



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

CP No. 1154/(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

Immix Trade Private Limited

Unit No 123 Plot No. C-56/1 Turbhe- Navi Mumbai
Thane MH- 400710

... Petitioner/Financial Creditor

V/s

Sunrise Properties PVT LTD

Shop No. 155, Veena Mall, Kandivali East Off
Western Express Highway, Mumbai 400 101

... Respondent/Corporate Debtor

Order Dated:24.10.2024

Coram:

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

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

Appearances through VC/Physical/Hybrid Mode :

For the Petitioner : Adv. Gyanika Kochar (VC) Advocate

For the Corporate Debtor : Adv. Rajat Lohia (VC) Advocate



ORDER

Per: Madhu Sinha Member (Technical)

1. The Petitioners viz. **‘Immix Trade Private Limited’** (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 **‘Sunrise Properties Private’** (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. 3,70,88,716/-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 Loan Agreement dated 16.01.2013.
 - b. A copy of Transaction Statement in respect of the pledge and unpledged of shares.
 - c. A copy of Demand Notice dated 03.03.2020.
 - d. A copy of Reminder Email dated 19.05.2020 for the Demand Notice dated 03.03.2020
 - e. A copy of Financial statement of account.
 - f. A copy of record of default with NeSL.

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, 1956. The erstwhile Aventis Biofeeds Private Limited as per the said Gazette Notification inter alia notified amalgamation scheme as “Aventis Biofeeds Private Limited



(Amalgamation with Immix Trade Private Limited.) Scheme 2018” came into effect on 05.07.2018, by virtue of which all the legally enforceable rights of Aventis Biofeeds Private Limited, have been legally vested in Immix Trade Private Limited.

4. It is submitted that the Corporate Debtor Aventis Biofeeds Private Limited (now amalgamated with **Immix Trade Private Limited** (*hereinafter Financial Creditor*)) entered into loan agreement with the Corporate Debtor under which it was agreed that the Financial Creditor would grant inter Corporate Deposit upto a sum of Rs. 1,00,00,000/- to the Corporate Debtor for a period of 365 days unless extended by the Financial Creditor.
5. The Corporate Debtor was to secure the loan by pledging security of Rs. 200/- for every Rs. 100/- of the loan amount. The ICDs were to carry interest @15% p.a. payable quarterly and if the Corporate Debtor defaulted on the loan, the Corporate Debtor was liable to pay interest @15% p.a. (2% pa additional interest) for the first 365 days and beyond the period of 365 days, they were to pay interest @24% p.a till date of realization.
6. The Financial Creditor advanced a sum of Rs. 40,00,000/- to the Corporate Debtor.
7. The Petitioner further submitted that The Corporate Debtor pledged 1,00,000 shares of Flexituff Ventures International Limited in favour of Aventis Biofeeds Private Limited on 14.01.2013 and another 1,00,000 shares of Flexituff Ventures International Limited on 05.02.2013.
8. The loan was disbursed on 09.02.2013. As per the Loan Agreement, the Corporate Debtor was to pay the interest on quarterly rest basis on 31.03.2013 which the Corporate Debtor admittedly failed to do so. Thus, the Corporate Debtor was liable to pay interest @ 17% p.a. for the first year which amounted to a sum of Rs. 95,014/- for the quarter ended 31.03.2013. The Corporate Debtor admittedly failed to make payment of the interest accrued and belatedly made part payment of a sum of Rs. 73,972/- on 15.04.2013. Since the amount due as on 31.03.2013 was



not paid, a default' occurred in terms of Section 3(12) of the Insolvency and Bankruptcy Code, 2016

- 9.** The Corporate Debtor defaulted on the payment of interest in the very first quarter itself. Till date the Corporate Debtor has only paid a sum of Rs. 5,40,369/- as follows: -

