

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/4175/2023 C.P. (IB)/155(MB)2022

IN THE MATTER OF

Piramal Capital & Housing Finance
Limited

Vs

Sumer Radius Realty Private Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.09.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: -

For the Respondent: -

ORDER

IA/4175/2023: - The above **IA/4175/2023** is listed for pronouncement of orders. The same is pronounced in open court today vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)
//Anmol//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

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

C.P. (IB)/ 155 (MB) 2022

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.

**Omkara Assets Reconstruction
Private Limited**

Having its address at:

No. 9, M.P. Nagar First Street, Kongu Nagar Extension, Tirupur, Tamil Nadu – 641 607.

Having its corporate office at:

47th Floor, Kohinoor Square, N.C. Kelkar Marg, R.G. Gadkari Chowk, Mumbai – 400 028.

... Financial Creditor/Petitioner

Versus

Sumer Radius Realty Private Limited

Having its registered office at:

220, Commerce House, 140, N.M. Road, Fort, Mumbai - 400023.

... Corporate Debtor/Respondent

Along with

I.A. (IB) / 4175(MB) 2023

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

**J.C. Flowers Asset Reconstruction
Private Limited**

... Applicant

Versus

**1. Piramal Capital & Housing Finance
Limited**

**2. Sumer Radius Realty Private
Limited**

... Respondents

Order Pronounced on: 07.09.2026

Coram:

Sh. Vinay Goel
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearances:

For Petitioner

In CP 155/2022: Adv. Ryan D'souza, Adv. Zaid Mansuri i/b DSK Legal (PH)

For CD

In CP 155/2022: Adv. Rubin Vakil a/w Adv. Ruchi Kakkad i/b Integrum Legal (PH)

For Respondent

In IA 4175/2023: Adv. Ryan D'souza, Adv. Zaid Mansuri i/b DSK Legal (PH)

ORDER

1. The Present Company Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Piramal Capital and Housing Finance Limited (Erstwhile Dewan Housing Finance Corporation Limited/DHFL) for initiating Corporate Insolvency Resolution Process ("**CIRP**") against Sumer Radius Realty Private Limited (SRRPL) ("**the Corporate Debtor/Respondent**") for a default amount of **Rs. 22,350,793,302/-**, the date of default being 11.03.2019.
2. It is submitted that, pursuant to the order dated 07.06.2021 passed by this Tribunal approving the resolution plan in respect of Dewan Housing Finance Corporation Limited ("**DHFL**"), which became effective on 30.09.2021,

Piramal Capital and Housing Finance Limited reverse merged with DHFL. Thereafter, the name of DHFL was changed to Piramal Capital and Housing Finance Limited on 03.11.2021. Subsequently, vide order dated 22.08.2024, this Tribunal allowed the substitution of Omkara Assets Reconstruction Private Limited ("**Petitioner/Financial Creditor**") in place of Piramal Capital and Housing Finance Limited, and the Petitioner filed the amended Petition on record on 16.09.2024.

Brief Facts as per the Petition:

3. It submitted that the present Petition has been filed under Section 7 of the Code in respect of defaults under (i) the Loan Agreement dated 30.07.2018 ("Facility 1") executed by the Corporate Debtor; and (ii) the Corporate Guarantee dated 30.07.2018 ("Facility 2") executed by the Corporate Debtor in respect of the loan availed by Radius Estate Projects Private Limited ("**REPPL**").
4. In respect of Facility 1, it is submitted that DHFL, on the request of the Corporate Debtor, sanctioned a loan of Rs. 900 crores (disbursed Rs. 439.25 crores) vide sanction letter dated 27.07.2018, which was documented under the Loan Agreement dated 30.07.2018. The loan carried interest at 12% per annum, payable monthly, with the principal repayable in 24 EMIs commencing 48 months from the date of first disbursement. The Corporate Debtor failed to pay the interest due under the Loan Agreement, resulting in classification of the loan account as NPA on 01.01.2019. The Financial Creditor further submitted that the Corporate Debtor committed a subsequent default on 11.03.2019 and did not regularise the account despite repeated requests.
5. As regards Facility 2, it is submitted that DHFL had sanctioned a loan of Rs. 1,100 crores to REPPL vide sanction letter dated 27.07.2018. The Corporate Debtor had executed the Corporate Guarantee dated 30.07.2018 in favour of the Financial Creditor in respect of the said facility. Upon REPPL's failure to fulfil its repayment obligations, the Financial Creditor invoked the Corporate Guarantee vide letter dated 10.02.2021 and called upon the Corporate

