

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No.1180/MB/2022

*[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 Private Limited

[CIN: U67100TZ2014PTC020363]

No. 9, M.P. Nagar, First Street

Kongu Nagar Extension, Tirupur,

Coimbatore-641607

Tamil Nadu.

.....**Financial Creditor**

Vs.

Gigeo Construction Company Private Limited

[CIN: L65910MH1984PLC032639]

5/1 Amar Palace, West Central Road

Opp. Yashwant Stadium, Dhantoli

Nagpur-440 012.

Maharashtra.

.....**Corporate Debtor**

Pronounced: 04.06.2024

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For the Applicant(s) : Adv. Nausher Kohli a/w Adv. Astha Ojha &
Adv. Jashshah i/b DSK Legal

For the Respondent(s) : Adv. Shadab Jan a/w Adv Atharva Khadse.

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

BACKGROUND

- 1.1 This is an Application bearing C.P.(IB) No.1180/MB/2022 filed by Piramal Capital and Housing Finance Limited (PCHFL) on 08.09.2022 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 through Mr. Jigar Patel, its Authorised Representative duly authorised in this behalf *vide* Board Resolution dated 05.08.2022 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Gigeo Construction Company Private Limited (hereinafter referred to as “the Corporate Debtor”).
- 1.2 In this case, a term loan of Rs.50,00,00,000/- was originally sanctioned by Dewan Housing Finance Corporation Ltd. (hereinafter referred to as “DHFL”) to the Corporate Debtor *vide* Sanction Letter dated 26.09.2017 for the construction and development of a real estate project. Various documents such as Loan Agreement dated 27.09.2017; Deed of Hypothecation dated 27.09.2017; Deed of Simple Mortgage dated 29.09.2017; and Deed of Personal Guarantee dated 27.09.2017 were executed by the Corporate Debtor/Guarantors in favour of DHFL. The Financial Creditor disbursed a total amount of Rs.49,20,00,000/- to the Corporate Debtor on different dates falling between 29.09.2017 and 29.06.2018.

- 1.3 Subsequent to the disbursement, the Corporate Debtor failed to adhere to the terms of the Loan Agreement and to pay interest. The default occurred on 15.04.2018 and the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) on 14.07.2018.
- 1.4 The Financial Creditor issued a Loan Recall Notice dated 11.11.2019 calling upon the Corporate Debtor and the Guarantors to pay the entire outstanding loan amount within 7 days of receipt of the said notice. However, despite receipt of Loan Recall Notice, the Corporate Debtor failed to make payment of the amount due and payable to the Financial Creditor.
- 1.5 Meanwhile, this Tribunal *vide* order dated 07.06.2021 approved a resolution plan submitted by PCHFL in respect of DHFL under Section 31 of the Code. As per the terms of the resolution plan, PCHFL was reverse-merged with DHFL and the resultant entity upon completion of the said merger was renamed as PCHFL. The name of DHFL was accordingly changed to PCHFL on 03.11.2021. Hence, the present Application has been filed by PCHFL on 08.09.2022 seeking commencement of CIRP in respect of the Corporate Debtor.
- 1.6 Later, the debt owed by the Corporate Debtor to PCHFL was assigned in favour of Omkara Assets Reconstruction Private Limited by an Assignment Deed dated 10.01.2023 entered into between Omkara Assets Reconstruction Private Limited and PCHFL. Being the lawful assignee of the debt, Omkara

Assets Reconstruction Private Limited thus became Financial Creditor to the Corporate Debtor within the meaning of Section 5(7) of the Code. IA No.611/2023 filed by it for amending the cause title of the Application was allowed *vide* order dated 20.02.2023 and necessary amendment in this regard was carried out on 28.06.2023.

