



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. V**

**CP No. 1037/(IB)-MB-V/2023**

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

*In the matter of*

**Unity Small Finance Bank Ltd**

Vinay Bhavya Complex, 1<sup>st</sup> Floor, CST Road,  
Kalina, Santacruz East, Mumbai- 400 098

... Petitioner/Financial Creditor

V/s

**Sudradh Construction Private Limited**

204, Chandra Mahal, Room No 23, 2<sup>nd</sup> Floor,  
Thakurdwar, Mumbai- 400 002

... Respondent/Corporate Debtor

**Order Dated: 21.08.2024**

**Coram:**

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

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

***Appearances through VC/Physical/Hybrid Mode :***

For the Petitioner : Mr. Manoj Kumar Mishra Advocate(VC)

For the Corporate Debtor : Ashwini Gawde Advocate (PH)

**ORDER**

*Per: Madhu Sinha Member (Technical)*

1. The Petitioners viz. '**Unity Small Finance Bank Ltd**' (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against '**Sudradh Construction Private Limited**' (hereinafter as '**Corporate Debtor**'). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 2,02,59,92,008.70/-inclusive of contractual interest, penal interest, costs and expenses.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
  - a. A copy of Sanction Letter dated 22.12.2012.
  - b. A copy of Letter of Lien and Set off dated 24.12.2012
  - c. A copy of Letter of Guarantee dated 24.12.2012
  - d. A copy of General Power of Attorney and Power of Attorney Sanction dated 24.12.2012
  - e. A copy of Term Loan agreement dated 24.12.2012
  - f. A copy of Mortgagee Deed dated 05.01.2013
  - g. A copy of Demand Notice dated 02.09.2010.
  - h. A copy of Financial statement of account.
  - i. A copy of record of default with NeSL.
  - j. A copy of OTS (One Time Settlement Proposal) dated 30.07.2021.



**BRIEF FACTS AND SUBMISSIONS OF THE PETITIONER:**

3. The Petition reveals that the Financial Creditor is a company incorporated under the provisions of Companies Act, 2013. The erstwhile Punjab and Maharashtra Co-operative Bank Limited as per the said Gazette Notification inter alia notified amalgamation scheme as “the Punjab & Maharashtra Co. Operative Bank Limited. (Amalgamation with Unity Small Finance Bank Ltd.) Scheme 2022” came into effect on 25.01.2022, by virtue of which all the legally enforceable rights of Punjab & Maharashtra Co. Operative Bank Limited, have been legally vested in Unity Small Finance Bank Limited.
4. It is submitted that the Corporate Debtor approached Punjab & Maharashtra Co. Operative Bank Limited (now amalgamated with **Unity Small Finance Bank Limited** (*hereinafter Financial Creditor*) for availing loan facilities to the extent of Rs.36,00,00,000/- (Thirty Six Crores Only). Upon applications made by the Corporate Debtor, loan facility vide sanction letter dated 02.12.2012 were sanctioned by Financial Creditor to the Corporate debtor, which was subsequently enhanced to Rs.51,12,00,000/- (Fifty-One Crores Twelve Lakh only).
5. The terms of the Facility were accepted by the Corporate Debtor and Corporate Debtor agreed and undertaken to repay the said facility with interest, cost and charges.
6. After availing the loan facilities, the Corporate Debtor was irregular in their instalment payments and committed defaults. The Financial Creditor declare the account of the Corporate Debtor as Non-Performing Asset **‘NPA’ on 31.03.2013** in accordance with directions and guidelines issued by the RBI. The Financial Creditor issued a letter bearing Ref No. PM/CO/Credit/50/19-20 dated 10.02.2020 for repayment of total outstanding amount owed by the Corporate Debtor. In furtherance thereto, the Financial Creditor issued another Notice bearing Ref No.



PM/CO/Recovery III/69/19-20 dated 20.03.2020. Despite repeated reminders from Financial Creditor and on no effective steps taken by the Corporate Debtor.

7. Thereafter, the Financial Creditor initiated measures under the provisions of the SARFAESI Act and issued demand notices dated 02.09.2020 under Section 13(2) of the SARFAESI Act, calling upon the Corporate Debtor, its Directors and Guarantors for repayment of the amount pertaining to Facility, which has not been responded to by the Corporate Debtor.
8. Subsequent to above, the Financial Creditor proceeded to take physical possession of the mortgage properties under Section 13(4) on 27.11.2020 for which the Application under Section 14 of the SARFAESI Act was filed by Financial Creditor on 07.12.2021 and also instituted proceedings before the Hon'ble Mumbai Debt Recovery Tribunal ('DRT') which is currently pending. Whereas the Corporate Debtor had preferred a Securitization Application before the Hon'ble Mumbai Debt Recovery Tribunal ('DRT').
9. The Applicant submitted that the date of default i.e. 31.03.2013 falls within the limitation period, since the Corporate Debtor has acknowledged the outstanding amount owed in favour of the Petitioner on numerous occasions, as can be reflected from its Financial Statement for every consecutive year. Also the Corporate Debtor has acknowledged its outstanding amount owed in favour of the Financial Creditor, by way of extending proposal for One Time Settlement (OTS) vide letter dated 30.07.2021.
10. Hence, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.



**REPLY FILED ON BEHALF OF THE CORPORATE DEBTOR:**

- 11.** In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of specific traverse.
- 12.** It is further submitted that the present Petition filed by the Financial Creditor is not maintainable under Section 7 of the IB Code, 2016 as the same is incomplete, defective and not maintainable in law. The Corporate Debtor further submitted that the application filed by the Financial Creditor was barred by limitation as the date of default mentioned fell outside the limitation period. Moreover, the application was also barred by Section 10A since the loan was recalled by notice dated 22.10.2020, beyond the stipulated period. Additionally, the Financial Creditor's demand exceeded the amount disbursed (i.e. The Financial Creditor had demanded more than 200 Crores; when their own best case was that disbursement of INR 51.12 Crores was made), suggesting ulterior motives rather than genuine insolvency resolution. Therefore, the application was not maintainable and should be dismissed.
- 13.** The Corporate Debtor submitted that they were a private limited company engaged in the business of developing and constructing houses and offices across Mumbai and Navi Mumbai. The Corporate Debtor was the principal borrower and mortgagor, owning and developing a housing project on Plot No. 28, Sector 15, CBD Belapur, Navi Mumbai. The Petitioner claimed to have sanctioned a Mortgage Term Loan of ₹36 crores in 2012 against this plot. However, the Petitioner alleged a mortgage over only 83 flats within the project, despite the entire project consisting of 110 flats and 12 shops. This was supported by a Valuation Report from 2012, which covered only the 83 flats, suggesting that the mortgage did not extend to the entire



project as claimed by the Petitioner. The Respondent argued that if the entire project had been mortgaged, the valuation would have included all flats and shops, not just the 83 flats mentioned. They were arrayed as the alleged principal borrower and mortgagor. The Corporate Debtor was seized up and possessed Plot No. 28, Sector No. 15, CBD Belapur, Navi Mumbai 400 614. They had constructed and developed a housing project over the said Plot No. 28. As per title documents, the Corporate Debtor was the owner of the said plot of land till that date, and no conveyance was being done in favor of any other party. Thus, the Corporate Debtor was entitled to all the benefits of being the owner of the land.

14. It was further submitted that the Corporate Debtor, had been maintaining its loan account promptly and regularly with the Financial Creditor as the Corporate Debtor had a very old business relationship with the Petitioner Bank.
15. It was submitted that the Corporate Debtor was surprised to receive a statutory demand notice under section 13(2) of the SARFAESI Act dated 02.09.2020, stating that their loan account had turned into a non-performing asset (NPA) on 31.03.2013, with an alleged final liability of Rs. 139,04,20,635.70/-. Subsequently, on 15.11.2020, the Financial Creditor had issued a "notice to take possession" to the Corporate Debtor. These actions by the Financial Creditor unmistakably demonstrated malicious intent, seemingly aimed at extorting money from the Corporate Debtor.
16. The Respondent in its written submission submits that the application filed by the Financial Creditor was deemed to be barred by limitation because it had been filed after the specified time limit from the date of default. This conclusion was supported by a precedent set by the *Hon'ble Supreme Court in Babulal Vardharji Gurjar versus Veer Gurjar Aluminium Industries Pvt. Ltd.*,

*"38. The discussion foregoing leads to the inescapable conclusion that the application made by the*



*respondent No. 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 08.07.2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The NCLT having not examined the question of limitation: the NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders deserve to be set aside and the application filed by the respondent No 2 deserves to be rejected as being barred by limitation”.*

Therefore, the present application was deemed ineligible due to being filed after the expiration of the limitation period. "

**17.** Furthermore, the Respondent submits that the date of default mentioned in the notices falls under the protection of Section 10A of the Insolvency and Bankruptcy Code. This section shields the Corporate Debtor from insolvency applications for defaults occurring during the period of the COVID-19 pandemic. Therefore, the default cited in the notices is exempt from insolvency proceedings under Section 10A of the Code. The Supreme Court, in the case of **Ramesh Kymal versus Siemens Games Renewable Power Private Ltd., Civil Appeal NO. 4050 of 2020**

*“emphasized that the legislative intent behind Section 10A of the Insolvency and Bankruptcy Code. It stated that the provision aims to protect corporate debtors from insolvency applications for defaults occurring during the COVID-19 pandemic. The Hon’ble Court*

*clarified that the section prohibits the filing of any application for insolvency proceedings for defaults that happened on or after 25 March 2020. This protection extends for six months, with the possibility of extension to one year. The Court stressed that interpreting the provision otherwise would undermine its purpose, leaving certain corporate debtors vulnerable despite experiencing defaults during the pandemic period. Therefore, Section 10A aims to shield corporate debtors from insolvency proceedings for defaults during the specified period."*

**18.** In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

**FINDINGS:**

**19.** We have heard the Counsel appearing for both the Parties and perused the material available on record.

**20.** This Tribunal finds that the Corporate Debtor has defaulted on repayment terms stipulated in the Sanction Letter dated 22.12.2012

Nature of loan	Mortgage Term Loan (for Project at Belapur Plot No. 28)
Amount	Rs.36,00,00,000.00 (Rupees Thirty Six Crore Only)
Prime Security	Land and structure standing thereon at Plot No.28, Sector 15, CBD Belapur, standing in the name of Sudradh Construction Pvt. Ltd. (by registered mortgage)
Collateral Security	Nil
Rate of interest	14% p.a. (Floating Rate)
Repayment	On Demand/to be repaid in 12 months
Moratorium Period	Three Month (Interest to be served - Rs.41,42,500.00 per month)
EMI	Rs.4,23,69,500.00 per month (for 9 months)
Sureties	Mr. Laxmichand Damji Chheda (Director) Mrs. Hansa Laxmichand Chheda (Director) Mr. Richik Laxmichand Chheda Mr. Nimit Laxmichand Chheda

and has also failed to repay the outstanding amount due. The Financial





Creditor issued Final Recall Notice dated 22.10.2020(annexed at Exhibit O) and recalled the entire loan amount being an aggregate sum of Rs.140,63,29,417.00/-.

21. It is an undisputed fact that loan facilities have been sanctioned by the Financial Creditor to the Corporate Debtor vide sanction letter dated 22.12.2012. The Bench further considered, whether the claim of the Financial Creditor fall within the period of Limitation. For this the Bench rely on the Judgement of the **Hon'ble Supreme Court of India in Sesh Nath Singh & Anr v. Baidyabati Sheoraphuli Co-operative Bank Ltd & Anr**, wherein it was held that:

*“an applicant under section 7 of the IBC can claim benefit of section 14 of the Limitation Act, 1963, in respect of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”).*

Here it is pertinent to note that, Section 14 of the Limitation Act, 1963, states that *“the period of limitation for any suit, the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the Defendant shall be excluded, where the proceedings relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it”.*

22. The Financial Creditor had initiated the proceedings under the SARFAESI Act and had sent a notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor on 02.09.2020. On 07.12.2021, the Financial Creditor filed an application under Section 14 of the SARFAESI Act before the Hon'ble DRT Mumbai, which was pending before the Hon'ble DRT Mumbai.



Pursuant to the same, the Corporate Debtor had also preferred a Securitization Application before Hon'ble DRT Mumbai on 18.01.2021.

**23.** In the present case, the Corporate Debtor had acknowledged the debt by sending an OTS proposal dated 30.07.2021 and also made payments to the Principal Amount and also to the interest amount. Thus, there was a clear acknowledgment of debt and default of non-payment of money due by the Corporate Debtor. The Financial Creditor, after giving several opportunities for repayment of the loan to the Corporate Debtor, had sent a final loan recall notice dated 20.03.2020 (annexed at Exhibit M) for recovery of the said sum to the Corporate Debtor.