Debtor to make payment within 15 days. The Corporate Debtor failed to make the payment within the stipulated period and continued to remain in default.

6. As recorded in Part IV of Form 1, the Financial Creditor claimed Rs. 6,30,88,29,602/- towards Facility 1 and Rs. 16,04,19,63,700/- towards Facility 2, aggregating to Rs. 22,35,07,93,302/-, as on 02.11.2021, with the date of default stated as 11.03.2019.
7. The Financial Creditor further submitted that the aforesaid facilities were secured by, inter alia, land bearing CS Nos. H/401, H/402 and H/415 to H/438 and CTS Nos. H/395, H/396, H/397 and H/398, aggregating to 26,099.40 sq. mts., together with the sold and unsold units in the project “Avenue 54” and the present and future constructions thereon, situated at Bandra, Santacruz West, Mumbai. The secured assets were stated to be valued at Rs. 3,495.50 crores.
8. Upon the Respondent’s failure to pay, the Petitioner filed the present Petition under Section 7 of the Code on 12.11.2021, seeking initiation of CIRP against the Respondent.

Reply of the Respondent:

9. The Corporate Debtor opposed the Petition and submitted that the Financial Creditor sought to proceed against it in respect of two separate transactions, namely, the loan of Rs. 900 crores sanctioned to the Corporate Debtor, out of which Rs. 439.51 crores were disbursed, and the Corporate Guarantee furnished in respect of the loan of Rs. 1,100 crores availed by Radius Estate Projects Pvt. Ltd. (“**REPPL**”). It was contended that the Petition was not maintainable as it sought to proceed against the Corporate Debtor both as borrower and guarantor, while REPPL, the principal borrower under the second facility, was itself undergoing CIRP. The Corporate Debtor further submitted that the Financial Creditor had failed to disclose material facts relating to REPPL’s CIRP, which had been admitted by this Tribunal on 06.09.2021, and the subsequent proceedings before the NCLAT and this Tribunal, concerning the constitution of the CoC and withdrawal of the CIRP.
10. The Corporate Debtor further submitted that it was a solvent company and

had an interest in approximately 6.5 acres of land at Santacruz (West), Mumbai, with development rights in the “Avenue 54” project having substantial development potential. It was contended that the project was capable of generating sufficient funds to discharge the liabilities and that the Petition had been filed only to exert pressure on the Corporate Debtor for recovery.

11. It was further submitted that the Financial Creditor had suppressed the pendency of I.A. No. 257 of 2021 in C.P. No. 4258 of 2019, wherein the Administrator of DHFL had alleged, on the basis of the Grant Thornton report, that the transactions between DHFL and SRRPL and between DHFL and REPPL involved irregularities, related-party transactions, siphoning of funds and other alleged fraudulent transactions. According to the Corporate Debtor, the Administrator had sought recovery of the amounts disbursed under those transactions. It was therefore contended that the Financial Creditor, being the successor of DHFL, could not take a contrary stand in the present proceedings by treating the same transactions as valid financial debt.
12. With regard to the loan granted to SRRPL, the Corporate Debtor contended that although the Financial Creditor had stated that the account was classified as NPA on 01.01.2019, further disbursements were made on 28.02.2019, 30.03.2019, 28.06.2019 and 01.07.2019, aggregating to approximately Rs. 224.51 crores. It was also submitted that the Financial Creditor had collected interest from the amounts so disbursed even after the alleged date of default. The Corporate Debtor therefore disputed the Financial Creditor's assertion regarding the date of default and classification of the account as NPA.
13. The Corporate Debtor further contended that, under the sanction letter dated 27.07.2018, repayment of the principal amount under the Rs. 900 crore facility was to commence after 48 months from the first disbursement, while interest was to be serviced separately. It was therefore submitted that the principal repayment obligation had not arisen on the date asserted by the Financial Creditor and that the Petition, insofar as it was based on the alleged

default in repayment of the principal amount, was premature.

