



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

C.P. (IB) No. 407/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Insolvency and Bankruptcy Application of Adjudating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

In the matter of

Unity Small Finance Bank Limited
CIN: [U65990DL2021PLC385568]

...Financial Creditor/ Applicant

Versus

Kaved Realty Private Limited

CIN: [U45200PN2012PTC142442]

...Corporate Debtor/Respondent

Order Delivered on: 23.10.2024

Coram:

Sh. Prabhat Kumar

Sh. Justice V.G Bisht

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

:

Ms. Naveli Reshamwalla a/w Adv.
Janhavi Mirlekar

For the Corporate Debtor

:

None Present



ORDER

Per: Sh. Justice V.G Bisht, Hon'ble Member (Judicial)

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") by Unity Small Finance Bank ("Financial Creditor") for a credit facility borrowed from the predecessor Applicant Bank i.e Punjab and Maharashtra Cooperative Bank ("PMC Bank") which is now merged with the Applicant Bank, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Kaved Realty Private Limited ("Corporate Debtor").

Brief Facts of the case:

2. The **Corporate Debtor, Kaved Realty Private Limited** is a private company limited by shares incorporated on 02.03.2012 under the Companies Act, 1956, with the Registrar of Companies, Pune, Maharashtra. Its registered office is Office No 531, Clover Center, Moledina Road, Camp, Pune, Maharashtra-411001 and is involved in the business of development of Real estate.
3. The **Financial Creditor, Unity Small Finance Bank Limited** is a company incorporated under the Companies Act, 2013 and a Banking Company within the meaning of Banking Regulation Act, 1949 is having its registered office at 1st Floor, Vinay Bhavya Complex, CST Road, Kalina, Mumbai-400098. Therefore, this Bench has territorial jurisdiction to deal with this petition.
4. The present Petition was filed on 21.03.2024 before this Tribunal for claiming an aggregate amount of Rs. 87,07,74,184/- (Rupees Eighty Seven Crore Seven Lakhs Seventy Four Thousand Hundred and Eighty Four) comprising of Rs.66,53,65,168/- as the principal amount and an interest amounting to Rs.20,54,09,016/- arising out of the Letter of Guarantee dated 22.09.2017 executed by the Corporate Debtor. The Date of Default as specified in part IV is 27.01.2020.



Submissions made by the Financial Creditor:

5. The Financial Creditor submits that the Corporate Debtor stood as a guarantor for the facility **Asuti Trading Private Limited (“Borrower”)** being 'Letter of Credit Facility with auto conversion of non-fund based to fund based & vice versa upto 30% of limit' having a limit of Rs.75,00,00,000/- by executing a Letter of Guarantee dated 22.09.2017 promising payments of all liabilities and obligations including but not limited to repayment of amount, interest, damages etc. The said facility was sanctioned by PMC Bank vide sanction letter dated 20.09.2017 and an amendment letter, dated 12.12.2017.
6. The Financial Creditor further submits that a Letter of Credit (“LC”) bearing irrevocable LC No.007191MLCU00037, dated 08.07.2019, was availed by the Borrower favouring beneficiary Mitsui & Co. for the purpose of shipment of Hot Rolled Steel Sheet in coil from Japan on credit of USD 26,35,000/- which was amended on 10.07.2019 and then again on 15.07.2019 to enhance the value of the LC to USD 97,92,500/-. A bill of exchange was drawn under such LC payable by PMC Bank on behalf of Borrower to Sumitomo Mitsui Banking Corporation for Mitsui & Co Ltd issued for an amount of USD 95,16,412.40/- falling due on 26.01.2020.
7. Subsequently, Sumitomo Mitsui Banking Corporation issued a letter, dated 06.08.2019, along with documents relating to Bill of Lading, Invoices and Packing List in view of the Letter of Credit facility for procuring raw materials from Japan on collection basis. It is further submitted by the Financial Creditor that, the predecessor of the Applicant Bank i.e PMC Bank had acknowledged the shipment of the raw materials via letter dated 09.08.2019, however in terms of this Bill, the Borrower and the Corporate Debtor failed to make the repayment of the amount on 27.01.2020.
8. The Financial Creditor have submitted that the Borrower has acknowledged the liability payable to PMC Bank vide letter dated 22.01.2020 wherein they have requested for an extension of the due date of the LC to repay the total outstanding amount. The letter also stated about the clamping of restriction under Section 35A of the Banking Regulation Act, 1949 by the Reserve Bank of India occurred during September 2019, which was a consequence of the massive fraud in relation to the

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dealings between the PMC Bank and Wadhwan group of Companies ultimately leading to the amalgamation of PMC Bank with the Applicant Bank on 25.01.2022 via Gazette notification for recovery of the public monies due from the Corporate Debtor.

