

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.1163/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Bank of India**

[CIN: U99999MH1906PLC000243]

...Financial Creditor/Applicant

V/s

**Pune Buildtech Private Limited**

[CIN: U45201MH2006PTC164356]

...Corporate Debtor/Respondent

***Order pronounced on : 04.07.2023***

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Zal Andhyarujina a/w Mr.  
Karan Bhide, Mr. Yash Pandya  
i/b Kini Law  
Firm Adv.

For the Respondent(s) : Mr. Gaurav Joshi a/w Mr.  
Yash Momaya, Mr. Akash  
Agarwal i/b ABH Law LLP,  
Adv.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is an Application being CP (IB) No. 1163/MB-IV/2021 filed on 30.10.2021 by M/s Bank of India, the Financial Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter Pune Buildtech Private Limited, the Corporate Debtor.

1.1 The total amount in default as on 31.08.2021 and payable by the Corporate Debtor to the Financial Creditor is **INR 631,76,37,838/-** together with further interest at 17.45% thereon compounded with monthly rests from 01.01.2016 along with penal interest at 2% p.a and other costs and expenses incurred and to be incurred for preservation and enforcement of the securities till the date of full and final payment and/or recovery. Date of Default is stated as 31.12.2015. The record of default has been reflected in NeSL Portal. The details are given below:

The computation of amount in default outstanding as on 31.08.2021 owed to Bank of India [Financial Creditor] by Pune Build-Tech Private Limited [Corporate Debtor]

| Sl. No. | Particulars   | [INR in Crores]<br>Amount |
|---------|---|---------------------------|
| 1.      | Total amount disbursed in the loan account starting from 09.10.2013 to 31.03.2015               | 224.07                    |
| 2.      | Interest and other charges debited to the account from 09.10.2013 to 31.12.2015                 | 67.6                      |
| 3.      | Payments received towards interest and other charges debited to the loan account                | 51.06                     |
| 4.      | Balance outstanding as on the date of account declared as NPA i.e. on 31.12.2015 [(1+2)-3]      | 240.61                    |
| 5.      | Cash recovery made after account declared as NPA  | 4.24                      |
| 6.      | Normal interest charged to the account from the date of NPA till 31.08.2021                     | 394.93                    |
| 7.      | Penal interest charged to the account from the date of NPA till 31.08.2021                      | 0.46                      |
| 8.      | Net amount payable by the Corporate Debtor to Financial Creditor as at 31.08.2021 [(4 -5) +6+7] | 631.76                    |

[Supporting Bank Statement in respect of the subject loan account bearing number 016065410000261 is enclosed]

2. The Corporate Debtor, (PBPL), is a 100% subsidiary of Marine Drive Hospitality and Realty Pvt. Ltd., (MDHRPL) [formerly known as DB Hospitality Pvt. Ltd. (DBHPL)]. Initially, PBPL planned to construct a Five Star Hotel in Yerwada, Pune on the plot admeasuring 14,368 sq. mt. and had obtained approvals accordingly. However, due to bad market conditions for hotel projects and unavoidable circumstances, the project was delayed and halted. Thereafter, Company decided to convert semi-constructed Hotel into residential project. Accordingly, it applied to Pune Municipal Corporation for Residential Plan approval. After receipt of approval in December 2013, it started civil work and demolition of unwanted

structure of existing hotel building. However, due to change in market conditions, company decided to change its scope of the project from Residential to Residential-cum-Home Offices.

2.1. The Corporate Debtor applied for sanction of sought Term Loan of Rs. 225.00 Crores from Bank of India (Financial Creditor) on 5.4.2013 for the project under Consortium Banking Arrangement. Company has also availed Term Loan of Rs. 30.50 Crores each from Punjab National Bank and Allahabad Bank for the then Hotel project.

2.2. The Corporate Debtor had also converted/ utilized already availed Term Loans aggregating to INR 61 crores [ Sixty One Crores] from Allahabad Bank and Punjab National Bank [ i.e. INR 30.50 crores each] to this Housing Project. However, Bank of India, the Financial Creditor having largest share in the above Project, as a Lender, has been designated as Lender's Agent.

2.3. The Term Loan originally sanctioned vide its sanction letter MLCB/SN/2013-14/700 dated 25.09.2013, was repayable in 21 equal monthly instalments of INR 10.71 crores each commencing 15 months from the date of first disbursement i.e.

from February 2015. Last instalment of INR 10.80 Crores payable on October, 2016. Door to door tenor of 3 years from the date of first disbursement. The loan is secured against following securities and the charges are registered with Registrar of Companies vide certificate dated 14.11.2013 -

- a. First pari-passu charge on land measuring 14,368 sq.mt located at Yerwada, Pune bearing CTS no 2175 (part) Plot No 3 and buildings to be constructed thereof;
- b. Exclusive charge on land admeasuring 7971.16 sq.mt located at Yerwada, Pune owned by Mukund Bhavan Trust and Development Rights owned by Pune Buildtech Pvt. Ltd.;
- c. Extension of charge on DB Hill Park admeasuring 80934 sq.mt located at Malad bearing C S No 827A/4A of Malad (E), Taluka Boriwali, MSD, owned by Mr. Tarashankar Chaubey and D B reality Pvt. Ltd. holds development right;
- d. Extension of charge on leasehold rights of Resham Bhavan property admeasuring 1161.34 sq.mt bearing CS No. 1680 of Fort, Mumbai owned by Government of Maharashtra and Lease Hold rights are held by D B Realty Ltd.;

- e. Subservient charge on residual value on Hotel Le Meridien [Now Hotel Hilton] bearing old Plot No. Y new Plot no D CTS No 41(part) 47 (part) and 41/B/3/B at village Banpada, Taluka Andheri East, Mumbai owned by BD & P Hotels Pvt. Ltd.; and
- f. Escrow on receivables from Project including sale of residential units.

2.4. The following documents in this relation were executed on 27.09.2013 –

- a. Term Loan Agreement dated 30.09.2013;
- b. Hypothecation cum Loan Agreement;
- c. Documents viz., L 490, L 515 and L 516 dated 30.09.2013
- d. Copies of the Undertaking Letter [ Three in Nos.];
- e. Guarantee Agreement dated 30.09.2013 duly executed by Mr. Shahid Balwa, Mr Vinod Goenka and Mr Asif Balwa as Guarantors in their personal capacity in favor of the Financial Creditor;
- f. Guarantee Agreement dated 30.09.2013 duly executed by authorized representative of M/s D B Reality Limited and

M/s D B Hospitality Private Limited as Corporate Guarantors in favor of the Financial Creditor;

- g. Supplemental Term Loan Agreement and Declaration cum Undertaking both dated 30.03.2015;
- h. Deed of Mortgage dated 15.10.2013 duly signed by Authorized Representative of D B Realty Limited, Mr Tarashankar Baijnath Choubey, Authorized representative of Mukund Bhavan Trust and Authorized Representative of Pune Buildtech Pvt. Ltd. in favor of Financial Creditor; and
- i. Joint Deed of Mortgage dated 28.07.2014 duly executed by Authorized Representatives of Pune Buildtech Pvt. Ltd., Hillside Construction Company Private Limited and Mukund Bhavan Trust, called as mortgagors, in favor of Punjab National Bank, Bank of India [Financial Creditor] and Allahabad Bank.

2.5. The total amount of Rs. 224.07 Crore, out of sanctioned Loan of Rs. 225 Crore, was disbursed during period beginning from 9.10.2013 to 31.3.2015. In view of the extension of moratorium period by one year as sought by the Corporate Debtor, the Repayment Schedule was changed vide letter dated 10.3.2015 and necessary documents in relation to modification were

executed on 28.3.2015. Consequent thereto, the Term Loan was repayable in 21 equal monthly instalments of INR 10.71 Crores. The first instalment payable on February 2016 and the last instalment payable on October 2017. Door-to-door tenor of 4 years from the date of first disbursement.

2.6. The Corporate Debtor could not complete the project and stopped construction work somewhere in September, 2016, due to shortage of funds. Due to non-payment of interest from August 2015 onwards, the account has been classified as NPA with effect from 31.12.2015.

2.7. The Financial Creditor issued a notice under Sec 13(2) of SARFAESI Act 2002 on 8.5.2017. The Corporate Debtor acknowledged the debt on 7.1.2015, on 1.11.2017 and thereafter on 2.1.2019. Consequent to the default, the Financial Creditor issued a notice dated 14.8.2020 calling upon both Corporate Debtor and its Guarantors to pay the entire outstanding dues. The Corporate Debtor acknowledged the debt on 8.3.2021 also.

3. The Corporate Debtor vide its reply dated 7.3.2022 submitted that the Petitioner has deliberately and with a mule *fide* intention concealed the true and correct facts in so far as the transaction between the

Petitioner and the Respondent is concerned. The Petition is abuse of process of law.

3.1. It has availed of a Term loan amounting to INR 225 Crore {**“Credit Facilities”**) from the Petitioner, and also availed of credit facilities from Punjab National Bank and Allahabad Bank, now merged with Indian Bank, for the Project. The total borrowing of the Respondent from the Petitioner, Punjab National Bank and Allahabad Bank, now merged with Indian Bank, (**“Consortium”**) is thus INR 286 Crore. The Petitioner, Punjab National Bank and Allahabad Bank, now merged with Indian Bank, have entered into an inter-lender agreement in respect of their loans to the Corporate Debtor, which is confirmed by the copy of the Inter Lender Agreement dated 2.6.2014. The present Petition is barred by the provisions of the Inter Lender Agreement, to which the Petitioner is a party, and the terms of which the Petitioner is bound by. It is submitted that the present petition ought to be dismissed for being unauthorized, in breach of the Inter Lender Agreement. and suffering from non-joinder of necessary parties, viz. Allahabad Bank, now merged with Indian Bank, and Punjab National Bank.

3.2. Owing to various factors beyond the Respondent's control, the Respondent was unable to service the Credit Facilities availed from the Financial Creditor, Punjab National Bank and Allahabad Bank, now merged with Indian Bank. Accordingly, between 2016 and 2022, the Respondent exchanged numerous correspondence (on a without prejudice basis) with the Petitioner and the Consortium for resolution of the Credit Facilities. Even after filing of the captioned Company Petition, the representatives of the Petitioner and the Respondent were in midst of discussing OTS proposals. As recent as January 15, 2022, the Petitioner addressed a letter to the Respondent to further improvise the OTS proposal submitted to the Petitioner. The Respondent proposes to sell the Project to a third party at a valuation far higher than the valuation arrived at by the Petitioner. It is only for want of approval of the OTS from the Petitioner that there has been a delay of six (6) years in resolving the entire matter. Further, as a show of its good faith and bona fide commitment to the OTS proposal, the Respondent deposited a sum of INR 10 Crore in a no-lien account with the Petitioner. The Petitioner took illegal steps to declare the Respondent and certain others as "wilful defaulters", in respect of which a Writ

Petition being Writ Petition No. 2710 of 2021 was filed before the Hon'ble Bombay High Court. In which orders have been passed against the Applicant. These facts have been suppressed by the Petitioner.

3.3. In the Petitioner's formulation of its own case, the last acknowledgement received by the Petitioner from the Respondent towards the purported default occurred on March 8, 2021 for a purported sum of Rs.236,36,79,674/- (Rupees Two Hundred Thirty- Six Crores Thirty-Six Lakh Seventy-Nine Thousand Six Hundred and Seventy-Four only). Therefore, it is Petitioner's case that the "default" occurred on March 8, 2021, which is between March 25, 2020 and March 24, 2021. Accordingly, in view of the Section 10A of the Code, the Petition is not maintainable and ought to be dismissed at the threshold, with costs.

3.4. That the Petitioner's own formulation of its case demonstrates that its case is barred by limitation as the purported "default" on 31.12.2015, on the basis of which Section 7 of the Code is invoked, is time barred. Nonetheless, the Petitioner is harping on

the said date of default to escape from the provisions of Section 10A of the Code, as the correct date of default is 8.3.2021, the last acknowledgement of debt.

