



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**CP (IB) No. 4/CB/2022**

***In the Matter of:***

Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016(hereinafter referred to as the “IBC”) and the rules and regulations framed therein;

***In the Matter of:***

**SERI EQUIPMENT FINANCE LIMITED**, having its registered office at- “Viswakarma”, 86C, Topsia Road (South), Kokata 700 006, West Bengal.

**...Financial Creditor**

**-Versus-**

**ANIL CONTRACTORS PVT LIMITED**, having registered office at- N1/93 IRC Village Nayapalli, Bhubaneswar, Orissa- 751 015

**...Corporate Debtor**

***Appearances:***

For the Petitioner	:	Mr. Aditya Kanodia, Adv. Mr. Swayamjit Rout, Adv. Ms. Gyaniee Nayak, Adv.
For the Respondent	:	Mr. Ratnanko Banerjee, Sr. Adv. For Mr. Saswat Kumar Acharya, Adv. Mr. Subham Agarwal, Adv.

Order reserved on: 16.05.2023

Order pronounced on: 26.06.2023



Coram:

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

### **ORDER**

*Per P. Mohan Raj, Member, (Judicial)*

1.This application under section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, has been filed by the **Seri Equipment Finance Limited**, through its authorised person Mr. Proloy Chatterjee, thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Anil Contractors Private Limited**, a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act, 2013 having its Registered Office at N1/93 IRC Village Nayapalli, Bhubaneswar, Orissa- 751 015 (Herein and after referred as the corporate debtor).

**Brief contents of the petition are as follows:**

2. The Financial creditor is a non-banking financial company authorized by the Reserve Bank of India. The financial creditor was admitted into CIRP under section 227 of IBC 2016 by an order of NCLT-Kolkata, dated 08.10.2021 in CP.No.294/KB/2021 on the petition filed by the Reserve Bank of India. The financial creditor is placed under the administration of the Administrator. The corporate debtor availed loans from the financial creditor as follows after entered into three loan agreements viz (i) Contract No.169111 dated 05.08.2018 for a sum



of Rs.66,83,000/ (ii) Contract No.187718 dated 30.06.2020 for a sum of Rs.15,93,400/- and (iii) contract No.187719 dated 30.06.2020 for a sum of Rs.52,19,73,000/-in total a sum of Rs.5302,49,400/- The loan was secured by common deed of Hypothecation and two deeds of Guarantees charge also recorded in favour of the financial creditor with ROC, Cuttack. In or about January 2021 the corporate debtor started to make default in payment of instalments. Despite of several demands and repeated requests the corporate debtor failed to pay the instalments and accrued interests. The financial creditor by notice dated 05.052021 called upon the corporate debtor to repay a total sum of Rs.4,69,24,153/- payable as on 03.05.2021 on demand, failure to pay the said amount within 7 days from the date of receipt of notice, the corporate debtor is liable to pay a sum of Rs.58,18,63,061/- as on 03.05.2021. The corporate debtor defaulted to pay the debt amount of Rs.58,18,63,061/-, as demanded in the said notice hence the petition.

**Brief contents of the Reply are as follows:**

3. The financial creditor filed the petition relying upon three loan – cum-hypothecation agreements/contracts. In respect of contract No.169111 is concern a sum of Rs.66,83,000/- was given on hypothecation of 10 nos. of “Sunbeam Concrete Mixer GCM 65XL” to the worth of Rs.83,54,400/- The corporate debtor regularly paid the instalment amount. Out of total instalment amount of Rs.56,26,000/- the corporate debtor paid a sum of Rs.55,52,000/- leaving a sum of Rs.74,000/- as on 03.05.2021, the amount payable is below the threshold amount.



4. In respect of contract No.187718 is concern a sum of Rs.15,93,400/- was given as an equipment loan on hypothecation of 6 nos. of “Transit Concrete Mixer” to the value of Rs.15,93,400/- The corporate debtor regularly paid the instalment amount. Out of the total instalment amount of Rs.7,00,000/- the corporate debtor paid a sum of Rs.8,51,395/- an excess amount of Rs. 1,51,395/- was paid as on 03.05.2021.