9. The Financial creditors on account of failure on the part of the Guarantor, issued Demand notice under Section 13(2) of the SARFAESI Act, 2002 to Borrowers, Guarantors and Mortgagors against the immovable properties which were mortgaged under the Letter of Credit Facility by PMC Bank on 30.08.2022, however the aforesaid had failed to pay the debt within 60 days of the notice. The Financial Creditor had even issued a Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application of Adjudating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 for the repayment of the outstanding amount along with 14% interest p. a payable within 7 days as on 06.10.2022. Furthermore, under Section 13(4) the aforesaid Act of 2002, Symbolic Possession for immovable properties belonging to the Corporate Debtor was issued on 26.04.2023. The calculation of the Outstanding Amount is provided as below:

Particulars	Amount
Letter of Credit/Bill Issue Amount	USD 95,16,412.40/-
Gross Bill Amount as on 25.01.2022 @ Rs. 74.715/- per USD	Rs. 71,10,18,752.47/-
(-) Cash Margin in form of FDR -Set off	(Rs. 4,56,53,584.47/-)
Net Bill Amount as on 25.01.2022 @ Rs. 74.715/- per USD	Rs. 66,53,65,168/-
(+) Foreign Conversion Exchange Charges	Rs. 10,799.48/-
Total Outstanding Liability	Rs. 66,53,75,967.48/-
(+) Interest payable @14% p. a	Rs.20,54,09,016/-
Total Liability Amount (as on 29.02.2024)	Rs.87,07,74,184/-

Findings:

10. Heard learned Counsel for the Financial Creditors and perused the records.

11. Upon going through the record files, the Bench takes note of the affidavit of service by the Financial Creditors whereby it is stated that the present Petition along with the annexures were served upon the Corporate Debtor via email as on 21.03.2024. In compliance to the order dated 18.06.2024, the Notice of petition, copy of the present

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petition and annexures were served upon the Corporate Debtors via Speed-Post dated 29.06.2024, however the same was returned with the remark "*Item Returned as Unclaimed*" as on 17.07.2024. The notice of Petition and annexures were also shared via email provided in the portal of the Ministry of Corporate Affairs, dated 04.07.2024 and 15.07.2024 but the same got bounced back too.

12. Thereafter vide order dated 28.08.2024, this Bench had given the Corporate Debtors an opportunity to file their reply to the Petition within 2 weeks' time, though their counsel weren't present that day. It is also recorded in the Order dated 10.10.2024, the Corporate Debtor had already been granted various opportunities to file and place on record their reply to the present petition but neither the Corporate Debtor filed any reply nor their Counsels appeared, thus this Bench decided to proceed ex parte vide the same order. The matter is thus decided on merits based on material available on record.

The following facts are not in dispute:

13. That the Corporate Debtor stood as a guarantor for the facility Asuti Trading Private Limited ("Borrower") being 'Letter of Credit Facility with auto conversion of non-fund based to fund based & vice versa upto 30% of limit' having a limit of Rs.75,00,00,000/- by executing a Letter of Guarantee.

14. That a Deed of Guarantee was also executed between the Financial Creditor and the Corporate Guarantor on 22.09.2017. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.

15. That there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.

16. That as stated supra, the Financial Creditor issued Demand Notices to the Corporate Guarantor under Section 13(2) of the SARFAESI Act, 2002 on 30.08.2022 and under Rule 7(1) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for

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Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on 06.10.2022 thereby calling to repay the debt to which the Corporate Debtor failed to pay within the stipulated period i.e. 60 days from the date of invocation notice and as per the records available there is no reply from the Corporate Debtor.

17. That there is also no dispute that the Petition is within limitation period in accordance to Article 137 of Limitation Act, 1963. As per Hon'ble Supreme Court vide Order, dated 01.10.2022, in Suo Moto Writ Petition (C) No.3 of 2020, excluded the period of approximately 2 years i.e. from 15.03.2020 till 28.02.2022 while computing the period of limitation under any law. It is pertinent to mention that prior to the period of exclusion; 46 days had lapsed from the date of default i.e. from 27.01.2020 till 15.03.2020. Subsequent to the period of exclusion, only 750 days has lapsed i.e. from 01.03.2022 till 20.03.2024. Hence, a total of 796 days has lapsed from the date of default which is within 3 years (1095 days).
18. That upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this Company Petition is liable to be admitted.
19. The Financial Creditor has proposed the name of Renaissance Insolvency Resolution Professionals Private Limited, Registration No: IBBI/IPE-0093/IPA-1/2022-23/50034 and professional membership no. IPE/P-0020, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
20. It is, accordingly, hereby ordered as follows: -
21. We are hereby directing the Suspended Board of Directors to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.



22. There shall be a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("Code"), in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium:

- (i) 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;
- (ii) That the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

23. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Section 31(1) of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

24. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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25. **Renascence Insolvency Resolution Professionals Private Limited, Registration No: IBBI/IPE-0093/IPA-1/2022-23/50034** and professional membership no. **IPE/P-0020**, having registered address at 101 , Kanakia Atrium 2, Cross Road A, Chakala MIDC, Andheri East, Mumbai - 400093, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (“IBBI”). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
26. 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 of the Code. 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 within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
27. The Financial Creditor shall deposit a sum of Rs. 5,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
28. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
29. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

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Order

In the above circumstances the petition bearing CP (IB) 407/MB/2024 filed by Unity Small Finance Bank Limited, the Financial Creditor, under section 7 of the Code r/w Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against Kaved Realty Private Limited, the Corporate Debtor, is **Admitted**.

Sd/-

**Sh. Prabhat Kumar
Member (Technical)**

Sd/-

**Sh. Justice V.G Bisht
Member (Judicial)**

/JJ/