

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1201 of 2023 &
I.A. No. 5907 of 2024

(Arising out of Order dated 28.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in CP(IB)-37/(MB)/2023)

IN THE MATTER OF:

Rajesh Vilasrao Patil ...Appellant

Versus

Savannah Lifestyle Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Arun Kathpalia Sr. Advocate with Mr. Ruby Singh Ahuja, Mr. Devang Kumar, Mr. Jappanpreet Hora, Ms. Diksha Gupta and Ms. Varsha, Advocates.

For Respondents : Mr. Sandeep Bajaj, Mr. Vipul Gai and Ms. Saumya, Advocates.

Mr. Mayank Biyani, Advocate.

WITH

Company Appeal (AT) (Ins) No. 1213 of 2023

(Arising out of Order dated 28.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in CP(IB)-37/(MB)/2023)

IN THE MATTER OF:

Vasantdada Shetkart Shakara Bank Ltd. ...Appellant

Versus

Savannah Lifestyle Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Rahul Gaikwad, Mr. Shivaji Masal, Mr. Govind, Advocates

For Respondents : Mr. Sandeep Bajaj, Mr. Vipul Gai and Ms. Saumya, Advocates.

Mr. Mayank Biyani, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed against the same order dated 28.07.2023 passed by National Company Law Tribunal, Mumbai Bench, Court-II admitting Section 7 application filed by Savannah Lifestyle Private Limited (Respondent No.1 herein).

2. Brief background facts of the case necessary to be noticed for deciding these Appeal(s) are:

- (i) Shaila Clubs and Resorts Pvt. Ltd. – Corporate Debtor (“**CD**”) obtained financial facilities from Consortium of Bank including Vasantdada Shetkari Sahakari Bank (hereinafter referred to as the “**Cooperative Bank**”) in the year 2005. The CD entered into a Mortgage Deed dated 27.05.2005.
- (ii) Respondent No.1 – Savannah Lifestyle Pvt. Ltd. approached the CD for permitting it to conduct its business from the Club Premises. The CD entered into a Conducting Agreement with Respondent No.1 on 18.05.2007 for 15 years and six months.
- (iii) The Cooperative Bank issued a Recovery Certificate on 23.02.2012 against the CD for recovering an amount of Rs.5,11,51,489. The Cooperative Bank filed a case before the Chief Metropolitan Magistrate (“**ACMM**”) praying to allow the Cooperative Bank to take possession of the Club premises.

The ACMM on 22.10.2018 appointed a Recovery Officer and directed to take possession of the Club premises.

- (iv) Respondent No.1, who was conducting the business from the Club premises filed a Writ Petition No.14517 of 2018 seeking direction to restrain the Cooperative bank from taking possession. Under the orders in Writ Petition, Respondent No.1 deposited Rs.50 lakhs with the Cooperative Bank. Writ Petition was disposed of on 24.04.2019 permitting Respondent No.1 to approach the ACMM for recall of its order. Respondent No.1 filed an application before ACMM for recall of the order, which was dismissed by the ACMM on 19.06.2019. Another Writ Petition No.7542 of 2019 was filed by Respondent No.1 before the Bombay High Court, where to show his bonafide an amount of Rs.2 crores was deposited by Respondent No.1. The Bombay High Court disposed of the Writ Petition on 17.01.2020, remanding the matter to the ACMM to decide afresh. The ACMM vide order dated 04.03.2020, upheld its earlier order dated 22.10.2018 holding that Respondent No.1 is not justified to claim possession of the Club. Respondent No.1 thereafter filed a Writ Petition (C) No.11610 of 2022 challenging the order dated 04.03.2020. In the Writ Petition, an interim order was passed.
- (v) On 29.10.2021 on an application filed by one Meghana Kore under Section 7, Corporate Insolvency Resolution Process

(“**CIRP**”) was initiated against the CD on 29.10.2021. The Suspended Director of the CD has filed an Appeal being Company Appeal (AT) (Ins.) No.1042 of 2021 challenging the admission order, which was allowed by this Tribunal, remanding the matter to the Adjudicating Authority.

- (vi) The Cooperative Bank sent an OTS letter dated 06.06.2022 making an offer to pay lumpsum amount of Rs.77,16,350 towards outstanding loan of the CD. Letter was sent to one of the Director of the CD. Respondent No.1 wrote to the Cooperative Bank to assign the loan along with all securities to Respondent No.1.
- (vii) In the pending Writ Petition No.11610 of 2022, Respondent No.1 entered into settlement with the Liquidator of the Bank. The Minutes of the Settlement were recorded on 20.10.2022. The Writ Petition No.11610 of 2022 was disposed of by the Bombay High Court on 21.10.2022 in terms of the Minutes of the Settlement dated 20.10.2022.
- (viii) The Suspended Director of the CD – Mr. Amit Kore sent a letter dated 17.11.2022 to the Cooperative Bank objecting to the Minutes dated 20.10.2022 recorded by the Bank. On receiving the letter from Director of the CD, the Cooperative Bank on 17.11.2022 wrote to Respondent No.1 that Cooperative Bank has withdrawn its OTS.