14. As regards the Corporate Guarantee, the Corporate Debtor submitted that the sanction terms for the Rs. 1,100 crore facility to REPPL also provided for repayment of the principal after 48 months from the first disbursement. It was contended that the Petition did not disclose any valid event of default by REPPL or the Corporate Debtor sufficient to sustain the proceedings against the Corporate Debtor as guarantor. The Corporate Debtor also relied upon the pendency of REPPL's CIRP and contended that the Financial Creditor had not proceeded against the principal borrower or disclosed the relevant proceedings in the present Petition. On these grounds, the Corporate Debtor sought dismissal of the Petition.

Written submissions by the Petitioner

15. The Financial Creditor submitted that the contention that the Corporate Debtor was solvent and could repay its dues by creating third-party rights in the "Avenue 54" project was not a defence to a Petition under Section 7 of the IBC. It was submitted that the relevant consideration was the existence of financial debt and default, and not the Corporate Debtor's ability to raise funds from its assets.
16. As regards the objection regarding joinder of two causes of action, the Financial Creditor submitted that there was no prohibition under the IBC against relying upon more than one transaction in a Petition under Section 7. Relying upon ***Innoventive Industries Limited v. ICICI Bank, [(2018) 1 SCC 407]***, it was submitted that once the Adjudicating Authority is satisfied about the existence of a financial debt and default, the Petition is required to be admitted, subject to the statutory requirements. The Financial Creditor further relied upon ***Gouri Prasad Goenka, Ex-Chairman of NRC Limited v. Punjab National Bank [2019 SCC OnLine NCLAT 1137]*** and ***Apya Capital Services Private Limited v. Guardian Homes Private Limited [2020 SCC OnLine NCLAT 803]*** to submit that disputes regarding the exact quantum of debt do not affect admission where the debt due and payable exceeds the statutory threshold.

17. With regard to the contention that the transactions forming the basis of the Petition were alleged to be fraudulent in the proceedings initiated by the Administrator of DHFL, the Financial Creditor submitted that the said proceedings were still pending adjudication and no finding had been recorded that the transactions were fraudulent. It was therefore contended that the mere allegation of fraud did not preclude enforcement of the debt arising from the relevant agreements and guarantees. The Financial Creditor further submitted that the reliefs sought in the avoidance proceedings and the present Petition were distinct and independent, while the former concerned restitution or recovery of amounts allegedly advanced pursuant to the impugned transactions, the present Petition sought initiation of CIRP on the basis of the financial debt and default of the Corporate Debtor. It was submitted that the Corporate Debtor had neither denied execution of the relevant documents nor disputed disbursement of the amounts or its liability under the Corporate Guarantee, and that both remedies could be pursued simultaneously. In support, reliance was placed on the decision of this Tribunal in ***Piramal Capital and Housing Finance Limited (Formerly known as Dewan Housing Finance Corporation Limited) v. Bank of Baroda & Ors., I.A. No. 2852 of 2021***. The Financial Creditor also submitted that the decision relied upon by the Corporate Debtor in ***Piramal Capital and Housing Finance Limited v. Nayati Healthcare & Research NCR Private Limited*** had subsequently been set aside by the NCLAT with the consent of the parties.
18. The Financial Creditor therefore submitted that the objections raised by the Corporate Debtor were without merit and that the Petition deserved to be admitted upon satisfaction of the requirements of Section 7 of the IBC.

