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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 02.03.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 181/BB/2018	For hearing IA 93/2020 (Memo) - CIRP	Sec 7 of I&B Code 2016	M/s Karnataka State Financial Corporation	Dr. T Somashekar, Advocate	M/s Innovative Studios Pvt Ltd	Balady Shekar Shetty RP Susheel Shankar, Advocate for RP & others

ADVOCATE FOR PETITIONER/s:

~~Dr. T Somashekar~~
Gurudas S. Kannur
Senior Counsel
for
RAGHU HULIKAL

Gurudas S. Kannur (Sr. Counsel)

ADVOCATE FOR RESPONDENT/s:

Ullasa B.C

PCS for Respondent

(Ullasa B.C)

8152047045

ORDER

Heard Mr. Gurudas S. Kannur Learned Senior Counsel along with Mr. Raghu Hulikal Learned Counsel for the Applicant in I.A. No. 93 of 2020 and Mr. Ullasa B.C, Learned PCS for the Respondent. I.A No. 93 of 2020 is disposed of vide separate order. Post the case on 07.04.2020.


MEMBER (T)


MEMBER (J)

Verified
By


Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. No.93 of 2020 in
C.P.(IB) No.181/BB/2018
U/s 60 (5) (c) of I & B, Code 2016

Between :

M/s. Rajesh Exports Limited,
No.4, Batavia Chambers,
Kumarakrupa Road,
Kumara Park East,
Bengaluru – 560 001

- Applicant

And

1. Shri BaladyShekar Shetty,
Resolution Professional of,
M/s. Innovative Studios Pvt Limited,
E98, 7A Cross, Manyata Residency,
Nagavara, Bengaluru – 560 045

2. M/s. Innovative Studios Pvt Limited,
No.135, Outer Ring road,
Marathahalli Junction, VarthurHobli,
Bengaluru – 560 037

- Respondents

Date of Order: 2nd March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Mr. Gurudas.S. Kannur
Senior Counsel along with
Mr. Raghu Hulikal

For the Respondent : Mr. Ullasa B.C. PCS,

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.93 of 2020 in C.P. (IB) No.181/BB/2018 is filed by
M/s. Rajesh Exports Limited(hereinafter referred to as 'Applicant')
under Section 60 (5) (c) of the I & B Code, 2016 by inter alia seeking

to consider the claim of the Applicant/Financial Creditor for a sum of Rs. 51,12,08,556/- as on 11.04.2019 as per the claim in "Form C" dated 25.04.2019 along with the interest of 24% till the date of realisation.

2. Briefs facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:

- 1) The initial Company Petition bearing C.P.(IB) No.181/BB/2018 was filed by M/s. Karnataka State Financial Corporation under Section 7 of the IBC, 2016, R/w Rule 4 of I & B (AAA) Rules, 2016 for initiating CIRP process in respect of the Corporate Debtor namely M/s. Innovative Studios Private Limited, and it was admitted by the Adjudicating Authority on 11.04.2019 by appointing Mr.BaladyShekar Shetty as the IRP and imposing moratorium, etc.
- 2) It is stated the M/s. Rajesh Exports Limited (herein after referred to as Applicant) is a public limited Company consisting of thousands of shareholders and its shares are listed on the Bombay Stock exchange and National Stock Exchange since 1995. The Company is the largest exporter of gold jewellery and winner of several national and international awards for its sterling export performance and along with export business; it also furnishes inter-corporate deposits (ICD) to other companies. Giving ICD is the regular business of the Applicant M/s. Rajesh Exports Limited.
- 3) It is stated that the Respondent No.2/Corporate Debtor approached the Applicant seeking ICD's for expanding the business and after derailed discussion sand due diligence, the Applicant agreed to grant ICD's subject to execution of the transactional documents such as ICD Agreement, Mortgage Deed, Personal guarantees, Indemnities and other relevant documents.



Accordingly following transactions were executed for protecting the interest of parties.