AVERMENTS OF FINANCIAL CREDITOR

- 2.1 Pursuant to the Loan Agreement dated 27.09.2017, the Corporate Debtor was obligated to repay the Facility through 24 (twenty-four) equated monthly instalments (EMIs), commencing 36 (thirty-six) months from the date of the first disbursement. The repayment included interest at the rate of 3.20% below the Financial Creditor's Retail Prime Lending Rate, viz., 18.20% per annum, resulting in an effective interest rate of 15% per annum with monthly rests.
- 2.2 Additionally, the Corporate Debtor was required to pay interest, i.e., Pre-equated Monthly Installments (PEMI) on the Facility during the initial 36 months from the date of the first disbursement. Any failure to make interest (or principal) payments for two consecutive months constituted a violation of the sanction terms, enabling the Financial Creditor to exercise its discretion to recall the entire Facility.
- 2.3 The Corporate Debtor failed to fulfil its obligation to pay interest/ PEMI, as stipulated in the Loan Agreement dated 27.09.2017. The Corporate Debtor defaulted on 15.04.2018, leading to the classification of the Facility and the Corporate Debtor's account with the Financial Creditor as NPA on 14.07.2018.

The Financial Creditor on numerous occasions requested/ reminded the Corporate Debtor to regularise the account, but the Corporate Debtor failed to do so.

- 2.4 In view of the Corporate Debtor's default, the Loan Recall Notice dated 11.11.2019 was issued by the Financial Creditor but the Corporate Debtor failed to make the required payment. The Corporate Debtor not only failed to meet its interest obligations but also defaulted in repaying the principal amount. According to Part-IV of the Application, the Financial Creditor claims a total amount of Rs.1,05,96,31,988/- (One Hundred and Five Crores Ninety-Six Lakhs Thirty-One Thousand Nine Hundred and Eighty-Eight Rupees) from the Corporate Debtor including interest as on 05.09.2022.
- 2.5 The Financial Creditor has annexed to the Application the Record of Default filed with NeSL showing the date of default as 15.04.2018 and the amount in default at Rs.95,79,79,951/-. Since the Corporate Debtor neither responded nor raised any objection to the above information during the authentication process initiated by NeSL, the same was "deemed to be authenticated".

CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor in its Affidavit-in-reply has raised a number of objections as to both the maintainability and the merits of the Application on the following grounds:-

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- 3.2 The present proceedings are liable to be held in abeyance on account of the pending application bearing CP (IB) No.277/MB/2023 filed by the Financial Creditor under Section 95 of the Code for the same debt against the personal guarantor, Mrs. Durgaben Patel, wife of Mr. Chhaganlal Patel, the Corporate Debtor's promoter and director. An interim moratorium is currently in effect as per Section 96 of the Code with respect to any proceedings in relation to any debt claimed by the Financial Creditor. The interim moratorium under Section 96 is wider than the moratorium under Section 14 of the Code and it bars institution or continuation of proceedings and even legal actions in respect of any debt. The Corporate Debtor relies on the judgment of Hon'ble Supreme Court in ***State Bank of India Vs. V. Ramakrishnan & anr. [(2018) 17 SCC 394]*** in this regard.
- 3.3 There is no "default" as understood within the meaning of Section 3(12) of the Code. The debt alleged by the Financial Creditor is neither due nor payable by the Corporate Debtor in terms of the Sanction Letter dated 26.09.2017 read with the Loan Agreement dated 27.09.2017. Under Clause B of the Sanction Letter dealing with "Repayment of Loan", the loan along with interest is repayable in 24 EMIs after 36 months from the date of first disbursement. Therefore, as per the Sanction Letter, the debt was repayable on or after 29.09.2020, i.e., during the period when Section 10A of the Code was in operation. The Financial Creditor has wrongly relied on Clause 3.4 of the Loan Agreement to suggest that the Corporate Debtor was liable to pay PEML and that it committed default on 15.04.2018. Notably, neither the Sanction Letter