Written submissions of the Respondent

19. It is submitted that the loan transaction of Rs. 2317 crores disbursed by DHFL to the Radius Group entities is under investigation by the CBI and the Enforcement Directorate and is the subject matter of FIR No. RC-219-2020-E-0004, FIR No. ECIR/MBZO-I/03/2020, CBI Special Case No. 830 of 2021 and PMLA Special Case No. 452 of 2020. The Respondent further submits

that the loan transaction, process note for sanction of the loan and the sanction letter are also under investigation, and that any adjudication upon the said documents and transaction in the present proceedings may have a bearing on the aforesaid investigation and pending proceedings, therefore, the Petition ought not to be entertained.

20. The Corporate Debtor further contended that the Financial Creditor had introduced the letter dated 10.02.2021, whereby the Corporate Guarantee was allegedly invoked, only through its additional affidavit dated 09.03.2022. It was submitted that the said letter was not pleaded or produced with the original Petition and that no satisfactory explanation had been given for its subsequent production. The Corporate Debtor also questioned the authority of the advocate who had issued the said letter on behalf of DHFL and contended that there was no material showing valid authorisation by the Administrator.
21. The Corporate Debtor relied upon the statement of account to contend that, despite the alleged classification of the loan account as NPA on 01.01.2019, further amounts aggregating to approximately Rs. 224.51 crores were disbursed thereafter. It was also submitted that DHFL had appropriated amounts towards interest payable on other loans of Radius Group entities from the subsequent disbursements. According to the Corporate Debtor, these transactions were inconsistent with the alleged date of default and raised a substantial question regarding the correctness of the Financial Creditor's claim.
22. The Corporate Debtor further submitted that the Financial Creditor had lodged a claim of approximately Rs. 2,348 crores before the IRP of REPPL in its CIRP. It was contended that the claim forming the subject matter of the present Petition arose from the same underlying transactions and, therefore, the Financial Creditor could not seek recovery of the same debt in the present proceedings.

Analysis & Findings

23. Heard Ld. Counsel for the parties, and perused the record. We have given our thoughtful consideration to the arguments advanced and material placed on record.
24. The Petitioner submits that the Respondent has committed a default under two facilities dated 30.07.2018. The first facility was a loan of Rs. 900 crores, against which Rs. 439.25 crores were disbursed, while the second was a Corporate Guarantee for a loan of Rs. 1,100 crores availed by REPPL and invoked on 10.02.2021 upon REPPL's default. The Financial Creditor claims an aggregate default of Rs. 22,35,07,93,302/- as on 02.11.2021 and submits that the existence of debt and default is sufficient for admission under Section 7, that both facilities can be clubbed in one Petition, and that the pending avoidance/fraud proceedings in I.A. No. 257 of 2021 does not bar enforcement of the debt.
25. Per contra, the Respondent contends that the Petition improperly combines two distinct causes of action, as it proceeds against the Corporate Debtor as borrower under the first facility and as guarantor under the second, while REPPL, the principal borrower, was undergoing CIRP. It further submits that DHFL, the predecessor of the Financial Creditor, had itself assailed these transactions in I.A. No. 257 of 2021 as fraudulent, related-party and siphoning transactions. Further, relying also on the pending CBI and PMLA proceedings concerning the same transactions, the Respondent seeks dismissal of the Petition.
26. It is undisputed that the Financial Creditor had extended a loan facility to the Corporate Debtor and that the Corporate Debtor had also furnished a Corporate Guarantee dated 30.07.2018 in respect of the loan facility availed by Radius Estate Projects Pvt. Ltd. ("**REPPL**"). These two facilities form subject matter of the present Petition.
27. It is further undisputed that the two facilities forming the subject matter of the present Petition have also been assailed in **I.A. No. 257 of 2021**, filed under Section 66 of the Code by the erstwhile Administrator of DHFL. The

said application was filed on 03.02.2021 on the basis of the Transaction Audit Report of Grant Thornton Bharat LLP dated 17.01.2021 (“**GT Report**”), under which the facility in question was indicated to be fraudulent.