5. In respect of contract No.187719 is concern it is stated that the same is fabricated fraudulent contract created by the financial creditor, it was not executed by the corporate debtor. This is reveals that as per the said contract the loan of Rs.52,19,73,000/- was given as an equipment loan, against no specific asset. It is vaguely stated that on various assets of 7 nos. There is no mention of details of properties which were hypothecated. In the vendor column, it is mentioned that “2<sup>nd</sup> Hand “. The corporate debtor submits that there was no disbursement of the loan amount of Rs.52.19 crores as claimed by the financial creditor. When there is no disbursement amount, it cannot suffice to show that there has been a financial debt. The purported personal guarantee deed for contract No.187719 does not reveal any details of the amount of loan is disbursed. This makes that this is a fraudulent and fabricating account. In this case mandatory condition of security deposit not obtained, it shows that there was no finance advanced.

6. The above factor shows that the outstanding amount arising from the first two contracts do not qualify the threshold amount. In respect of the third loan is concern it is fabricated, fraudulently manufactured case. This petition filed under section 7 of IBC 2016 is deserved to be dismissed.



**Brief contents of the Rejoinder are as follows:**

7. The corporate debtor received the notice dated 05.05.2021 but not replied nor disputed the contents. Even after filing this section 7 of IBC, 2016 petition the corporate debtor by letter dated 27.05.2021 stated that due to financial constraints, it was not in a position to pay the loans and sought restructuring of the loans for five years. The corporate debtor by letter dated 25.03.2021 confirmed the balance as required by the financial creditor, hence now it cannot deny. In the audited balance sheet of the corporate debtor ends with 31.03.2021 under the heading Secured Loans from NBFC reflects Rs.12,00,34,496 /- thus the corporate debtor acknowledged the debt. The contention of excess payment paid by the corporate debtor is denied. In respect of contract No.169111 is concern the total outstanding amount is Rs.31,84,468/- as on 03.05.2021 not Rs.74,000/-. In respect of contract No.187718 is concern the due of default amount is Rs.9,04,205/- as on 03.05.2021. It is denied that the corporate debtor had paid an excess amount. In respect of Contract No.187719 is concern it came into existence at the behest of corporate debtor due to its failure to repay the outstanding dues of Rs.52.20 crores arising out of contract No.179757 which in turn was entered into adjust the amount due under contract Nos.171639 and 177126 which had dues worth of Rs.47.92crores. The corporate debtor had entered into various smaller loan contracts and ultimately consolidated several of them repaid, some of them and ultimately 3 contracts remained unpaid. The contract No.187719 was executed on 30.06.2020 and CHG-1 Form for the creation of charge was digitally signed by the authorized representative of the corporate debtor on 20.10.2020 which



acknowledges the debt under contract No.187718 and 187719. The charge registered under section 77 of the Companies Act ,2013 has to be taken into account while adjudicating petition under section 7 of IBC, 2016. The cumulative due amount of three agreements is Rs.58,18,63,001/- thus the present petition meets the threshold. The said amount is confirmed by the corporate debtor and also reflected in the audited balance sheet of dated 21.03.2021. The present petition under section 7 of IBC,, 2016 is liable to be admitted.

**Brief contents of the Sur-Rejoinder are as follows:**

7. The letter annexed by the financial creditor dated 27.05.2022 is forged document. It has been not signed by the corporate debtor. The mere mentioning of “active loans” cannot specifically point out that Contract No.187719 is included. Another letter dated 25.03.2021 is unreliable and manufactured document. There is no signature in the said document on the part of the financial creditor. It is not explained why the financial creditor could not file this document along with section 7 of IBC,2016 petition. In a letter dated 25.03.2021, the financial creditor mentioned an amount of Rs.54,06,83,729/- as outstanding against the corporate debtor including an amount of Rs.52,17,23,729/- arising out of alleged fraudulent contract No.187719. In the audited financial statement of the corporate debtor produced by the financial creditor shows that the total secured amount loan from NBFC as on 31.03.2021 was only Rs.12,00,34,496/-. As on 25.03.2021 as per the letter the due is Rs.54,06,83,729/- then how it is becoming Rs.12,00,34,496/- in six days. If the outstanding amount was Rs.12,00,34,496/- how it includes the alleged debt of Rs.52,17,23,000/- of fabricated contract No.197719. The petition is