 1. Rs. 73,972/- 15 April, 2023;
 2. Rs. 1,35,000/- July, 2013;
 3. Rs. 3,31,397/- 17 February, 2014
- 10.** Thereafter, the Corporate Debtor approached Aventis Biofeeds Private Limited inter alia stating that they had an emergency and wanted the pledge of 1,71,000 shares to be revoked while assuring that they would pledge the shares again. The Corporate Debtor agreed and 50,000 shares were unpledged on 24.02.2014, 21000 shares were unpledged on 28.02.2014 and 1,00,000 shares were unpledged on 31.12.2014. Despite agreeing to re-pledge the shares to maintain the security as required under the Loan Agreement, the Corporate Debtor failed to do so.
- 11.** Despite the fact that the Corporate Debtor defaulted on the payment of interest, it continued to deposit the TDS amount upto F.Y. 2018- 2019, albeit on an incorrect calculation of interest which was due and payable to Aventis Biofeeds Pvt. Ltd.
- 12.** Aventis Biofeeds Private Limited was merged with Immix Trade Private Limited vide Order dt. 05.07.2018 passed by the Hon'ble National Company Law Tribunal, Mumbai. By Notice dt. 03.03.2020, the Financial Creditor called upon the Corporate Debtor to pay the outstanding dues of the Financial Creditor in accordance with Clause 8 of the Loan Agreement. Despite receipt of the said Notice, the Corporate Debtor Neither replied to the notice not clear cleared the outstanding dues of the financial creditor.
- 13.** The Corporate Debtor has failed to clear the outstanding dues of the Financial Creditor despite acknowledging the debt payable to Aventis Biofeeds Private Limited (now Immix Trade Private Limited) in their balance sheet ever since 2013, albeit recording an erroneous figure.



- 14.** The Corporate Debtor have defaulted in payment of their outstanding dues of Rs. 3,70,88,716/- and are clearly not in a position to repay their debts. Hence this petition.
- 15.** The financial creditor is emphasized that the Corporate Debtor has committed a “default” under Section 3(12) of the Insolvency and Bankruptcy Code (IBC). The definition of “default” under this section is non-payment of debt when it has become due and payable, either in whole or in part, and remains unpaid by the debtor. This definition has been further clarified by the Supreme Court in *Laxmi Pat Surana vs. Union Bank of India* [(2021) 8 SCC 481], which established that the “date of default” does not strictly refer to the date when the loan account was classified as a Non-Performing Asset (NPA), but rather when the payment becomes due and remains unpaid.
- 16.** The financial creditor is highlighting the fact that the Corporate Debtor has consistently acknowledged its debt to Aventis Biofeeds Private Limited (now Immix Trade Private Limited) in its balance sheets from the financial year 2012-13 onwards, albeit with some erroneous figures. Despite these acknowledgments, the Corporate Debtor failed to clear the outstanding dues. This acknowledgment is crucial for the financial creditor’s case, as it demonstrates the debtor’s continued recognition of the debt, which counters any arguments regarding the limitation period and strengthens the financial creditor’s claim that there is a “default.”
- 17.** The financial creditor is asserts that the acknowledgment of liability by the Corporate Debtor in its balance sheets, even if the figures were erroneous, is a sufficient admission of liability. This acknowledgment creates a jural relationship between the parties as debtor and creditor, which has the legal effect of extending the period of limitation under Section 18 of the Limitation Act, 1963. The Hon’ble Supreme Court has addressed this in several judgments, notably in **Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal &*



- 18.** The financial creditor emphasizes that the acknowledgment of liability by the Corporate Debtor in its balance sheets and payments, effectively extends the limitation period under Section 18 of the Limitation Act, 1963. This principle has been upheld in multiple judgments, including *Mahabir Cold Storage vs. CIT* [1991 Supp (1) SCC 402], where the Hon'ble Supreme Court held that an acknowledgment of liability in a balance sheet is sufficient to furnish a fresh starting point for the limitation period, even if not directly communicated to the creditor.
- 19.** In this submission, the Financial Creditor asserts that the Corporate Debtor has defaulted in repaying its outstanding dues and is incapable of meeting its financial obligations. The Financial Creditor argues that this case is fit for admission under Section 7 of the Insolvency and Bankruptcy Code (IBC) and should be allowed based on the following key points:
- a.** Acknowledgment and Admission of Liability: The Corporate Debtor has consistently acknowledged and admitted its liability to the Financial Creditor in its balance sheets, starting from the financial year 2012-13 through 2022-23. While the figures recorded may be erroneous, the acknowledgment is sufficient to establish the jural relationship between the Corporate Debtor and the Financial Creditor, reinforcing the existence of a debt. The Corporate Debtor has never disputed this liability, which further strengthens the case.
 - b.** Debt and Default Proved: The Financial Creditor emphasizes that the existence of debt and default is clearly proven, even without delving into the erroneous figures in the balance sheets. The acknowledgment of the debt by the Corporate Debtor is sufficient to establish that the debt is due and remains unpaid, thereby satisfying the key conditions under Section 7 of the IBC for initiating the Corporate Insolvency Resolution Process (CIRP).
 - c.** Non-Applicability of Section 186(3) of the Companies Act, 2013: The Financial Creditor clarifies that Section 186(3) of the Companies Act, 2013, which restricts the extent of loan amounts a company



can grant, was not applicable at the time when the loan was disbursed. Hence, there is no violation of this provision, and the validity of the loan remains intact.