28. During the CIRP of DHFL, the Resolution Plan submitted by Piramal Capital and Housing Finance Limited was approved by this Tribunal vide order dated 07.06.2021 and became effective on 30.09.2021. Thereafter, vide order dated 09.02.2023 passed in I.A. No. 2849 of 2021, this Tribunal permitted substitution of Piramal Capital and Housing Finance Limited in place of the erstwhile Administrator to pursue the applications filed under Sections 43, 45 and/or 66 of the Code, including I.A. No. 257 of 2021. The said application continues to remain pending. Pursuant to the approved Resolution Plan, the Financial Creditor stepped into the shoes of DHFL in respect of the rights and proceedings contemplated thereunder.
29. Thus, it is not in dispute that the transaction/facility in question is also assailed in I.A. No. 257 of 2021, which was filed prior in point of time to the present Petition, and continues to remain pending. It is also not the case of the Financial Creditor that, after revisiting its position with regard to the transaction, it withdrew the said application.
30. The Financial Creditor submitted that the proceedings under Sections 7 and 66 of the Code seek distinct and independent reliefs and, therefore, may be pursued simultaneously. Reliance has been placed on the decision of this Tribunal in ***Piramal Capital and Housing Finance Limited (Formerly Dewan Housing Finance Corporation Limited) v. Bank of Baroda & Ors., I.A. No. 2852 of 2021.***
31. The said decision, however, is distinguishable on facts. The issue therein concerned the availability of independent remedies under the Code against third parties in the context of proceedings under Section 66. It did not concern with a situation where the same party, in respect of the very same transaction, seeks to maintain two inconsistent positions - assailing the transaction as fraudulent and seeking recovery/restitution in respect thereof in one proceeding, while seeking to enforce the same transaction as a valid

and subsisting financial debt in another proceeding that too under IBC itself. The said decision, therefore, does not assist the Financial Creditor in the facts of the present case.

32. In the present case, I.A. No. 257 of 2021 was filed first in point of time, on 03.02.2021, by the erstwhile Administrator of DHFL on the basis of the GT Report. Pursuant to the order dated 09.02.2023 passed in I.A. No. 2849 of 2021, Piramal was permitted to pursue the said application in place of the erstwhile Administrator. The Financial Creditor has thus continued the proceedings in which the very transaction forming the subject matter of the present Petition has been assailed as fraudulent.
33. The inconsistency, therefore, does not arise merely from the pendency of two proceedings, but from the mutually inconsistent positions taken in respect of the very same transaction. Having continued to pursue I.A. No. 257 of 2021 by assailing the transaction as fraudulent and seeking recovery in respect thereof, the Financial Creditor cannot, in the present Petition, seek to enforce the very same transaction as a valid and subsisting financial debt under Section 7 of the Code. Such inconsistent positions attract the principle of approbate and reprobate. The Financial Creditor, having itself questioned the validity of the transaction in the earlier proceedings, cannot seek to enforce the same transaction as a valid financial debt in the present proceedings.
34. It is also relevant to note that the Loan Transaction amounting to Rs. 2317 crores disbursed by DHFL, is stated to be the subject matter of FIR No. RC-219-2020-E-0004 filed by the CBI and FIR No. ECIR/MBZO-1/03/2020 filed by the Enforcement Directorate. The said transactions are also the subject matter of CBI Special Case No. 830 of 2021 and PMLA Special Case No. 452 of 2020, which are presently pending before the respective authorities. The Respondent has further submitted that the loan transaction, the process note for sanction of the loan and the sanction letter forming the basis of the present Petition are under investigation in the aforesaid proceedings.