No.	ICD Date	ICD No.	ICD Amount	Mortgage Date	Particulars of Mortgage
1.	07.03.2009	101	3,00,00,000	09.03.2009	RMN-1-05353-2008-09 CD no. RMND 89
2.	30.04.2009	114	60,00,000	30.04.2009	RMN -1-00365-2009-2010 CD No. RMND 91
3.	14.05.2009	119	72,00,000	14.05.2009	RMN-1-00603-2009-10 CD NO. RMND 92

- 4) It is stated that as per the terms of ICD agreement, the Respondent No.2 duty is bound to pay the agreed rate of interest at regular intervals. In the event of non-payment of dues under the ICD Agreement, the Financial Creditor/Applicant is entitled to invoke its rights under the Mortgage deed and accordingly the Respondent no.2 is bound to execute the sale deed in its favour within 30 days. Further the Applicant/Financial Creditor is also entitled to recover the dues in excess after the transfer of property under the mortgage deed. Further the Respondent No.2 has committed default in making payment as per the terms of ICD, therefore ICD's were recalled as per notice dated 12.11.2009. Since the Respondent No.2 failed to honor its obligations, the Applicant/Financial Creditor was constrained to present the security cheques for clearance. Respondent No.2 also committed default in honouring the same and appropriate proceeding under Negotiable Instrument Act has been initiated and are pending for consideration before the respective courts. Further stated that the Applicant/Financial Creditor understand that the Respondent No.2 is under insolvency proceedings pursuant to the actions initiated by one of the creditor namely M/s.Karnataka State financial Corporation as per order dated 11.04.2019.



- 5) The Applicant Creditor submitted its claim on 25.04.2019 claiming an amount of Rs. 51,12,08,556/- as on 11.04.2019. Further stated that the Applicant has participated in the COC meeting for protecting its interest. The Applicant was surprised by the minutes of meeting dated 09.05.2019 in which its claim was shown only Rs. 7,13,41,467/- instead of Rs. 51, 12, 08,556/- and the voting rights as 19.45%. After detailed deliberations, the Applicant requested the COC to consider its claim in its entirety, as the claim is secured by the registered Mortgage Deeds dated 09.03.2009, 30.04.2009 and 14.05.2009 and by several other documents. Further as per the terms of the mortgage deed and the ICD agreement, the Applicant/Financial Creditor had requested the Respondent No.1 to transfer the secured schedule properties under the mortgage deed in its favour. However, the Respondent No.1 has failed to consider the request of the Applicant/Financial Creditor to transfer the land in its favour.
- 6) It is stated the Respondent No.1 has exceeded his jurisdiction and has completely ignored the fact that this transaction is not covered under the Karnataka Prohibition of Charging Exorbitant Interest Act, 2004 and Karnataka Money Lenders Act, 1961. It is further stated that the Respondent No.1 has classified the transaction between the Applicant/Financial Creditor and the Respondent No.2 as unsecured as per Section 77 (3) of the Companies Act, 2013. The classification of this Applicant/Financial Creditor is unsecured is totally misconceived.
- 7) It is stated that the Applicant/Financial Creditor has provided all relevant required documents and details like the account statement, copies of the ICD agreements, copies of the Mortgage deed etc., against the Respondent No.2. The documents furnished are more than adequate to process the claim of the



Applicant/Financial Creditor and to allocate the secured property infavour of the Applicant/Financial Creditor. Further, being aggrieved by the said communication dated 24.05.2019, the Applicant/Financial Creditor clarified certain aspects that the ICD transaction between the two Companies and not a loan transaction between two individuals. As such neither the provisions of the Karnataka Money Lenders Act, 1961 nor Karnataka Prohibition of charging exorbitant interest Act 2004 is applicable to the transaction. Further the burden of registering a charge is casted upon the Respondent No.2 and not on the Applicant/Financial Creditor and clarified that in any other event the interest of Applicant/Financial Creditor is protected under Section 77 (4) of the Act.

