to pay lease rentals to the loan account of the Corporate Debtor until the loan account was settled.
9. In terms of the Lease Agreement, DMI FPL and DMI HFPL received Rs. 54,66,605/- from the Lessee towards repayment of the Corporate Debtor's dues. However, the Lessees failed to pay the lease rentals and the Lease discontinued from 10.10.2020.
10. As stated by the Financial Creditor, the Corporate Debtor has admitted its liability in its balance sheets for the years 2017-2018, 2018-2019, and 2019-2020, wherein the liability owed to DMI FPL and DMI HFPL has been categorically recorded.
11. Regarding the date of default, the Financial Creditor, through the Additional Affidavit, clarified that while the CP mentions 10.10. 2020 as the date of default (being the date from which lease rentals were discontinued), the Corporate Debtor's loan account was classified as an NPA with effect from 14.06.2018, which can be reckoned as the date of default or a date 3 months prior thereto. As stated, the present CP is within limitation as the date of default is reckoned from 14.03.2018 (3 months prior to the date of NPA) and in view of the same, the present CP ought to have been instituted on or before 14.03.2021. Resultantly, a period of 1 year was available to institute the present proceedings as on 15.03.2020, the exclusion period on account of the COVID-19 Pandemic. The said exclusion period lapsed on 30.05.2022, in respect of limitation period which lapsed during the exclusion period. The present CP was filed on 16.03.2022 and thus, is within limitation.

12. DMI FPL and DMI HFPL, vide an Assignment Agreement dated December 27.12.2022, assigned all rights, title, and interest together with the underlying security of the Corporate Debtor's loan account to the present Financial Creditor, i.e. Omkara Assets Reconstruction Company Private Limited. By an order dated 16.05.2024, this Hon'ble Tribunal allowed Interim Application No. 2270 of 2024 and permitted the Financial Creditor to be substituted in place of DMI FPL and DMI HFPL.
13. The Financial Creditor submitted that the Corporate Debtor's contentions regarding jurisdiction, absence of Power of Attorney, dispute on quantum of debt, non-compliance with the Bankers' Book Evidence Act, and unclear dates of default were unsustainable and the Financial Creditor placed reliance on various Judgments with respect to the same.
14. Thus, the Financial Creditor prayed for admission of the Company Petition and initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, given that the debt and default are established, and the threshold limit of Rs. 1,00,00,000/- is satisfied.

### **III. Facts of the Corporate Debtor-**

1. The Corporate Debtor, at the outset, opposes the instant petition on various grounds, both procedural and substantive, and denies all contentions of the Financial Creditors.
2. The Corporate Debtor submits that this Hon'ble Tribunal has no jurisdiction whatsoever to decide the present dispute in terms of Article 10 and Clause 10.3 of the Term Loan Agreement dated 31.05.2016 duly executed between the Financial Creditors and the Corporate Debtor, which stipulates that all disputes shall be submitted to Arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act 1956, as amended from time to time, with the seat of arbitration being Delhi, India.

3. The Corporate Debtor contends that the petition filed 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 is without proper authority and defective, as Mr. Bharat Mohan Mukkar, who filed the application as Legal Counsel with Financial Creditor No. 1 and Authorized Representative of Financial Creditor No. 2, is not properly authorized to file such petition.
4. The Corporate Debtor states that there is neither a specific power of attorney nor a board resolution issued by the Financial Creditors authorizing Mr. Bharat Mohan Mukkar to file such petition, which is contrary to the ruling of the Hon'ble National Company Law Appellate Tribunal in the matter of Palogix Infrastructure Private Limited v. ICICI Bank Limited, Company Appeal (AT) (INS) No. 30 of 2017 dated 20.09.2017.
5. The Corporate Debtor submits that the only form of authorization enclosed with the Petition is an extract of Board Resolution dated 14.05.2018, which grants a general power to various officers of Financial Creditor to file any application/petition/legal proceedings on behalf of the Financial Creditors, which is insufficient for the initiation of insolvency proceedings.
6. The Corporate Debtor further submits that the Applicant has proposed the name of Mr. Sanjay Gupta having Registration No. IBBI/IPA-002/IP-N-00982-C01/2017-2018/10354 as the IRP, but has failed to annex a document for authorization for assignment as required under Regulation 7A of the Insolvency and Bankruptcy Code, 2016 (Insolvency Professional) Regulation, 2016.
7. The Corporate Debtor contends that Form 1 filed by the Applicant is incomplete and not in accordance with Section 7 and Section 215 of the IBC, as the Financial Creditor has failed to furnish the record of default recorded with the Information Utility, which is mandatory as per Section 215 of IBC and the Reserve Bank of India's notification dated 19.12.2017.

