

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

**CP (IB) No.1164/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Unity Small Finance Bank Limited**

...Financial Creditor/Applicant

**V/s.**

**Somerset Construction Private Limited**

[CIN: U45200MH2005PTC155627]

...Corporate Debtor/Respondent

**Order Dated: 25.07.2023**

***Coram:***

**Mr. Prabhat Kumar**

**Hon'ble Member (Technical)**

**Mr. Kishore Vemulapalli**

**Hon'ble Member (Judicial)**

***Appearances (via videoconferencing):***

For the Petitioner(s) : Adv. Kriya Jain h/f Adv. Maulik  
Chokshi, Advocates.

For the Respondent(s) : None present.

**ORDER**

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

1. This is an Application being CP (IB) No.1164/MB-IV/2021 filed by M/s. Punjab & Maharashtra Co-Operative Bank Limited (“Original Lender” or

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“Financial Creditor/Applicant”), under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Somerset Construction Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Applicant claimed total debt of Rs.295,60,86,327.40 (Rupees Two Hundred Ninety Five Crores Sixty Lakhs Eighty Six Thousand Three Hundred Twenty Seven and Forty Paise only), which includes Principal amount of Rs.199,99,46,786/- (Rupees One Hundred Ninety Nine Crores Ninety Nine Lakhs Forty Six Thousand Seven Hundred Eighty Six Only) and interest of Rs.95,61,39,541.40/- (Rupees Ninety Five Crores Sixty One Lakhs Thirty Nine Thousand Five Hundred Forty One and Forty Paise Only) as on 31.05.2021, in default.
3. The date of default is stated as 30.05.2018 part IV of the petition. It is also stated that account was declared as Non-Performing Asset (NPA) on 31.08.2018. The Applicant has enclosed record of default, stated as “Deemed to be authenticated”, wherein date of default is stated as 30.05.2018 and last date of repayment is stated as 23.04.2018.
4. Subsequently, Original Lender/Applicant was merged with Unity Small Finance Bank Limited, and substitution of the name of merged entity was allowed vide order dated 22.12.2022 passed in IA-2147/2022.

**The Brief Facts of the Case:-**

5. The Corporate Debtor availed financial services from in form of Mortgage Overdraft Limit of Rs.200,00,00,000/- (Rupees Two Hundred Crores Only). The Sanction Letter dated 22.03.2018 along with other documents, were executed in the name of the Corporate Debtor, along with Corporate Guarantor and the Personal Guarantors who had signed the Letters of

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Guarantee to avail the credit facility of Rs.200,00,00,000/- (Rupees Two Hundred Crores Only) from the Original Lender.

6. The Corporate Debtor had hypothecated book debts as the primary security by entering Hypothecation Deed in ADV 70 with the Original Lender as on 18.04.2018. The Original Lender, Corporate Debtor and the Corporate Guarantor (HDIL) had entered into a Tripartite Agreement of Mortgage for the land which was located in Village at Panvel, District Raigad, under Registration No. Panvel-5509-2018 dated 24.04.2018 in the village Adiwali, Maharashtra admeasuring 159 Acres and 7 Gunthas as primary security.
7. The Corporate Debtor committed a default on 30.05.2018 and the Applicant had declared the account as NPA on 31.08.2018. The Applicant issued Final notice before taking action u/s 13 of SARFAESI Act 2002 vide Ref. No./PM/CO/CREDIT/342/2019-20, dated-07.10.2019 upon the Corporate Debtor and also copied thereof to the Personal Guarantors Mr. Sarang Rakesh Kumar Wadhawan and Mr. Rakesh Kumar Wadhawan and Corporate Guarantor, namely Housing Development & Infrastructure Limited (HDIL).
8. The Applicant issued a Notice vide Ref. No./PM/CO/REC- III/65/19-20 dated 20.03.2020 u/s 13(2) of SARFAESI Act 2002 upon the Corporate Debtor and also copied to the Personal Guarantors Mr. Sarang Rakesh Kumar Wadhawan and Mr. Rakesh Kumar Wadhawan and Corporate Guarantor namely Housing Development & Infrastructure Limited (HDIL).
9. The Applicant issued Notice vide Ref. NO./PM/CO/REC-III/81/20-21, dated 08.06.2020 upon the Corporate Debtor, to ask the Corporate Debtor to handover the possession of the Land situated at Village Adivali, Gram

Panchayat- Rohinjan, Taluka Panvel, District Raigad admeasuring 159 Acres and 7 Gunthas, mortgaged with the Applicant as primary security.

10. The Applicant issued the possession notice vide Ref. NO./PM/CO/REC-III/106/20-21 dated 23.06.2020 under Rule 8(1) of the SARFAESI Act, 2002 to the Corporate Debtor, wherein the Corporate Debtor was restrained from transferring the physical possession, and the Applicant took the symbolic possession of the Land. A public notice was advertised by the Applicant in Free Press Journal (English Newspaper) and Navshakti (Marathi Newspaper) on 27.06.2020 in this respect.
11. The Counsel for the Personal Guarantors vide the letter dated 23.06.2020, asked the Applicant whether claim in respect of the Corporate Debtor has also been filed before the Resolution Professional in CIRP proceeding of HDIL, the Corporate Guarantor. It was also informed that the mortgage property is owned by HDIL and any action in relation thereto is barred by Section 14 of the Code in view of CIRP in case of HDIL. This was responded by the Applicant vide its letter dated 26.06.2020 that the Applicant has lost claimed for dues payable by HDIL, and moratorium imposed in relation to assets of HDIL has no impact whatsoever on the assets of the Corporate Debtor. Accordingly, there is no bar in proceeding in respect of the mortgage property. Another notice dated 01.07.2020 was issued by the Applicant for handing over the possession.
12. Thereafter, there has been few exchanges of communication in relation to outstanding debt, however, the Corporate Debtor failed in repayment of dues and committed the default.
13. This matter was listed on 20.01.2022 and again on 30.03.2022 when the Corporate Debtor was directed to file reply within 15 days after receipt of the notice. Thereafter, this matter was listed on 06.06.2022, 27.07.2022 and

11.08.2022, and the Respondent was represented by Counsel. However, no reply was filed. Thereafter, the name of the merge entity was substituted vide order dated 22.12.2022, and the substituted Applicant was directed to serve a copy of amended application to the Corporate Debtor. Thereafter, this matter was listed on 30.01.2023. On 01.06.2023, the Counsel for the Applicant submitted that despite service of Court Notice the Corporate Debtor chose not to appear in the matter, accordingly, the Applicant was allowed to take out substituted service by way of paper publication, and the matter was posted on 27.06.2023. The Applicant placed on record compliance in this relation, however, the Corporate Debtor was not represented by any one on that day.

**Findings:**

14. We have carefully gone through the pleadings available on records and considered the arguments of the Applicant.
15. The Counsel on behalf of the Corporate Debtor appeared on 06.06.2022 and two other occasions thereafter. However, no reply was filed. Despite sufficient opportunities being granted, the Corporate Debtor failed to file reply. Even after substitution of the assignee a Court Notice as well as notice by substituted served was issued to the Corporate Debtor by the assignee but neither Corporate Debtor filed the reply nor was represented.
16. It is evident from the records that the Financial Creditor had granted/sanctioned credit facility, and the Corporate Debtor availed the credit facilities but failed to repay the dues as a result of which the accounts of the Corporate Debtor were classified as Non-Performing Asset as per RBI prudential norms. Furthermore, vide letter dated 06.07.2020 in response to notice under Section 13(2) of the SARFAESI Act demanding payment of Rs.256,97,72,144/-, the Corporate Debtor has not denied the liability to

pay this amount. Instead the Corporate Debtor had taken a plea of Covid Lockdown and pleaded that time period for filing objections to notice under Section 13(2) shall commence after 31.07.2022. In other words, there is a constructive acknowledgment of acknowledgment of debt and default by the Corporate Debtor. Thus, the Petition is well within the period of limitation prescribed under section 18 of the Limitation Act, 1963 i.e. three years.

17. Considering the above facts, we opine that the nature of debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that admittedly there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor.

18. The Applicant has proposed the name of Mr. Snehal Kamdar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00415/2017-18/10738] 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.

### **ORDER**

This Application being C.P. (IB) No. 1164/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Unity Small Finance Bank Limited, Financial Creditor/ Applicant against Somerset Construction Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process 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. Snehal Kamdar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00415/2017-18/10738], Email: snehal.kamdar@jjkandco.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. These expenses are subject to approval 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)**

25.07.2023

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**