- 8) It is stated that the Financial Creditor is a public limited company and the accounts are statutorily audited and every transaction is a part of the balance sheet and the accounting systems are in accordance with the applicable laws. The ICD transactions are solely governed under the provision of the Companies Act, and the regulations issued by the Reserve Bank of India from time to time. As such the agreeing and charging of interest at 24% between two companies is squarely within the parameters of law and is not in violation of any of the laws as alleged. Further, even pursuant to the reply dated 01.07.2019 issued by the Financial Creditor the Respondent No.1 failed to consider the claim as per communication dated 14.07.2019 and 20.08.2019 and as early as 30.08.2019.
- 9) It is further stated that in all commercial prudence, the Applicant/Financial Creditor has once again requested the Respondent No.1 to reconsider the claim as it's in accordance with the procedure established by law. However the Respondent No.1 without considering the clarification for the best reasons



known to him has failed to consider the claim. The Applicant/Financial Creditor is not an unsecured lender. The ICD has been extended to the Respondent No.2 only based upon the exclusive security furnished to the Applicant/Financial Creditor by the Respondent No.2. The Respondent No.1 is bound to recognise the collateral furnished and registered in favour of the Financial Creditor and exclusively allocate such collateralised property to the Financial Creditor failing which there would be no sanctity of the Transfer of property act and various laws and acts which protect and recognise the interest of a registered Mortgage done for the purpose of security. Hence the application.

3. The Respondent No.1 (Liquidator) has filed the statement of objections dated 18.02.2020 by inter alia stating as follows:

- (1) The Company petition is admitted vide order dated 11.04.2019 and subsequently, the Adjudicating Authority passed an order dated 06.01.2020 by directing to liquidate the Corporate Debtor by appointing RP as Liquidator etc. The Applicant was required to submit its claim to the Liquidator in accordance with Section 38 of I& B Code 2016 r/w Regulation 16 of the Liquidation Process Regulations 2016.
- (2) It is stated that the Respondent as an IRP caused a public announcement in Financial Express (English Language) and Kannada Prabha(Kannada Language) on 13th April 2019 and called upon to submit that claims with proof in accordance with Regulation 6 of the IBBI Regulations, 2016. Further, the Applicant submitted its claim with proof in Form C to the Respondent No.1 on 25th April 2019, wherein the Applicant had claimed Rs. 51,12,08,556/- as a financial debt due from Corporate Debtor as on 11th April 2019. The Applicant had furnished along with the Form C the agreement entered between

the Applicant Company and the Corporate Debtor for issuance of ICD.

- (3) It is stated that on perusal of the Karnataka Prohibition of Charging Exorbitant Interest Act, 2004 (KPCEI Act) r/w Karnataka Money Lenders Act, 1961 and Notification No. CMW/04/CML/2003 dated 28/8/2003, the Respondent gathered that the captioned provisions prohibits charging interest rate of 14.00% p.a for secured loans and 16.00% for unsecured loans. The extract of relevant provisions are produced below:

Section 2 (1) (d) of the Karnataka Prohibition of Charging Exorbitant Interest Act 2004:

“exorbitant interest” means and includes charging of interest on hourly basis, daily basis, instalment basis, monthly basis or in any other form which works out to be an interest at the rate more than that fixed by the State Government u/s 28 of the Karnataka Money Lenders, Act, 1961”

Section 28 of the Karnataka Money Lenders Act, 1961

28. Limitation on rate of interest – (1) The State Government may from time to time by notification fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

(2) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at the rate exceeding the maximum rate fixed by the State government under Sub-Section (1) shall be valid and no court shall in any suit to which this Act applies award interest exceeding the said rates.

- (4) It is stated that the Respondent being the RP taking into consideration of the principle laid down in the provisionally considered the claim of the Applicant as an unsecured Creditor



and considered interest rate of 14 % from the date of transaction upto CIRP commencement date admitted Rs. 9, 74, 45,125/- against the claim of Rs. 51, 12, 08,556/- vide his letter Reference No. IP/IS/2019-20/FC-01 dated 24.05.2019. The Respondent vide his communication referred above communicated to the Applicant and requested to substantiate his claim along with documentary evidences including the following:

- a. Certified copy of the statement/worksheet/grouping formula part of the schedule of Inter-corporate Deposit or/ and Interest Accrued and not yet received in which the name of the Corporate debtor is clearly mentioned and duly signed by your auditors for all the year upto 2017-18 in which you have claimed as interest accrued and not received and for 2018-19
- b. Certified copies of Léger Extracts for your claim amount as it gets reflected in your books of accounts from the date of lending until the date of claim duly certified by your auditors.
- c. Certificates from your Tax Auditors mentioning that the amount of interest in respect of the corporate Debtor has been included in the taxable income taxes in respect of such interest income included in the Income Tax return.
- d. Any decision of the Hon'ble High Court of Karnataka or the Hon'ble Supreme Court supporting your submission.

(5) It is stated without furnishing requisite documents as sought for the Applicant has filed the instant Application to direct to accept the claim, which is not tenable. He has filed copies of all correspondence exchanged between the Parties.

4. Heard Mr. Gurudas S. Kannur, Learned Senior Counsel for the Applicant, and Mr. Ullasa B.C. Learned PCS for the Respondent. We

have carefully perused the pleadings of both Parties and extant provisions of the Code and the Rules made thereunder.

5. By perusal of various documents filed by the Parties along with their pleadings, both the Liquidator and the Applicant have exchanged various dated 24.05.2019, 14.07.2019, 16.08.2019, 30.08.2019 on the issue. Ultimately, on 27.12.2019, the Liquidator sent a letter to the Applicant by pointing out the following requisite documents as being asked for still not submitted to re-consider the Claim of Applicant:

- a. Certified copy of the statement/worksheet/grouping formula part of the schedule of Inter-corporate Deposit or/ and Interest Accrued and not yet received in which the name of the Corporate debtor is clearly mentioned and duly signed by your auditors for all the year upto 2017-18 in which you have claimed as interest accrued and not received and for 2018-19
- b. Certified copies of Ledger Extracts for your claim amount as it gets reflected in your books of accounts from the date of lending until the date of claim duly certified by your auditors.
- c. Certificates from your Tax Auditors mentioning that the amount of interest in respect of the corporate Debtor has been included in the taxable income taxes in respect of such interest income included in the Income Tax return.
- d. Any decision of the Hon'ble High Court of Karnataka or the Hon'ble Supreme Court supporting your submission

6. In order to consider any claim of a Party, concerned Party has to submit the requisite document(s) to the Concerned Authority to consider its claim. An Authority, which is required to consider a claim of a party, is entitled to ask the Party to substantiate its claim by producing relevant document(s) in addition to document(s) already furnished along with Claim. The contention of Applicant that



documents already furnished along with its claim would suffice to accept its claim is not at all tenable, and it is liable to be rejected. The Liquidator is having every right to ask the Applicant to submit requisite documents as he thought it relevant to the issue in question. Moreover, the documents in question, asked for by the Liquidator, are prima facie, found to be relevant to the issue in question. Since the Corporate Debtor is in liquidation, the Liquidator is under statutory Obligation to scrutinise the Claims as per available records of Corporate Debtor with reference to the documents filed by respective claimants. Therefore, the stand of the Liquidator in asking the Applicant to substantiate its claim by producing the requisite documents in question, is to be held within his rights.

7. In the result, **I.A. No. 93 of 2020** in C.P (IB) No. 181/BB/2018 is disposed of with following directions:

- (1) The Applicant, if so advised, can submit a suitable Representation to Liquidator, along with requisite documents as asked for, within a period of two weeks from the date of receipt of copy of this order;
- (2) On receipt of above representation, the Learned Liquidator is directed to re-consider the claim as per law, and pass speaking order within two weeks thereafter, and communicate the same to the Applicant, immediately. No order has to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**