not the Loan Agreement provides for the rate of PEMI or the amount of PEMI. Thus, there is an apparent conflict between the terms of the Sanction Letter read with Clause 3.1 of the Loan Agreement and Clause 3.4. Reliance is placed on various judgments, including that of Hon'ble Delhi High Court in ***Sunil Kumar Chandra Vs. M/s. Spire Techpark Pvt. Ltd. [(2023) SCC OnLine Del 286]*** wherein it has been held that in case there is an iota of inconsistency between any two clauses of a contract, the former clause would prevail over the latter clause. Referring to the judgment of the Hon'ble Supreme Court in ***Bank of India Vs. K. Mohandas & Ors. [(2009) 5 SCC 313]***, it is contended that if the terms applied by one party to the contract like banks and insurers are ambiguous or unclear, an interpretation against that party should be preferred. Hence, Clause 3.1 would prevail over Clause 3.4 of the Loan Agreement and as such no debt was due or payable as on 15.04.2018.

- 3.4 The Financial Creditor incorrectly sets the default date as 15.04.2018 contrary to the explicit terms of the Loan Agreement. The Corporate Debtor contends that repayment of the loan with interest will occur in 24 EMIs starting after 36 months from the first disbursement. In other words, the Corporate Debtor is entitled to a moratorium period of 36 months from the date of the first disbursement on 29.09.2017. Further, any repayment obligations commence only after the expiry of 36 months from the first disbursement, i.e., on and after 29.09.2020. The Respondent thus had no legal or contractual obligation to pay any Pre-Equated Monthly Instalments ('PEMI') or repayment instalments

up to 29.09.2020. According to the Financial Creditor's own case, the debt would have fallen due only on 29.09.2020, during the period when Section 10A of the Code was in operation. Hence, there is no question of any default. The Financial Creditor has wrongly declared the Corporate Debtor's account as NPA during the moratorium/ cool-off period when no repayment obligation existed. The Loan Recall Notice dated 11.11.2019 is thus *non est* and illegal.

3.5 Further, the present Application is time-barred, as it was filed on 08.09.2022, more than three years from the pleaded date of default viz., 15.04.2018. It is noteworthy that the Financial Creditor has not presented a case for extension of the limitation period under Section 18 or 19 of the Limitation Act, 1963, nor has the Financial Creditor filed an application under Section 5 of the Limitation Act, 1963 seeking condonation of the delay. Additionally, any potential benefit from the *Suo Motu* Order passed by the Hon'ble Supreme Court would not apply, as the exclusion of time granted therein, if any, has already lapsed. It was clarified in that judgment that in cases where the limitation would have expired during the period between 15.03.2020 and 28.02.2022, all persons shall have a period of limitation of 90 days from 01.03.2022 i.e., 01.06.2022. The Financial Creditor having failed to file the Application before 01.06.2022, the same is liable to be rejected as barred by limitation.

3.6 Lastly, the Information Utility Report is unreliable. The report indicates date of default as 15.04.2018 and default amount of Rs.95,79,79,951/-. It is thus acknowledged and pleaded by Financial Creditor that the default occurred on 15.04.2018, as the Corporate Debtor failed to make payment of PEMIs.

However, the Financial Creditor claims to have recalled the loan amount only on 11.11.2019. Hence, even on this count, the Application is flawed and liable to be rejected.

REJOINDER BY FINANCIAL CREDITOR

4. The Financial Creditor while replying to the objections raised by the Corporate Debtor makes the following submissions in its Affidavit-in-Rejoinder:-
 - 4.1 The Hon'ble NCLAT, New Delhi in ***State Bank of India Vs. Mahendra Kumar Jajodia (2022) ibclaw.in 89 NCLAT*** clarified that CIRP proceedings of personal guarantors and corporate debtors should be treated independently and adjudicated individually. It was observed that the contract of guarantee is an independent contract and shall not absolve the guarantor from liability in case where the principal borrower is discharged from liability or no proceedings have been initiated against the principal borrower. This view was affirmed and upheld by the Hon'ble Supreme Court in ***Mahendra Kumar Jajodia Vs. State Bank of India, [(2022) ibclaw.in 16 SC]***. It is settled that simultaneous proceedings are valid against both corporate debtor and personal guarantor with the caveat that the creditors cannot recover more than the total amount claimed [***Lalit Kumar Jain Vs. Union of India [(2021) 9 SCC 321]***]. Moreover, the interim moratorium under Section 96 of the Code is only with respect to the debts of the personal guarantor and not the Corporate Debtor, as observed by the Hon'ble Supreme Court in ***State Bank of India Vs. V. Ramakrishnan & Anr. [(2018) 17 SCC 394]***.

- 4.2 The Corporate Debtor has made an incorrect interpretation of the clauses of the Sanction Letter and the Loan Agreement executed by the Corporate Debtor. The grounds raised by the Corporate Debtor on this count are frivolous and untenable. Upon seeking clarification, it is submitted that the total PEMI amount in default as on 15.04.2018 was Rs.1,76,20,206/- and the total outstanding amount as on date of default was Rs.49,89,65,647/.
- 4.3 The present Application is not time-barred. The Application bearing CP(IB) No.4258 of 2019 filed against DHFL came to be admitted on 03.12.2019 and as a result, a moratorium was declared under Section 14 of the Code which came to be lifted on 07.06.2021 when the resolution plan of PCHFL was approved. Thus, the time period between 03.12.2019 (commencement of moratorium) and 07.06.2021 (lifting of moratorium) deserves to be excluded in computation of limitation period in respect of the Application in terms of Section 60(6) of the Code. It is pointed out that these facts were duly taken into account by a co-ordinate Bench of this Tribunal in the matter of *PCHFL Vs. Manpreet Developers Pvt. Ltd.* [order dated 11.01.2023 in CP (IB) No.700 of 2022]. Further, the said position was also affirmed by the Hon'ble Supreme Court in ***New Delhi Municipal Council Vs. Minosha India Ltd. [(2022) 8 SCC 384]***. Furthermore, due to the COVID-19 pandemic, the period from 15.03.2020 to 28.02.2022 was excluded by the Hon'ble Supreme Court *vide* its Order dated 10.01.2022 in Miscellaneous Application No.21 of 2022. Hence, the Application is well within the limitation period.

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- 4.4 Finally, in case of the Financial Creditor, the Adjudicating Authority has only to determine whether a “default” has occurred, i.e., whether the debt (which may still be disputed) was due and remained unpaid. In the event of a default, the Application under Section 7 of the Code ought to be admitted, as held by the Hon'ble Supreme Court in *M/s Innoventive Industries Ltd. Vs. ICICI Bank Ltd [(2017) ibclaw.in 02 SC]*. In the present Application, it is submitted that there is a financial debt of over Rs.1 Crore in respect of which a default occurred on 15.04.2018 and the Application has been filed well within the limitation period and hence, the same deserves to be admitted.

ANALYSIS AND FINDINGS

5. Upon hearing the Counsel for both parties and having carefully gone through the materials available on record, our findings in the matter are as under:-
- 5.1 At the outset, it is proposed to deal with the objection raised by the Corporate Debtor regarding the maintainability of the Application against Corporate Debtor on the ground that the Financial Creditor has already filed insolvency proceedings against Mrs. Durgaben Patel (Personal Guarantor) for the same debt and interim moratorium under Section 96 of the Code is in operation. In this connection, it would be pertinent to take note of the provisions of Section 128 of the Indian Contract Act, 1872, which provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Therefore, on occurrence of default, the principal debtor and the surety are jointly and severally liable to the creditor which has

the right to recover its dues from either or both of them simultaneously. In the instant case, a perusal of Clause 6 of the Deed of Personal Guarantee dated 27.09.2017 also reveals that upon its execution, both the Guarantors agreed and declared that their liability shall be irrevocable, joint and several with the liability of the Borrower/ Corporate Debtor for repayment of the loan together with interest, costs, charges and expenses.

- 5.2 It is a settled position of law that there is no embargo under the Code on the financial creditor initiating simultaneous or independent proceedings against the principal borrower and the personal guarantor. The Financial Creditor can initiate insolvency resolution process against personal guarantors to a corporate debtor prior to, during and after the completion of CIRP against the corporate debtor. Section 60(2) of the Code permits simultaneous initiation of insolvency resolution proceedings against both the corporate debtor and the personal guarantors. Therefore, it is fallacious to assume that no action could be taken against the Corporate Debtor in the instant case while the interim moratorium in case of the personal guarantor is in operation and insolvency resolution process of the personal guarantor is underway. Reliance of the Corporate Debtor on **SBI Vs. V Ramakrishnan** (supra) is misplaced, because the issue involved in that case was whether on admission of an insolvency petition, Section 14, which provides for a moratorium for the limited period mentioned in the Code, would apply to a personal guarantor of a corporate debtor while no such issue is involved in the present case. The said judgment is not an authority for the proposition being canvassed by the Corporate

Debtor that in view of interim moratorium under Section 96 of the Code being in operation in case of the Personal Guarantor to the Corporate Debtor in respect of the same debt, the present Application instituted against the Corporate Debtor should be kept in abeyance. In any case, Section 14(3)(b) of the Code now makes it clear that the moratorium under Section 14(1) shall not apply to a surety in a contract of guarantee to a corporate debtor. Similarly, going by the scheme of the Code, it is nowhere mentioned that the moratorium under Section 96 or Section 101, in case of a personal guarantor to a corporate debtor, shall act as a bar on the proceedings under Section 7 initiated by the financial creditor in respect of the said corporate debtor. Consequently, the Corporate Debtor's plea on this count is found to be bereft of substance and is accordingly rejected.

- 5.3 The next issue for determination is whether based on interpretation of relevant clauses of the Sanction Letter dated 26.09.2017 and the Loan Agreement dated 27.09.2017, there was any amount due and payable by the Corporate Debtor which remained unpaid thereby resulting in occurrence of default. In this connection, it is noticed on perusal of the Sanction Letter that the repayment of the loan along with interest was to be made in 24 EMIs commencing after 36 months from the date of first disbursement. Clause 3.1 of the Loan Agreement read with Schedule I thereto is also along similar lines, though it also provides that interest "*will be payable monthly from the date of first disbursement*". Further, it is noticed that the Corporate Debtor has deliberately and conveniently chosen to overlook Clause 2(8) of the Sanction

Letter dealing with “other terms and conditions” which clearly and categorically states that *“interest shall be charged from the date of first disbursement. In the first 36 months, only interest (PEMI) needs to be paid every month. Post-dated cheques (PDCS) covering Interest should be furnished with each disbursement. If there is a default in payment of Interest or Principal for 2 consecutive months, it shall be construed as violation of the terms of sanction and the entire loan may be recalled”*. To the same effect is Clause 3.4 of the Loan Agreement which states that *“PEMI shall be charged from the date of first disbursement till the commencement of repayment through EMIs. Post Dated Cheques (PDC's) covering the same should be furnished with each disbursement. If there is a default in payment of interest or principal for two consecutive months, it shall be construed as an event of default or violation of the terms and conditions of the sanction and the entire said Loan may be recalled”*.

- 5.4 Hence, on careful consideration of the aforesaid clauses of the Sanction Letter and the Loan Agreement, it clearly emerges that (i) the loan along with interest was repayable in 24 EMIs commencing after 36 months from the date of first disbursement and (ii) that till the commencement of repayment through EMIs, only interest/ PEMI was to be charged from the date of first disbursement of the loan amount and such interest/PEMI was payable monthly from the date of first disbursement. It is also noticed that in case of default in payment of interest or principal on part of the Corporate Debtor for two consecutive months, the Financial Creditor had the right to recall the entire outstanding

loan amount. It is also pertinent to mention that the Corporate Debtor had been making payments of PEMI to the Financial Creditor on various dates both prior and subsequent to the pleaded date of default, i.e., 15.04.2018. In these circumstances, the Corporate Debtor cannot feign ignorance and nonchalantly claim that it was under no legal or contractual obligation to pay PEMI up to 29.09.2020. Thus, we find that there is not even an iota of inconsistency or ambiguity or vagueness between the terms and conditions of the Sanction Letter dated 26.09.2017 and the Loan Agreement dated 27.09.2017. In view of this position, the reliance placed by the Corporate Debtor on the judicial precedents referred to in Para 3.3 above will be of no avail. The contention raised by the Corporate Debtor on this count is nothing but a figment of its imagination and the same is accordingly rejected.

