

DIVISION BENCH
COURT - I

(MENTIONING)

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/241(KB)2023

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), CMDE SIDDHARTH MISHRA**

ORDER SHEET OF THE HEARING ON 23RD APRIL 2025

IN THE MATTER OF	UNITY SMALL FINANCE BANK LIMITED VS SOHOM SHIPPING PRIVATE LIMITED
UNDER SECTION	IBC UNDER SEC 7

C O R R I G E N D U M O R D E R

1. This matter was not on board today. However, upon mentioning, the matter was taken up on board.
2. In the Order passed in C.P. (IB)/241(KB)2023 dated 18.12.2024, some typographical errors have brought to our notice and therefore, the same are amended as under:
 - a) In **Page No. 1** and **Page No. 14** inadvertently written as "*Soham Shipping Private Limited*" will be replaced by "**Sohom Shipping Pvt Ltd**".
 - b) Rest of the Order will remain unchanged.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**



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

In the Matter of:

Unity Small Finance Bank Limited

....Applicant / Financial Creditor

Vs.

Soham Shipping Private Limited

.... Corporate Debtor / Respondent

Date of Pronouncement of order: 18.12.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Counsel appeared physically / through video Conferencing

Ms. Manju Bhuteria, Adv.] For the Financial Creditor
Ms. Nimisha Agarwal, Adv.]

Mr. Shaunak Mitra, Adv.] For the Corporate Debtor
Mr. Chandrachur Chatterjee, Adv.]

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Sr. Counsel /Counsels for the parties were heard at length.

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3. This Petition has been preferred by the Petitioner / Unity Small Finance Bank Limited (The Financial Creditor / FC) seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the Respondent / Soham Shipping Private Limited (the Corporate Debtor / CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code") regarding an outstanding debt of INR 6,65,98,454.78/-(Rupees Six Crore Sixty-five Lakhs Ninety-eight Thousand Four Hundred Fifty-four and Paisa Seventy-eight only).

4. Ld. Counsel appearing for the Financial Creditor would contend as under:

4.1. The Corporate Debtor approached the bank for term loan facility which was sanctioned vide letter dated 27.02.2018 for a sum of Rs. 8 Crores and an amended sanction Letter dated 20.03.2018 was issued.


4.2. The Financial Creditor had disbursed the following payments which were detailed below:

Loan Account No.	Agreement Date	Disbursal Date	Sanctioned Loan Amount	Disbursed loan
MUM201000030	20.03.2018	31/03/2018 14/05/2018 20/07/2018 03/08/2008 17/08/2018 14/09/2018 17/12/2018 31/01/2019 27/02/2019	Rs.8,00,00,000/-	Rs.3,00,00,000/- Rs.1,00,00,000/- Rs. 25,00,000/- Rs. 50,00,000/- Rs. 75,00,000/- Rs.1,25,00,000/- Rs. 60,00,000/- Rs. 35,00,000/- Rs. 30,00,000/-
Total			Rs.8,00,00,000	Rs.8,00,00,000

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4.3. The Corporate Debtor to secure due repayment of the said amount, the Corporate Debtor executed a facility agreement dated 21.03.2018 along with following documents:

4.3.1. Two (2) Letters of Hypothecation dated 21.03.2018.

4.3.2. Deed of Promissory Notes for Rs. 8,00,00,000/- dated 21.03.2018.

4.3.3. Deed of Personal Guarantee dated 21.03.2018 of Rs. 8 Crores executed by Mr. Subrata Hazra and Soham Hazra in favour of the Applicant.

4.3.4. Deed of Mortgage dated 23.03.2018.

4.3.5. General Power of Attorney dated 24.03.2018.

4.3.6. Escrow Agreement dated 07.05.2018.

4.4. In furtherance of the disbursement of the term Loan Facility, the original Lender issued a Restructured Sanction letter dated 30.06.2021 for an amount of Rs. 7,06,07,859/- (Rupees Seven Crores Six Lakhs Seven Thousand Eight Hundred and Fifty-nine only) in place of Rs. 8,00,00,000/- (Rupees Eight Crores only).

4.5. The Corporate Debtor having failed to repay the loan was declared NPA as per RBI Guidelines dated 29.08.2022 and follow up issuance of Notice under Section 13(2) of SARFAESI Act was issued.

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The details of NPA and outstanding amounts are depicted by way of a chart which is as under:

Account No.	Data of NPA
MUM201000030	29/08/2022
Outstanding Details	
Principle Outstanding	Rs.5,95,41,484.00
Overdue Interest Amount	Rs. 64,46,715.78
Others (Additional Interest / Bounce Charges / Penal Charges	Rs. 6,10,364.00
Total Outstanding as on 30.09.2023	Rs. 6,65,98,545.78

4.6. The Ld. Counsel therefore would submit that the Corporate Debtor to the Financial Creditor is liable to repay a sum of Rs. 6,65,98,545.78 (Rupees Six Crore Sixty-five Lakhs Ninety-eight Thousand Five Hundred Forty-five and Seventy-eight Paisa only) together with further interest @ 13% per annum till payment and / or realisation of cost / expenses incurred or to be incurred for preservation and enforcement of the security and realisation of the amounts due from the defendants. Financial Creditor is thus entitled and has preferred this application under Section 7 of IBC, 2016.

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4.7. In support of the contentions, the following documents have been placed on record:

4.7.1. Sanction Letter dated 27.02.2018 and the same is marked with the Petition as Annexure -B.

4.7.2. Amended Sanction Letter dated 23.03.2018 and the same is marked with the Petition as Annexure -C.

4.7.3. Facility Agreement dated 21.03.2018 and the same is marked with the Petition as Annexure -D.

4.7.4. Letter of Continuity for Demand Promissory Note and the same is marked with the Petition as Annexure -E.

4.7.5. Restructured Sanction Letter dated 30.06.2021 and the same is marked with the Petition as Annexure -L.

4.7.6. Demand Notice dated 01.09.2022 and the same is marked with the Petition as Annexure -M.


4.8. The Date of Default has been marked to be 29.08.2022 and the amount marked to in Default for a sum of Rs. 6,65,98,545.78.

5. Per contra Ld. Counsel Mr. Shaunak Mitra appearing for the Corporate Debtor would submit as under:

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- 5.1. That the Petition is not maintainable as the person who has signed application on behalf of the Financial Creditor, has not been authorized by a proper Board Resolution to initiate any action on the part of the Financial Creditor or to appoint any Professional in the matter.
- 5.2. The Financial Creditor has failed to show that it had necessary approval or Board Resolution before disbursement of the alleged loan.
- 5.3. The Loan does not fall within the definition of the financial debt under IBC, 2016. Payment of TDS cannot be taken as a proof of any financial debt in absence of any document evincing the disbursement of the alleged Loan by the financial creditor.
- 5.4. The Financial Creditor has failed to make out a case of default and in absence of Default, no application under Section 7 can be admitted.
- 5.5. The financial creditor did not recall the said loan or terminated the said facility agreement.
- 5.6. After declaring the Loan account as NPA, the Financial Creditor by a sanction Letter dated 30.06.2021, restructured the said Loan, the account of the corporate debtor had not been declared NPA by the

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financial creditor, as such there does not exist any debt and the Corporate Debtor has not committed any default.

5.7. The Financial Creditor having preferred an application under Section 19 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act, 2002") before the Debt Recovery Tribunal (for short "DRT"), and cannot resort to a double recovery from the Corporate Debtor.

5.8. It is not the object of IBC to penalise solvent companies.

5.9. The Form No. 1 is incomplete. Hence, the Petition should be dismissed.

6. In rebuttal, Ld. Counsel Ms. Manju Bhuteria appearing for the Financial Creditor would submit as under:


6.1. That the Board Resolution authorising the person who has signed the Petition on behalf of the Financial Creditor is available. Ms. Bhuteria would refute the statement made by the Ld. Counsel appearing for the Corporate Debtor.

6.2. Annexure -A of the Petition discloses that Mr. Vijay Kumar, Senior Vice President of Financial Creditor has duly authorized Mr.

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Birendra Kumar Samanta, Vice President to act and appear on behalf of the Financial Creditor before this Adjudicating Authority.

6.3. The statements of accounts have been duly annexed to the application which confirms the “debt” and “default”.

6.4. The Demand Notice dated 01.09.2022 has been annexed as Annexure M which is self-explanatory and therefore, the allegation that no demand notice was served is baseless.

6.5. The claim that sanction letter dated 20.06.2021 was issued to restructure the loan therefore, debt does not exist anymore is denied. Thereafter, the Corporate Debtor was declared as NPA again on 29.08.2022 and simultaneously on 01.09.2022. The Demand Notice was issued, therefore, the claim made by the Corporate Debtor is not true.

6.6. It is vehemently denied that there is no documentary evidence to substantiate the claim of the Financial Creditor or that the Financial Creditor has failed to make out a case for initiation of CIR Process of the Corporate Debtor.

7. Analysis and findings:



7.1. It is evident that the Centrum Finance Services Limited had entered into a Business Transfer Agreement with Unity Small Finance Bank, the present Financial Creditor or the new lender on 26th October, 2021 pursuant to which the Financial Creditor had acquired entire business of Centrum Financial Services Limited by way of slump sale in accordance with the terms and conditions contained in the Business Transfer Agreement.