20. In response to the Corporate Debtor's allegations, the Financial Creditor contends that the Inter Corporate Deposit (ICD) was lawfully disbursed, and the defenses raised by the Corporate Debtor are baseless. The Financial Creditor submits the following explanations:

- a. No Violation of Section 186(3) of the Companies Act, 2013:** The Corporate Debtor has alleged that the Financial Creditor lacked the requisite authority to grant the ICD, claiming a violation of Section 186(3) of the Companies Act, 2013. However, the Financial Creditor clarifies that the loan was disbursed on 09.02.2013, prior to the Companies Act, 2013, which came into force on 30.08.2013. Therefore, the provisions of the Companies Act, 2013, requiring a special resolution for granting loans, are not applicable to the disbursement in question, as the Act did not apply at the time the loan was granted.
- b. Admission of Disbursement of Rs. 40 Lakhs:** The Corporate Debtor, in its Affidavit-in-Reply, has admitted to receiving a loan disbursement of Rs. 40 Lakhs. Despite this admission, the Corporate Debtor claims that the ICD Agreement was voidable because the Financial Creditor allegedly failed to disburse the entire principal sum of Rs. 1 crore. The Financial Creditor refutes this claim, pointing out that the ICD Agreement dated 16.01.2013 clearly stipulates that the loan amount could be "up to Rs. 1,00,00,000/-," meaning there was no obligation on the Financial Creditor to disburse the full Rs. 1 crore. Thus, the disbursement of Rs. 40 Lakhs was in full compliance with the terms of the agreement.
- c. Amount in Default Exceeds Rs. 1 Crore:** As of 30.09.2023, the total amount in default is Rs. 3,70,88,716/-. The loan carried an



interest rate of 15% per annum on quarterly rests if serviced regularly. However, since the Corporate Debtor defaulted in servicing the loan during the first financial quarter itself, the applicable interest rate increased to 17% per annum in the first year, and 24% per annum thereafter. A detailed calculation of the amount in default has been provided in the Company Petition, clearly showing that the default amount exceeds Rs. 1 crore, thus meeting the threshold for initiating the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code (IBC).

- 21.** The Financial Creditor submits that there is no bar to limitation, as the Corporate Debtor has consistently acknowledged the liability in its Balance Sheets, thereby extending the period of limitation year on year. Despite this, the Corporate Debtor has deliberately reported erroneous figures to misrepresent the outstanding amounts. For example, from F.Y. 2019-20 to F.Y. 2022-23, the Corporate Debtor showed the same outstanding amount of Rs. 76,59,489/-, despite the actual amount being higher as per its own records. Further, the Corporate Debtor continuously declared a pledge of 1,29,000 shares of Flexituff International Limited in its Balance Sheets, even though only 29,000 shares remained pledged as of 31.12.2014. These misleading entries were evidently intended to understate the debt and avoid crossing the Rs. 1 crore threshold. The Financial Creditor emphasizes that these false and inaccurate financial statements are aimed at deceiving both the Registrar and the Creditor. The outstanding amount, as per the Loan Agreement, was Rs. 1,03,62,942/- on 31.03.2018, which exceeds the threshold for filing this petition. Therefore, the Corporate Debtor's attempt to manipulate the figures does not absolve it of its obligation to repay the debt.
- 22.** The Financial Creditor submits that the security of 29,000 shares is insufficient to cover the outstanding debt. The Corporate Debtor unpledged 50,000 shares on 24.02.2014, 21,000 shares on 28.02.2014,



and 1,00,000 shares on 31.12.2014, leaving only 29,000 shares as security. Despite the Corporate Debtor's reassurances of repayment, the Financial Creditor refrained from invoking the pledge to avoid multiple legal proceedings. The Corporate Debtor's claim that the shares should have been liquidated when their value was higher is baseless, as part payments were made after those dates, and assurances of repayment were continuously given. The Loan Agreement provided that the Financial Creditor had the discretion to invoke the pledge but was not obligated to do so. The current value of the remaining shares (Rs. 53.47 as of 22.07.2024) is insufficient to cover the debt. Thus, the Corporate Debtor's defense on this ground is unfounded, and the Financial Creditor acted in good faith based on the Debtor's assurance.