8. The Corporate Debtor states that the Financial Creditor has not produced any record of default as available with any Credit Information Company (CIC), which is a mandatory requirement under Form-1, thereby rendering the petition defective.
9. The Corporate Debtor submits that the NPA classification is contrary to guidelines issued by the Reserve Bank of India, as the account was classified as NPA on 14.06.2018, but the Statement of Account does not show that the account was overdue for 90 days as required under the RBI Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to advances bearing reference No. RBI/2014-15/74 DBOD.No.BP.BC.9/21.04.048/2014-15, dated 01.07.2014.
10. The Corporate Debtor contends that as per the Principal Sanction Letter dated 18.04.2016, it was agreed that the principal would begin amortizing after month 24 from the day of disbursement, and therefore, the declaration of the account as NPA is illegal.
11. The Corporate Debtor submits that the Bank is illegally claiming an amount of Rs. 40,39,20,414 as on 21.02.2022 with further interest at contractual rate, which is exorbitant and not the actual amount due and payable, as the Bank is charging inflated rate of interest and compounding the same, including penal interest.
12. The Corporate Debtor states that interest has been capitalized in blatant violation of the guidelines and law laid down by the Hon'ble Supreme Court of India in the judgment titled Central Bank of India Vs. Ravindra & Ors. (2002) 1 SCC 367.
13. The Corporate Debtor submits that the Statement of Account filed by the Applicant is not certified in terms of the Bankers' Books Evidence Act, 1891, as required under Column 7 of Part V of Form-1, rendering it inadmissible as evidence.

14. The Corporate Debtor contends that the Financial Creditors have failed to specifically mention the date of default in the Application, which is a mandatory requirement under Form-1.
15. The Corporate Debtor submits that the Financial Creditors are already taking action under SARFAESI Act and have proceeded to auction one secured asset, and discussions for amicable settlement have taken place between the parties, facts which have not been mentioned by the Petitioner in the present proceedings.
16. The Corporate Debtor states that the computation of defaulted amount as filed in this petition is different from the calculation of total dues as filed in the reply filed in the Securitization Application, and the amount claimed under Section 13 of SARFAESI is Rs. 18,34,55,009/- only, whereas the amount claimed in the present petition is more than double.
17. The Corporate Debtor contends that the alleged claim is disputed and unsubstantiated, as the statement of account reflects huge repayment of principal outstanding from time to time, which has not been properly accounted for, and the rate of interest has been arbitrarily charged with varying percentages every month.
18. The Corporate Debtor submits that it was not able to successfully commence and complete work due to various reasons beyond its control, of which the Applicant had been put to notice from time to time, and therefore there has been no willful default on the part of the Corporate Debtor.
19. In view of the above-mentioned preliminary legal objections and factual submissions, the Corporate Debtor prays for the dismissal of the instant petition.

#### **IV. Findings-**

1. We have heard both the Counsels and have perused the documents placed on record. After appreciating the contentions of both the Counsels, it stands established that the case of the Petitioner is that the Corporate Debtor had availed a Term Loan Facility under the Term Loan Agreement dated 31.05.2016



and defaulted in repayment of the same. The Financial Creditor has filed the instant Company Petition for a debt amounting to Rs. 40,39,20,414/-.

2. It is established from the perusal of the documents placed on record by the Financial Creditor that there was disbursal of the Term Loan Facility, constituting the financial debt within the meaning of Section 5(8) of the Code. The existence of the debt and default in repayment is not disputed by the Corporate Debtor.
3. The contention of the Learned Counsel for the Corporate Debtor that in view of the Arbitration Clause in the Term Loan Agreement, this Tribunal has no jurisdiction, deserves to be rejected. It is pertinent to note that the petition before this Tribunal under the IBC is for initiation of CIRP against the Corporate Debtor, which cannot be the subject matter of arbitration. Furthermore, there is no contention to the effect that the parties have filed their claims/counter-claims before arbitrators and that the matter is already in arbitration.
4. Regarding the issue of quantum of debt which is being disputed by the Corporate Debtor, the same appears to be an afterthought as the debt has been duly admitted by the Corporate Debtor in its balance sheets for the financial years 2017-2018, 2018-2019, and 2019-2020. Such acknowledgment is for an amount significantly exceeding the threshold limit of Rs. 1,00,00,000/-. At this stage, we are not concerned with the exact quantum of the amount due, as long as it is above the threshold limit prescribed under the Code.
5. The petition clearly mentions the date of default and the amount due. In view of the fact that the basic ingredients required for consideration by this Tribunal under Section 7 of the Code are satisfied in the petition, and the existence of debt has not been denied by the Corporate Debtor, we deem it appropriate to admit the present petition for initiation of CIRP.
6. The objections raised by the Corporate Debtor regarding authorization, non-furnishing of record of default with Information Utility, and non-compliance with the Bankers' Books Evidence Act, 1891, are procedural in nature and do

not go to the root of the matter, especially when the debt and default are established through other documentary evidence on record.

7. The Corporate Debtor's contention regarding proceedings under SARFAESI Act does not bar the present proceedings, as the two remedies are concurrent and not mutually exclusive, as held by the Hon'ble Supreme Court in various judgments.
8. In light of the facts and circumstances of the present case and the documents available record, we are satisfied that a default has occurred and the application under Section 7 of the Code is complete in all respects. In this regard it is imperative to place reliance on the judgment of the Hon'ble Supreme Court in the matter *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*, wherein it has been held as under-

*“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 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.”*

9. Therefore, the present petition is hereby **admitted** to CIRP by passing the following order-

### **ORDER**

- a. The above Company Petition No. 506/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Goldsouk Infrastructure Private Limited**.

- b. The Petitioner has proposed the name of **Mr. Sanjay Gupta**, bearing Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354, with place of residence at C-4E/135, Janakpur, New Delhi - 110058, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional 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 CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That 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.

- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 506/IBC/MB/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

sd/-

**MADHU SINHA****Member (Technical)**

/Jhanvi/

sd/-

**REETA KOHLI****Member (Judicial)**