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**GOVERNMENT OF INDIA/ भारत सरकार**  
**NATIONAL COMPANY LAW TRIBUNAL/ राष्ट्रीय कंपनी विधि अधिकरण**  
**AHMEDABAD BENCH/अहमदाबाद बेंच**

1<sup>st</sup> and 2<sup>nd</sup> Floor, Corporate Bhawan/ पहली और दूसरी मंजिल, कॉर्पोरेट भवन,  
Beside Zydus Hospital, Off S.G. Highway / ज़ाइडस अस्पताल के पास, ऑफ एस जी हाईवे,  
Thaltej, Ahmedabad-380 059./थलतेज, अहमदाबाद- ३८० ०५९.

Ref: **NCLT/AHM/ CP (IB) No. 370 of 2018/ 167 /2020.**

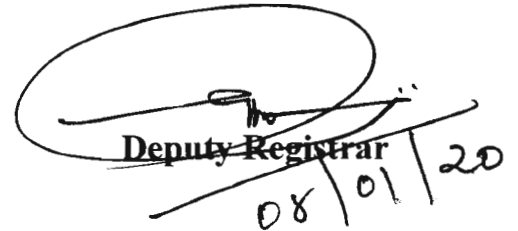
To,

1. AU Small Finance Bank Limited	Registered Office 19-A, Dhuleshwar Garden, Ajmer Road, Jaipur-302001, Rajasthan
1.1 AU Small Finance Bank Limited	Branch Office 4 <sup>th</sup> Floor, B-405, Shivalik Corporate Park, Above D' Mart, Shivranjini Cross Road, Ahmedabad-380015
2. SRK Devbuild Private Limited	18/2, Lasudia Mori, Dewas Naka, A.B Road, Indore, Madhya Pradesh-452 010
3. Mr. Ravi Kapoor Interim Resolution Professional	402, 4 <sup>th</sup> Floor, Shaival Plaza, Near Gujarat College, Ellisbrideg, Ahmedabad-380006
4. Registrar of Companies	3 <sup>rd</sup> Floor, 'A' Block, Sanjay Complex, Jayendraganj, Gwalior-474 009

**Sub: Certified True Copy of order dated 03.01.2020 passed in CP (IB) No. 370 of 2018.**

With reference to the subject cited above, please find enclosed herewith copy of the order dated 3<sup>rd</sup> day of January, 2020 passed by this Tribunal in CP (IB) No. 370 of 2018, being The Applicant, Respondent, Interim Resolution Professional and Registrar of Companies, Gwalior for information, records and action if any at your end.

**Date:08.01.2020**

  
Deputy Registrar  
08/01/20

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH at AHMEDABAD**

**C.P. (I.B) No.370/7/NCLT/AHM/2018**

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 03.01.2020**

Name of the Company: AU Small Finance Bank Ltd.  
V/s.  
SRK Devbuild Pvt. Ltd.

Section of the Companies Act : Section 7 of the Insolvency and Bankruptcy Code

**S.NO. NAME (CAPITAL LETTERS)      DESIGNATION      REPRESENTATION      SIGNATURE**

- 1.
- 2.

**ORDER**

The Case is fixed for pronouncement of order.

The Order is pronounced in open Court, vide separate sheet.

The Present CP(IB) 370 of 2018, filed under Section 7 of the Insolvency & Bankruptcy Code.

**The Application is admitted.**

  
**(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)**

  
**(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)**

Dated this the 3rd day of January. 2020

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**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
INDORE BENCH at AHMEDABAD**

C.P. (I.B.) No. 370/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**In the matter of:**

AU SMALL FINANCE BANK LIMITED  
A Banking Company within the  
meaning of the Banking Regulation Act,  
1949.

Having Registered Office at:  
19-A, Dhuleshwar Garden,  
Ajmer Road, Jaipur-302001,  
Rajasthan.

Having its Branch Office at:  
4<sup>TH</sup> Floor, B-405,  
Shivalik Corporate Park,  
Above D'Mart,  
Shivranjini Cross Road,  
Ahmedabad, Gujarat-380015

.....Petitioner

**Versus**

SRK DEVBUILD PRIVATE LIMITED  
18/2, Lasudia Mori,  
Dewas Naka A.B. Road  
Indore, Madhya Pradesh-452010

.....Respondent

**Appearance:**

Advocate, Mr. Lalit M. Patel for the Applicant/Financial Creditor  
Advocate, Vijayesh Atre for the Respondent/Corporate Debtor

Order Pronounced and delivered on 03.01.2020



✓

✓

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor **AU SMALL FINANCE BANK LIMITED** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, **SRK DEVBUILD PRIVATE LIMITED** for the default committed by the Corporate Debtor in making repayment of the Term Loan facility availed from the Financial Creditor. The Applicant(FC), AU SMALL FINANCE BANK LIMITED is a Financial Creditor, a banking company within the meaning of the Banking Regulation Act, 1949. The application has been filed by the duly authorised officer, Shri Mr. Vishal Gori, authorised Person of the Petitioner, 4<sup>th</sup> Floor, B-405, Shivalik Corporate Park, Above D'mart, Shivranjini Cross Road, Ahmedabad, Gujarat-380015.
2. The Respondent Corporate Debtor (CD) Company, namely, **SRK DEVBUILD PRIVATE LIMITED** was incorporated on **25/08/2011** with CIN: **U45200MP2011PTC026631**.
3. The nominal share capital of the Respondent (CD) Company is **Rs.4,25,00,000/-** (Rupees Four Crores Twenty Five Lakhs Only) and the paid-up share capital of the Corporate Debtor Company is **Rs.4,25,00,000/-** (Four Crores Twenty Five Lakhs Only). The Registered Office of



the Corporate Debtor Company is situated at: 18/2, Lasudia Mori, Dewas Naka A. B. Road Indore, Madhya Pradesh-452010. *The Corporate Debtor Company is engaged in the business of Construction.*

4. *It is submitted that the Petitioner Bank sanctioned a Term Loan Facility of Rs.4,00,00,000/- to the Respondent Company as per the terms of sanctions letter dated 09.02.2015 and upon execution of the Loan Agreement dated 11.02.2015.*
5. *It is stated that the petitioner respectfully submits that at the time of availing the said Rupees Term Loan Facility amount, the Respondent company assured the Petitioner Bank that the amount of the said loan facilities will be paid with moratorium period of 12 Months and thereafter by way of 84 Equal Monthly Instalments (EMIs) as per the terms and conditions of the sanction and Schedule-C of the Loan Agreement.*
6. *It is submitted that the Respondent Company created Security Interest by way of Equitable Mortgage by deposit of titles deeds of the immovable property being Plot No. Survey No. 239/2/1. 239/2/1, & 239/2/2 situated at village Peer Karadiya, Tehsil; Sanwer, Dist. Indore, Madhya Pradesh.*
7. *It is submitted that the Respondent Company failed and neglected to pay the pending instalments and interest*



accrued thereon and thereby committed a default and consequent to such the loan account of the **Respondent company was classified as NPA on 31.05.2016.**

8. It is submitted that on 30.08.2016 petitioner issued a Demand Notice under Section 13(2) of the SARFAESI Act, to the Respondent and to the Mortgagors/Guarantors and called upon them to pay an amount of Rs.4,70,34,931/- due as on 30.08.2016 within 60 days which was duly served upon them. However, the Respondent Company failed to make payment of the said amount within 60 days, therefore, the Petitioner Bank took symbolic possession of the aforesaid secured asset on 10.12.2016 and issued a sale notice dated 10.02.2017. Thereafter, being aggrieved by the said measures, the Borrowers and Co-Borrowers filed Securitization Application before the Hon'ble DRT Jabalpur bearing SA. No. 71/2017.
9. It is submitted that the Respondent Company/Guarantors approached the Petitioner Bank for settlement of the dues and agreed to pay an amount of **Rs.4.00 Crores** against the total outstanding amount of **Rs.5.50 Crores** due as on 20.05.2017 and accordingly **Terms of Settlement were executed on 26.05.2017.** However, the Respondent Company failed to make payment as per the terms of settlement, and therefore, it was cancelled.



10. It is submitted that the Petitioner Company regularly maintains the accounts of the Respondent Company. Since, the Respondent Company failed to pay the overdue amount, the Petitioner Company had right to foreclose the loan account and as per the foreclosure statement, an amount of **Rs.3,34,96,299/-** is due and payable to the Petitioner as on **25.07.2018** which includes the principal amount, interest and other charges, more particularly mentioned in the said statement annexed with ledger account.
11. It is submitted that the Financial Creditor has to recover an amount of **Rs.3,34,96,299/-** which is a financial debt still remaining unpaid by the Respondent as **on 25.07.2018**.
12. The Corporate Debtor has defaulted payment and the **date of default is 31/05/2016** as stated by the Petitioner Bank.
13. The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Section 2A of the Banker's Book of Evidence Act, 1891. (Page no. 94 of paper book). The Petitioner Bank has claimed their dues of **Rs.3,34,96,299/-** as on **25.07.2018**
14. The Financial Creditor, to substantiate their claim, has enclosed following documents: -
- i. Details of the loan agreements has been annexed  
(Page no 70 to 92 of the paper book)



- ii. Copy of the sanction letter dated 09/02/2015 and Loan Agreement dated 11/02/2015 and other security Documents have been annexed (Page no. 15 to 62 of the paper book)
  - iii. Copy of the statutory demand Notice dated 30/08/2016 issued under Section 13(2) of the SARFAESI Act. (Page no. 63 to 65 of paper book)
  - iv. Copies of the Possession Notice dated 10/12/2016 and Sale Notice dated 10/02/2017 (Page no. 66 to 68 of the paper book)
  - v. Copies of the Terms of Settlement dated **26/05/2017** and Letter of **Cancellation of settlement** (Page no.69 to 76 of paper book)
  - vi. Copy of the Ledger Account and Foreclosure Statement as on 25/07/2018 along with Certificate under Banker's Books of Evidence Act, 1891.
  - vii. Copy of the letter **of Acknowledgement debts and security dated 30/08/2016.**
15. The Petitioner has filed Pursish regarding service of Petition dated 03/08/2018.
16. The matter was taken up and heard from both sides by this Bench on 08.08.2018, 19.09.2018, 26.10.2018, 07.12.2018, 08.01.2019, 08.02.2019, 09.04.2019, 01.05.2019, 19.07.2019, 23.08.2019, 12.09.2019, 27.09.2019, 23.10.2019 and 07.11.2019. The counsels



of the petitioner and the Respondent were present and put forth their submissions before the Bench.

17. In response to the present I.B. Petition filed by the Petitioner Bank, **the Respondent has filed its objections on 19/09/2018.**

17.1 It is submitted that the application is not in the form Prescribed under the Insolvency and bankruptcy Code, 2016. The Statement of Account is not attached in accordance with the Banker's Book of 1 Evidence Act, 1891 and hence, the proceedings filed by the applicant before the Tribunal are **not maintainable.**

17.2 It is submitted that the Respondent No. 1 Company is not the sole borrower as there are two individual borrowers. **Mr. Subhash Agarwal** as well as **Mrs. Gulab Agarwal** are also the co-borrowers and therefore selected action against the corporate borrower is unjustified and unwarranted.

17.3 It is submitted that as on date, there is no security document executed in favour of the present petitioner for the alleged disputed claim and therefore, selected action against the company is bad in law.



- 17.4 It is submitted that the Financial Creditor has not initiated any action against the individual co-borrowers which creates a doubt about the alleged demand of the financial creditor.
- 17.5 It is submitted that the Respondent/Corporate Debtor is a going concern and owns a running school which is providing **education to hundreds of students** in addition to **employment to more than hundred teaching and other staff.**
- 17.6 It is submitted that the audited balance sheet of company dated 31.03.2017, Respondent Company has **assets worth crores of rupees** which are more than the alleged liability and, therefore, the Respondent Company cannot be said to be a company which is unable to pay.
- 17.7 It is submitted that the Petition filed by the petitioner is based on incomplete facts and documents and only some selected facts have been stated in the position. It is submitted that in a series of judgments, various decision of various Hon'ble High Courts and the Hon'ble Supreme Court of India has held that for want of an affidavit in accordance with law, the petition is liable to be dismissed.



17.8 It is stated that the loan agreement dated 11/02/2015 is not an admissible evidence because it is neither sufficiently stamped nor registered.

17.9 It is submitted that the Applicant has purposely not disclosed complete facts of the case and his claim is disputed.