23. The Corporate Debtor's reliance on the Vidarbha Industries Power Limited vs. Axis Bank Limited judgment is misplaced. In Vidarbha, the NCLT's admission order was set aside solely because the Appellant was due to receive Rs. 1,730 Crores under an APTEL order, which had potential for realization. The Hon'ble Supreme Court in that case clarified that the NCLT ordinarily must admit a petition under Section 7 of the IBC upon satisfaction of the existence of financial debt and default, unless there are compelling reasons, such as an award or decree in favor of the Corporate Debtor that exceeds the debt amount. Even then, the Court held that admission could proceed if the awarded amount is not capable of realization.

24. It is submitted that in the case of Vidharba Industries, the Hon'ble Supreme Court categorically laid down that a Section 7 Petition would have to be admitted unless there were compelling circumstances, such as an Award/Decree capable of being realized for an amount higher than the debt, to show that the Petition should not be admitted. In the present case, the Corporate Debtor has not shown any substantial ground to justify why the present Petition ought not be admitted considering that it is complete and there is an admitted debt and default and within limitation. In the



absence of Any compelling circumstances, the Petition ought to be allowed in view of The judgement of the Hon'ble Supreme Court in Innoventive Industries Ltd. V. ICICI Bank and Another (supra).

- 25.** 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:

- 26.** In reply, the Corporate Debtor has denied all allegations made by the Petitioner seeking the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016, alleging non-payment of financial debts. The Corporate Debtor asserts that the petition is factually and legally flawed and contains misrepresentations of both law and fact.

- 27.** The Corporate Debtor refutes each and every allegation unless specifically admitted in the reply and emphasizes that any non-response should be treated as denied. The Company Petition (IB), according to the Corporate Debtor, lacks merit, is devoid of any substantive particulars, and is an abuse of the process of law. Further, the Corporate Debtor argues that the petition is coercive, filed with the intent to exert undue pressure and extort money through unlawful demands.

- 28.** The Respondent submitted that a bare perusal of Form 1 and its annexures reveals that the Petitioner/Applicant claims a sum of Rs. 3,70,88,716/- (Rupees Three Crores Seventy Lacs Eighty-Eight Thousand Seven Hundred and Sixteen Only). The Financial Creditor has initiated this application under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, alleging default in the payment of the debt owed by the Corporate Debtor. In addition to disputing the misclassification of the Respondent Company's account by Immix Trade Private Limited (formerly Aventis Biofeeds Private Limited) as a Non-Performing Asset (NPA), the Corporate Debtor challenges the maintainability of the Petition filed under Section 7 of the IBC. It is asserted that no cause of action has arisen, and the institution of this



Petition is therefore wrongful. The following legal grounds are presented to establish the lack of merit in maintaining the Petition:

- a. Alleged Acknowledgment of Liability:** It is vehemently contended that the Financial Creditor has not produced any written acknowledgment by the Corporate Debtor or its authorized representative regarding the alleged debt. The mere existence of entries in the books of accounts, without any explicit acknowledgment by the Corporate Debtor or its signatory, cannot be deemed as acknowledgment of liability. Therefore, the claim is barred by the law of limitation, as the limitation period has already expired.
- b. Section 18 of the Limitation Act, 1963:** It is firmly asserted that none of the allegations in the Petition amount to an acknowledgment under Section 18 of the Limitation Act, 1963. As such, the Petition cannot be maintained on the grounds of limitation, and the application is liable to be dismissed.
- c. Absence of Cause of Action:** The impugned Petition under Section 7 of the IBC alleges a default by the Corporate Debtor. However, the Corporate Debtor contests the existence of any such default, asserting that it has duly fulfilled its financial obligations to the creditor, Immix Trade Private Limited (formerly Aventis Biofeeds Private Limited). Therefore, the cause of action for instituting the Petition under Section 7 of the IBC does not exist, rendering the Petition unsustainable.
- d. Insufficiently Stamped Loan Document:** It is further submitted that the Agreement/Memorandum of Agreement, which forms the basis of the alleged debt, is insufficiently stamped in violation of the Indian Stamp Act, 1899. According to Schedule 1A of the Indian Stamp Act, as applicable in the State of Madhya Pradesh, Article 21 specifies a principal stamp duty of 0.25% for agreements related to securing the repayment of a loan or debt. The agreement in question,



executed for Rs. 40,00,000/-, is affixed with stamps of only Rs. 200/-, which is clearly insufficient. Under the provisions of the Indian Stamp Act, 1899, the Hon'ble Adjudicating Authority is precluded from entertaining or considering inadequately stamped documents. As such, this document cannot form the basis of the claim, further undermining the validity of the Petition.