3.5. The Respondent availed Rs. 225 Crores and has also paid substantial interest on the Credit Facilities availed from the Petitioner. The Petitioner has failed to demonstrate as to how did the said sum, usuriously increased to the Purported Debt, claimed to be Rs.631,76,37,838/- in the Petition. Such a significant increase to the Purported Debt as claimed by the Petitioner is not crystallized. It is trite that if a debt is not crystalized under the Code, the Petition is ought to be dismissed.

3.6. That the Tens Loan Agreement, on the basis on which the Petitioner is seeking reliefs, as also the other ancillary agreements, is not valid and legally enforceable for reason of' it being insufficiently stamped under applicable law, hence, the present proceedings based on these documents cannot be proceeded further with and would be beyond the jurisdiction of this Hon'ble Tribunal.

- 3.7. Besides this, the Corporate Debtor has pleaded on the ground of “Force Majeure” arising from COVID 19 pandemic; Severe Global Economic crisis’ Purpose of Code being revival of Corporate Debtor and not a recovery tool; and default arose on account of fault of the financial creditor.
4. The Applicant filed a rejoinder dated 7.4.2022 and 18.04.2022 stating that when the debt becomes due and remains unpaid to the Financial Creditor, the default is established. In case of a Financial Creditor, the Adjudicating Authority has only to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. In the event of a default and that the debt would be due and remain unpaid, the Application under Section 7 of IBC ought to be admitted as observed by the Hon’ble Supreme Court of ***Innoventive Industries Ltd vs. ICICI Bank in Civil Appeal Nos. 8337-8338 of 2017***. The reply of the Corporate clearly admits the existence of debt and default. The deposit of Rs. 10 Crores by the Corporate Debtor purportedly as a sign of good faith was made out of its own volition and not at the directions of the Financial Creditor. Mere acceptance of settlement proposal by other financial institutions does not curtail the rights of this Financial Creditor to pursue its legal

remedies under this Code, nor is this financial Creditor bound to follow the decision of other financial institutions, that too under the dictate of the defaulting Corporate Debtor. The applicant has relied upon the decision of Hon'ble Supreme Court in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor & Others v. Meenal Agarwal & others (Civil Appeal No. 7411 of 2021)** to contend that the grant of OTC scheme cannot be prayed as a matter of right. It is submitted that for the purpose of Section 7, the existence of default holds relevance, regardless of whether wilful or otherwise, therefore, the order passed by the Hon'ble High Court do not come to the rescue of the Corporate Debtor. It also contends that insufficiency of stamp duty, even if there is one, is not a relevant factor in deciding applications filed u/s 7 of the Code. The signatory to the application is duly authorised person in terms of the Board Resolution passed by the Directors of the Applicant. Also, the date of default is when the default arises, and acknowledgement of debt merely extends the limitation period. It also submitted that only an amount of Rs. 4.24 crores has been paid in the credit facility account by the corporate debtor in last seven years.

5. The Corporate Debtor filed a written submission dated 20.4.2022 reiterating the arguments contained in its reply dated 7.3.2022.

6. The Corporate Debtor filed an IA-3795/2022 seeking dismissal of the company petition on the ground of limitation and Section 10A of the Code.

6.1. The Financial Creditor filed reply dated 11.1.2023 opposing IA-3795/2022, and explaining the limitation aspect and applicability of Section 10A of the Code. It also apprised this Bench that the Corporate Debtor had filed an IA seeking deferment of pronouncement of order on ground of settlement, after this Petition was reserved for Orders on 13.4.2022, however, this IA was finally dismissed. Thereafter, this matter was listed for Pronouncement of Order on 23.6.2022, however, no pronouncement was made and came to de-reserved subsequently on account of reconstitution of bench.

7. Classic Promoters and Builders Pvt. Ltd. ("Classic") filed an IA-3636/2022, seeking to apprise the Bench that it had expressed its willingness to take over the Project of the Corporate Debtor and had meeting with Consortium Lenders on 20.12.2017, and informed the Consortium that the Corporate Debtor had identified it as a purchaser of the Project for a sum of Rs.150 Crores and that the

Corporate Debtor would be able to settle the matter with the Consortium including the Applicant Financial Creditor. The Minutes of this meeting also record that the Consortium would process the fresh OTS from the Corporate Debtor upon receipt of an amount of Rs. 5 Crores. It has been pleaded that, on the basis of these representations by the Applicant Financial Creditor, Classic deposited an amount of Rs.5 Crores in a no-lien account of the Petitioner as an advance against the purchase of the Project' and it has a vested right and interest in the Project, accordingly sought to intervene in the Company Petition. Classic has alleged in this Application that the Applicant Financial Creditor reneged from the understanding arrived at between it and the Consortium Lenders and filed the Application u/s 7 of the Code. It has been apprehended that the Applicant Financial Creditor is treating the Project and the Land as its security interest for the transaction and therefore apprehends that the admission of the captioned Company Petition and the consequent moratorium that follows would erroneously extend to the Land and the Project as well despite the fact that the same is now an asset of the Applicant.

- 7.1. The Applicant Financial Creditor filed its reply dated 11.01.2023 contending that the said Application is not maintainable and ought

to be dismissed at the on inter-alia on the ground that no person has a right to be heard except the Corporate Debtor and the Financial Creditor. The scope of jurisdiction of this Hon'ble Tribunal is narrow and this Hon'ble Tribunal is required to notice only whether there is a 'debt' and 'default' committed by the Corporate Debtor and as to whether the application is complete in all respects. It is submitted that this is consistent with the provisions of the Code relating to appeals, whereunder any person aggrieved is entitled to move in appeal. As such, it is submitted that the Applicant has no locus whatsoever. Further, the Applicant has no right, title or interest whatsoever in respect of the said land and project and shall be prejudiced by the admission of the Company Petition in view of the provisions of the Code. It is further submitted that as and when the resolution professional/interim resolution professional takes over the assets of the Corporate Debtor, as part of the CIRP proceedings, the Applicant always has rights and remedies available in accordance with the provisions of the Code to impugn such action of the resolution professional. Further, the present Interlocutory Application smacks mala-fide intentions as the said Application is subsequently filed which is only after reconstitution of the Hon'ble Bench and never before. This clearly shows that the present Interlocutory Application filed by the Intervenes is only filed to

further delay the proceedings. Further, it is incorrect to state that Classic has acted in furtherance of representations purportedly made by the Financial Creditor and/or that purported settlement was made on the clear understanding that the project would be transferred and conveyed to Classic, and the same was consented to by the Financial Creditor. On the contrary, the Financial Creditor never granted its consent to any such proposal whatsoever at any point in time whatsoever and that such averments are made with knowledge of falsehood and with mala- fide intention to mislead this Hon'ble Tribunal.

