

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 1623 of 2023
& I.A. No. 4585 of 2024

IN THE MATTER OF:

D.V. Prabhu

...Appellant

Versus

Omkara Assets Reconstruction Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Arjun R. Sheth, Solicitor along with Mr. Rajiv Chawla & Ms. Henna George.

**For Respondents : Mr. Siddharth Sangal, Ms. Harshita Agarwal & Ms. Richa Mishra, for R-1/ ARC.
Mr. Vishwas V Shah, for R-2/ IRP**

O R D E R
(HYBRID MODE)

[Per : Justice Rakesh Kumar Jain (Oral)]

19.09.2024 This appeal is directed against the order dated 24.11.2023 passed by the National Company Law Tribunal, Ahmedabad, Division Bench, Court - I (**'Tribunal'**) by which CP (IB) No. 363 of 2023 and IA No. 276 of 2022 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**'Code'**) by the State Bank of India against the Hubtown Bus Terminal (Vadodra) Pvt. Ltd. (**'Corporate Debtor'**) was admitted.

2. The Appeal has been filed by the Suspended Director of the Corporate Debtor. At the time of preliminary hearing on 13.12.2023, this court passed the Interim Order i.e. "In the meantime, CoC be not constituted in pursuance of

the impugned order.” The Interim Order is still continuing. The CoC has not been constituted so far.

3. During the pendency of this appeal, the debt of the State Bank of India was assigned to the Respondent, namely, Omkara Assets Reconstruction Pvt. Ltd. (Assignee). The Appellant gave an undertaking on 01.07.2024 alleging that *“to safeguard the Company from dragging into CIRP in IBC proceedings, we hereby undertake that we will extend our full co-operation to OARPL to sell/dispose of security under the SARFAESI Act”* The undertaking is reproduced as under:-

“01st July 2024

*From: Dattatrya Vijaysingh Prabhu,
Suspended Director,
Management of Hubtown Bus Terminal (Vadodara) Pvt. Ltd.
Makarpura, Vadodara.*

*To,
Omkara Assets Reconstruction Private Limited ("OARPL"),
Kohinoor Square, 47th Floor,
N.C. Kelkar Marg, R.g. Gadkari Chowk, Dadar (W),
Mumbai-400 028.*

*Dear Sir,
Sub: Undertaking for repayment of all outstanding qua the
Term Loan facility in the name of M/s Hubtown Bus
Terminal (Vadodara) Pvt. Ltd. ("Company") from State Bank
of India ("Assigned Debt")*

Ref: Your Letter for Assigned Debt to us as an Guarantor, having reference no. Omkara/Mumbai/0014/2024-25 dated April 02, 2024

In reference to the above and amid the various hardship and challenges faced by us and the Company in the duration of Assigned Debt with the Assignor Bank, i.e. SBI. We wish to amicably resolve the debt assigned to OARPL keeping the borrower company outside the CIRP procedure. To safeguard our company from dragging into the CIRP and IBC proceedings, we hereby undertake that we will extend our full co-operation to OARPL to sell/dispose of security under the SARFAESI Act. We acknowledge the legality of the SARFAESI Action taken till date qua the secured assets and we further waive all our rights to dispute the same on any ground whatsoever. We further gives our undertaking and assurance to provide our full cooperation to you to recover the dues by enforcing the security interest.

In view of above, we request to please cooperate with us for closing/dropping the CIRP process and safe guard the company from the stringent steps of IBC.

Thanking you

D.V. Prabhu

Suspended Director

Hubtown Bus Terminal (Vadodara) Pvt. Ltd. (In CRP)”

4. Apropos, the undertaking, the Respondent has been asked to file an Additional Affidavit /consent. The Additional Affidavit was filed on 06.09.2024.

The contents of the said affidavit are as under :-

“1. I am the Assistant Vice President in the respondent No. 1 (assignee)-Omkara Assets Reconstruction Pvt. Ltd., and as such I am fully acquainted with the facts and circumstances of the case in the above matter and competent to swear-in this affidavit on behalf of the respondent No. 1 (Omkara ARC) in the above matter.