e. Temporal Termination-Case for Dismissal: The Corporate Debtor (CD) contends that, as per Clause 3 of the agreement dated 16/01/2013, the Inter Corporate Deposit (ICD) facility was provided for a fixed term of 365 days, from 16/01/2013 to 15/01/2014, with repayment due on 15/01/2014. The clause clearly states that any renewal of the ICD facility required a written request from the Borrower. The CD asserts that no such written request was made to extend the facility beyond the initial term, making the default effective upon non-payment on the due date. The CD further argues that any reliance by the Petitioner on entries in the Balance Sheet as proof of renewal is misplaced, as such entries do not meet the specific contractual requirement of a written request. Consequently, the claim is subject to the law of limitation, and the petition ought to be dismissed on this ground. The CD emphasizes that the absence of a written renewal request obligates the repayment of the ICD along with interest upon the expiration of the 365-day term, and any assumption of an automatic extension is contrary to the terms of the agreement.

f. Failure to sell the pledge shares renders the petition premature and unjustified: The Corporate Debtor (CD) asserts that the petition is premature and unjustified due to the Financial Creditor's failure to exercise its primary remedy under the agreement, which grants the right to sell the pledged shares in the event of default. The CD argues that since the pledged shares were not sold to satisfy the



outstanding amount, including interest and costs, the alleged default cannot be sustained.

- g. Pledge on Equity Shares:** The Corporate Debtor (CD) contends that the Financial Creditor still holds a pledge on 29,000 equity shares. If these shares had been liquidated immediately after the alleged default on 31/03/2013, they would have generated a value exceeding the Inter Corporate Deposit amount along with any accrued interest. Therefore, the CD argues that the claim for further interest is unjustified.
- h. Threshold Limit:** Additionally, the CD points out that the outstanding amount at the time of filing the petition was below the minimum threshold limit prescribed under the Insolvency and Bankruptcy Code, 2016, as per the Ministry of Corporate Affairs notification dated March 24, 2020. Accordingly, the CD submits that the petition is liable to be dismissed outright as it does not meet the statutory requirements.
- i. Sufficiency of Security:** The Corporate Debtor (CD) asserts that sufficient security was provided in the form of pledged shares at the time of default, given that the Inter Corporate Deposit (ICD) was a short-term instrument. The CD argues that the Financial Creditor failed to invoke the pledged shares within the prescribed limitation period. The value of the pledged shares, as of the default date (31.03.2013) and the 366th day (16.01.2014), exceeded the alleged dues. Thus, the CD submits that initiating the Corporate Insolvency Resolution Process (CIRP) under these circumstances is an unjust attempt to coerce a solvent entity. Accordingly, the petition lacks merit and should be dismissed.
- j. Disbursement and Lien:** The Corporate Debtor (CD) submits that the Inter Corporate Deposit Agreement was executed for a principal amount of Rs. 1 Crore, with securities pledged accordingly. However, only Rs. 40 Lacs was disbursed. The CD argues that the non-



disbursement of the remaining amount, along with the breach of terms, renders the agreement dated 16.01.2013 voidable at the option of the petitioner. As a result, it was commercially necessary and prudent to lift the lien on the additional pledged shares.

k. Financial Creditor did not possess the requisite authority to grant Inter Corporate Deposit in the first place: the CD contends that the Financial Creditor did not have the requisite authority to grant the Inter Corporate Deposit. Under Section 186(3) of the Companies Act, 2013, any loan exceeding the specified limits requires prior approval in a general meeting. The Financial Creditor, formerly Aventis Biofeeds Private Limited, failed to obtain such approval, thus acting in contravention of statutory provisions. Consequently, the actions taken under the agreement are rendered invalid.

1. Maintainability Challenge: The Corporate Debtor contends that the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, is not maintainable due to the absence of a valid cause of action. The Corporate Debtor asserts that the Financial Creditor wrongfully instituted the petition, neglected to sell the pledged shares, and violated the principles of natural justice. Therefore, the Corporate Debtor respectfully requests that this Hon'ble Adjudicating Authority dismiss the petition and grant relief from the unwarranted insolvency proceedings initiated by the Financial Creditor.

29. The Corporate Debtor contends that the primary issue for consideration is whether a default in payment has occurred, the timing of such default, and whether the Financial Creditor exercised their rights within the stipulated timeframe. The Corporate Debtor vehemently opposes the calculation of the outstanding amount, asserting that the precise amount of default cannot be determined.



- 30.** As per Section 3(12) of the Insolvency and Bankruptcy Code, 2016, "default" refers to the non-payment of a debt when any part or instalment has become due and payable. The Corporate Debtor asserts that any alleged default would arise only after failing to make the requisite payment on the Inter-Corporate Deposit (ICD). The Financial Creditor should have sold the pledged shares in accordance with Clause 7 of the Loan Agreement dated December 16, 2013, prior to instituting any insolvency proceedings.
- 31.** The Corporate Debtor further submits that the Loan Agreements, which form the basis of these proceedings, are inadmissible in evidence due to insufficient stamping and being barred by the law of limitation. Consequently, the Financial Creditor is not entitled to any relief based on these documents, rendering the claim liable to rejection. Additionally, the documents presented by the Financial Creditor do not meet the legal requirements for valid written agreements. Such documents must be registered and properly executed to be admissible as evidence, and the discrepancies therein render the institution of the insolvency resolution process void ab initio
- 32.** The Corporate Debtor emphasizes that the limitation period for recovering the alleged amount is three years from the date of default. Since the alleged default arose from the credit entry in the Borrower's account, the period for recovery commenced the following day, thereby exceeding the limitation period as the insolvency resolution process was initiated on October 31, 2023.
- 33.** Lastly, the Corporate Debtor references the Supreme Court's judgment in *Vidarbha Industries vs. Axis Financial Creditor* (Civil Appeal No. 4633 of 2021), which establishes that the Adjudicating Authority possesses the discretion to not admit an application for initiating the Corporate Insolvency Resolution Process (CIRP) even if a default is established, considering the overall financial health and viability of the Corporate Debtor. The Court observed that solvent companies should not be penalized for temporary defaults and clarified that rejection of the



application does not preclude financial creditors from initiating fresh proceedings if dues remain unpaid.

34. Therefore, the case of Corporate Debtor falls squarely within the ratio laid down in the judgment of Apex Court in Vidarbha Industries case:

a. The title “Insolvency and Bankruptcy Code” makes its amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of IBC, therefore, confers discretionary power on the Adjudicating Authority to admit an application of a Financial Creditor under Section 7 for initiation of CIRP.

b. Time bound initiation and completion of CIRP could only arise if the companies were bankrupt or insolvent and not otherwise. Moreover, the timeline starts ticking only from the date of admission of the application for initiation of CIRP and not from the date of filing the same.

35. In *Swiss Ribbons v. Union of India (2019) 4 SCC 17*, the Hon'ble Supreme Court examined the constitutional validity of the Insolvency and Bankruptcy Code (IBC) and observed that a financial creditor may initiate the Code upon the occurrence of a “default.” The Court clarified that the process is a collective proceeding aimed at rehabilitating the corporate debtor. Under Section 7(4), the adjudicating authority must ascertain the existence of a default based on the evidence provided by the financial creditor. If satisfied that a default has occurred, the authority may admit the application; otherwise, it shall dismiss it.

36. The judgment emphasized that while Section 7(5)(a) may grant the adjudicating authority discretion, this discretion must not be exercised arbitrarily. The authority must admit the application if there is a financial debt and a default unless there are compelling reasons not to do so. Furthermore, it is established that the commencement of the Corporate Insolvency Resolution Process (CIRP) occurs upon the admission of the application, not at the time of filing.



- 37.** The Corporate Debtor asserts that the adjudicating authority must consider its objections to admission on their own merits, ensuring a fair assessment of the circumstances surrounding the alleged default. Therefore, the Corporate Debtor submits that the authority should weigh the grounds presented against admission before deciding to initiate the CIRP.
- 38.** The Corporate Debtor contends that the initiation of the Corporate Insolvency Resolution Process (CIRP) requires careful commercial judgment. The Corporate Debtor emphasizes that the non-application of judicial discretion could lead to the unjust and regressive step of subjecting a healthy corporate entity to the rigorous processes of CIRP, thereby undermining the objectives of the insolvency law.
- 39.** The Corporate Debtor further asserts that if the application under Section 7 is admitted, it will jeopardize the interests of numerous stakeholders who are unaware of these proceedings. It is argued that the Hon'ble Adjudicating Authority must first ensure that the application is complete and that a default has occurred. The Corporate Debtor claims that the application lacks completeness due to the absence of crucial information regarding various litigations and that the primary documents necessary for determining the default, such as the certified statement of account under the Bankers' Books Evidence Act, are not present.
- 40.** The Corporate Debtor asserts that the petition is a malicious attempt by the petitioner to coerce payment and serves as an inappropriate substitute for a recovery mechanism. Judicial precedents from the Hon'ble Supreme Court and the Hon'ble National Company Law Appellate Tribunal consistently underscore that the IBC is not to be misused for coercive recovery.
- 41.** In light of these considerations, the Corporate Debtor respectfully requests that this Hon'ble Adjudicating Authority reject the application under Section 7 of the Insolvency and Bankruptcy Code, 2016, and dismiss the Company Petition (IB) with costs, along with any further orders that the Tribunal may deem appropriate.