- (ix) On 01.12.2022, this Appellate Tribunal pleased to set aside the CIRP in CP (IB) No.170 of 2018 and remitted the matter to Adjudicating Authority for fresh consideration.
- (x) A Review Petition No.38 of 2023 was filed by the Rajesh Vilasrao Patil, Suspended Director of the CD in the Bombay High Court in Writ Petition (C) No.11610 of 2022 praying for review of the order dated 21.10.2022 as well as the Minutes.
- (xi) The Company Petition (IB) No.170 of 2019 was withdrawn on 10.02.2023 on settlement. The Cooperative Bank wrote a letter dated 13.01.2023 to Respondent No.1 that OTS entered with Respondent No.1 has been withdrawn and amount of Rs.87.92 lakhs paid by Respondent No.1 was returned with Bank Draft. The CD also issued an eviction notice to Respondent No.1.
- (xii) Respondent No.1 filed an application under Section 7 on which CP(IB)No.37 of 2023 was registered against the CD praying for initiating CIRP against the CD. The basis of the application was the assignment of the loan account of the CD to Respondent No.1 by Cooperative Bank vide Minutes dated 20.10.2022 and the order of the Bombay High Court dated 21.10.2022. In the application notices were issued. The CD filed its reply objecting to the application on several grounds. The Cooperative Bank also filed an IA No.2595 of 2023 in CP(IB) No.37 of 2023 seeking intervention and bringing on

record relevant facts for consideration of the Adjudicating Authority including that the assignment of OTS entered with Respondent No.1, was withdrawn. The Intervention Application although was listed on 21.06.2023 and the Adjudicating Authority granted time to the CD to file its reply, the application was adjourned on 19.07.2023 and thereafter on 31.08.2023.

- (xiii) While Intervention Application filed by the Cooperative Bank remained pending, the Adjudicating Authority by the impugned order dated 28.07.2023 admitted Section 7 application. The Adjudicating Authority in the impugned order relied on the order dated 21.10.2022 of the Bombay High Court, where it was recorded that Cooperative Bank has assigned the Loan Account of the CD to Respondent No.1. The Adjudicating Authority noticed the acknowledgement of the debt of the Cooperative Bank in financial statements of the CD. Application under Section 7 was held to be within time. Returning the aforesaid finding, Section 7 application was admitted.

- (xiv) Aggrieved by which order, these two Appeal(s) have been filed.

3. Company Appeal (AT) (Ins.) Nos.1201 and 1213 of 2023 came for consideration before this Tribunal on 27.09.2023. This Tribunal after hearing learned Counsel for both the parties passed a detailed interim order directing that no further steps shall be taken in pursuance of the

impugned order dated 28.07.2023. The interim order has been extended from time to time. Respondent No.1 has filed its reply, to which rejoinder has also been filed. Both the Appellant(s) have been heard by this Tribunal on 01.08.2025.

4. IA No.1900 of 2025 has been filed by the Appellant, praying to take on record judgments of the Bombay High Court dated 11.03.2025 in Writ Petition No.11610 of 2022 and other relevant orders. Application is allowed. Judgments of the Bombay High Court are taken on record.

5. We have heard Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant and Shri Sandeep Bajaj, learned Counsel appearing for Respondent No.1.

6. Learned Counsel for the Appellant submits that Respondent No.1 had no right to enter into any OTS with Cooperative Bank to get the assignment of debt of the CD. It is submitted that Respondent No.1 under a Conducting Agreement was given possession of the Club premises to run its business, which Agreement has also come to an end in November, 2022. Respondent No.1 has not paid its conducting charges to the Club. The OTS entered by the Cooperative Bank with Respondent No.1, which is recorded in the Minutes dated 20.10.2022 before the Bombay High Court in Writ Petition No.11610 of 2022 was on the strength of illegal assignment by the Cooperative Bank in favour of Respondent No.1. The OTS letter, which was given by the Cooperative Bank was meant for the CD and Respondent No.1 has no authority or jurisdiction to accept the OTS letter, it was only conducting business from

the Club premises. Under the Master-Directions Reserve Bank of India (Transfer of Loan Exposure) Directions, 2021, the Cooperative Bank could not have assigned the debt of the CD to Respondent No.1. Respondent No.1 was not eligible to receive any assignment from the Cooperative Bank. It is submitted that immediately, the objections were filed by the one of the Directors of the CD with the Cooperative Bank on 17.11.2022, objecting to the OTS and the Cooperative Bank, immediately realizing its error has withdrawn the OTS and sent a letter dated 18.11.2022 to Respondent No.1 that OTS has been withdrawn. The Bank subsequently vide letter dated 13.01.2023 has returned the amount received from Respondent No.1 by Bank Draft. The OTS having come to an end, there was no authority or jurisdiction in Respondent No.1 to file Company Petition in the year 2023. The Suspended Director of the CD has also filed the review petition being Review Petition No.38 of 2023 before the Bombay High Court to review its judgment dated 21.10.2021 passed in Writ Petition No.11610 of 2022. It is submitted that all these facts were brought into the notice of the Adjudicating Authority and the submissions advanced on behalf of the CD has been noticed by the Adjudicating Authority in its order, however, without consideration of any of the submissions, Section 7 application has been admitted, relying on the assignment by the Cooperative Bank in favour of Respondent No.1 as contained in the order dated 21.10.2022 of the Bombay High Court. It is submitted that the Cooperative Bank also has filed an Intervention Application in the Company Petition before the Adjudicating Authority,

bringing all relevant facts for consideration of the Adjudicating Authority, in which application, although time was allowed to the CD to file the reply, but before the application could be decided, Section 7 application was admitted. Shri Kathpalia submits that the Cooperative Bank itself has filed an Appeal being Company Appeal (AT) (Ins.) No. 1213 of 2023 challenging the order of admission. The stand of the Cooperative Bank is that assignment in favour of Respondent No.1 having been cancelled / set aside, there is no right left in Respondent No.1 to maintain Section 7 application. Further, the Cooperative Bank has also filed review petition before the Bombay High Court for reviewing the judgment dated 21.10.2022. It is submitted that the Bombay High Court vide its judgment dated 11.03.2025 has allowed the review petition filed by the Suspended Direction of the CD as well as the application filed by the Cooperative Bank and recalled its order dated 21.10.2022 along with Minutes dated 20.10.2022. The very basis of the claim of Respondent No.1 having been knocked out, the order passed by Adjudicating Authority deserves to be set aside on the grounds as noted above as well as the order of the Bombay High Court dated 11.03.2025. It is submitted that Respondent No.1 has also filed a Special Leave Petition against the judgment of the Bombay High Court dated 11.03.2025, which SLP has been dismissed by the Hon'ble Supreme Court on 25.04.2025. It is, thus, conclusively held that assignment, which is claimed by Respondent No.1 is illegal and unlawful. It is also submitted that Respondent No.1 is not

the Financial Creditor, hence, it has no right to maintain Section 7 application.

7. Learned Counsel for Respondent No.1 opposing the submissions of learned Counsel for the Appellant submits that Respondent No.1 has made payment to the Cooperative Bank and the said payment was made on behalf of the CD, the said payment is the 'financial debt', entitling Respondent No.1 to maintain Section 7 application. It is submitted that amount having been paid by Respondent No.1 on behalf of the CD, it is a Financial Creditor. Learned Counsel for Respondent No.1, however, does not dispute that Bombay High Court vide its judgment dated 11.03.2025 has recalled the order dated 21.10.2022 and Minutes dated 20.10.2022. Learned Counsel for Respondent No.1 submits that amount of Rs.2.5 crores was deposited under orders of the Bombay High Court with the Cooperative Bank and further, Rs.87.92 lakhs for obtaining assignment.

8. Shri Sandeep Bajaj, learned Counsel appearing for Respondent No.1 elaborating his submissions, submits that even assuming that assignment in favour of Respondent No.1 is disputed, the debt owed due to Cooperative Bank remains a financial debt for the purposes of Section 7 of the IBC. As per Section 7, sub-section (1), Explanation, the Appellant, who has disbursed an amount of Rs.2.5 crores on behalf of the CD, being a Financial Creditor, can maintain Section 7 application for the debt of Cooperative Bank. It is thus submitted that apart from assignment in favour of Respondent No.1, thus, the application by Respondent No.1 for debt of Cooperative Bank where default was

committed by the CD, is maintainable and the order impugned can be sustained on the above basis.

9. We have considered the submissions of learned Counsel for the parties and have perused the records.

10. From the materials on record and submission of the parties, there are following undisputed facts of the case:

- (i) The CD had obtained financial facility of Rs.4.75 crores from Vasantdada Shetkari Sahakari Bank. On default being committed, Recovery Certificate dated 23.02.2012 was issued for an amount of Rs.5,11,51,489/-.
- (ii) Respondent No.1 – Savannah Lifestyle Pvt. Ltd. entered into a Conducting Agreement with the CD on 18.05.2017, under which Respondent No.1 permitted to run his business from the Club premises of the CD for period of 15 years six months.
- (iii) The Cooperative Bank has initiated proceedings in the year 2018 before the Additional Chief Metropolitan Magistrate for taking possession of the Club premises on the strength of Recovery Certificate. The Liquidator of the Cooperative Bank has sent a letter to the CD on 06.06.2022, making an offer of OTS. Respondent No.1 vide letter dated 11.08.2022 to the Cooperative Bank, requested the Cooperative Bank to assign

the loan along with all securities of the CD to Respondent No.1 and replace it in place of CD.