2. THAT, the above appeal was last listed for hearing before this Hon. Appellate Tribunal on 02.09.2024, when on the submissions of the counsel for the parties that the parties have reached a mutual understanding to close the CIRP proceedings on the assurance of the appellant/Corporate Debtor to fully cooperate with the respondent No. 1 in the proceedings under the SARFAESI Act, 2002, this Hon. Appellate Tribunal granted time to the respondent No. 1 to put its confirmation/approval of the said understanding in the Omkara Assets Reconstruction Pvt. Ltd. filed I.A. No. 4585/2024 for Substitution before this Hon. NCLAT, which by its Order dated 10.07.2024, substituted the Omkara Assets Reconstruction Pvt. Ltd. as respondent No. 1 in the above appeal in place of the State Bank of India.

4. THAT, after assignment of the debt of the Corporate Debtor to the Omkara Assets Reconstruction Pvt. Ltd. vide Assignment Agreement dated 30.03.2024, the appellant

approached the Omkara Assets Reconstruction Pvt. Ltd. for reaching an understanding/settlement, and after several discussions, the appellant issued Letter/Undertaking dated 01.07.2024 to the respondent No. 1-Omkara Assets Reconstruction Pvt. Ltd., the operative part of which reads, as under: -

“...In reference to the above and amid the various hardship and challenges faced by us and the Company in the duration of Assigned Debt with the Assignor Bank, i.e. SBI. We wish to amicably resolve the debt assigned to OARPL keeping the borrower company outside the CIRP procedure. To safeguard our company from dragging into the CIRP and IBC proceedings, we hereby undertake that we will extend our full co-operation to OARPL to sell/dispose of security under the SARFAESI Act. We acknowledge the legality of the SARFAESI Action taken till date qua the secured assets and we further waive all our rights to dispute the same on any ground whatsoever. We further gives our undertaking and assurance to provide our full cooperation to you to recover the dues by enforcing the security interest.

In view of above, we request to please cooperate with us for closing/dropping the CIRP process and safe guard the company from the stringent steps of IBC....”

True copy of the Letter/ Undertaking dated 01.07.2024 is the Ld. NCLT, Ahmedabad (Adjudicating Authority) in CP (IB) No. 363/2020, are CLOSED, however, the respondent No. 1, most humbly, seeks liberty of this Hon. Appellate Tribunal to revive the CIRP proceedings In case the appellant/CD violates or commits breach of the Undertaking dated 01.07.2024 in any manner.

6. THAT, the present Addl. Affidavit has been filed by the respondent No. 1 in view of the Order dated 02.09.2024 of this Hon. Appellate Tribunal in reference to the Undertaking dated 01.07.2024 of the appellant. The contents in Paras 1 to 7 of the present Affidavit-are true to the record of the case within my knowledge.

7. THAT the document(s) enclosed with this affidavit are true copies of their original from the record of the respondent No. 1-Omkara ARC.”

5. Counsel for the Respondent has submitted that in this Affidavit, the Respondent has sought liberty of this Tribunal for revival of the CIRP proceeding in case the Appellant violates the undertaking dated 01.07.2024.

6. Counsel for the Appellant has submitted that the Appellant shall abide by the undertaking and has no objection for revival of the CIRP proceeding in case of any breach of the undertaking given by the Appellant on 01.07.2024.

7. During the course of hearing today, we have enquired from the Counsel for the Respondent about the compliance of the guidelines of the Reserve Bank of India ('RBI'), which is the regulatory authority of the Respondent. He has

submitted that in the past there was an income tax raid on the Respondent and RBI had also issued a show-cause notice but the Respondent is now following the guidelines of the RBI.

8. Be that as it may, in view of the settlement arrived at between the parties by virtue of the undertaking dated 01.07.2024 and the Affidavit which has been filed on 06.09.2024 (both have been reproduced), the present appeal is succeeds and is allowed. The Impugned Order by which the Appellant (Corporate Debtor) has been pushed into the CIRP is hereby set aside. The Registry is directed to send a copy of this order to the Department of Regulation of the RBI within a period of 15 days for their perusal.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sim/Ravi