8. The Corporate Debtor filed an IA-1890/2023, after the Company Petition was reserved for the orders, challenging the Petition on insufficiency of stamps on the loan documents relying upon decision of Hon'ble Supreme Court in case of *NN Global Limited Vs. Indo Unique Flame Ltd. and Others (20.23 SCC OnLine SC 495)* (“*NN Global*”) stating that all the Agreements were executed in New Delhi and were stamped for Rs.100/-, save and except the Supplemental Term Loan Agreement, which was stamped for Rs.300/- in New Delhi. Amongst the aforesaid Agreements, the Mortgage Deed was executed in Mumbai, Maharashtra and was stamped at Rs.10,00,000/- (Rupees Ten Lacs only); and Joint Mortgage Deed was

executed in Pune, Maharashtra was stamped at Rs.10,00,000/- (Rupees Ten Lakh only), accordingly, the documents, not having been stamped in accordance with Article 5(h)(A)(iv) of Schedule I to Maharashtra Stamp Act, 1958, can not be cannot be enforced under law as the same does not exist in view of decision of Constitutional Bench of Hon'ble Supreme Court in case of N N Global. The corporate debtor has urged this Tribunal in the said IA, after reproducing certain Paras from the said decision in support of its contentions, to consider the findings of the Hon'ble Supreme Court of India in the said judgement before passing any judgement in the Company Petition. It has further submitted that there is no doubt that the Agreements referred to and relied upon by the Petitioner in the present Petition to claim a default from the Respondent are insufficiently stamped. On the face of the Agreements, one can see that such Agreements are insufficiently stamped. It has further been submitted that If this Hon'ble Tribunal does not consider the recent judgement on insufficient stamp duty then any orders judgment passed without considering the same will open flood gates and set a dangerous precedent, where such an order will have a catastrophic impact on the matters.

8.1. This Bench finds that the corporate debtor has already taken this ground in its reply on both occasions and the Bench ought to have decided this issue in the light of judicial decisions before it. The Corporate Debtor has given details of stamp affixed on these agreements, which are as follows :

| Sr. No. | Agreements  | Place of execution         | Stamp Duty Paid     |
|---------|---|----------------------------|---------------------|
| 1.      | Term Loan Agreement dated September 30, 2013.   | New Delhi                  | 100/-               |
| 2.      | Guarantee Agreements dated September 30, 2013 <i>via.</i> Mr. Shahid Balwa, Mr. Vinod Goenka, and Mr. Asif Balwa      | New Delhi                  | 100/-               |
| 3.      | Corporate Guarantee dated September 30, 2013 <i>viz.</i> DB Realty Limited, Marine Drive Hospitality Private Limited. | New Delhi                  | 100/-               |
| 4.      | Hypothecation cum Loan Agreement dated September 30, 2013.  | New Delhi                  | 100/-               |
| 5.      | Mortgage Deed dated October 15, 2013  | Mumbai<br>,<br>Maharashtra | 10,00,000<br><br>/- |

---

|    |   |                      |                 |
|----|---|----------------------|-----------------|
| 6  | Joint Deed of Mortgage dated July 28, 2014. | Pune,<br>Maharashtra | 10,00,000<br>/- |
| 7. | Supplemental Term Loan Agreement dated      | New<br>Delhi         | 300             |

9. The financial Creditor has filed written submission dated 10.5.2023 placing reliance on the decision of Hon'ble Supreme Court in the case of Innoventive Industries Limited, Bishal Jaiswal, Laxmi Pat Surana, and Dena Bank on the aspect of Limitation; decision of Hon'ble NCLAT in the case of *Sullen Synthetics Limited v. Stressed Asset Stabilization Fund (2022) ibclaw.in 904 NCLAT* on the aspect of dispute in quantum of debt claimed as due; and Hon'ble NCLAT, Chennai Bench decision in the case of *Ashique Ponnamparambath vs. The Federal Bank Limited (At) (CH)(Insolvency) No. 22 of 2021* on insufficiency of stamp duty, wherein it was held that “*However, in addition to the Term Loan Agreement, the Financial Creditor relies on Demand Promissory Note, Hypothecation letter regarding depositing of title deed, a certified copy of the bank statement, and so many other documents filed along with the Application. Therefore, even if it is considered that the Term Loan Agreement*

*is insufficiently stamped and it cannot be accepted in evidence, then also alleged debt and default are proved beyond doubt.”*

*Findings:*

10. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.

10.1. The Counsel for the Corporate Debtor vehemently argued that the present petition is in nature of Recovery Proceedings and no resolution, as the mandate of IBC is, is sought to be intended by the present application. To support its contention, the Counsel drew our attention to the various OTS proposals latest being Proposal dated 31.08.2022, having been submitted by the Corporate Debtor. The Corporate Debtor also placed reliance on the Hon’ble Supreme Court’s decision in the case of *Vidarbha Industries (2022 (8) SCC 352)*.

10.1.1. This Bench notices that the Hon’ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC* had held that “*The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor,*

*making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the Adjudicating Authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the Adjudicating Authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred.”*

10.1.2. The reliance of Corporate Debtor on the Hon’ble Supreme Court’s decision in the case of *Vidarbha Industries (2022 (8) SCC 352)* is not sustainable in view of later decision in the case of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC* holding that “*it was clarified by the order in review that the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries(( (2018) 1 SCC 407)) and E.S. Krishnamurthy(( (2022) 3 SCC 161)). The view taken in the case of Innoventive Industries(( (2018) 1 SCC 407)) still holds good.”*

10.1.3. Hence, this Bench does not find any merit in this argument that the said proceedings are meant to recover the outstanding and do not seek the resolution of the Corporate Debtor, as mandated under the IBC.

10.1.4. The sufficiency of security is not a relevant consideration in a proceeding u/s 7 of the Code, however it is dealt with in detail in later paras. On the contrary, it invalidates the argument of the Corporate Debtor that the present proceedings seek to recover the outstanding than to resolve the corporate debtor. A lender, having comfortable security and intending to recover its money, would prefer to take over the assets of the borrower under SARFAESI Act to have it auctioned for realisation of its outstanding.

10.2. Classic Promoters and Builders Pvt. Ltd. sought to intervene by filing an IA no. 3636/2022. This Bench finds that it has no locus in the matter, as no right came to be acquired by it by submission of an offer to take over the project of the corporate debtor in the absence of acceptance of same by the applicant financial creditor. Accordingly, this bench is of considered view that this IA deserve to be dismissed.

10.3. The Corporate Debtor has further pleaded that the financial creditor has relied upon an acknowledgement dated 08.03.2021 to support its case

being within the limitation period. This Bench finds that the date of default is stated as 31.12.2015 in part IV of the Form 1 forming part of the present petition and is further evidenced by the record of default at NeSL portal . The Corporate Debtor has not disputed that this is not correct date of default. Instead, the Corporate Debtor argues that fresh date of default comes into existence when the outstanding debt is said to have been acknowledged i.e. 08.3.2021 by the Corporate Debtor and the said date falls within the period prescribed in section 10A of the IBC barring filing of any application u/s 7, 9, & 10 under the IBC.

10.3.1. This Bench finds the said argument is ex-facie illegal and not in accordance with stated position in numerous decisions of higher courts, wherein it has been consistently held that the default arises when the debt due is not paid and the subsequent events do not give rise to any fresh date of default. The subsequent acknowledgement acknowledges the liability and does not cause any default having come into existence.

10.3.2. The Corporate Debtor has also argued the date of default as stated in Part IV of Form 1 forming part of the petition is 31.12.2015, and accordingly, the period of limitation runs from the said date of default. The present petition is filed on 30.10.2021,

hence, the said application, having been filed beyond a period of 3 years from the date of default, the present application deserves to be dismissed on ground of limitation.

10.3.3. This Bench notices that the Corporate Debtor has acknowledged the debt of Rs. 228,55,21,768/- vide acknowledgement dated 07.01.2015. Further, the debt was acknowledged on 01.11.2017, 15.05.2019 and 08.03.2021. The acknowledgment dated 15.05.2019 confirms the debt of Rs.236,92,95,293/- as due and payable as on 31.12.2018 plus uncharged interest w.e.f.31.12.2015. In view of said acknowledgement, the period of limitation extends upto 14.04.2022 and thereafter upto 07.03.2024 vide last acknowledgement dated 08.03.2021.

10.3.4. This Bench also finds that the Corporate Debtor has acknowledged the said debt in its audited financial statement for the year ended on 31.03.2018, 31.03.2019, 31.3.2020 and 31.03.2021, which contains the corresponding amounts for the preceding year also. The said financial statements clearly show that the Corporate Debtor owes debt to the applicant bank, and such acknowledgement extends the period of limitation.

10.3.5. Further, in the case of *Tejas Khandhar Vs. Bank of Baroda (2022)* *ibclaw.in 496 NCLAT*, it was held that “*Keeping in view the aforementioned ratio laid down by the Hon’ble Apex Court in ‘Dena Bank (now Bank of Baroda)’ (Supra), this Tribunal is of the considered view that the OTS proposal dated 01.08.2016 and the subsequent one on 27.03.2018 falls within the definition of the ambit of ‘acknowledgement of debt’ as envisaged under Section 18 of the Limitation Act, 1963*”. Thus, the various OTS proposals vide letters beginning from 22.06.2017 and ending on 31.10.2022 further extends the period of Limitation.

10.3.6. In the case of *Dena Bank Vs. C. Shivakumar Reddy and Anr (2021)* *ibclaw.in 69 SC*, the Hon’ble Supreme Court held that acknowledgement of debt in the audited financial statements is a valid acknowledgement of debt u/s 18 of the Limitation Act, thus the period of limitation further gets extended.

10.3.7. Nonetheless, in the case of  
Suo Motu Writ Petition (C) NO. 3 OF 2020  
In Re: Cognizance For Extension Of Limitation  
{Suo Motu Writ Petition (C) NO. 3 OF 2020}, the Hon’ble  
Supreme Court ordered to exclude the period from 15.03.2020 to  
28.02.2022 for the purpose of computation of Limitation Period

vide its order dated 10.01.2022. In view of this also read together with acknowledgement dated 1.11.2017, the present petition can be held to have been filed within the period of limitation. Hence, this contention of the Corporate Debtor is also rejected.

10.4. The Corporate Debtor has challenged the maintainability of this Petition on the ground of insufficiency of stamp duty paid on loan / mortgaged documents in view of decision of *N.N. Global Mercantile Private Limited (Supra)*. The corporate debtor has contended that the Term Loan Agreement including the other ancillary agreements as mentioned aforesaid, on the basis on which the Petitioner is seeking reliefs, are not valid and legally enforceable for reason of it being insufficiently stamped under applicable law on the ground that the Term Loan and other ancillary agreements are executed in New Delhi, save and except the Supplemental Agreement which was executed in Mumbai. Thus, once such agreements are relied upon by the Petitioner before this Hon'ble Tribunal, which is exercising its jurisdiction in Mumbai, such agreements are known to be brought in Maharashtra. Once brought into Maharashtra for purpose of filing the present Petition under the Code, it is liable to payment of stamp duty under Maharashtra Stamp Act, 1958. It is further stated that as per the provisions of the Stamp Act, the Term Loan Agreement is liable to payment of stamp duty under Article

5(h)(A)(iv) of Schedule 1 of the Stamp Act, which provides payment of stamp duty at the rate of 0.2% of the amount agreed in the contract.

10.4.1. It is also contended that, in the present case, the Term Loan Facility, which was sanctioned to the Respondent was Rs.225 Crores. Therefore, the agreed contractual value under the Term Loan Agreement is clearly over Rs. 10 Lakh. In view thereof, 0.2% of the total contract value i.e. Rs. 225 Crores will be levied. 0.2% of 225 Crores is Rs.45 Lakh which will be payable as the stamp duty on the Term Loan Agreement. The Petitioner has admittedly paid only Rs. 100/- as evident from the stamp affixed on the Term Loan Agreement. In view of the insufficiently stamped agreement, this Hon'ble Tribunal cannot act and give effect to such agreement. Likewise, the other ancillary agreement inter alia Hypothecation Agreement which is also executed in New Delhi is stamped only at Rs. 100/- in place of Rs. 45 Lakh when the same is relied upon by the Petitioner in the State of Maharashtra. Even in the case of Mortgage Agreement, which is executed in Mumbai, Maharashtra, there is a deficient stamp duty of Rs. 35 Lakh as only Rs.10 Lakh is paid instead of Rs.45 Lakh. Considering while executing the Agreements, the requisite stamp duty was not paid, in addition thereto, penalty at the rate of 2% per month shall be levied on such

Agreements. Therefore, in view of the insufficient stamp duty, this Hon'ble Tribunal cannot take into account such Agreements and give effect thereto.

10.5. This Bench notices that the issue for consideration before the Hon'ble Supreme Court in case of N. N. Global (Supra) was “*Whether the statutory bar contained in Section 35 of the Stamp Act applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, as being non-existent, pending payment of stamp duty on the substantive contract / instrument?*”

10.5.1. The Corporate Debtor has reproduced Para No. 69, 72, 76, 81, 96, 112, 114(v), 120 & 124 from the said decision in support of its contention.

10.5.2. In this case, the Constitutional Bench, by majority of 3:2, held at para 120 that “*An instrument, which is exigible to stamp duty, may contain an Arbitration Clause and which is not stamped, cannot be said to be a contract, which is enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. An unstamped instrument, when it is required to be stamped, being not a contract and not enforceable in law, cannot, therefore, exist in law*” and further held

that *“the provisions of Sections 33 and the bar under Section 35 of the Stamp Act, applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act, would render the Arbitration Agreement contained in such instrument as being non-existent in law unless the instrument is validated under the Stamp Act”*.

10.5.3. From the above proposition, this Bench notices that the Hon’ble Court held that an instrument, which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument, hence is a void contract in terms of provisions of Contract Act. Accordingly, such instrument can not be taken in evidence by the Court.

10.5.4. This Bench also notices that the Hon’ble Court held at Para 114.v, while adverting to the issue how the Courts will act when an instrument is not stamped or insufficiently stamped, that *“We may, however, qualify what we have said with a caveat. There may be cases, where no stamp duty is seen paid. It paves the way for the unambiguous discharge of duty under Sections 33 and 35 of the Stamp Act. There may, however, be cases, where it may be stamped but the objection is taken by the party that it is not duly stamped. In such cases, no doubt, it is ordinarily the duty of the Court to examine the matter with reference to the duty under Section 33(2). If the claim*

*that it is insufficiently stamped, appears to the Court to be on the face of it, wholly without foundation, it may make the Reference on the basis of the existence of an Arbitration Agreement otherwise and then leave it open to the Arbitrator to exercise the power under Section 33, should it become necessary. This approach does justice to the word 'examine' in Section 33(2) of the Stamp Act while not ignoring the command of Section 11(6A) of the Act. It is not to be confused with the duty to examine prima facie whether an 'Arbitration Agreement' exists under Section 11(6A) of the Act, but is related to the duty to examine the matter under Section 33(2) of the Stamp Act".*

10.6. Section 34 of the Maharashtra Stamp Act ("Stamp Act") provides that –

*34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument :*

*Provided that,—*

*(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of—*

*(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and*

- (ii) *a penalty at the rate of 2 per cent. of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument :*
- Provided that, in no case, the amount of the penalty shall exceed four times the deficient portion of the stamp duty ;*
- b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;*

10.6.1. Section 19 of Maharashtra Stamp Act provides that –

*19. Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently such instrument or a copy of the instrument is received in the State,—*

*(a) the amount of duty chargeable on such instrument or a copy of the instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed ;*

*(b) and in addition to the stamps, if any, already affixed thereto such instrument 6[ or a copy of the instrument ] shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section in the same manner and at the same time and by the same persons as though such*

*instrument or a copy of the instrument were an instrument received in this State for the first time at the time when it became chargeable with the higher duty, and (c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument or a copy of such instrument as if such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.*

10.6.2. Section 4(1) of the Maharashtra Stamp Act provides that “*Where, in the case of any development agreement, sale, lease mortgage, or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-1 for the conveyance, development agreement, lease mortgage or settlement and each of the other instruments shall be chargeable with the duty of One Hundred Rupees instead of the duty is any prescribed for it in that Schedule*”. Section 4(3) further provides that “*If the parties fail to determine the principal instrument between themselves then the officer before whom the instrument is produced may, for the purposes of this section determine the principal amount*”.

10.6.3. This Bench finds that Entry 6 of Schedule 1 to the Maharashtra Stamp Act deals with any instrument evidencing an agreement relating to—(1) The deposit of the title deeds or instrument constituting or being

evidence of the title to any property whatever (other than a marketable security), where such deposit has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt; and Article 40 deals with MORTGAGE-DEED, not being an agreement relating to Deposit of Title Deeds, Pawn or Pledge or Hypothecation (Article 6), Bottomry Bond (Article 14), Mortgage of a Crop (Article 41), Respondentia Bond (Article 53), or Security Bond of Mortgage Deed (Article 54) when possession is not given or agreed to be given as aforesaid. The stamp duty rate prescribed, at relevant point of time, in Article 6 is 0.2 per cent. of the amount secured by such deed and in Article 40 it is 0.5 per cent. of the amount secured by such deed, subject to the maximum of ten lakh rupees.