revolving upon three agreements out of which contract No.197719 is fraudulent and other two contracts do not constitute any substantial financial debt to meet the threshold. At the first time in the rejoinder, the financial creditor taken dishonest stand that contract No.187719 has been allegedly executed between the parties to subsume other loans under contract No.171639,177126 and 179757. It is stated that contract No.187719 is only a takeover loan which consolidated other small loan amounts. The contract No.187719 neither makes any declaration it is only for takeover of earlier loans, not does it have any reference to the other three earlier contracts No.171639,177126 and 179757. In the main petition, there is no averment about contracts No.171639,177126 and 179757 which have been taken over by contract No.187719. The present stand taken by the financial creditor is a divergent and self-contradictory stand and departure from the contents of the main petition. The financial creditor cannot be taken a completely new case in the rejoinder. There is no evidence that contract No.187719 is only a takeover loan relating to previous contracts. The charge was filed by the financial creditor itself. There is no resolution of corporate debtor in this regard. Even if the false contention of the financial creditor as stated in the rejoinder is true, the due amount was Rs.31,84,468/- as per the contract No.169111 and Rs.9,04,205/- as per contract No.187718 totaling Rs.40,88,673/- does not satisfy the threshold of Rs.1 crore as per section 4 of IPC 2016. That in view of the foregoing reasons the petition filed by the financial creditor under section 7 of IBC, 2016 deserves to be dismissed.

8. The petitioner filed this petition on the following facts that the financial debt amount is Rs.58,18,63,061/- The default date is 03.05.2021. According to the



petitioner, the loan was availed by the corporate debtor by three contracts dated 05.08.2018, 30.06.2020 and 30.06.2020. On the corporate debtor side denies the balance due amount, default date and denies the execution of contract dated 30.06.2020 bearing contract No.187719. After hearing both sides arguments and pleadings the following points are framed for consideration.

**The points for consideration are:**

1. Whether the contract dated 30.06.2020 bearing No.187719 is true and valid?
2. Whether the petition is hit by section 10A of IBC 2016?

**Point No.1:**

9. The petitioner filed this petition on the basis of three contracts executed by the corporate debtor and availed loan for its business. The details of the three contracts are set below:

<b>Contract No.</b>	<b>Debt Granted (Amount in Rs.)</b>	<b>Date of Contract</b>
169111	66,83,000	05.08.2018
187718	15,93,400	30.062020
187719	52,19,73,000	30.06.2020
Total (Rs)		53,02,49,400

10. On the respondent side admitted the execution of the first two contracts and denies the execution of 3<sup>rd</sup> contract and stated that the 3<sup>rd</sup> contract is forged, fraudulently created document. Further in the reply the respondent raised the plea apart from the forgery that no amount was disbursed in pursuance of contract



bearing No.187719 dated 30.06.2020. In the rejoinder the petitioner admitted that no actual money disbursement was made in pursuance of contract dated 30.06.2020 bearing 187719, this contract was executed acknowledging the existing loan of Rs.52,19,73,000/-This contract was coming into existence when the corporate debtor failed to pay the outstanding dues of Rs.52.20 crores arising out of contract No.179757, which in turn was entered into the adjust the amount due under contracts Nos.171639 and 177126 which had dues worth Rs.47.92 Crores. In respect of disbursement clause 2A of contract defined, according to the said definition *(v)adjustment of loan amount in part or in full against any dues of the borrower with the company.* So, the contention of the respondent that in view of non-disbursement of amount, the contract No.187719 is without consideration is not acceptable. On the petitioner side of course given an explanation under what circumstances the contract No.187719 was emerged in the rejoinder, but in the petition, it is not explained in detail, but this averments in the rejoinder are not amount to introduction of new case but it is only an expansion of existing case. This is not inconsistent with existing plea, In the situation the citation of Rajasthan High Court Gurjant Singh vs Krishan Chander and others relied on the respondent side is not applicable to the facts of this case.

11. On the corporate debtor side denies the execution of contract No.187719 dated 30.06.2020 (*page 126 of petition*) and stated that the signatures found in this contract are forged. As already stated, the corporate debtor admitted the execution of contract No.187718 dated 30.06.2020 (*page 97 of the petition*). In short both the contracts are same dated according to financial creditor both the contracts were



executed by the corporate debtor on the same day on the same time one after another but on the corporate debtor side admitted the execution contract No.187718 on the date mentioned there on 30.06.2020 but denied the execution of another contract No.187719 dated 30.06.2020. Thus, we have an admitted document of the corporate debtor contract No.187718 and disputed contract No.187719.

