**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**COURT-VI, NEW DELHI BENCH**

**CP IB NO. 761/ND/2023**

*An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

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**<u>IN THE MATTER OF:</u>**

**UNITY SMALL FINANCE BANK LIMITED**

**Having its Registered Office at:**

40, BASANT LOK, VASANT VIHAR,

NEW DELHI-110057

**...APPLICANT/ FINANCIAL CREDITOR**

**VERSUS**

**M/S SERVEALL CONSTRUCTIONS PRIVATE LIMITED**

**Having its Registered Address at:**

A-20, KAILASH COLONY,

NEW DELHI-110048

**...RESPONDENT/CORPORATE DEBTOR**

**<u>Order Delivered on: 29.07.2026</u>**

**<u>CORAM:</u>**

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| **JUSTICE JYOTSNA SHARMA** | **MS. ANU JAGMOHAN SINGH** |
| **HON'BLE MEMBER (JUDICIAL)** | **HON'BLE MEMBER (TECHNICAL)** |

**APPEARANCES:**

**For the Applicant** : Mr. Atul Sharma, Ms. Renuka Iyer, Mr. Anmol Bansal and Mr. Arpit Paul, Advs.

**For the Respondent** :

## ORDER

**1.** This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Unity Small Finance Bank Limited (hereinafter referred to as 'Financial Creditor'), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Serveall Constructions Private Limited ("Corporate Debtor").

**2.** The present application was filed on 13.12.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 231,14,45,121/- (Rupees Two Thirty One Crores Fourteen Lakhs Forty Five Thousand One Hundred Twenty One) along with interest @13% from 01.02.2021 till the date of realization, along with a cost of Rs.70,800/- and arbitration fees of Rs.5 Lakhs as on 28.04.2022. The Financial Creditor has filed the "Record of financial information-Form C" dated 30.08.2023 as generated by the NeSL, showing the status of default of the Corporate Debtor under the Loan Agreement.

**3. <u>Submissions made by Financial Creditor:</u>**

i. That the Corporate Debtor had availed various overdraft facilities from the Punjab and Maharashtra Co-operative Bank Limited. Subsequently, pursuant to the Gazette Notification dated 25.01.2022, the Punjab and Maharashtra Co-operative Bank Limited was amalgamated with the Applicant Bank, whereby the Applicant Bank became entitled to recover the public monies due and payable by the Corporate Debtor and its group companies.

ii. That the Corporate Debtor had initially approached the Applicant–Financial Creditor for grant of a mortgage overdraft facility of Rs. 20,00,00,000/- (Rupees Twenty Crores only). The Applicant Bank sanctioned the said overdraft facility vide Sanction Letter dated 03.12.2008. Pursuant thereto, the necessary loan and security documents were executed. The aforesaid facilities were further secured by personal guarantees furnished by the Directors of M/s Privilege Power and Infrastructure Private Limited, a group company of the Corporate Debtor.

iii. That, from time to time, the Applicant had also extended additional credit facilities to the Corporate Debtor, and the existing credit facilities were duly renewed, pursuant to which disbursements were made in accordance with the sanctioned terms. Consequently, the total sanctioned loan exposure stood enhanced to Rs. 180,00,00,000/-. For securing the aforesaid credit facilities, the immovable properties of M/s Privilege Power and Infrastructure Private Limited, a group company of the Corporate Debtor, were mortgaged in favour of the Applicant Bank. It is further submitted that the Mumbai Bench of this Adjudicating Authority has initiated the Corporate Insolvency Resolution Process (CIRP) of M/s Privilege Power and Infrastructure Private Limited in CP (IB) No. 1358/2020.

iv. Consequent upon the persistent defaults committed by the Corporate Debtor, the Applicant issued two Demand Notices dated 07.10.2019 and 13.01.2021 under Section 13 of the SARFAESI Act, 2002, calling upon the Corporate Debtor to discharge its outstanding liabilities.

v. That since the Applicant is registered under the provisions of Multi State Co-Operative Society Act, 2002, the Applicant referred the disputes to arbitration. The learned sole arbitrator vide its arbitral award dated 28.04.2022 directed the defaulting borrower to pay the Applicant the outstanding amount of Rs. 231,14,45,121/- along with interest @13% from 01.02.2021 till the date of realization, along with a cost of Rs.70,800/- and arbitration fees of Rs.5 Lakhs. That the Applicant has filed an execution petition of the arbitral award before the Hon'ble High Court of Bombay.

vi. That even after the arbitral award and its execution petition, a sum of Rs. 231,14,45,121/- (Rupees Two Thirty One Crores Fourteen Lakhs Forty Five Thousand One Hundred Twenty One) along with interest @13% from 01.02.2021 till the date of realization, along with a cost of Rs.70,800/- and arbitration fees of Rs.5 Lakhs remained due and payable by the Corporate Debtor to the Applicant as on 28.04.2022. Hence this petition is filed.

