2026 INSC 460

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7184 OF 2022

DHANLAXMI BANK LIMITED ... APPELLANT

VERSUS

MOHAMMED JAVED SULTAN & ORS. ... RESPONDENTS

J U D G M E N T

ALOK ARADHE, J.

1. This appeal assails the order dated 02.08.2022 passed by the National Company Law Appellate Tribunal (NCLAT), whereby order dated 20.02.2020 passed by National Company Law Tribunal (NCLT), was set aside.

FACTS

2. The relevant facts giving rise to the present appeal, as discernible from the record are set out in the following chronology of events:

(i) On 06.04.2011, M/s. Emerald Mineral Exim Pvt. Ltd. [(Corporate Debtor, (CD)] and Bengal Shrachi Housing Development Ltd. (Builder) entered into an agreement for sale of unit bearing No. SBP-9C(A) measuring 5893.5 sq. ft. which was to be constructed in the building, namely

"Synthesis Business Park" New Town, Rajarhat, Kolkata (subject property).

(ii) On 27.06.2011, the appellant (Bank) sanctioned loan of Rs.1.50 Crores in favour of CD for purchasing the subject property.

(iii) On 29.06.2011, facility agreement was executed between the Bank and the CD. On the same day, a quadripartite agreement was executed between the Bank, CD, the Builder and the West Bengal Housing Infrastructure Development Corporation Limited (WBHIDCL). Under the said agreement, the CD instructed the Bank to disburse the loan amount directly to the Builder, subject to terms of the facility agreement. Pursuant thereto,

(iv) On 13.09.2011, an amount of Rs.1.34 crores was disbursed directly to the Builder.

(v) As on 12.04.2014, CD paid a sum of Rs.54,13,999.87/- to the Bank.

(vi) On 31.03.2013, the CD executed a nomination agreement with the Builder to transfer the subject property to Jupiter Pharmaceuticals Limited (JPL) for Rs.2,26,77,250/-.

(vii) On 22.04.2013 a copy of nomination agreement was furnished to the Bank.

(viii) On 10.06.2013, a deed of conveyance was executed by the CD in favour of the Builder and WBHIDCL, for transfer of the subject property for Rs.2,26,77,250/-.

(ix) On 25.04.2014, the CD executed an acknowledgement of liability.

(x) On 05.07.2014, the account of the CD was classified as a Non-Performing Asset (NPA).

(xi) On 22.07.2014, the CD again acknowledged its liability.

(xii) On 07.09.2015, the CD proposed one time settlement of Rs.74 Lakhs. The cheques issued by the CD towards repayment of the loan were dishonoured due to insufficient funds.

(xiii) On 28.01.2016 the Bank initiated proceedings under the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (1993 Act), before the Debt Recovery Tribunal (DRT) against the CD, Builder and Guarantors for the recovery of an amount of Rs.1,80,32,125.50/- as on 11.12.2015 along with interest at the rate of 14.25 % *per annum*.

(xiv) By an order dated 20.09.2016, the DRT held that Bank's charge is existing and continues irrespective of the sale deed executed by the Builder in favour of the third party and appointed a receiver to take possession of the subject property from the third party. The DRT further directed the Builder to deposit a sum of Rs. 1.50 crores within two days from the date of the order, which was directed to be treated as security provided by the Builder. The Builder, on 27.09.2016, deposited a sum of Rs.1.50 crores.

(xv) On 28.09.2016, the Bank filed a winding up petition against the CD under Sections 433, 434 and 439 of the Companies Act, 1956 (1956 Act).

(xvi) Pursuant to the Central Government notification dated 07.12.2016, the matter was transferred to NCLT on 19.04.2019 and treated as a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code).

3. The NCLT, by an order dated 20.02.2020, *inter alia,* held that the debt and default are proved beyond reasonable doubt. The NCLT, therefore, admitted the petition and initiated Corporate Insolvency Resolution Process (CIRP) against the CD.

4. The suspended Director of the CD challenged the aforesaid order in an appeal. The NCLAT by an order dated 02.08.2022, *inter alia,* held that the Bank did not directly disburse the amount to the CD and, therefore, the Bank cannot be termed as "Financial Creditor" under Section 7 of the Code. It was further held that the Bank had indulged in forum shopping and the provisions of the Code could not be used as recovery mechanism. Accordingly, NCLAT set aside the order passed by the NCLT and allowed the appeal.

SUBMISSIONS

5. Learned senior counsel for the Bank submitted that there is a valid debt against the CD, as it is referred to as the borrower of the quadripartite agreement dated 29.06.2011. Our intention has been invited to Clauses 2 & 19 of the aforesaid agreement. It is also urged that facility agreement discloses that true borrower is the CD who had paid interest on the loan and had executed acknowledgment of liability. It is argued that NCLAT has incorrectly recorded a finding that the Bank has recovered a sum of Rs.1.50 crores and ought to have appreciated that the amount is still lying in deposit with the DRT. It is contended that the

Bank has taken recourse to different statutory remedies which does not amount to forum shopping.