12. Even though on the corporate debtor side branded the contract No.187719 dated 30.06.2020 is forged documents, its signatures are forged, no steps have been taken on both sides to subject the document to the expert opinion as provided under section 45 of Indian Evidence Act 1872. However, this Adjudicating Authority is not excluded to invoke section 73 of Indian Evidence Act 1872 to compare the signatures and seals found in the disputed documents with signatures and seals found in admitted document. It is clear that when experts evidence is not there court has Power to compare the writings, signatures and decide the matter. The Apex Court in ***MurariLal- vs- State of Madhya Pradesh (1980)*** **1 SCC 704** held as follows:

*The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. [Section 73](#) of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two*



*voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of Madhya Pradesh (supra) were cases where the Court itself compared the writings*

13. On careful comparison signatures, and seals of corporate debtor found in contracts No.187718 and signatures and seals found in contract No.187719 are same, it shows both are executed by a same person. Apart from that the writings in pen and numbers written from pages 119 to 123 of contract No.187718 and writing in pen and numbers written from pages 148 to 152 depicts that both hand writings are of the same person. It shows the forms in both the contracts are filled up in hand by pen by the same person. Thus, it is established that both the contracts were executed by the corporate debtor. This view is fortified by letter dated 05.05.2021 (*Annexure 'J' page 2016 of petition*) there the existence of contract No.187719 is mentioned, after the receipt of this notice till filing of reply the corporate debtor not denied the execution of contract No.187719, now at first time in reply it put forth such a plea, it shows that it is only an afterthought. Further this petition was filed on 04.02.2022, even after filed this petition the corporate debtor admitted the existence of five active contracts in his letter dated 27.05.2022 (*Annexure 'A' in rejoinder page 30*) addressed to the financial creditor for restructure



of loan and the corporate debtor also made an endorsement of acknowledgement of debt and the existence of contract No.187719 in the letter addressed to the corporate debtor (Annexure 'B' page 31 of rejoinder).Of course these two documents are refuted by the corporate debtor branding them as forged.

14. The person who had signed contract representing the corporate debtor also executed personal guarantee deed on the same day. The admitted personal guarantee deed executed by him in connection with contract No.187718 is found in page 157 of the petition. The personal guarantee deed in connection with contract No.187719 is found in page 169 of the petition, the execution of this deed is denied by corporate debtor. Both admitted and disputed personal guarantee deeds are perused and compared, it shows that the signatures found in admitted personal guarantee deed pertaining to contract No.187718 and disputed Personal guarantee deed pertaining to contract No.187719 are same both are executed by a same person. All the signatures are remains same, apart from the signatures of the executant of the personal guarantee, the 1<sup>st</sup> page of both the documents were filled by ink by same hand writing. The company seal affixed in both the deeds at page 166 and 178 are also the same. On casual perusals of both the contracts and personal guarantees proves that all the documents are executed by one and the same person by almost at a same time. This is proved by perusal of admitted and disputed documents by naked eyes.

15. Apart from the execution of contract and personal guarantee deeds, loan also registered with the registrar of company, Cuttack. In this regard corporate debtor side submitted that the loan was registered with ROC by the petitioner



themselves in violation of provisions of the Companies Act 2013. The loan contract was executed on 30.06.2020, as per section 77 of companies Act 2013, the charge shall be registered with the registrar of Companies by the company within thirty days, if the company fails to register the charge within thirty days the charge holder can apply to Registrar of companies to register the charge, in such cases the registrar after giving notice to the company can register the charge. Here the petitioner/charge holder registered the charge with ROC on 20.10.2020. This factor shows that when the corporate debtor failed to register the charge, within thirty days from the loan document, the petitioner/charge holder taken an initiative and registered the charge with ROC, Cuttack. There is no faulty in this regard. The respondent/ corporate debtor all the times admitted and acknowledged the debt, but now all of a sudden somersaulted and denies the execution. There are some discrepancies in the contract No.187719 dated 30.06.2020 in description equipments. It is mentioned that various assets and 2<sup>nd</sup> hand and there is no mentioning of specific details of the equipment. These discrepancies alone will not make the contract is invalid.

16. On the corporate debtor side argued that in the admitted personal guarantee deed pertaining to contract No.187718 is concern in *(page 157 of petition)* first page of Personal guarantee since the disbursed loan amount is written it is genuine, however in page 169 the blanks are kept vacant not filled up, hence the personal guarantee deed pertaining to contract No.187719 is not genuine. This contention is not acceptable because as explained in rejoinder by contract No.187719 no actual amount was disbursed, the contract No.187719 was emerged



at the behest of the corporate debtor due to its failure to repay the loan amount of Rs.52,19,73,000/-. Thus, the reason given by the petitioner, why the blanks are not filled up in personal guarantee pertaining to contract Npo.187719 is sufficient, hence non-filling of amount in the relevant column of personal guarantee deed does not make that the document was not executed by the personal guarantor, who was also a director of the corporate debtor. In these circumstances it is concluded that the contract No.187719 is executed by the corporate debtor.

17. On the corporate debtor side stated that out of three contracts relied by the financial creditor, the execution and receipt of consideration under two contracts viz contracts No.169111 dated 05.08.2018 for Rs.66.83 Lakhs and contract No. 187718 dated 30.06.2020 for Rs.15.93 Lakhs are admitted. Further in respect of the said two admitted contracts it is stated that in respect of first contract No.169111 dated 05.08.2018 the corporate debtor paid an instalment amount of a sum of Rs.55,52,000/- out of instalments due amount of Rs.56,26,000/- and outstanding balance amount is Rs.74,000/- and in respect of second contract No.187718 dated 30.06.2020 an instalment amount of a sum of Rs.8,51,395/- was paid out of instalment due amount of Rs.7,00,000/- According to the corporate debtor in respect of second contract an excess amount of Rs.1,51,395 was paid. For this contention the corporate debtor relies upon the calculation sheet as on 03.05.2021 filed by the financial creditor as Annexure 'K' (*Page 209 to 212 of petition*).



18. On the corporate debtor side taken the columns in Annexure 'K' under the headings Disbursed Amount, Instalment Due Amount and Instalment collection amount. In page 211 of the petition in the calculation sheet under the heading Disbursed amount, it is mentioned that Rs.66,83,000/-Instalment due amount, it is mentioned as Rs.56,26,000/- and instalment Collection amount it is mentioned as Rs.55,52,000/- the difference is Rs.74,000/- accordingly the respondent says that the balance amount payable is only Rs.74,000/- The manner of interpretation of the accounts by corporate debtor is incorrect. The calculation sheet filed by the financial creditor is the status of the amount payable by the corporate debtor as on 03.05.2021. As per the Repayment schedule (page 93 of petition) the last instalment amount payable was up to July 2021. Further the overdue charges, default interest payable by the corporate debtor for delayed payments are not added, so the contention of the corporate debtor that only Rs.74,000/- is due, leaving future instalment amount in respect of first contract No.167111 dated 05.08.2018 is incorrect. The amount payable as on 3.05.2021 was Rs.31,84,468/-.

19. Similarly, the contention of the corporate debtor in respect of contract No.187718 (*Page 212 of petition*) the Disbursed loan amount was Rs.15,93,400/-, the regular instalment amounts payable (*Repayment schedule page 122 of petition*) as on 03.05.2021 i.e. Four instalments from January 2021 to April 2021 at the rate of Rs.1,75,000/- was Rs.7,00,000/- the remaining nine instalment amount payable up to January 2022. The amount collected as on 3.5.2021 was 8,51,395/- A sum of Rs. 1,51,395/- was in excess in respect of instalment due without calculating



default interest for delayed payment the total outstanding amount payable as 03.05.2021 was Rs.9,04,205/- The contention of corporate debtor in respect of contract No.187718 that it had paid an excess amount of Rs.1,512,395/- over the entire due amount is not correct. The admitted fact is loan amount is Rs.15,93,400/- the corporate debtor paid totally Rs.8,51,395/- then how the corporate debtor can claim it had paid an excess amount of Rs.1,51,395/- over the entire loan amount. As per the loan agreement if the corporate debtor committed any default in payment of any instalment, the financial creditor is entitled to claim entire balance amount, accordingly the entire due amount payable by the corporate debtor as on 03.05.2021 was Rs.9,04,205/-

20. In respect of contract No.187719 is concern we have already concluded that it was executed by the corporate debtor in adjustment of loan due amount pertaining to earlier loans. After the execution of this loan agreement, no amount was paid by the corporate debtor, only an adjustment of a sum of Rs.2,50,000/- was given credit. The due amount inclusive of default interest as on 03.05.2021 is Rs.5786,78,593/-

21. Thus, the cumulative balance amount payable by the corporate debtor out of three contracts exceed minimum threshold amount fixed under section 4 of the IBC 2016.

22. On the respondent side rely upon Apex Court Citation *New Okhla Industrial Development Authority- Vs- Anand Sonbhadra 2022 SCC Online SC 631*. This is the case where the question involved is whether the lease amount is a financial



debt as defined under Section 5 (8) of IBC, 2016; while deciding the said question the Apex Court held that disbursement is an indispensable requirement to constitute a debt, a financial debt within the meaning of sec. 8(5) IBC, 2016. In our case loan amount was already disbursed by the financial Creditor through earlier agreements, when the corporate debtor failed to repay the amount, the present Contract No. 187719 dated 30.06.2020 was executed and adjusted the amount due on previous contracts, hence it is incorrect to say that there was no disbursement of amount at all, but here the disbursement of loan was effected through earlier agreements, hence renewal of debt by subsequent contract will not change the character of debt. In the situation, this citation is not applicable to the present case in our hands. The another citation relied on the corporate debtor side is *Deepak Veg Pro Pvt Ltd- vs- Shree Hari Agro Industries Ltd 2022, SCC online NCLAT 401*. This is the case relating to acknowledgement of debt under Section 18 of the Limitation Act 1963. On the Financial Creditor side, who is assignee of debt relied upon the entries made in the financial statement of the corporate debtor to save limitation. The plea of the corporate debtor is the debt shown in the financial statement is different, it is not relating to debt amount involves in the Section 7 of IBC petition. In the said case debt amount mentioned in Sec.7 petition and amount figured in the financial statement of the corporate debtor is not same but there was much difference. In the situation, the NCLAT held that the amount shown in the balance sheet do not show that it is the same debt amount which is in default and therefore held that entries in balance sheet cannot be taken as an acknowledgement of original debt. In our case difference appears between the debt amount mentioned in petition and



amount mentioned in balance sheet, but in the petition it is stated that part of the debt amount also mentioned in the balance sheet, further the balance sheet entries are not relied by the petitioner for an acknowledgment of debt, hence this citation also not helpful to the case of the respondent.

23. In the circumstances it is concluded and answer that the contract No.187719 was executed by the corporate debtor, the same is true and valid and binding upon the corporate debtor.

**Point No.2:**

24.The petitioner stated in part IV (2) of petition the default date is 03.05.2021. For this the petitioner averred in part IV (1) of the petition that the loan amount was repayable on demand as per the terms of agreement entered between the parties. In this regard on the petitioner side rely upon notice dated 05.05.2021 (*Annexure 'J' page 206 of petition*) In this notice it is stated that the corporate debtor committed a default to pay the amount of Rs.4,69,24,153/-as on 03.05.2021 as per the agreements mentioned in the notice. In the notice annexure agreements No.187719 and 169111 are mentioned.

25. The above referred agreement No.187719 is perused. In para 2 of agreement under the caption Repayment (*Page 129 of petition*) it is mentioned that the Loan and interest payable on such loan at such interest as specified in loan cum Hypothecation Schedule on monthly compounding basis... In the repayment schedule table (*page 151 of petition*) the first instalment amount of Rs.1,02,73,000/- was payable in the month of January 2021. Further in the said agreement under B1



caption Finance Details (*Page 150 of petition*) it is specifically mentioned that in serial 'K' the due date is 15.01. 2021. This is also confirmed by the petitioner itself in part IV(1)(c) page 19 of the petition as "In or about January, 2021, the corporate debtor started to make default in payment of instalments.

26. The above admission of the petitioner and repayment clause and repayment schedule of the contract No.187719 discloses that the corporate debtor committed default in the month of January 2021. The contention of the petitioner that the amount is payable on demand is also falsified by the recitals of the loan agreements. This factor shows that the petitioner purposely on its own whims and fancy fixed the date of default as 3.05.2021 to get rid from the clutches section 10A of IBC 2016. No petition under section 7.9. and 10 IBC 2016 can be filed for the default falls between 25.03.2020 to 24.03.2021 in view of specific bar provided in first proviso to Section 10A of IBC 2016 read with Notification S.O.4638(E) dated 22.12.2020. In this case default date fall on 15.01.2021, hence it is answered that the petition is hit by section 10A of IBC 2016.

27. On the petitioner side argued that this plea of that petition is hit by Section 10A of IBC, 2016 not raised in the pleadings, during the course of the argument only the respondent raised this plea hence the same shall not be considered. This is purely question of law; it can be raised at any time even without pleading.

27. In view of the answer arrived to the point No.2 this petition is **Dismissed.**



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28. 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,

29. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.06.26 16:35:42 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2023.06.26 15:07:31 +05'30'  
RAJ

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this, 26<sup>th</sup> day of June, 2023.

*Supriya—P.s*