7.2. Such Transfer with the knowledge of Corporate Debtor as would be evident from the signatures appearing at page 7 of the rejoinder. Signatures appearing at the letter dated 01.12.2021 as contained in Annexure – B at page 7 of the rejoinder.

7.3. It is also evident that on 15.03.2024, the Ld. Counsel appearing for the Corporate Debtor submitted that the Corporate Debtor intends to settle this matter with the Financial Creditor. The order records as under:

“1. Ld. Counsel for the parties present.

2. Reply Affidavit has been filed. Ld. Counsel for the Corporate Debtor states that the Corporate Debtor intends to settle this matter with the Financial Creditor.

3. In view of the statement, post this matter for reporting settlement on 11.05.2024. It is made clear if the matter is not settled, this petition will be heard on its merits.”



7.4. Therefore, there is no gainsaying that “**Debt**” and “**Default**” is admitted by the Corporate Debtor.


7.5. On the question whether debt gets extinguished upon restructuring of the Loan, we would note that by a sanction letter dated 30.06.2021, Financial Creditor restructured the loan account of the Corporate Debtor. The Corporate Debtor’s account was again declared as NPA on 29.08.2022. The Demand Notice was sent on 01.09.2022.

7.6. Whether proceedings under IBC and SARFAESI amounts to double recovery from the Corporate Debtor. It is noted that both proceedings under IBC as well as SARFAESI a parallel proceedings while IBC addresses broader Insolvency situation with different threshold amount and SARFAESI focuses on asset recovery. The choice between SARFAESI Act and IBC depends upon a nature of debt as per specific circumstances of the case. For example for secured asset / backed recoveries; SARFAESI offers speedy and fast recovery through assets liquidation whereas for more complex cases involving corporate restructuring unsecured creditors, IBC provides a more holistic and inclusive approach and is a better choices.

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7.7. Section 238 of the IBC has a non-obstante provision which takes precedence over any other law or instrument that conflicts with it. Hence, it is wrong to say or suggest that proceedings under IBC as well as under SARFAESI Act are not maintainable.

7.8. Moreover, upon admission of Section 7 application interim moratorium kicks in.

8. We have considered the rival contentions of and perused the records.

9. Whether the Petition has been preferred by an authorised person of Financial Creditor:


9.1. We also perused the Power of Attorney granted on 14.06.2022 by the Unity Small Finance Bank Limited to Mr. Vijay Kumar in the capacity as Senior Vice President to act to appear and represent the subject bank before this Adjudicating Authority or any other Tribunal or any Appellate Authority.

9.2. It is duly supported by a resolution passed at the meeting of Board of Directors of Unity Small Finance Bank Limited holding of 19.05.2022. Therefore, there is no gain saying that Sr. Vice President Mr. Vijay Kumar is not authorised to act on behalf of the Financial Creditor.

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9.3. In the present case, “**disbursement**” of sum as loan which is essentially against “consideration for time value of money” is adequately met. Thus “**debt**” that is due to “**Financial Creditor**” and “**default**” by the Corporate Debtor is satisfied.

10. In view of the above, we hold that the “**debt**” and “**default**” on the part of the Corporate Debtor stands admitted, the Petition is maintainable, it is not hit by limitation, threshold is met and accordingly, the Petition deserves to be admitted.

11. Further, we are fortified in our views by the following decisions of the Hon’ble Apex Court which succinctly clarifies what a “Financial Debt” would be that would justify initiation of Corporate Insolvency Resolution process:

11.1. In **Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416**, it was held that:

“any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money.”

(Emphasis added)

11.2. **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401,**

that:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

11.3. **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...'”

(Emphasis added)


12. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 241/KB/2023** filed under Section 7 of the I&B Code, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIR Process) in respect of the Corporate Debtor and pass the following Orders:

(a) This application being **C.P.(IB)/241(KB)2023** filed by **Unity Small Finance Bank Limited**, the Financial Creditor, under

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section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Soham Shipping Private Limited**, the Corporate Debtor, is **admitted.** ``

- (b)** There shall be a moratorium and the moratorium shall have effect under Section 14 of the IBC from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC.
- (c)** Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (d)** **Mr. Sanjay Kumar Poddar, having** registration number **IBBI/IPA-001/IP-P018025/2019-2020/12759** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall

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carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- (e) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (f) The IRP/RP shall submit to this Adjudicating Authority periodical report about the progress of the CIRP in respect of the Corporate Debtor.
- (g) The Financial Creditor shall deposit a sum of **Rs. 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (h) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

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(i) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this Order.

13. C.P.(IB)/241(KB)2023 to come up on **17.01.2025** for filing the progress report.

14. The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

15. Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 18th day of December, 2024

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M. Jana (P.S.)