FINDINGS:

42. We have heard the Counsel appearing for both the Parties and perused the material available on record.
43. The present petition reveals that the Operational Creditor claims an outstanding debt of Rs. 3,70,88,716/- due from the Corporate Debtor.
44. The contention regarding the existence of financial debt, as raised by the Corporate Debtor, is without merit. The Financial Creditor has provided executed loan agreements and corresponding transaction records that clearly demonstrate the presence of financial debt as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. These documents contain the necessary elements, including the loan amount by way of ICD, interest rate, and repayment terms.
45. The Corporate Debtor has cited the case of ***Transmission Corporation of A.P. Ltd. vs. Equipment Conductors and Cables Ltd. (2019)*** to argue that the mere existence of documents is insufficient to establish a financial debt, and that a clear contractual obligation and performance of the underlying contract are necessary for enforcement. The Corporate Debtor contends that certain conditions of the contract were not fulfilled, thus disputing the existence of the debt. However, upon reviewing the loan agreement and transaction records submitted by the Financial Creditor, it is evident that these documents clearly establish the existence of a financial debt, as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016.
46. The Corporate Debtor's argument concerning the non-fulfilment of certain conditions has not been substantiated by any credible evidence or specific details. In light of the *Transmission Corporation* case, while it is true that a financial debt must be based on enforceable contracts, the Corporate Debtor has failed to demonstrate any real or substantial dispute regarding the enforceability of the debt. Therefore, this case law does not support the Corporate Debtor's defense, and the existence of financial debt remains affirmed.



47. The contention regarding the alleged default in payment, as raised by the Corporate Debtor, The Financial Creditor has cited the case of ***Innoventive Industries Ltd. vs. ICICI Bank (2017)*** to argue that once the debt and default are established, the Adjudicating Authority is obligated to admit the application for initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016.
48. The Hon'ble Supreme Court in the matter of *Innoventive Industries* clarified that the nature of the debt or the dispute is immaterial if the default is clearly proven. In the present case, the default in payment has been conclusively established through the transaction records and bank statements provided by the Financial Creditor, which show missed payment deadlines and outstanding amounts. The Corporate Debtor has failed to provide any substantive evidence to dispute the default.
49. With respect to the contention raised by the **Financial Creditor**, it is noted that while the **Corporate Debtor** defaulted on the payment of interest, it continued to deposit the Tax Deducted at Source (TDS) amount up to the financial year 2018-2019. The deduction of TDS, however, does not equate to the full discharge of the debt or prevent the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016. TDS is a statutory obligation under the Income Tax Act, 1961, which requires a portion of payments, such as interest, to be deducted for tax purposes and remitted to the government. In this regard, the Hon'ble National Company Law Appellate Tribunal (NCLAT) in ***Sundaram Finance Limited vs. Rekha Jhunjunwala*** [Company Appeal (AT) (Insolvency) No. 103 of 2018] observed that mere deduction and deposit of TDS on payments does not amount to acknowledgment of debt under Section 18 of the Limitation Act, 1963.
50. Therefore, while the Corporate Debtor's TDS payment reflects compliance with statutory requirements, it does not imply admission or acknowledgment of the principal debt towards the Financial Creditor. The continuation of TDS payments until 2018-2019, without payment of the



underlying debt, cannot be construed as an acknowledgment of liability, nor does it affect the right of the Financial Creditor to initiate CIRP proceedings under the IBC.

51. With respect to the contention raised by the **Corporate Debtor** (CD), it is asserted that the Inter-Corporate Deposit (ICD) agreement with the **Financial Creditor** was for a fixed term of 365 days, from January 16, 2013, to January 15, 2014, and that any renewal required a formal written request from the Borrower. The **Corporate Debtor** argues that since no such request was made, the loan obligation effectively terminated on the due date, thereby negating any default in payment. The ICD agreement explicitly establishes a fixed repayment timeline, necessitating payments by January 15, 2014, as stipulates in Clause 3 that any extension or renewal must be requested in writing, underscoring the necessity of adhering to the agreed formal procedure for amendments. Consequently, the **Corporate Debtor** maintains that attempts to determine an outstanding amount post-termination are unfounded, as the contract is deemed to have ended.

52. While the Financial Creditor asserts that entries in the books of the Corporate Debtor imply a continuation of the debt, the Corporate Debtor contends that these entries do not constitute a valid acknowledgment of liability after the agreement's termination. However, it is important to note that the **debt is still reflected in the books of the Corporate Debtor till 2023**, which indicates that the liability to repay continues, despite the formal end of the agreement. This reflects an **acknowledgment of liability** under **Section 18 of the Limitation Act**. Furthermore, the **Corporate Debtor** has continued to benefit from the amount provided under the ICD, and the failure to repay the outstanding sum cannot be excused simply due to the expiration of the contract's formal terms. Therefore, the Financial Creditor's petition is not without merit, as the debt obligation continues to exist, and the default in repayment still holds validity based on the **benefits received** and the **debt reflected in the Corporate Debtor's books**.



53. The Corporate Debtor (CD) contends that the Financial Creditor (FC) did not possess the requisite authority to grant the Inter-Corporate Deposit (ICD) due to a lack of prior approval from a general meeting, as mandated by **Section 186(3) of the Companies Act, 2013**. This raises significant questions regarding the validity and enforceability of the ICD. However, it is important to note that the **ICD agreement was executed on January 16, 2013**, before the **Companies Act, 2013**, came into force on **April 1, 2014**. As a result, the provisions of **Section 186(3)**, which require prior approval through a special resolution in a general meeting for loans or guarantees exceeding the prescribed limits, would not retroactively apply to the ICD agreement in question. Consequently, the argument raised by the Corporate Debtor regarding the applicability of **Section 186(3)** does not invalidate the ICD, as the statutory requirement did not exist at the time of the agreement's execution.

54. The Corporate Debtor further argues that sufficient security was provided in the form of equity shares pledged to secure the Inter-Corporate Deposit (ICD). The Financial Creditor submits that the security of **29,000 shares** is insufficient to cover the outstanding debt. The Corporate Debtor had unpledged **50,000 shares** on **February 24, 2014**, **21,000 shares** on **February 28, 2014**, and **100,000 shares** on **December 31, 2014**, leaving only **29,000 shares** as security. While the Financial Creditor's failure to invoke this security within the limitation period raises concerns regarding asset management, it does not equate to a failure of the petition itself. The mere existence of security does not preclude the Financial Creditor from pursuing insolvency proceedings, particularly when there are unresolved claims regarding the outstanding debt.

55. The Financial Creditor asserts that the debt owed by the Corporate Debtor is acknowledged in the audited books of accounts. The Corporate Debtor disputes this, claiming that there is no specific written acknowledgment of the debt from its authorized representatives. However, legal principles established by the Hon'ble Supreme Court of India indicate that entries in



audited books of accounts or financial statements reflecting outstanding debt can serve as a written acknowledgment of liability under **Section 18 of the Limitation Act, 1963.**

56.In **Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Anr.**, the Hon'ble Supreme Court ruled that audited financial statements, including balance sheets, can be relied upon as valid acknowledgments of debt under **Section 18** of the Limitation Act. Additionally, the Court in **Dena Bank vs. C. Shivakumar Reddy & Anr.** affirmed that entries in balance sheets are considered acknowledgments of liability if they show the debt owed.

57.In the present case, the audited financial statements of the Corporate Debtor reflect the outstanding financial debt claimed by the Financial Creditor. Since these financial statements have been signed and approved by the Corporate Debtor's authorized representatives (such as directors), they meet the requirement of written acknowledgment under **Section 18** of the Limitation Act. Consequently, the acknowledgment of debt in the audited books of accounts extends the limitation period, thereby rendering the claim valid even if the original limitation period had expired. Thus, the Corporate Debtor's contention regarding the lack of written acknowledgment does not hold, as the audited entries in its books of accounts constitute valid acknowledgment of the debt. Therefore, the claim of the Financial Creditor remains within the prescribed limitation period under the Limitation Act.

58.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.

59.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.

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

- a.** The above Company Petition No.1154/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sunrise Properties PVT LTD.**
- b.** The IRP proposed by the Financial Creditor, **Mr.Shouvik Kumar Roy**, having registration No... IBBI/IPA-001/IP-P-02113/2020-2021/13284, having address at E 502 Raheja Heights ,Gen AK Vaidya Marg Dindoshi Malad East ,Near Sankalp Society ,Mumbai Suburban, Maharashtra ,400097 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.



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- 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 1154 of 2023 is Admitted.
 - l.** 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)