- (iv) The Liquidator of the Cooperative Bank and Respondent No.1 entered into a settlement, which is recorded in the Minutes of the proceedings before the Bombay High Court on 20.10.2022 in Writ Petition No.11610 of 2022. The Writ Petition was disposed of vide order dated 21.10.2022 in terms of the Minutes.
- (v) On 17.11.2022, Mr. Amit Kore, Suspended Director of the CD wrote a letter to the Cooperative Bank, raising objection towards the OTS entered by the Cooperative Bank with Respondent No.1 and it was also communicated to the Liquidator that Respondent No.1 has no authority to enter into any OTS and Respondent No.1 has acted with malafide and ulterior motives.
- (vi) The Cooperative Bank on 18.11.2022 has written a letter to Respondent No.1, informing that Respondent No.1 is ineligible for the OTS claim. The Cooperative Bank also returned the amount of Rs.87.92 lakhs by Bank Draft to Respondent No.1.
- (vii) In Writ Petition No.11610 of 2022, the Liquidator of the Bank and Respondent No.1 has entered into a settlement, which is recorded in the Minutes dated 20.10.2022, on the basis of which Writ Petition was disposed of on 21.10.2022 by the

Bombay High Court. The Suspended Director of the CD filed Review Petition No.85 of 2024 in Writ Petition No.11610 of 2022 to recall the order dated 21.10.2022.

11. We need to first notice the pleadings in Section 7 application, which was filed by Respondent No.1 for initiating CIRP against the CD. Copy of the application is part of the record of the Appeal. Part-IV indicates that debt of total amount claimed in default was Rs.9,16,43,081/- from the CD. In Part-V under the headings 'Particulars of financial debt [documents, records and evidence of default], Respondent No.1 has given details of loan obtained by the CD from Vasantdada Shetkari Sahakari Bank and issuance of the Recovery Certificate. Under Item No.5, of Part-V, which is "The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)", Respondent has relied on the Minutes of the order dated 20.10.2022 under which it notices the assignment of debt of loan account of the CD to Respondent No.1. It was pleaded that in the light of the assignment of the loan account in favour of Respondent No.1, the rights and securities, charges, remedies and benefits thereto as a secured creditor is now stand assigned to Respondent No.1. It is useful to extract Item No.5 of Part-V, which is as follows:

5	The The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)	1. Minutes of Order dated 20 th October 2022 executed and filed by Savannah Lifestyle Private Limited and Vasantdada Shetkari Sahakari Bank recording the terms of the assignment of debt of the
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		loan account of the Corporate Debtor. A copy of the certified copy of the Minutes of Order dated 20th October 2022 is hereto annexed and marked as ("Exhibit -E"). 2. Order dated 21st October 2022 passed by the Hon'ble Bombay High Court. A copy of the certified copy of the order dated 21st October 2022 has been annexed and marked hereto as ("Exhibit -F"). In light of the assignment of the loan account of the Corporate Debtor in favour of Savannah Lifestyle Private Limited, the rights and securities, charges, remedies and benefits attached thereto as a secured creditor also stand assigned to Savannah Lifestyle Private Limited."
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12. The basis of the application is, thus, assignment of debt of the Cooperative Bank in favour of Respondent No.1, which is recorded in the Minutes dated 20.10.2022 of the Writ Petition before the Bombay High Court. It is relevant to notice the Minutes dated 20.10.2022 in Writ Petition No.11610 of 2022, which Minutes were signed by the Liquidator of Vasantdada Shetkari Sahakari Bank and Respondent No.1. It is useful to extract the entire Minutes of the order, which is as follows:

“MINUTES OF ORDER

1. The Petitioner and Respondent No. 1 and 2 have settled their disputes out of Court.
2. By an order dated 28th of July 2022, the learned Deputy Registrar (Urban Banks), Cooperative Societies, Maharashtra State,

Pune, has extended the application of the One Time Settlement Scheme dated 6th of June 2022 to the Respondent No. 2 Bank. Accordingly, among other defaulters, Respondent No. 2 has offered the benefits of the same to Respondent No. 3 as also to the Petitioner since the Petitioner is in possession of the Premises. As against the actual dues of INR 8,97,73,098/- as of today, after the credit of INR. 2,50,00,000/- by the Petitioner under orders passed by this Hon'ble Court, the Petitioner has offered to deposit a further sum of INR.87,92,000/- only.

3. Accordingly, the Petitioner has paid to Respondent No.2 amounts towards resolution of N.P.A. 100~ account of Respondent.3.

a. Bankers Cheque No. 920861 dated 2nd September 2022 drawn on SBI Bandra West branch in favour of the Respondent No. 2 for an amount of INR 77,16,350/-; and

b. Bankers Cheque No. 920864 dated 3rd September 2022 drawn on SBI Bandra West branch in favour of the Respondent No. 2 for an amount of INR 10,75,000/-.

4. Subject to realisation of the instruments as aforesaid in paragraph no. 3 hitherto, the Respondent No. 2 has assigned the loan account of Respondent No. 3 alongwith all rights and securities, mortgages, charges, remedies and benefits attached thereto, as a secured loan, in favour of the Petitioner. The formal "No Dues" certificate shall be issued by Respondent No. 2 within a period of one week from the date of credit of the amount of INR. 87,92,000/- into its account. Respondent No. 2 will issue No Objection Certificate regarding any decision of assignment or any other relief to the Petitioner by the Resolution Professional in his jurisdiction.

5. The cause of action for the petition, having come to an end, the Petitioner seeks leave to withdraw the present Writ Petition, in terms of the present order.

6. The Petitioner seeks liberty to adjust its equities qua the sums of money as referred to in paragraph no.2 hereinabove as against the Respondents No.3 to 8 and/or their creditors in the pending litigation/s between them *inter se* and/or otherwise. The Petitioner is at liberty to do so, in accordance with law.

7. The Writ Petition is accordingly disposed of, with no orders as to cost."

13. The Bombay High Court vide its order dated 21.10.2022 disposed of the Writ Petition No.11610 of 2022 by following orders:

"1. Petitioner and respondents no.1 and 2 are present in the Court. Dispute is settled between the parties. They have signed

Minutes of Order dated 20th October, 2022. The same is taken on record and marked "X--1" for identification.

2. Parties are identified by their respective Advocates. In terms of the Minutes of Order, respondent no.2 has agreed to issue "No-Dues Certificate" to the petitioner. In view of this, nothing survives in the petition. The petition is disposed of in terms of the Minutes of Order.

3. Leave to amend. Amendment to be carried out forthwith."

14. Section 7 application, thus, was based on the assignment as claimed by Respondent No.1 from Cooperative Bank, which is recorded in the Minutes dated 20.12.2022. There is no separate assignment or documents by the Cooperative Bank in favour of Respondent No.1. Respondent No.1 claims assignment on the basis of the Minutes of the Order dated 20.10.2022 as is pleaded in Section 7 application.

15. The CD as noted above, through its Director on 17.11.2022 immediately objected to the action of the Cooperative Bank in entering into OTS with Respondent No.1. After receiving the complaint, the Cooperative Bank communicated to Respondent No.1 on 18.11.2022 and 13.01.2023 that Respondent No.1 has been found ineligible for the OTS. The Cooperative Bank has also returned the amount paid by Respondent No.1 towards OTS, which letter is also part of the record and filed as Annexure A-26 of the Appeal. It is also relevant to notice that the Liquidator of the Cooperative Bank after having taken a decision to cancel the OTS with Respondent No.1 has filed a Review Petition No.38 of 2023 in Writ Petition No.11610 of 2022 for recall of the order dated 21.10.2022 along with Minutes dated 20.10.2022. A Writ Petition No.3543 of 2024

was filed by Respondent No.1 in the Bombay High Court, challenging the cancellation of the OTS offer with Respondent No.1 by the Cooperative Bank. An interim order was passed by the Bombay High Court on 06.03.2024 and after the judgment passed by the Bombay High Court in Writ Petition No.11610 of 2022, by which Review Petition was allowed and order dated 21.10.2022 was recalled, the Writ Petition No.3543 of 2024 was also dismissed by order dated 30.04.2025, which judgment of the High Court has also been placed on record by the Counsel for the Appellant.

16. We have already noticed that the Cooperative Bank in Section 7 application filed by Respondent No.1 has filed an application seeking intervention on 15.02.2023 being IA No.2595 of 2023, when Adjudicating Authority directed the parties to file the reply. In IA No.2595 of 2023, all relevant facts including cancellation of the OTS was brought by the Cooperative Bank. However, the said application was pending consideration when the impugned order dated 28.07.2023 was passed, admitting Section 7 application. The CD before the Adjudicating Authority has categorically pleaded that OTS entered by Respondent No.1 with the Cooperative Bank is illegal and not in accordance with law. It was pleaded that on behalf of the CD before the Adjudicating Authority that under the Reserve Bank of India directives the Cooperative Bank cannot make an assignment to private parties. The said submission has been noticed in paragraph-13 of the impugned order, which is as follows:

“**13.** Further, vide circular dated 24.09.2021, Reserve Bank of India issued master directions namely the Reserve Bank of India (Transfer of Loan Exposures) Direction, 2021 which provided guidelines on assignment of loans by Banks or other financial institutions. The said directions clearly stipulated that the assignment/transfer/acquiring of any loans can only be done to the entities referred to as 'lenders' which do not include private parties. Therefore, the assignment of loan by the Bank to the Financial Creditor is illegal.”

17. The Cooperative Bank has made an assignment in favour of Respondent No.1 as recorded in the Minutes dated 20.12.2022, which assignment was withdrawn by the Cooperative Bank informing Respondent No.1 and returning the amount received. Respondent No.1 aggrieved by the cancellation of the OTS also filed Writ Petition in the Bombay High Court. The CD was, thus, challenging the very eligibility of action of the Cooperative Bank entering into OTS with Respondent No.1. The Adjudicating Authority did not advert to the said issues and by the impugned order has admitted Section 7 application, relying on claim of assignment of Respondent No.1 on the basis of Minutes of the proceedings dated 20.10.2022.

18. The judgment of the Bombay High Court dated 11.03.2025 passed in Review Petition and IA in Writ Petition No.11610 of 2022 now recalled the order dated 21.20.2022 passed by it as well as Minutes of the proceedings dated 20.10.2022, noted in the Writ Petition. The very basis and foundation of the case of Respondent No.1, thus is knocked out. The claim of assignment of Respondent No.1 from Cooperative Bank having been held to be unlawful, there is no right in Respondent No.1 to claim

to be Financial Creditor of the CD. By order dated 11.03.2025, the Bombay High Court has allowed the Review Petition filed by the Director of the CD. The judgment of the Bombay High Court dated 11.03.2025 is a detailed judgment, noticing submissions of Respondent No.1 and submissions of review Petitioner. The Bombay High Court has noticed the correspondence between the Liquidator of the Cooperative Bank and Respondent No.1, letter of Respondent No.1 dated 11.08.2022, letter dated 17.11.2022 issued by the Suspended Director of the CD objecting to the OTS. The Liquidator has filed an affidavit in the Writ Petition No.11610 of 2022, where on 21.11.2022 pleading that OTS in favour of Respondent No.1 was incorrect. The Bombay High Court after considering all aspects of the matter has recorded its finding in paragraphs 51 and 52 that transfer of loan account of Shaila Clubs in favour of Respondent No.1 was clearly unlawful and the compromise entered between the Cooperative Bank and Respondent No.1, could not have been accepted by the High Court for disposal of Writ Petition. In paragraphs 51 and 52, the Bombay High Court held following:

“51) I am therefore of the view that the transaction of assignment of loan of Shaila Clubs by the Bank in favour of Savannah is specifically prohibited under the 2021 RBI Directives as Savannah is not an eligible transferee. One of the objectives behind the RBI Directives is to ensure that the Banks do not transfer loan accounts to ineligible transferees. Otherwise, Banks would transfer loan accounts to private money lenders. Since Savannah is not one of the recognized transferees under the 2021 RBI guidelines, transfer of loan account of Shaila Clubs in favour of Savannah would clearly be unlawful. Therefore, the compromise entered into

between the Bank and Savannah is something which this Court could not have accepted for the purpose of disposal of Writ Petition No.11610 of 2022.

52) More glaring is the fact that the compromise executed between the Bank and Savannah affects the interests of Shaila Clubs, which is not signatory to the Minutes of Order. The effect of Minutes of Order is that upon a payment of amount of Rs.3.37 crores in the loan account of Shaila Clubs, Savannah has secured right to recover outstanding loan amount of Rs.8,97,73,093/- (as on 20 October 2022) from Shaila Clubs. As observed above, Savannah is possessing a valuable asset of Shaila Clubs being Club premises at Bandra in Mumbai. By transfer of loan, it became mortgagee of the Club's property. On the basis of assignment of loan of Shaila Clubs in its favour, Savannah has instituted CIRP against Shaila Clubs and would ultimately realise the outstanding loan amount alienating the property of Shaila Clubs. Thus, the Minutes of Order directly affect the rights of Shaila Clubs. The objective behind RBI Directives of not permitting ineligible lender to purchase NPA is totally frustrated in the present case, where Savannah is actually eyeing to secure ownership of property under its management as mere Conductor by paying sum of Rs.3.37 crores in Shaila Clubs' loan account. The compromise effected between Bank and Savannah actually affects the interest of Shaila Clubs, who is not the signatory to the compromise. Mere presence of Advocate of Shaila Clubs before the Court on 21 October 2022 or failure on the part of the Advocate to raise any objection to disposal of the petition in view of the Minutes of Order would not convert unlawful compromise into lawful one."

19. The Bombay High Court held that compromise itself being unlawful the seal of the High Court on such compromise must be removed. In paragraph 58, following has been held:

“58) It sought to be contended by Dr. Tulzapurkar that as far as the Bank and Savannah are concerned, the compromise is lawful

as the Bank itself walked up to Savannah with an offer to settle the loan account of Shaila Clubs under OTS for an amount of Rs.77,16,350/-. It is suggested that so far as the Bank is concerned, the compromise is lawful as the Bank always intended to close Shaila Clubs' loan account upon acceptance of ascertained amount of Rs.77,16,350/- under the OTS. It is contended that the Liquidator had all the powers to ascertain the figure at which Shaila Clubs' loan account could be settled under the OTS and the Bank has taken independent commercial decision of closing the loan account of Shaila Clubs by accepting the amount of Rs.77,16,350/-, in addition to the amount of Rs.2.50 crores already paid into the said loan account. Dr. Tulzapurkar has contended that so far as validity of assignment of loan account from Bank to Savannah is concerned, Shaila Clubs has already raised objection to the validity of such transfer in the CIRP initiated before NCLT and the said issue can be decided in those proceedings. It is sought to be contended that NCLT is competent to decide whether assignment of the loan of Shaila Clubs from the Bank to Savannah is valid or not. Dr. Tulzapurkar has accordingly contended that alleged invalidity of assignment of loan account cannot be a reason for seeking recall/review of order dated 21 October 2022. I am unable to agree with his contentions. The Minutes of Order dated 20 October 2022 has a seal of this Court in the form of order dated 21 October 2022. If the compromise is itself unlawful, the seal of this Court put on such compromise must be removed so that no party is permitted to rely on the same in any collateral proceedings by contending that that the compromise has been accepted by the High Court and that the same is therefore valid. This is the first reason why the specious plea sought to be adopted by Savannah about part of the compromise dealing with rights of Bank being lawful must be rejected. Secondly and more importantly, the compromise ultimately affects the rights of Shaila Clubs, which has sought review of the order dated 21 October 2022. Therefore, the review petition filed by the Shaila Clubs cannot be dismissed by relegating it to remedy of raising objection

in CIRP before NCLT which does not have the jurisdiction to declare that the compromise effected through the Minutes of Order accepted by this Court is unlawful. NCLT would always treat the Minutes of Order, with seal of this Court, to be lawful. It is therefore necessary that the order dated 21 October 2022 is recalled.”

20. Ultimately, the High Court recalled the order dated 21.10.2022 on the applications filed by the Cooperative Bank as well as the Review Petition filed by the CD. In paragraph 66 of the judgment, following has been held:

“**66)** After considering the overall conspectus of the case, I am of the view that the order passed by this Court on 21 October 2022 on the basis of Minutes of Order dated 20 October 2022 deserves to be recalled both in application filed by the Bank as well as in the Review Petitions filed by Shaila Clubs and its suspended director.”

21. It is relevant to notice that Respondent No.1 has filed a Special Leave Petition No.10922-10924/2025 before the Hon’ble Supreme Court, challenging the order of the Bombay High Court dated 11.03.2025, which Appeal has been dismissed by the Hon’ble Supreme Court by following order passed on 25.04.2025:

“**1.** We are not inclined to interfere with the impugned judgment passed by the High Court. Hence, the Special Leave Petitions are dismissed.

2. Pending applications, if any, shall stand disposed of.

22. We may further notice that a Writ Petition No.3543 of 2024 was also filed by Respondent No.1, challenging the cancellation of the OTS by

Cooperative Bank, which Writ Petition also claimed to be dismissed on 30.04.2025 by the Bombay High Court.

23. In view of the above adjudication by the Bombay High Court and recalling of its order dated 21.10.2022 passed by it, on the basis of the Minutes dated 20.10.2022, under which Minutes, Respondent No.1 has claimed the assignment of debt of the CD by the Cooperative Bank in its favour having been recalled, the very basis of Section 7 application filed by Respondent No.1 has been knocked out. There is no right left in Respondent No.1 to claim itself as Financial Creditor of the CD. We have already noticed that Adjudicating Authority without considering the application filed by the Cooperative Bank, from whom Respondent No.1 claimed assignment, passed the impugned order. The Cooperative Bank having brought on record all relevant facts, it was incumbent on the Adjudicating Authority to take note of the averments of the Cooperative Bank and keeping the application pending and admitting Section 7 application itself becomes unsustainable. We, thus, are of the view that Section 7 application filed by Respondent No.1 did not merit admission.

24. Now coming to the submissions advanced by Shri Sandee Bajaj, learned Counsel appearing on behalf of Respondent No.1 that application filed by Respondent No.1 is maintainable by virtue of Section 7 sub-section (1), Explanation, for the default committed by CD, towards the debt of Cooperative Bank, we need to deal with the said submissions also. Section 7, sub-section (1), Explanation provides as follows:

“7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

25. There are more than one reason, due to which the above submissions of Respondent No.1 cannot be accepted.

- (i) Section 7 application filed by Respondent No.1 is founded only on the basis of assignment by the Cooperative Bank as recorded in the Minutes of the Order dated 20.10.2022 and as noted in the order of the Bombay High Court. Section 7 application is based on the assignment in favour of Respondent No.1 only. The application is not founded or based on the fact that Respondent No.1 claiming to be a Financial Creditor independently, or separately, on the basis of any disbursement made to the CD. When the application is founded only on assignment made in favour of Respondent No.1, Respondent No.1 cannot be allowed to raise any other submission in support of Section 7 application, which was neither pleaded nor advanced before the Adjudicating Authority.
- (ii) For maintaining an application for default of another Financial Creditor, the essential ingredients to be fulfilled by the Applicant is that the Applicant has to be a Financial Creditor on its own facts. Respondent No.1 cannot be held to be a Financial Creditor of the CD. There is no disbursement

by Respondent No.1 to the CD for time value of money in any commercial transaction. The amount, which is claimed to be paid by Respondent No.1 under the orders of the Bombay High Court totaling to Rs.2.5 crores was made by Respondent No.1 in Writ Petition filed by Respondent No.1 to protect its possession as it was carrying out its business from the Club premises under the Conducting Agreement entered with the CD. The amount deposited by Respondent No.1 was to show its bonafide to protect its possession, which was sought to be taken over by Cooperative Bank in pursuance of the Recovery Certificate issued under the Maharashtra Cooperative Societies Act. Thus, the amount paid by Respondent No.1 was to protect its possession and cannot be treated as any disbursement made to the CD.

26. In the above context, we may refer to the judgment of this Tribunal in **Gp. Capt Atul Jain vs. Tripathi Hospital Pvt. Ltd. and Ors. – (2023) SCC OnLine NCLAT 366**, which was relied by learned Counsel for Respondent No.1 itself, where it was held that for application under Section 7, sub-section (1), claiming to be Applicant on behalf of default of another Financial Creditor, the non-negotiable requirement is to establish himself as a Financial Creditor of the CD. In paragraph 21 of the judgment, following was laid down:

“**21.** Be that as it may, the Appellant is however required, in the first place, to establish himself as a Financial Creditor of the Corporate Debtor in terms of Section 5(7) of IBC before being

allowed to take advantage of the explanation clause to Section 7 to establish default owed not only to himself as a financial creditor but to any other financial creditor of the corporate debtor on the basis of NeSL data for initiation of CIRP against the Corporate Debtor. The Appellant has clearly misconstrued the provisions of IBC by taking shelter of Explanation to Section 7 in isolation instead of reading it harmoniously with the non-negotiable requirement of Section 7(1) of firstly establishing himself as a Financial Creditor qua the Corporate Debtor.”

27. Respondent No.1 has been conducting its business from the Club premises under the Conducting Agreement. Respondent No.1 is not a Financial Creditor of the CD, so as to maintain an application as Financial Creditor under Section 7, sub-section (1). Moreso, the entire transaction culminating into the Minutes dated 20.10.2022 of the Cooperative Bank entering into an OTS with Respondent No.1 was held to be unauthorized and unlawful, on the basis of which, no right can be claimed by Respondent No.1 against the CD. Respondent No.1 illegally attempted to take the possession of the CD, on the basis of illegal assignment obtained from Cooperative Bank, which assignment came to be declared as illegal and withdrawn by the Cooperative Bank on 18.11.2022 itself. As noted above, the Cooperative Bank itself has filed an application in the Bombay High Court, praying for review of the judgment dated 21.10.2022, which was ultimately allowed. The Cooperative Bank has also filed an Appeal in this Tribunal, being Company Appeal (AT) No.1213 of 2023 and also written submission, praying to set aside the order dated 28.07.2023 initiating CIRP against the CD. The Cooperative Bank has further stated that it is desirous to

carry forward the recovery proceedings against the CD, in accordance with the Maharashtra Cooperative Societies Act. In view of the above, we do not find any substance in the submission of learned Counsel for Respondent No.1 that application filed by Respondent No.1 under Section 7 against the CD is maintainable by virtue of Section 7, sub-section (1), Explanation.

28. In any view of the matter, in view of the judgment of the Bombay High Court dated 11.03.2025, which has been brought on the record, the very basis of the claim of Respondent No.1 has become non-existent. The Appellant(s) are entitled to reliefs in this Appeal.

29. In result, both the Appeal(s) are allowed. The impugned order dated 28.07.2023 passed in CP(IB)-37/(MB)/2023 is set aside. Section 7 application filed by Respondent No.1 is dismissed. Pending IAs, if any, are also disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

21st August, 2025

Ashwani