- 5.5 This leads us to the ascertainment of the amount of PEMIs due and payable by the Corporate Debtor as on 15.04.2018 which remained unpaid. It is observed from the record that the first disbursement of Rs.38 Crores was made to the Corporate Debtor on 29.09.2017 and till 31.01.2018, the Financial Creditor had made total disbursements of Rs.48 crores to the Corporate Debtor. Upon seeking clarification in the course of present proceedings, the Financial Creditor has submitted the working of the PEMI amount in default as on 15.04.2018 at Rs.1,76,20,206/- which exceeds the minimum threshold amount prescribed under Section 4 of the Code. There is no doubt that the default in payment of interest/ PEMIs will fall within the definition of "default" under Section 3(12) of the Code. The Financial Creditor has submitted the

record of default issued by NeSL with respect to Corporate Debtor which is sufficient to prove the default on part of the Corporate Debtor. It is pertinent to note that no objection was raised by the Corporate Debtor with NeSL in this behalf. Likewise, having defaulted in the payment of PEMIs on 15.04.2018, the Corporate Debtor cannot have any valid objection as to why the loan was recalled on 11.11.2019.

- 5.6 Finally, as regards the Corporate Debtor's plea that the Application is barred by limitation, it is noticed that while the date of default is mentioned in Part-IV as 15.04.2018, the Application was filed by the Financial Creditor on 08.09.2022. In this connection, the Financial Creditor has sought exclusion of the period from 15.03.2020 to 28.02.2022 due to the COVID-19 Pandemic in terms of the Order of the Hon'ble Supreme Court dated 10.01.2022 in Miscellaneous Application No.21 of 2022. Further, the Financial Creditor has rightly pointed out that pursuant to admission of DHFL to CIRP *vide* order of this Tribunal dated 03.12.2019 and approval of resolution plan of PCHFL *vide* order of this Tribunal dated 07.06.2021, it is eligible for exclusion of the time period between 03.12.2019 (when moratorium under Section 14 of the Code commenced) and 07.06.2021 (when said moratorium ended) in computation of limitation period in respect of the present Application as prescribed under Section 60(6) of the Code. This works out to be a period of 1 year 6 months and 4 days. As the Financial Creditor is lawfully entitled to the exclusion of above period of moratorium in computing the period of limitation for filing of this Application by virtue of Section 60(6) of the Code, the present Application

falls well within the period of limitation. However, the Financial Creditor also refers to the Order of Hon'ble Supreme Court dated 10.01.2022 in Miscellaneous Application No.21 of 2022 stating that the present Application is not barred by limitation due to the exclusion of the period from 15.03.2020 to 28.02.2022 during the COVID-19 pandemic. Consequently, it is concluded that the Application is not barred by limitation.

- 5.7 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 ***Innovative Industries*** (supra), the moment the Adjudicating Authority is satisfied that a default has occurred, the Application must be admitted. Considering the facts and circumstances of the case and the findings reached above, it is clear 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 Financial Creditor has also filed an Affidavit of the Interim Resolution Professional (IRP) in compliance with Section 7(3)(b) of the Code. The Applicant has proposed the name of Mr. Ritesh R. Mahajan, a registered Insolvency Professional as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Code and has provided his AFA in Form B and also given his declaration in Form 2 dated 01.09.2022, *inter alia*, stating that no disciplinary

proceedings 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.1180/MB/2022** filed under Section 7 of the Code by the Financial Creditor for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Gigeo Construction Company Private Limited, 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. Ritesh R. Mahajan**, a registered Insolvency Professional having **Registration Number IBBI/IPA-002/IP-N00048/2017-18/10132** and **e-mail address riteshmahajancs@gmail.com** and valid Authorisation for Assignment up to 22.11.2024 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