6. On the other hand, learned counsel for the respondent nos. 1 & 2 submitted that the Bank had disbursed the loan amount to the Builder and there was no enforceable default by the CD in the manner alleged by the Bank. It is contended that under the quadripartite agreement, the Builder had obligations concerning payment and transfer of subject property. It is argued that the dispute is essentially contractual involving questions of transfer of property and obligations of the Builder rather than a pure insolvency default under the Code. It is contended that the order passed by the NCLAT does not call for any interference in this appeal.

7. We have considered the rival submissions and perused the record.

8. It is well settled that condition precedent invocation of Section 7 of the Code is the existence of a 'financial debt' and a 'default' in its repayment. The scheme of the Code is to ensure that when a debt becomes due and is not paid, the Insolvency Resolution Process begins[1]. The Code operates as a collective insolvency

[1] **Innovative Industries Ltd.** v. **ICICI Bank & Anr.; (2018) 1 SCC 407**

resolution mechanism and not as a forum for the adjudication of individual contractual claims. This Court has underscored that where object behind the invocation of Code is to compel payment rather than to address genuine financial distress, such invocation would amount to an abuse of process[2]. The Code must not be used as a tool for coercion and debt recovery by individual creditors[3].

9. In the instant case from the perusal of clauses 7 to 14, 16, 17 to 20 and 25 of the quadripartite agreement following facts emerge:-

(a) An amount of Rs.1.50 crore was to be paid by the Bank upfront/in multiple tranches to the Builder.

(b) The CD had instructed the Bank to disburse the loan amount directly to the Builder subject to terms and conditions of the facility agreement.

(c) On completion of construction of subject property, the Builder was required to give seven days prior notice before execution of sale deed in favour of the CD.

(d) In case, CD desires to withdraw its application for allotment of subject property or its application is cancelled by the

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[2] **Pioneer Urban Land and Infrastructure Ltd. & Anr.** v. **Union of India & Ors.; (2019) 8 SCC 416**

[3] **Glas Trust Company LLC** v. **BYJU Raveendran & Ors.; (2025) 3 SCC 625** and **Anjani Technoplast Ltd** v. **Shubh Gautam; 2026 INSC 410**

Builder or if the CD fails to deposit the balance amount representing the difference between the loan amount sanctioned by the CD and the actual purchase price of the subject property or in the case of death of CD or in case the agreement for sale of subject property is cancelled, the Builder shall refund the amount after deducting all its dues and charges to the Bank.

(e) The amount which may be received by the Builder on account of provisional sale price of subject property was required to be paid to the Bank.

(f) The Builder had assured and confirmed the Bank that the subject property is free from any encumbrances and it has taken necessary permissions/approvals/sanctions for construction of the building from all competent authorities.

(g) The Builder had given his consent that Bank shall have lien on the subject property and CD shall furnish the same as security of loan to the Bank and create a mortgage in favour of Bank as and when sale deed/lease deed is executed in its favour.

(h) The Builder had undertaken not to mortgage the subject property to any financial institution for raising any loan.

(i) The Builder had agreed and undertaken not to transfer the subject property to any other member or other person without previous consent of the Bank.

10. It is an admitted position that the loan amount was directly disbursed to the Builder. The quadripartite agreement indicates that the Builder had significant obligation concerning the construction, delivery and transfer of subject property. The structure of transaction reveals that Bank's disbursement was intrinsically linked to performance of Builder's obligation. In such circumstances, the transaction cannot be viewed in isolation as a simple financial lending arrangement between the Bank and the CD.

11. The material on record indicates that obligations arising out of the transaction are intertwined with Builder's performance. The dispute between the parties is predominantly contractual in character involving competing claims relating to transfer of property and associated obligations.

CONCLUSION

12. The present case does not involve a straightforward financial debt-default scenario warranting initiation of CIRP. The facts disclose a dispute which is predominantly contractual in nature and is subject matter of the proceedings before the DRT-the appropriate forum for recovery. The deposit made pursuant to order of the DRT further indicates that the matter is actively being adjudicated in appropriate proceeding. Therefore, permitting invocation of the Code in cases such as the present one, would amount to converting insolvency proceedings into a coercive mechanism for recovery which is impermissible.

13. For the aforementioned reasons, we are not inclined to interfere with the judgment passed by the NCLAT.

14. In the result, appeal fails and is hereby dismissed. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

NEW DELHI;
MAY 7, 2026.