35. In this regard, it is also relevant to take into consideration the view taken by this Authority in **Progfin Private Limited v. Ganesh Benzoplast Limited, C.P. (IB) 583(MB)/C-V/2024**, decided on 01.09.2025, and upheld by Hon'ble NCLAT in **Company Appeal (AT) (Ins) No. 1565 of 2025**, decided on 30.06.2026. In that case, this tribunal, while noting that the facility documents forming the basis of the Section 7 petition were also the subject of pending civil suits and FIRs, held that the pendency of such parallel proceedings limited its jurisdiction to conclusively determine the existence of debt and default, and observed that:

*"25. As regards the Petitioner's contention regarding the facts relating to disbursement of the amount, consequent debt and default is concerned while one may agree with such proposition but the facts and circumstances surrounding such disbursements and consequent debt and default cannot be overlooked. The Petition under Section 7 filed by a Financial Creditor cannot be admitted unless the debt and default is established. **In the present case though there is debt and consequent default but the same cannot be established against the Respondent herein in the wake of the surrounding circumstances** which include the disbursement made into a bank account which is not the bank account authorizedly opened by the Principal Borrower, the Deed of Guarantee executed being claimed to be on account of fraud, the signatures and the Board Resolutions supporting such actions of opening bank account and executing Deed of Guarantee alleged to be fabricated. These aspects being disputed and consequent litigations being pursued by the Parties clearly limit the jurisdiction of this Tribunal in coming to a conclusion in respect of establishing of existence of debt and default.*

26. It is submitted on behalf of the Respondents that the documents basis which the present Company Petition has been filed are fraudulent, forged and fabricated. Further, it is not disputed that Respondent has filed a commercial suit (L) 21035 of 2024 challenging the existence and validity of such documents. Additionally, a First Information Report

bearing no. 315 of 2024 has been registered before the police authorities. Given this background of the case, this Tribunal which has adjudicatory jurisdiction in a summary manner would not have jurisdiction to adjudicate upon the issues involved of fraud, fabrication or of documents being forged which issue is before the authorities.”

[Bold for Emphasis]

36. On appeal against the order passed by this Authority, the Hon’ble NCLAT affirmed these observations and held as under:

“30. When we see the impugned order, we find that the Adjudicating Authority after taking notice of the multiple pending civil and criminal proceedings did not make any attempt to conduct any trial of sorts to ascertain whether the transactions are actually fraudulent thus respecting the boundaries of the limited summary jurisdiction enjoyed by it. Having said that, in our considered view, we are not persuaded to agree with the contention of the Appellant that the Adjudicating Authority had misapplied the principles laid down by this Tribunal in the Tulip Hotel judgment as in that case this Tribunal had held that allegations of fraud or forgery cannot be considered by the Adjudicating Authority at the time of adjudicating a petition under Section 7 of the IBC. **In the given circumstances, we do not find the Adjudicating Authority to have either overstepped its jurisdiction or found to have abandoned or declined to exercise its jurisdiction and therefore neither transgressed or undermined the legislative intent of the IBC in rejecting the Section 7 application.**”

37. In the aforesaid judgments, it was observed that although debt and default were prima facie shown, the same could not be conclusively established against the Respondent in view of the surrounding circumstances. Consequently, the Section 7 petition was dismissed. In the present case also, although the Financial Creditor has relied upon the disbursement and alleged default, the very same transactions are under investigation by the CBI and the ED and are also the subject matter of proceedings under the

PMLA. These circumstances raise serious issues concerning the nature and validity of the transactions forming the basis of the alleged financial debt and, therefore, this Authority, in exercise of its summary jurisdiction under Section 7 of the Code, cannot conclusively determine the existence of the debt and default so as to admit the present Petition.

38. In view of the facts and circumstances of the case, not only the present Petition attract the principle of approbate and reprobate, but also the very underlying transaction, being the subject matter of investigation by the CBI and ED and consequent proceedings thereto, restricts its ambit to be considered as a financial debt within the meaning of Section 5(8) of the Code and the occurrence of consequent default. Accordingly, **C.P. (IB) No. 155 of 2022** is **dismissed** as not maintainable.
39. In view of the dismissal of the captioned Company Petition, the reliefs sought by the Applicant in **I.A. No. 4175 of 2023**, filed under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, seeking intervention in the present proceedings do not survive for consideration. Consequently, the said Interlocutory Application has become **infructuous** and is accordingly **disposed of**.

Sd/-

Vinay Goel

Member (Judicial)

OmkarD.

Sd/-

Charanjeet Singh Gulati

Member (Technical)