10.6.4. This Bench finds that the Deed of Mortgage dated 15.10.2013 and Joint Deed of Mortgage dated July 28, 2014 creates a Registered Mortgage and not an agreement relating to deposit of title deeds, hence, such mortgage deed would be subject the stamp duty under Entry 40, which prescribes maximum duty of Rs. 10.00 lacs. It is not in dispute that this Mortgage deed has been executed upon payment of stamp duty of Rs. 10.00 lacs and is a registered document. Further, the said Deed of Mortgage and Joint Deed of Mortgage is the principal instrument having been executed pursuant to sanction letter dated 28.06.2013

mandating execution of necessary security documents for the sanction limits before release of such limits. Accordingly, the Term Loan Agreement and the other ancillary agreement inter alia Hypothecation Agreement, having been executed on a stamp of Rs.100/- in state of Delhi, is also sufficiently stamped in view of section 4(1) of the Maharashtra Stamp Act.

10.6.5. The Corporate Debtor's contention is that the said Mortgage Agreement as well as the agreement was also exigible to stamp duty under entry-5(h)(A)(iv) of schedule 1. However, this Bench finds that the Deed of Mortgage, Joint Deed of Mortgage, the Term Loan Agreement and the other ancillary agreement inter alia Hypothecation Agreement, are sufficiently stamped and the contention of the Corporate Debtor are based on mistaken appreciation of the facts pertaining thereto. Even if the contention of the Corporate Debtor is taken into account, the said contention gives rise to issue of classification under Schedule-1 of the Stamp Act. This Bench finds that the Hon'ble Supreme Court in the case of NN Global (Supra) laid down guideline in these words "*If the claim that it is insufficiently stamped, appears to the Court to be on the face of it, wholly without foundation, it may make the Reference on the basis of the existence of an Arbitration Agreement otherwise and then leave it open to the Arbitrator to exercise the power under Section 33, should*

*it become necessary. This approach does justice to the word 'examine' in Section 33(2) of the Stamp Act while not ignoring the command of Section 11(6A) of the Act.*” Accordingly, this Bench is of the considered view that this Bench, after having recorded the findings that said documents are sufficiently stamped, can proceed further to take these documents in evidence and leaving the issue of determination to the IRP/RP to be appointed in this case, in case the present petition is admitted.

10.7. Nonetheless, this Bench considers it appropriate to deal with the issue whether insufficiently stamped loan agreements and mortgage agreements can have a bearing on the adjudication of an application u/s 7 of the Code in case the claim can otherwise be substantiated.

10.7.1. This Bench finds that the law laid down in N N Global makes the contract, which is unstamped or insufficiently stamped, void, and the said decision further lays down the principle that such contract gets revived upon payment of duty with penalty under the Stamp Act. It follows therefrom that an instrument, insufficiently stamped or unstamped, is eclipsed by shadow of insufficiency of stamp duty paid on such instrument and cannot be taken in evidence; and once such shadow gets removed, the contract revives and becomes an enforceable instrument.

10.7.2. This Bench also finds that the law laid down in N N Global requires the Court or Public Authority to impound such instrument, in case it is unstamped or is found insufficiently stamped prima-facie and further mandates the Court or Public Authority to ensure that the Stamp Duty is paid in accordance with the applicable Stamp Act before allowing enforcement of rights arising from such instrument.

10.7.3. The IBC was enacted to facilitate the revival of the debtor by a resolution process, and such resolution process, as contained in the IBC, does not stipulate that the enforcement of such rights in the resolution process. The Hon'ble Supreme Court in case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC* had held that “*It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors*”.

10.7.4. The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Ascertainment of existence of debt and default is not necessarily

to be evidenced by a loan agreement or ancillary agreement or mortgage agreement. Instead, it can be proved by other means, as provided in Section 7(3) of the IBC prescribing record of default recorded with the information utility or such other records or evidence such may be specified. Further, Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribed Form-1 under Chapter-II and IV of Part-II of the Code for making an Application under 7 of the Code by Financial Creditor. Part-V of this Application requires details of financial debt document records and evidence of default to be stated by the Applicant. In the present Application, the Financial Creditor has provided NESL report dated 21.09.2021, copies of entries in Banker's Book, Copy of Notice u/s 13(2) of SARFAESI, Act 2002 and copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, besides copy of Sanction Letter, Mortgage Deed & Joint Mortgage Deed, Term Loan Agreement and other ancillary agreement. The Financial Creditor also filed audited Financial Statements of the Corporate Debtor for the year ended on 31.03.2018, 31.03.2019, 31.03.2020 and 31.03.2021 as well as OTS offers made by the Corporate Debtor.

10.7.5. It is not the case of Corporate Debtor that NESL report dated 21.09.2021, copies of entries in Banker's Book, Copy of Notice u/s

13(2) of SARFAESI, Act 2002, copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, audited Financial Statements of the Corporate Debtor, and OTS offers require payment of stamp duty under Maharashtra Stamp Act. This Bench finds that entries in Banker's Book evidence the amount claimed to have been given as loan, and default in payment thereof is evidenced from Notice u/s 13(2) of SARFAESI, Act 2002, copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, and audited Financial Statements of the Corporate Debtor as well as OTS offer letters placed on record as demonstrated in the preceding paras. Accordingly, this Bench of the view that, even if the contention of the Corporate Debtor is accepted that the Supplemental Mortgage Deed, Term Loan Agreement and other ancillary agreement cannot be taken in evidence to establish the existence of debt and default in payment thereof, this Bench finds that the fact of debt and default stands proved otherwise by other evidences, as is held in case of Hon'ble NCLAT, Chennai Bench decision in the case of *Ashique Ponnamparambath vs. The Federal Bank Limited* (2021) ibclaw.in 336 NCLAT.

10.7.6. This Bench finds the plea of insufficiency of stamp duty raised by the Corporate Debtor, to dislodge the present petition, is contrary to its own admission while seeking disbursement of the Term Loan under

these very agreements and subsequent acknowledgements, OTS proposals and its financial statements. This Bench feels that the dislodgement of the position, which remained legal for sufficiently long time as per Corporate Debtor's actions, would only benefit the Corporate Debtor at the cost of Financial Creditor, more so when the amount of deficient stamp paper was recoverable from the Corporate Debtor itself.

10.7.7. This Bench further notices that in the case of Swiss Ribbons (Supra), the Hon'ble Court also held that "*the interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests*". In other words the present application u/s 7 of the Code does not seek enforcement of security or any loan agreement at this stage and also during the CIRP process.

10.7.8. It shall be pertinent to note that the stamp duty even if paid by the lender, is recoverable from the borrower i.e. the Corporate Debtor in the present case. This Bench is of the considered view that interest of the state shall be protected in case IRP/RP is directed to notify the

collector of stamps to file its claim for a deficiency in a stamp duty in case there is an objection raised by the Corporate Debtor.

10.7.9. In view of above discussions, this Bench does not find any merit in the arguments of the Corporate Debtor on this issue.

10.8. The Corporate Debtor has filed an IA-2717/2023 on 23.06.2023 and the same was listed on 03.07.2023 praying for deferment/pronouncement of any final order/judgment in CP (IB) No.1163/MB-IV/2021 till such time the applicant/financial creditor has considered the OTS proposal of the Respondent. The Corporate Debtor has submitted that it has submitted letters dated 27.01.2023, 08.02.2023 and 24.05.2023 expressing to settle the matter amicably for Rs.374.83 Crore with some modifications to the terms from time to time. The pronouncement of Order in the case of the Corporate Guarantor i.e. Marin Drive Hospitality & Reality Private Limited to the credit facilities granted to the Corporate Debtor was listed on 28.06.2023, and the pronouncement of that order came to be deferred after mentioning by the Corporate Guarantor on the ground of settlement proposal is being under consideration of the Financial Creditor/Applicant. The Financial Creditor placed on record a praecipe dated 28.06.2023 on that day stating that-

*“3. In response to the prayer clause of the said Interlocutory Application, the Financial Creditor submits its current factual position as under:*

- a. The Corporate Debtor submitted an OTS proposal, to the Financial Creditor for the settlement of its dues, which is under consideration with the Financial Creditor.*
- b. In furtherance of the same, the Corporate Debtor deposited INR 10 Crores with the Financial Creditor as a token amount in No Lien Account with the Financial Creditor.*
- c. Accordingly, the OTS Amount, as offered by the Corporate Debtor, has to be paid within 90 days from the date of approval, if the same is approved.*
- d. Since the Account is classified under fraud category, the Financial Creditor is in the process of formulating a Board Policy on dealing with fraud accounts in terms of settlement, in accordance with the recent RBI Circular dated 08.06.2023.*
- e. Thereafter, the Corporate Debtor’s request would be submitted to the Competent Authority for consideration as per the Financial Creditor’s extent guidelines.”*

10.8.1. This bench directed applicant financial creditor to be present in person through a responsible and authorized officer to update this bench

about the exact facts pertaining to the OTS proposal, in view of deficient and unclear submissions in the praecipe and posted the matter on 04.07.2023 . In the meantime, this IA came to be listed for hearing on 03.07.2023. One DGM represented the Applicant/Financial Creditor, and again reiterated that the Financial Creditor is in the process of formulating a board policy on dealing with fraud accounts in terms of settlement, in accordance with the recent RBI circular dated 08.06.2023, and submitted that the Corporate Debtor's request can be submitted to competent authority for consideration/approval thereafter. The officer present in person categorically stated that he has instruction to pray for admission of the Corporate Debtor into CIRP. This bench was handed over another praecipe dated 29.06.2023 from the advocate for the Financial Creditor stating that the Financial Creditor has no objection to the matter being kept in abeyance till the Competent Authority of the Financial Creditor has taken a decision in the matter.

10.8.2. This bench has considered these submissions and finds that consideration of the Corporate Debtor's proposal for settlement is at premature stage in view of, formulation of a board policy on dealing with fraud accounts is still to take place. This bench further finds that the account of the Corporate Debtor is in defaults since 31.10.2015 and

there have been numerous OTS proposal having been discussed between the parties, however, it yielded no result.

10.8.3. This bench finds that that the Hon'ble Supreme Court in the matter of **M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC** held that *"If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application"*. Further, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests, as held in *Swiss Ribbons Pvt. Ltd. & Anr [2019] ibclaw.in 03 SC*. In view of this, we are not inclined to entertain the prayer for deferment of pronouncement of the order in this case, more so, this application is pending since two years for its adjudication before this tribunal for about two years even though the court mandates decision on such applications within 14 days of its filing.

10.8.4. Accordingly, IA2717/2023 is **dismissed**.

11. Since, there exist a Financial Debt of more than Rs.1.00 Crore; the Corporate Debtor has default in repayment thereof on 31.12.2015; the Petition is within Limitation period in view of various acknowledgement extending the period of limitation; and the Petition is complete and has

been filed under the proper form, this Bench finds that present Petition deserves to be admitted.

12. The Financial Creditor has proposed the name of Mr. Birendra Kumar Agarwal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00564/2017-18/11040] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

13. IA-3795/2022, and IA-1890/2023 filed by the Corporate Debtor are dismissed as not maintainable. IA-3636/2022 filed by Intervenor is also dismissed on ground of locus.

### **ORDER**

- a) This Application being C.P. (IB) No. 1163/NCLT/MB/C-IV/2021 filed by Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) in the matter of Pune Buildtech Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Birendra Kumar Agarwal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00564/2017-18/11040], Phone No. 9769379944, email- [bk@bhamaconsulting.com](mailto:bk@bhamaconsulting.com) as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out

of issuing public notice and inviting claims, in case the Funds are not found available with the Corporate Debtor by the IRP. The said amount shall be treated as Interim Finance provided by the Financial Creditor. The expenses, so incurred by IRP, are subject to ratification by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

**Prabhat Kumar**  
**Member (Technical)**

04.07.2023

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**