17.10 It is stated that the Application is defective for want of **certification and verification the averments in the application and the documents attached can be relied upon.**

17.11 It is submitted that the subsequent affidavit dated 08/07/2019 cannot be looked into or considered.

17.12 It is also stated that the alleged claim is barred by limitation.

18. The Applicant Bank **has filed a Written Arguments on 23/08/2019** (Page 1 to 8) addressed the issues in support of its claim. It is stated that it is an undisputed position in the matter and there is financial debt due by the Corporate Debtor to the petitioner for amount Rs.3,34,96,299/- still remaining unpaid by the Respondent as on 25/07/2018. Thus, it is evident that corporate **Debtor has committed default in making payment of the financial debt as provided under clause (i) of sub section (8) if Section 5 of the Insolvency and Bankruptcy Code, 2016.** Hence this Tribunal is required to only examine whether criteria made for triggering the C.I.R.P. process in respect of the



Corporate Debtor are fulfilled so as to admit the present I.B. petition. In view of the above, the petitioner/financial creditor has fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.

### OBSERVATIONS

19. It is found, that the Petitioner Bank has submitted the documents duly executed by the **Corporate Debtor and Guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891**, in support of their IB Petition for initiation of C.I.R.P.

19.1 The Term Loan was sanctioned and released by the Petitioner Bank and the same was availed by the Corporate Debtor, SRK Devbuild Private Limited.

19.2 The CD has defaulted in making repayment of the Term Loan to the Petitioner Bank and **the date of default is 31/05/2016**. The Statement of accounts submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.

19.3 **The last payment to the loan was came on 31/05/2017. The OTS proposal was executed on 26/05/2017 but the same was not honoured by the Corporate Debtor.**

19.4 **The Petitioner Bank has filed the petition on 02/08/2018 which is within the period of limitation.**



19.5 **The charge has been created by the Corporate Debtor with ROC, Gwalior for Rs.4.00 Crores in favour of the Applicant Bank on 09/02/2015 and the said charge creation letter has been issued by the ROC in this regard.**

19.6 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt, debt due and defaulted and** proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP)

**ORDER**

20. Considering the material, papers filed by the Petitioner and the facts mentioned in the **Para No. 19, 19.1, 19.2, 19.3, 19.4, 19.5, and 19.6 this Adjudicating Authority is satisfied that,**

- (a) The Corporate Debtor **availed loan facilities** from the Financial Creditor (AU SMALL FINANCE BANK LIMITED).
- (b) Existence of debt is above **Rs. One Lac;**
- (c) **Debt is due;**
- (d) Default has **occurred on 31/05/2016**
- (e) Petition **has been filed within the limitation period;**
- (f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found**



to be complete for the purpose of initiation of **Corporate Insolvency Resolution Process** against the Corporate Debtor.

Hence, **the present IB Petition is admitted** with the following **Directions/observations**. **The date of admission of this petition is 03/01/2020.**

18. This Adjudicating Authority hereby appoints, as proposed, **Mr. RAVI KAPOOR, having Insolvency Professional Registration No. IBBI/IPA-002/IP-N00121/2017-18/10290, Email ID: ravi@ravics.com, Address: 402, 4<sup>th</sup> Floor, Shaival Plaza, Near Gujarat College, Ellisbridge, Ahmedabad - 380006 as an Interim-Resolution Professional.** The Interim Resolution Professional is further **directed to make public** announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.
19. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -



- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have **effect from the date** of this order **till the completion of** the Corporate Insolvency Resolution Process.*

20. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20, 21 of I.B Code. Further the **personnels of the Corporate Debtor** are directed to extend co-operation to **Interim Resolution Professional as required Under Section 19 of IB Code.**

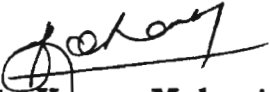


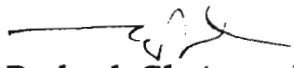
21. It is also observed that the Petitioner Bank has claimed **total dues of Rs.3,34,96,299/- which includes the principal amount, undebited interest and penal interest, as of 25.07.2018.** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out a **viable Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution **Plan Viable, feasible and implementation successful**, in the era of Minimum Cost of funds based Lending Rate ("MCLR" in short) and Competitive market condition, the Committee Of Creditor(s) (COC) **may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal interest/overdue interest.
22. The **Registry is hereby directed** to communicate the authentic copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the **Registrar of Companies, Indore** immediately through speed post/registered post. The Registrar of Companies



shall update its website the status of Corporate Debtor for the information of the public at large.

23. Thus the present I.B petition filed Under Section 7 of the **IBC stands admitted with the above observations and direction.**

  
**(Prasanta Kumar Mohanty)**  
**Adjudicating Authority &**  
**Member (T)**

  
**(Harihar Prakash Chaturvedi)**  
**Adjudicating Authority &**  
**Member (J)**

SK



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Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad