

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

C.P. NO. (IB) 305 OF 2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

IN THE MATTER OF:

Bank of Maharashtra

...Financial Creditor/Applicant

Versus

Supertech Realtors Private Limited

...Corporate Debtor/Respondent

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 12.06.2024

PRESENT:

For the Applicant : Sr. Adv. Sudhir Makkar, Adv. Nishant Awana, Adv. Rini Badoni, Adv. Saumya Gupta, Adv. Nitya Sharma, Adv.

For the Respondent : Sr. Adv. P. Nagesh, Adv. Ravi Tyagi, Adv. Gaurav Mishra, Adv. Daman Popli, Adv. Ria Chanda, Adv. Neetu Devrani, Adv. Anubhav Yadav

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The Instant Application is filed on behalf of the Bank of Maharashtra (hereinafter referred to as "Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against Supertech Realtors Private Limited ("Respondent/ Corporate Debtor") having CIN U70200DL2010PTC202282 on the ground that the Corporate Debtor had committed a default in payment for an amount aggregating to Rs. **168,04,59,415/- (Rupees One Hundred Sixty-Eight Crores Four Lakhs Fifty-Nine Thousand Four Hundred Fifteen Only)** till the filing of this present application dated 08.04.2022.
2. The Corporate Debtor, Supertech Realtors Private Limited is incorporated on 05.05.2010, having its registered office situated at 1114, Hemkunt Chambers, 11th Floor 89, Nehru Place New Delhi DL 110019. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

1. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-
 - a) The applicant submits that the Corporate Debtor Supertech Realtors Private Limited approached the consortium led by Union Bank of India for seeking financial assistance to tune of Rs. 735.58 Crores. The Corporate Debtor Out of the total financial assistance of Rs. 735.58 crores requested the Financial Creditor to grant Credit Facilities to the tune of Rs. 150,00,00,000/- (Rupees One Hundred and Fifty Crores Only) for partial financing of development of residential apartments, office, retail and luxury hotel in the name and style of "SUPERNOVA" at cost of Rs. 2,326.14 Crores on a land admeasuring 70,002 sq. meters at Plot No. 94, Noida.
 - b) In view of the representation on behalf of the Corporate Debtor, vide a Sanction Letter dated 14.12.2012, the Applicant granted a term loan of Rs. 150,00,00,000/- (Rupees One Hundred and Fifty Crores Only) to the Corporate Debtor on the terms and conditions contained therein and other loan documents. The said Term loan was repayable in quarterly instalments in consolidated door-to-door tenor of 10 years and 4 months i.e., by March 2023
 - c) Accordingly, while accepting the terms of the Sanction Letter dated 14.12.2012, the Corporate Debtor vide Resolution dated 19.12.2012 resolved to appoint Mr. Ram Kishore Arora, Mrs. Sangeeta Arora and

Mr. Mohit Arora Gupta as Authorised Representatives of the Corporate Debtor to execute all the necessary documents.

d) The Applicant has submitted that in pursuance of the said term Sanction Letter following other documents were executed between the parties in order to provide the Credit facilities-

- i. Demand Promissory Note dated 22.12.2012 executed by the Corporate Debtor in favour of the Applicant Bank/ Financial Creditor.
- ii. Facility Agreement (Consortium Term Loan) dated 20.12.2012.
- iii. Inter-Se Agreement dated 20.12.2012 executed between the Consortium Banks.
- iv. Joint Deed of Hypothecation dated 22.12.2012 executed by the Corporate Debtor in favour of the Consortium Bank including the Applicant.
- v. Guarantee Deed dated 22.12.2012 executed by Mr. Ram Kishore Arora,
Director cum Personal Guarantor.
- vi. Guarantee Deed dated 22.12.2012 executed by Mrs. Sangita Arora,
Director cum Personal Guarantor.
- vii. Corporate Guarantee Deed dated 22.12.2012 executed by Supertech Limited.
- viii. Escrow Account Agreement dated 22.12.2012 executed between the Corporate Debtor and the Consortium Banks including the Applicant Bank / Financial Creditor.
- ix. Undertaking dated 22.12.2012 issued by the Corporate Debtor in favour

of the Consortium Banks including the Applicant Bank / Financial Creditor.

- x. Shortfall of unsecured Loan /Advances from Customers undertaking executed by the Corporate Debtor in favour of the Consortium Banks including the Applicant Bank/ Financial Creditor.
- xi. Power of Attorney for Creation of Mortgage Security dated 20.12.2012 executed by the Corporate Debtor in favour of the Consortium Banks including the Applicant Bank / Financial Creditor.
- xii. Affidavit of Declaration dated 28.12.2012 executed by the Corporate Debtor qua equitable mortgage to be created in favour of the Consortium Banks.
- xiii. Memorandum of Entry dated 29.12.2012 – First time mortgage by the Borrower by deposit of title deed with the lead Bank, executed by the Corporate Debtor in favour of the Consortium Banks including the Applicant Bank/ Financial Creditor.
- xiv. Affidavit of No-Encumbrance dated 29.12.2012 submitted by the Corporate Debtor in favour of the Consortium Banks including the Applicant Bank/ Financial Creditor.
- xv. Letter of Allotment dated 28.03.2011 issued by NOIDA in favour of the Corporate Debtor.
- xvi. Lease Deed dated 19 .07.2011 executed between NOIDA and the Corporate Debtor.
- xvii. Possession Letter dated 21.07.2011 issued by NOIDA in favour of the Corporate Debtor.

Accordingly, after execution of all the necessary documents, the aforesaid loan facility was made available in accordance with the terms of the sanction.

- e) The Applicant has submitted that contrary to the terms and conditions of the said sanction, the Corporate Debtor failed to maintain financial discipline and defaulted in properly maintaining the said accounts in addition to various other breaches and violations of the sanction of said Credit Limit and consequently, a huge outstanding became due and payable by the Corporate Debtor to the Financial Creditor in respect of the said Credit Limit. Thereafter, despite repeated requests and reminders from the Financial Creditor, the Corporate Debtor failed to make good the aforesaid defaults and breaches of the terms and conditions of sanction of said Credit Limit and accordingly accounts of Corporate Debtor stood classified as Non-Performing Assets with effect from 28.09.2018.
- f) Further the Corporate Debtor while acknowledging its liabilities under the terms of sanction, executed a Letter of Revival dated 23.10.2018 in favour of the Lead Bank.
- g) The Corporate Debtor has submitted that despite repeated reminders and requests, no further payments of the dues or compliance of the undertakings and representations, were forthcoming, the Financial Creditor, vide a Notice dated 18.07.2019 under section 13(2) of the SARFAESI Act, 2002, directed the Corporate Debtor to make payment of the over-due amount

- h) On lapse of the statutory period of Notice of 60 days, the Corporate Debtor failed to clear the liability towards the Financial Creditor, therefore, the Lead Bank (Union Bank of India) acting on behalf of the Financial Creditor issued a possession notice dated 23.06.2021 and took notional/symbolic possession of immovable properties of the Corporate Debtor.
- i) The Applicant has submitted that the Corporate Debtor has committed a default in repayment of amount aggregating to Rs. 168,04,59,415/- (Rupees One Hundred Sixty Eight Crores Four Lakhs Fifty Nine Thousand Four Hundred Fifteen Only). In view of huge liabilities which were due and payable by the Corporate Debtor to the Financial Creditor, the Corporate Debtor made last payment to the financial Creditor on 16.03.2022 in Term Loan Account and accordingly the date of Default is 16.03.2022.

2. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a) Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. The instant reply has been filed by Corporate Debtor through its authorized representative Mr. Sangeet Kumar, duly authorized vide Directors Board Resolution dated 15th April, 2019.
- b) The Respondent has further submitted that the instant Section 7 application is defective as the same is preferred without any valid and proper authority. It is most humbly submitted that there is no specific

Power or Attorney or a Board Resolution issued by the Financial Creditor that is authorizing Mr. Sanjeev Kumar to institute the present proceedings.

- c) The Respondent have submitted that date of default by the Corporate Debtor in the said petition varies and is in contradiction to each other. the date of default is reckoned as 16.03.2022 whereas as per FORM I, part IV at Page 34 of the Application, the date of default is reckoned as 01.05.2021. Further, the Respondent has alleged the NPA as per the Applicant is reckoned to be 28.09.2018. Thereby the said application is not only defective but also barred by Limitation

Therefore, the present application is liable to be dismissed.

- d) The Respondent has further submitted that the Corporate Debtor is one of the biggest developers in Delhi and is a victim of the economic slowdown, financial crunches that has crippled the Real Estate Industry. Further, multiple housing and Commercial plots were allotted to Corporate Debtor by New Okhla Industrial Development Authority (NOIDA), Greater Noida Industrial Development Authority (GNIDA) and Yamuna Expressway Industrial Development Authority (YEIDA) in last 20 years. However, during 2010-11, due to farmers and land-owners objections to land acquisitions, the same was challenged before the Hon'ble High Court of Allahabad. The dispute came to rest finally in 2015 after the Hon'ble Supreme Court in the matter of **Savitri Devi & Ors v. State of U.P. & Ors. [2015 (7) SCC 21]** upheld the land acquisition subject to some riders and conditions like

additional farmer compensations etc to the landowners and farmers by the Development Authorities. Therefore, the period from 2010 to 2015 was completely unfavourable and disturbing for the Corporate Debtor and resulted in huge financial losses.

- e) The Respondent has further cited various other reasons for the delay in the project completion. The reasons cited are - stay orders passed by the Hon'ble National Green Tribunal (NGT), where it stayed the construction activities within the radius of 10 km from the Okhla Bird Sanctuary, shortage of labours and workforce in the real estate project sites due active implementation of social schemes such as National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), introduction of GST Goods and Services Tax (GST) in 2016 which left the developers across the nation adapting to the new tax structure, demonetisation and, global COVID-19 Pandemic.
- f) The Respondent has submitted that instant application is filed with a sole intent to recover monies which is against the premise of the Code.

3. Rejoinder on behalf of the Applicant/ Financial Creditor

- a) The Financial Creditor has submitted that application has been filed by the competent authorised representative of the Applicant Bank. The Applicant has submitted that in reference to minutes of the meeting (MoM) dated 22.03.2022 and the subsequent letter dated 19.04.2022 authorises Mr. Sanjeev Kumar to file the present application before this Adjudicating Authority. Further, it has been

resolved that for the matters in High Court or its bench, National Company Law Tribunals and State Commissions, the Zonal Manager/ Deputy Zonal manager/ Assistant general Manager/ Chief Manager posted at zone and in case Zonal Office is not established where the said Court/Tribunal/Commission is situated, then Branch Manager of the main Branch of the Bank at that location shall be the Principal officer for all the matters.

- b) The Learned Counsel for Applicant has submitted that discrepancy in the date of default as highlighted by the Corporate Debtor, the same is an inadvertently a typographical error and it is hereby clarified that the date of default is 16.03.2022, i.e. date of last payment made by the Corporate Debtor to the Financial Creditor.
- c) Further answering to Limitation aspect as challenged by the Respondent, the Learned Counsel for Applicant has submitted that by no stretch of imagination the present application is barred by the laws of Limitation. It has submitted that Owing to the non-adherence of the financial discipline by the Corporate Debtor, the account was declared as NPA on 28.09.2018. the Corporate Debtor has while acknowledging its "debt" which has become due and payable to the Financial Creditor, has made payments to the Financial Creditor on several dates starting from 15 .04.20 I 9 until 16.03.2022. Additionally, apart from part payment, a Letter of OTS constitutes an acknowledgement in terms of Section 18 of the Limitation Act, 1963 as it shows that the

Corporate Debtor acknowledged debt and shows intention to settle the legitimate dues of the Financial Creditor.

ANALYSIS AND FINDINGS

4. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, rejoinder and written submission presented by Financial Creditor and Corporate Debtor.
5. The issue of consideration before this bench is whether the present application has been filed by authorized representative. On perusal of the record, the Bench had recorded in its order dated 01.06.2022 to file fresh copy of identity card of Authorized Signatory along with Vakalatnama. The Order dated 01.06.2022 is reproduced here-below-

“

1. Ld. Counsel is directed to file fresh Vakalatnama duly dated and properly signed and stamped at the appropriate place.
2. Ld. Counsel is directed to furnish a copy of the identity cards of the Authorized Signatories which clearly show their names and designations in the bank. ”

The same had been filed by the Applicant Bank dated 08.06.2022. Upon review of the records, this Adjudicating Authority finds that Power of Attorney dated 07.06.2022 by the Applicant Bank in favour of Mr. Sanjeev Kumar has been backed by Board Meeting of Applicant Bank dated 22.03.2022, has been placed on record. Therefore, the provided Power of Attorney constitutes a valid and

sufficient authorization and therefore the contention of the Respondent is rejected.

6. The next issue for consideration is whether the present application is filed within the limitation period. Owing to the non-adherence of the financial discipline by the Corporate Debtor, the account was declared as NPA on 28.09.2018. the Corporate Debtor had made various re-payments into the loan account between 15.04.2019 to 16.03.2022. Further, during the pendency of the instant petition, at the request of the Corporate Debtor, a One Time Settlement (OTS) dated 15.06.2022 was sanctioned by the Financial Creditor. This OTS was later rescinded by the Financial Creditor as the Corporate Debtor failed to make payments in terms thereof.

The **Hon'ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 of 2020** has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. Therefore, by no stretch of imagination, the application is barred by the law of limitation.

7. The Respondent have submitted that the Applicant has made contradictory statement with regard to Date of Default. In Part 4 of Form 1 of the Application the date of default has been mentioned as 01.05.2024, whereas in the same breath, the Financial Creditor has also admitted that the Corporate Debtor has made payments till 16.03.2022. The Financial Creditor submitted that the date of default

for the purposes of the present Petition is 16.03.2022 and that there has been a typographical error and the date of default has been inadvertently mentioned as 01.05.2021. Further, it has submitted that the correct date of default as 16.03.2022 has been mentioned at page nos. 9, 16, 41 & 283 of the Application. The Applicant has relied on **Manmohan Singh Jain Vs. State Bank of India & Anr."** [(2021) SCC OnLine NCLAT 5983] wherein the date of default was not mentioned in Part-IV of Form I of the Petition. However, there was sufficient evidence in the form of pleadings and supporting documents to establish the date of default. Therefore, it was held that non-mentioning of the date of default was not fatal to the Petition and the AA had correctly admitted the Petition.

8. To prove its Contention, the Corporate Debtor has relied upon **Ramdas Dutta Vs. IDBI Bank Ltd.** [Company Appeal (AT) (Ins.) No. 1285 of 2022], **Kodeboyina Srinivas Krishna vs PVM Innvensys Pvt. Ltd."** [Company Appeal (AT) (Ins.) No. 205 of 2020], **Winntus Scaffolding Pvt. td. vs. Aishwarya Business Corporation Pvt. Ltd.** [CP (IB) No. 44/2022], **Inakshi Sobti vs Starlight Systems Private Limited"** CP(IB) No. 778/MB-VI/2023, **P. Nanikutty and Anr vs K. U. Kalpakadevi and Ors."** 2023 sec OnLine Ker 3270. Whereas, on perusal of the record we find that there is a mere typographical error in Part IV of the Application which had been subsequently clarified in the Rejoinder Filed by the Applicant, and the date of default has

been mentioned as 16.03.2022 at several places in the pleadings and documents annexed thereto.

9. It is contended by the Respondent that the Bank of Maharashtra / the Financial Creditor herein holds no authority to prefer the present petition as the same authority solely and unequivocally lies with the lead bank i.e. Union Bank of India. The relevant paragraph of the Inter Se Agreement dated 20.12.2012 have been reproduced below for the Respondent contention-

“2. LeadBank

By consent of all the parties hereto, Union Bank of India (the 'Lead Bank' is designated and recognized as the the Lenders shall be entitled to designated and recognize one of the Lenders as the 'lead bank' and from the date of such designation and recognition, such Lender will be treated as the Lead Bank.

.....

5.Coordinated approach

Notwithstanding anything to the contrary contained in or arising out of or implied by the Facility Agreement and/or the Security Documents, it is hereby agreed and declared by and between the Lenders and the Lead Bank as follows: All the Lenders shall act in the spirit of the 'consortium' and as far as possible in the best interests of the consortium having due regard to the interest of each of the Lenders.

It is the objective of the Lenders to have a co-ordinated approach to the taking of all action under the Facility Agreement, the other Transaction Documents and this Agreement, unless otherwise specifically provided in this

Agreement. In furtherance of such objective, any Lender proposing to take any action (including to accelerate the respective Facility owed to it or to take, authorize and/or direct any enforcement action) under or in terms of the Facility Agreement, the other Transaction Documents and/or this Agreement, shall comply with the terms of this Agreement before taking any such action.

6. Actions under the Facility Agreement and the other Transaction Documents

i) Any decision or action (whether in the nature of authorization, direction, approval, waiver or consent or otherwise) in relation to the matters set out below shall be taken by the Lenders or the Lead Bank only in the manner set out in this Clause;

a) ceding charge on the assets secured for the Facility, interest, fees, costs, charges, expenses and all other monies whatsoever stipulated or payable under the Facility Agreement and/or other Transaction Documents;

b) declaring an event of default under the Facility Agreement and/or recall of the Facility;

c) enforcement of all or part of the said Securities;

d) release of the security created for the Facility, whether full or part, upon full repayment of the Facility or otherwise;

e) changes in/ substitution of the stipulated /created security;

f) relaxation of the covenants provided by the Borrower and/or any other related person in the Facility agreement and/or other Transaction Documents;

g) extension of the Completion Date and/or the last date of drawal of the Facility. Any Lender/s proposing to take

any decision /action in connection with the aforesaid matters shall notify the other Lenders and the Lead Bank of such proposed decision/action by such Lender/s. The Lead Bank shall, within 15 (fifteen) days of receipt of such notification from such Lender/s convene a meeting of the Consortium of lenders for deciding I determining the course of action to be taken on the proposal received. Decision as taken at such meeting by the Majority Lenders shall be communicated to the Borrower and the third-party security provider/s by the Lead Bank within the period decided at the aforesaid meeting and shall be binding on ail the Lenders; a copy of the aforesaid communication shall be marked by the Lead Bank to all the Lenders. All the Lenders shall take such action as is decided at the aforesaid meeting of the Consortium of Lenders. In the event it is decided to recall the Facility and/or enforce any or all the said Securities, the Lenders shall stop all farther advances or accommodations to the Borrower under the Facility.

Decision/action on any other matter (other than as expressly stated in this Agreement) may be taken by any Lenders as it/they deem fit and no approval of any other Lender/Lead Bank will be required. However, written intimation of such decision /action will be provided by the aforesaid Lender/s to other Lenders and the Lead Bank.”

10. In its written Submissions, the Respondent/ Corporate Debtor has submitted that Clause 6 of the aforesaid Inter-se Agreement states that for any lender proposing to take any decision/action itself, shall notify the other lenders and the lead bank of such proposed decision

and that the lead bank shall within 15 days of the receipt of such notification from such lender convene a meeting of the consortium of lenders for deciding/determining the course of action to be taken on the proposal receipt. The Respondent have further alleged that the instant section 7 Application has been filed without giving due notice and without giving due opportunity to the borrower to discharge its liability. On the day the said section 7 was filed, without due compliance of the binding provisions of these clauses of the inter-se agreement, the said section 7 was premature and non-maintainable.

11. The Respondent/Corporate Debtor have placed their reliance on **“Rakshit Dhirajlal Doshi vs. IDBI Bank Limited”**. Accordingly, the relevant paragraphs of **Judgement dated 15.11.2022** of the **Hon’ble NCLAT** passed in the matter of **“Rakshit Dhirajlal Doshi vs. IDBI Bank Limited and Others in Company Appeal (AT) (Insolvency) No. 658 of 2022”**, have been produced here below wherein the following was held:

“28. We note that in the Impugned Order the Adjudicating Authority has relied on clause 7.5 of the Inter-se Agreement to hold that any lender is at liberty to take any decision or action on any other matter and is not required to take any approval from any other lender. We find that clauses 7.1 and 7.2 of the Inter-se Agreement clearly lay down that an ‘Event of Default’ is covered under the actions for which the provisions are made in the Inter-se Agreement and the modality of taking such action is clearly set out in clause 7.2. Even for the enforcement of securities, clause 7.3 of the Inter-se Agreement clearly provides that the

enforcement of any or all of the securities, shall be done by the Security Trustee as per provisions of the Security Trustee Agreement on behalf of all the lenders and as instructed by the majority lenders. Therefore, clause 7.5 has to be read conjointly with clauses 7.1, 7.2 and 7.3 of the Inter-se Agreement. If that is done, we find that the action taken by the IDBI Bank in declaring 'Event of Default' is not in consonance with the provisions of Inter-se Agreement. We, therefore, conclude that the Adjudicating Authority has committed an error by placing reliance on a faulty interpretation and understanding of clause 7.5 of the Inter-se Agreement.

29. From the above discussion, it is clear that the Respondent IDBI Bank was not entitled to act independently in declaring an 'Event of Default' in respect of its individual loan and recalling the loan advanced by it to the borrower Doshion and seeking repayment of the said loan from the guarantor FIPL. We are, therefore, of the view that the locus standi of the Respondent IDBI Bank in taking unilateral action for declaring an 'Event of Default' in the repayment of the loan advanced by it is not established as the IDBI Bank being a participating bank of the Bank of Baroda consortium was bound to act under the clauses/provisions of the Inter-se Agreement and the Security Trustee Agreement.”

.....

“31. We note the order of NCLT in the matter of IDBI Bank vs. Manoj Gaur (supra) wherein it is held that if the Security Agreement lays down that the lenders shall act collectively then IDBI Bank could not have acted on behalf of all the lenders, without obtaining their formal consent and substituting itself in place of the Security Trustee. We also take note of the judgment of Hon'ble Supreme Court in the matter of State Bank of India vs. V. Ramakrishnan (supra) wherein the Hon'ble Apex Court has held

that the continuing liability under IBC for corporate guarantees is not res-integra and shall be operative for individual guarantors. Both these judgments are, in our opinion, applicable in the present case.

32. On the basis of detailed discussion in the aforementioned paragraphs, we are of the clear opinion that, in view of the stipulations and provisions in the Inter-se Agreement of which the Respondent IDBI Bank was a signing party, and the provisions of the Security Trustee Agreement entered into between the Bank of Baroda (as a Lead Bank of the consortium) and the guarantor FIPL and IL&FS Trustee Company Limited, the IDBI Bank could not have acted unilaterally in either declaring an 'Event of Default' regarding repayment its loan facilities granted to the borrower Doshion and later seeking repayment of the loan from the guarantor Fivebro International Private Limited."

12. Per Contra, the Applicant in its Written Submissions has stated that the facts of Rakshit Dhirajlal (supra) are not applicable to the facts of the present case. Further it has submitted that the lenders being part of the consortium, are privy to the Inter-se Agreement executed in between them. Therefore, the Corporate Debtor, being a third party, has no locus to contend that the Financial Creditor has violated the Inter-se consortium agreement of lenders.
13. The Applicant Bank has further relied on the Judgement of the **Hon'ble NCLAT** passed in the matter of **Amitabh Kumar Jha vs. Bank of India & Anr. [Company Appeal (AT) (Ins.) No. 1392 of 2019]** wherein it was observed that the Corporate Debtor cannot meddle with the internal arrangement and affairs of the creditors and

cannot get out of the rigors of its liability on the basis of the Inter-Creditor Agreement

The relevant extracts of the Judgement are reproduced below:

“9. Having heard learned counsel for the parties including the Intervenor, we find that existence of financial debt and its default on the part of the ‘Corporate Debtor’ is not the issue in controversy as the same has admitted. The factum of the ‘Corporate Debtor’ having obtained financial facility from consortium of lenders including the ‘Bank of India’, the ‘Financial Creditor’ and default on the part of the ‘Corporate Debtor’ in discharging its liability do not form issue for consideration. It is also not in controversy that the financial debt in respect whereof the ‘Financial Creditor’ herein sought triggering of ‘Corporate Insolvency Resolution Process’ is payable both in law as also in fact. The ‘Corporate Debtor’ is merely banking upon the Financing Documents including CLA, STA and ICA to assail the impugned order notwithstanding the fact that neither the claim is barred by law nor do such Financing Documents clothe the ‘Corporate Debtor’ with a right to disentitle the ‘Financial Creditor’ from enforcing its claim, in its individual capacity, despite being a member of the consortium of lenders. It is queer that the ‘Corporate Debtor’ is making a vain bid to get out of the rigours of its liability in terms of loan documents sanctioning the loan and giving rise to contractual liability as against it on the basis of an ‘Inter-Creditor Agreement’, to which admittedly it is not a party. It would be a travesty of justice to raise a plea that since the Creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the Creditor, an individual Creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the Creditor which is otherwise payable in law and not barred by

any legal framework including the law of limitation. What transpires among the Creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the Creditors in regard to their joint or individual interests, more so when in the instant case the Intervenors who are the consortium of lenders have supported the action taken by the 'Bank of India' in triggering 'Corporate Insolvency Resolution Process'. None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the 'Bank of India' in regard to the financial debt payable to it and to the extent of its interest.

10. The statutory right across the ambit of Section 7 of the 'I&B Code' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

.....

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

14. In view of the Judgement (supra), we agree with the contention raised by the Applicant Bank that the Respondent cannot take benefit of the inter-se agreement entered by and between the consortium of banks.

Hence, we are of the view that the Judgement of Hon'ble NCLAT in the matter of "Rakshit Dhirajlal Doshi vs. IDBI Bank Limited and Others" in Company Appeal (AT) (Insolvency) No. 658 of 2022 does not help the case of the Respondent and is not applicable to the facts of the present case. Even otherwise, as per the Scheme of Section 7 of IBC 2016, an application can be filed by a Financial Creditor alone by itself or jointly with other Financial Creditors. Further, we do not find any objection raised by the Union Bank of India. On the Contrary, there has been a separate Section 7 application filed by the Union Bank of India against Corporate Debtor bearing CP (IB) 209 OF 2021.

15. Further, it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -

5. Definitions: - (7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;

16. Additionally, the Respondent in its Written Submission has stated that Financial Creditor has failed to register the debt of the Corporate Debtor with Nesl. It is submitted that the Financial Creditor in terms of Regulation 20 and 21 Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017. Reliance is being placed upon Circular bearing no. IBBI/IU/59/2023 dated 15.06.2023 issued

by the IBBI whereby, a guidance has issued by the IBBI stating that the record of default issued by the information utility shall be appended with the application filed under Section 7, IBC whereby, in the present case no such steps have been taken by the Financial Creditor information process the same and acknowledgement it after due-verification.

17. As regard to the Corporate Debtor's contention that record of Default is not annexed with the present application, which is a mandatory requirement. This Adjudicating Authority is of the considered view that Section 7 of the Code, 2016 read with the CIRP Regulations, 2016 empowers the Financial Creditor to file record of the default recorded in the information utility or "such other record and default as may be specified". This Adjudicating Authority is further persuaded by the decision of Hon'ble NCLAT in the matter of **Vijay Kumar Singhania Vs. Bank of Baroda and Anr. Company Appeal (AT) (Insolvency) No.1058 of 2023; Order dated 13.12.2023**, had adjudicated on the question, "Whether filing of Record of Default (RoD) of Information Utility is mandatory? and without obtaining an Authentication of Default (AoD) as per IU Regulation 21, no application under Sec. 7 can be filed by Financial Creditor?" and held as follows:-

"30. Before the Adjudicating Authority, submission on the basis of the argument which has been advanced by the Appellant before us that no information of default from the information utility have been filed, application deserves to be rejected was

raised and dealt with by the Adjudicating Authority. It is useful to extract the following observations in paragraph 11 of the judgment of the Adjudicating Authority:-

“.....As far as the plea of default being not recorded with the information utility is concerned, as can be seen from Section 7 (3)(a) of the IBC, 2016, along with the application, the Financial Creditor may furnish the record of default recorded with the information utility or such other or record or evidence of default as may be specified. Besides, as can be seen from Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons Regulations), 2016, for the purpose of Clause (a) of sub-section 3 of Section 7 of the Code (ibid), the Financial Creditor may furnish a certified copy of entries in the relevant account in Banker's Book as evidence of default. In the present case, the Petitioner has enclosed the copies of the statement of account in respect of Account Nos. 05860600004851 and 05860500000127 along with the interest calculation sheet and Certificate under Section 2(A) of Banker's Book Evidence Act, 1891, as Annexure-7 to the Petition, which is valid evidence in terms of the provisions of Regulation 2A(a) of IBBI (CIRP) Regulations, 2016. As far as the plea of Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 is concerned, in terms of the said provision, before filing an application to initiate CIRP the creditor should file the information of default with the Information Utility and the IU shall process the information for the purpose of issuing record of default in accordance with Regulation 21 of the Regulations. The Regulation nowhere provides that the information of default recorded by IU can be the only evidence to be relied on while taking a decision regarding the admission of a Petition under Section 7 of IBC, 2016. Even otherwise also, neither the IBBI (IU) Regulations, 2017 nor the order issued by the Registrar, NCLT can have overriding effect qua the provisions

of Regulation 7(3)(a) of the IBC, 2016. In the wake, we are unable to countenance the plea raised by the Respondent i.e., in the absence of a record of default recorded by IU, an application filed under Section 7 of IBC, 2016 may not be admitted.”

31. Thus, we are of the view that the Adjudicating Authority has correctly repelled the contention of the Appellant that in absence of a record of default recorded by information utility, the application filed under Section 7 may not be admitted.”

18. Therefore, taking into the account of judicial precedent and provisions in the Code, 2016 and its accompanying regulations it is settled proposition that the record of default recorded with the Information Utility cannot be the sole document to be furnished in a Section 7 Application and the financial creditor is at liberty to submit such other record of default as may be specified which proves the existence of debt and default. The Applicant has placed on record Certificates under the Bankers Books Evidence Act 1981 issued by Bank of Maharashtra, reflecting the statement of accounts of the Applicant in relation to the facilities granted by the Applicant to the Corporate Debtor and a copy of the Report by CIBIL pertaining to the Corporate Debtor dated 23.03.2022 to prove the existence of debt and its default. Therefore, the contention of the Corporate Debtor regarding the non-maintainability of the present application in absence of record of default cannot be sustained.

19. Adverting to the facts of the present case, it is undisputed The Corporate Debtor approached the consortium led by Union Bank of India seeking financial assistance to the tune of Rs. 735.58 crores.

Out of this, the Corporate Debtor requested the Financial Creditor to grant credit facilities to the tune of Rs. 150 Crores for partial financing of development of residential apartments, office, retail and luxury hotel in the name and style of “SUPERNOVA”. This term loan was repayable in quarterly instalments spread across 10 years and 4 months.

20. With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.
21. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company application (C.P. No. (IB)- 305/(ND)/2022) stands admitted and the CIRP is hereby initiated against Supertech Realtors Private Limited.

22. The applicant in Part -III of the application has proposed the name of IRP, accordingly, this bench appoint Ms. Anju Agarwal, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P00106/2017-2018/10213 and email id – anju@insolvencyservices.in. Accordingly, Ms. Anju Agarwal is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against her, within three (3) days of pronouncement of this order.
23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

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

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to

admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

26. We direct the Applicant/Financial Creditor to deposit a sum of Rs. Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Ms. Anju Agarwal to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
27. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
28. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the

Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

29. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
30. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.
31. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./305/2022 stands admitted.**

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)

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

**IA NO. 6418 OF 2023
IN
CP IB 305 OF 2022**

IN THE MATTER OF:

Bank of Maharashtra

...Financial Creditor/Applicant

Versus

Supertech Realtors Private Limited

...Corporate Debtor/Respondent

AND IN THE MATTER OF:

Mukesh Kumar Gupta

...Applicant

Versus

Bank Of Maharashtra And Anr

...Respondents

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:12.06.2024

PRESENT:

For the Applicant

: Adv. Abhishek Anand

For the Respondent

: Sr. Adv. Sudhir Makkar, Adv. Nishwant Awana, Adv. Saumya Gupta, Adv. Nitya Sharma, Adv. Rini Badoni, Adv. Vaibhan Yada

IA NO. 6418 OF 2023
IN
IN CP IB 305 OF 2022
Date of Order 12.06.2024

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The instant application is being preferred on behalf of allottees of the project titled as **Supernova**, situated at Sector 96 Noida which is being developed by the Corporate Debtor herein. The captioned application is being preferred through the authorised representative, Mr. Harpal Singh duly authorised vide the letter of authorisations issued by the homebuyers, with the following prayer –
 - a) Allow the instant application and appoint a local commissioner to assess the status of the corporate debtor and the project Supernova.
 - b) Defer the captioned petition for the period till the filing of the status report by the Local Commissioner
 - c) Pass any other order as this Hon'ble Tribunal may deem fit in abovementioned facts and circumstances.
2. The instant application is being preferred by the Applicant seeking appointment of a Local Commissioner to assess the present situation of the project qua which the captioned proceedings have been initiated.
3. We have heard counsel for the parties and perused the record with their able assistance.
4. The issue involved in this case is as to whether an application like the one in hand could have been maintained at the instance of the

IA NO. 6418 OF 2023
IN
IN CP IB 305 OF 2022
Date of Order 12.06.2024

Appellant before the admission of the application under Section 7 of the Code?

5. There is no dispute that the Applicants/Appellants are the allottees who have booked their units in the said project being developed by the Corporate Debtor. However, as submitted by counsel for Respondent, the units which has been booked by the Applicants in the Project named **Supernova** situated at Sector 96 Noida which is far beyond completion. It is further the case of the Applicant that there are large number of Allottees and if all of them keep on filing the application before the order of admission then the timeline which is provided for the purpose of pursuing the application filed under Section 7 of the Code shall be adversely affected as also the interest of the Financial Creditor who has initiated the proceedings.

6. In **‘Prayag Polytech Pvt. Ltd. vs. Hind Tradex Ltd. 2019 SCC Online NCLAT 1029 decided on 16.08.2019’** the Hon’ble NCLAT had held that

“in view of the matter, we are of the view that there is no requirement for intervention of any Directors or shareholders of the ‘Financial Creditor’ or any other party before admission of Application under Section 7 of IBC. If the application is admitted, it would be open to any aggrieved party to move before this Appellate Tribunal.”

7. Additionally, in the case of **Shrem Residency Pvt. Ltd. 2023 SCC**

Online NCLAT 70 decided on 11.01.2023 Hon’ble NCLAT had held

IA NO. 6418 OF 2023

IN

IN CP IB 305 OF 2022

Date of Order 12.06.2024

that the only thing which is to be taken into consideration at the time of admission of section 7 of the Code that there is a debt and default.

8. In view of the aforesaid facts and circumstances in the present case.

We do not find any merit in the present Interlocutory Application and thereby **IA NO. 6418 OF 2023** of in **CP IB 305 OF 2022** is dismissed though without any order as to costs.

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)