**24.** As has been stated above the OTS proposal sent by Corporate Debtor on 30.07.2021 and after the OTS Proposal where the Corporate Debtor has acknowledged its liability in favour of Unity Small Finance Bank Ltd and also the Corporate Debtor had made payments on various dates namely on 08.11.2014, 24.07.2015, 06.02.2016, 24.03.2016, 11.02.2022, 31.03.2023 and the last payment was made on 31.03.2023. The acknowledgment of the financial debt by the Corporate Debtor via the OTS Proposal dated 30.07.2021 further supports the assertion that the Petition has been filed within the period of limitation. **The Hon'ble NCLAT in the matter of Tejas Khandhar v. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 371 of 2020, decided on- 12-07-2022**, held that the

*“OTS proposal falls within the definition of the ambit of ‘acknowledgement of debt’ as envisaged under Section 18 of the Limitation Act, 1963”.*

Section 18 of the Limitation Act defines as under:

- 1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh*



*period of limitation shall be computed from the time when the acknowledgment was so signed.*

- 2) *Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

**25.**As regards the point of limitation, it has been rightly pointed out that the account of the Corporate Debtor was declared NPA. In this regard, Counsel for the Petitioner has referred to the statement of account of the Corporate Debtor at Exhibit (T) which shows that the Corporate Debtor has been making part payments. It is well settled that part-payments made from time to time amount to acknowledgements on the part of the Corporate Debtor and the same has the effect of renewing /extending the period of limitation by another three years. The Hon'ble NCLAT in **Jayprakash Vyas vs. Prabhat Steel Traders Pvt. Ltd. & Anr**, has held that

*“when part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made.”*

**26.**Additionally, reference can be made to the Financial Statements of the Corporate Debtor from the years 2012-2013 to 2022-2023, which have been submitted by the Financial Creditor as evidence, showing that the Corporate Debtor has been remitting partial payments towards the outstanding debt. In view of the Judgement laid down by Hon'ble Supreme Court in **Supreme Court in Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal & Anr.**

*“has ruled that entries in balance sheets can amount to acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act 1963”.*



The period of reference (i.e., 31.03.2013) is excluded, as permitted by law, the present Petition shall be deemed to have been filed within the period of limitation.

**27.** As regards the contention that the petition is barred under Section 10A of the IBC, 2016, the argument raised by the Counsel for the Corporate Debtor, citing the loan recall notices dated 20.03.2020, SARFAESI Notice dated 02.09.2020, and the final recall notice dated 20.10.2020, being issued during the Section 10A period, is found to be unsustainable.

**Section 10A of the I&B Code, 2016 provides as follows:**

*“Section 10A: Suspension of initiation of corporate insolvency resolution process. 10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

***Provided that no*** application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period”.

*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020”.*

A plain reading of Section 10A signifies that no application/proceedings under Sections 7, 9 and 10 can be initiated for any default in payment which is committed during Section 10A period. Thus, what is essentially barred is initiation of CIRP proceedings when the Corporate Debtor commits any default during the Section 10A period.



However, if the default is committed prior to the Section 10A period and continues in the Section 10A period, this statutory provision does not put any bar on the initiation of CIRP proceedings

In this regard, a reference can also be made to the law laid down by the Hon'ble NCLAT in the matter of **Pratik Jiyani vs. Pirmal Capital & Housing Finance Limited and Ors., Company Appeal (AT) Insolvency No. 1198 of 2023**

*“whereby it has been held by the Hon'ble NCLAT it is mandatory to issue notice in case of default, hence, it cannot be said that default on non-payment of interest would automatically lead to recall of the entire loan. The Financial Creditor cannot split the cause of action and furthermore the Hon'ble NCALT also states that if the account of the Corporate Debtor was classified as NPA prior to the insertion of Section 10A of the Code, the provisions of Section 10A would not get attracted to the Petition under Section 7 of the IB Code, 2016”.*

Therefore, the Petition cannot be held to be barred under Section 10A of the IB Code, 2016

**28.** The Corporate Debtor's assertion that each notice mentions a different date of default is also untenable. As regards to the different dates mentioned in the notices this Bench observes that the date of default typically refers to the date when the borrower failed to meet the payment obligations as stipulated by the terms of the loan agreement. The notices mention the due dates by which the payment was supposed to be made, and non-compliance with these dates constitutes the default. The dates mentioned in notices are used to demand payment of debt, but without the intention of creating confusion or disputes. The Hon'ble Supreme Court in the matter of *Innoventive Industries Ltd. v. ICICI Bank & Anr* **(2018) 1 SCC 407**



*“The Supreme Court emphasized that the trigger for initiating Corporate Insolvency Resolution Process (CIRP) is the existence of a default. The court highlighted that as long as the demand notice under Section 8 of the IBC makes the debtor aware of the default and demands payment, minor procedural discrepancies, such as date variations, would not necessarily invalidate the notice.”*

**29.** Admittedly, in this case, the default took place in the year 2013 when the account of the Corporate Debtor was declared as NPA 31.03.2013. In part (IV) of the Petition, no doubt, the date of default is mentioned as 31.03.2013 but it has also been stated that there has been a continuing default in the account of Corporate Debtor, when the loan of the Corporate Debtor was classified as NPA in view of the default committed by the Corporate Debtor. Relying on the judgement of **Hon’ble Supreme Court Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481,**

*“where it was held that the ‘date of default’ does not mean a strict interpretation that it has to be the ‘date of NPA’ in fact, the ‘date of default’ defined under Section 3(12) of the Code is to mean ‘non-payment of a debt’ which has become ‘due and payable’ whether in whole or any part and is not paid by the Corporate Debtor”, the Tribunal observed that all the material on record clearly shows that the Corporate Debtor has consistently acknowledged the debt from 24.07.2015 onwards”.*

**30.** The point raised by the Respondent concerns the filing of an additional affidavit without obtaining permission from the Adjudication Authority,



which is argued to be misleading the Hon'ble Tribunal's Order dated 07.11.2023 and against the Rule 55 of NCLT Rules 2016:

*“Rule 55 of the NCLT Rules states that Pleadings before the Tribunal – No pleadings, subsequent to the reply shall be presented except by the leave of the tribunal upon such terms as the Tribunal may think fit”.*

The Tribunal's order dated 07.11.2023 make it evident that the additional affidavit was submitted without the Tribunal's permission. The Tribunal deems this as a minor irregularity.

- 31.** The financial debt is due & payable by the Corporate Debtor as on the date of filing the present Company Petition. Further, there is Admission of default and outstanding liability by the Corporate Debtor in OTS proposal annexed to the Company Petition.
- 32.** From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.
- 33.** The essential ingredients required to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) Of the Code are proved by the Financial Creditor beyond Reasonable doubt in the present case. The application made by the Financial Creditor is complete in all Respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in Excess of minimum amount stipulated under section 4(1) of the IBC. Besides, the Company Petition is well within the period of limitation. Therefore, the debt and default stand established and there is No reason to deny the admission of



the Petition. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter. In view thereof, This Adjudicating Authority admits this Petition and orders Initiation of CIRP against the Corporate Debtor.

**34.** Consequently, the petition is ordered to be admitted in the following terms:

- a.** The above Company Petition No.1037 /IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sudradh Construction Private Limited.**
- b.** The IRP proposed by the Financial Creditor, **Mr.Anurag Kumar Sinha**, having registration No. **IBBI/IPA-001/IP-00427/2017-2018/ 10750**, having address at Flat no 3602,Redwood (Tower No. 7), Runwal Greens, Mulund Goregaon Link Road, Bhandup (West), Mumbai City, Maharashtra. 400 078 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process 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. 1037/IBC/MB/2023 is **Admitted**.
- 1.** The Registry is hereby directed to communicate this order to both the parties and to IRP with immediate effect.

Sd/-

**Madhu Sinha**  
**Member (Technical)**  
/Priyanka/

Sd/-

**Reeta Kohli**  
**Member (Judicial)**

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1656 of 2024**

**IN THE MATTER OF:**

**Laxmichand Damji Chheda**  
**(Suspended Director of**  
**Sudradh Construction Private Limited)**

**...Appellant**

**Versus**

**Unity Small Finance Bank Limited & Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj Tiwari, Mr. Aditya Shukla, Ms. Monica, Ms. Bandita and Ms. Aroshi Pal, Advocates.**

**For Respondents : Ms. Varsha Banerjee, Advocate for R-1.**

**O R D E R**  
**(Hybrid Mode)**

**23.08.2024:** Learned Counsel for the Respondent prays for an adjournment. She submits that the Appeal may be taken on Tuesday.

Counsel for the Appellant requests that the Appeal may be taken on Wednesday. It is submitted that Appellant intend to submit a proposal to Financial Creditor for Settlement. The matter being Real Estate Project and Order was passed only on 21.08.2024.

Considering the aforesaid we list this Appeal on Wednesday i.e., **28<sup>th</sup> August, 2024.**

Counsel for the Appellant is directed to serve the copy of the Appeal to the Financial Creditor.

In the meantime, no further steps shall be taken in pursuance of the Impugned Order.

Learned Counsel for the Respondent further submits that no proposal is under consideration.

Counsel for the Appellant submits that proposal is yet to be given for Settlement.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**[Arun Baroka]**  
**Member (Technical)**

*himanshu/nn*

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1656 of 2024**

**IN THE MATTER OF:**

**Laxmichand Damji Chheda**  
**(Suspended Director of**  
**Sudradh Construction Private Limited)**

**...Appellant**

**Versus**

**Unity Small Finance Bank Limited & Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj Tiwari, Ms. Heena Kochar, Mr. Aditya Shukla, Ms. Aroshi Pal, Ms. Bandita, Ms. Monika and Mr. Auritro Mukherjee, Advocates.**

**For Respondents : Mr. Alok Dhir, Ms. Varsha Banerjee and Mr. Aishwarya Nash, Advocates.**

**ORDER**  
**(Hybrid Mode)**

**22.11.2024:** Heard Learned Sr. Counsel Mr. Abhijeet Sinha appearing for the Appellant and Learned Counsel Mr. Alok Dhir appearing for the Respondent.

2. This Appeal has been filed against an Order dated 21.08.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court No. – V), by which Section 7 Application filed by the Unity Small Finance Bank Ltd. has been admitted.

3. When the Appeal was taken for consideration, Appellant submitted that Appellant has made a proposal to the Bank for Settlement and Interim Order on 23.08.2024 was passed to the following effect:

*“Learned Counsel for the Respondent prays for an adjournment. She submits that the Appeal may be taken on Tuesday.*



*Counsel for the Appellant requests that the Appeal may be taken on Wednesday. It is submitted that Appellant intend to submit a proposal to Financial Creditor for Settlement. The matter being Real Estate Project and Order was passed only on 21.08.2024.*

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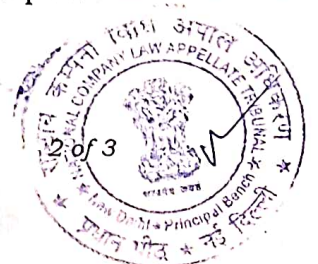
*Counsel for the Appellant submits that proposal is yet to be given for Settlement."*

4. The Appeal was taken thereafter on several occasion and Interim Order was extended.

5. When the matter was taken today, Counsel for the Appellant submits that the Appellant has not been able to make upfront payment of Rs.6.12 Crores to the Respondent Bank. He submits that there are no other Creditor except for one Operational Creditor.

6. The Adjudicating Authority has admitted Section 7 Application finding the debt and default on the part of the Corporate Debtor. The endeavour of the Appellant to settle is also clearly indicate that default is there on the part of the Corporate Debtor.

7. In the facts of the present case, we are of the view that no purpose will serve in keeping the Appeal pending. There shall be liberty to the Appellant to take recourse to the 12A route by filing an Application through IRP under Section 12A read with Regulation 30A of the CIRP Rules, 2016 within a period of two weeks from today. The Interim Protection shall be limited for the period of two weeks.



8. We make it clear that in event, 12A Application is not filed, then CoC may be constituted and CIRP may be proceed in accordance with the law.

Appeal is disposed of.

*sdh*  
[Justice Ashok Bhushan]  
Chairperson

*sdh*  
[Barun Mitra]  
Member (Technical)

*sdh*  
[Arun Baroka]  
Member (Technical)

himanshu/nn

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*sdh*  
27/11

Assistant Registrar  
National Company Law Appellate Tribunal  
(Principal Bench)  
New Delhi