**Analysis and Findings**

4. The matter is proceeding ex-partee against the against the Corporate Debtor.
5. Heard the Learned Counsel for the Applicant and perused the material on record.
6. It may be noted that vide order dated 22.12.2023, notice was issued to the Corporate Debtor. Thereafter, vide order dated 30.01.2024, this Adjudicating Authority permitted substituted service upon the Corporate Debtor by way of publication in the newspapers. Pursuant thereto, the Applicant filed an Affidavit of Service dated 29.04.2024, evidencing compliance with the directions pertaining to substituted service. Despite service having been duly effected through the substituted mode, none appeared on behalf of the Corporate Debtor. Accordingly, in the interest of justice, one final opportunity was granted to the Corporate Debtor to appear and file its reply vide order dated 07.06.2024. However, despite the said opportunity, neither any appearance was entered nor any reply was filed on behalf of the Corporate Debtor. Consequently, the Corporate Debtor proceeded against ex parte vide order dated 02.08.2024. Thereafter, the Petition came to be dismissed for non-prosecution vide order dated 04.02.2025. Subsequently, the Applicant filed an application seeking

restoration of the Petition, setting out the reasons for the non-prosecution of the matter. Upon consideration of the reasons so stated, this Adjudicating Authority restored the Petition, which was recorded vide order dated 13.06.2025. Upon restoration of the Petition, this Adjudicating Authority, vide order dated 02.02.2026, directed issuance of fresh notice to the Respondent. Pursuant thereto, the Applicant filed an Affidavit of Service dated 11.03.2026, evidencing compliance with the directions regarding service. Thereafter, vide order dated 08.06.2026, this Adjudicating Authority observed that, despite restoration of the Petition and fresh service of notice upon the Respondent, none had appeared on behalf of the Respondent. Accordingly, the matter was directed to proceed ex parte against the Corporate Debtor.

7. From perusal of the papers on record it appears that the Corporate Debtor had availed various credit facilities from the Financial Creditor at an interest rate as provided in the sanction letters. Further, we note that the amounts were disbursed and the interest was chargeable thereby the essential ingredients of a financial debt as defined under section 5(8) of the Insolvency and Bankruptcy Code, 2016 are met.
8. As per records and the submissions of the Applicant which remain unrebutted failed to repay the debt. The default in payment is further evidenced by the existence of an arbitral award in favour of the Applicant.
9. The Applicant with the application has annexed an arbitral award dated 28.04.2022 passed in favour of the Financial Creditor which remained unpaid evidencing the default committed by the Corporate Debtor.

The Hon'ble Supreme Court in the case of ***Dena Bank Vs C. Shivakumar Reddy (2021) SCC Online SC 543*** has held that:

> *"141. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of*

*the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."*

In view of the aforesaid dictum, the arbitral award dated 28.04.2022, which crystallised the liability of the Corporate Debtor and determined the amount due and payable, gives rise to a fresh cause of action for initiation of proceedings under Section 7 of the Code. Accordingly, the present Petition, having been filed within three years from the date of the arbitral award, is within the prescribed period of limitation.

10. It was submitted on behalf of the Applicant that the name of the Corporate Debtor had been struck off from the Register of Companies by the Registrar of Companies under Section 248 of the Companies Act, 2013. In this regard, reliance was placed upon the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Hemang Phophalia v. The Greater Bombay Co-operative Bank*, Company Appeal (AT) (Insolvency) No. 765 of 2019**, wherein it was held as under:

*"23 The Hon'ble NCLAT in the Matter of Hemang Phophalia vs The Greater Bombay Co-Operative Bank held that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by*

*the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act."*

In view of the aforesaid decision, it is settled law that the striking off of the name of the Corporate Debtor from the Register of Companies does not, by itself, constitute a bar to the initiation of proceedings under the Code. A section 7 petition having been admitted by the Adjudicating Authority, the Corporate Debtor is deemed to have been restored in terms of Section 252(3) of the Companies Act, 2013.

11. While adjudicating a Section 7 application, the Adjudicating Authority has to satisfy itself regarding the existence of 'Debt' and 'Default'. In the instant case, as discussed in the above paragraphs, the twin conditions of Section 7 i.e. 'Debt 'and 'Default' are established.

12. That the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time.

13. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)- 761/(ND)/2023** filed by Unity Small Finance Bank Limited the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Serveall Constructions Private Limited the Corporate Debtor, stands **admitted** and CIRP of M/s Serveall Constructions Private Limited is initiated.

**14. As per the discussion in para 10 in this judgement the ROC is directed to restore the name of the Respondent Company as per law at the earliest. The Registrar NCLT shall send the copy of this order immediately to the concern ROC for necessary compliance.**

15. That the petitioner in part-III of the petition has proposed the name of Mr. Manish Lalji Dawda, as Interim Resolution Professional. However, it has been observed by the Adjudicating Authority that the number of assignments of the proposed insolvency professional exceeds the maximum limit as provided under Regulation 7B of IBBI(Insolvency Professionals) Regulations, 2016. Therefore, this Adjudicating Authority hereby appoints Mr. Bihari Lal Chakravarti having Registration Number-IBBI/IPA-002/IP-N00863/2019-2020/12776 and E-mail Id: blchakravarti25@gmail.com, as an Interim Resolution Professional (IRP) for Corporate Debtor. The interim resolution professional is directed to file its consent in Form 2 along with a valid AFA within 7 days from the date of this order.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) 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;

(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

19. We direct the applicant Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakhs Rupees) with the Interim Resolution Professional to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial

Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

21. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

22. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

23. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

24. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. I.B./761/(ND)/2023** stands **admitted**.

25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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| **Sd/-** | **Sd/-** |
| **(ANU JAGMOHAN SINGH)** | **(JYOTSNA SHARMA)** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |