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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/115/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of ***M/s. Sri Subha Lakshmi Infra Private Limited***

M/s. India Infoline Home Finance Limited

IIFL House, Sun Infotech Park Road, No.16V,
Plot No. B-23, Thane Industrial Area,
Wagle Estate,
Thane – 400 604

... Financial Creditor

-Vs-

M/s. Sri Subha Lakshmi Infra Private Limited

5/12, Mount – Poonamalle Road,
Nandambakkam,
Chennai – 600 089

...Corporate Debtor

Order Pronounced on 28th September, 2021

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : G. Anitha, Advocate

For Corporate Debtor : None appeared

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

The present Application is filed by the Applicant namely,
M/s. India Infoline Home Finance Limited (*hereinafter
referred to as "Financial Creditor"*) under Section 7 of the

Insolvency & Bankruptcy Code, 2016 (**IBC, 2016**), seeking to initiate the Corporate Insolvency Resolution Process (**CIRP**) against the Respondent namely, **M/s. Sri Subhalakshmi Infra Private Limited** (*hereinafter referred to as "Corporate Debtor"*). The prayer made therein is to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and to appoint an "Interim Resolution Professional" (IRP).

2. From Part-I of the Application, it is evident that the Financial Creditor is a Limited Company incorporated on 26.12.2006. From Part-II of the Application, it is evident that the Corporate Debtor is a Private Limited Company with CIN: U45208TN2012PTC088837 which was incorporated on 06.12.2012 with the Authorized Share Capital of Rs.60,00,000/- and Paid-up Share Capital of Rs.60,00,000/-.

3. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Mrs. E. Santhanalakshmi, as the Interim Resolution Professional (IRP). Part-IV of the Application discloses the total amount of debt from which it is evident that the Financial Creditor has claimed a sum of Rs.3,24,83,847/- as due and payable by the Corporate Debtor.



4. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor Company is a wholly owned subsidiary of India Infoline Finance Limited (IIFL) which is a NBFC registered with Reserve Bank of India. It was submitted that the Corporate Debtor along with several co-borrowers have availed housing loan to the tune of Rs.3,05,02,991/- from the Financial Creditor and in pursuance of the same has entered into a loan agreement dated 30.11.2016 for the purpose of expanding its business by developing a residential project to be constructed in the land owned by the Corporate Debtor.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has also provided security of the assets to secure the repayment of the loan granted to the Corporate Debtor and deposited with the Financial Creditor the title deeds of the land property. It was submitted that the said loan amount of Rs.3,05,02,991/- was disbursed to the Corporate Debtor on 30.11.2016 and the rate of interest was fixed at 12.25% p.a. which was subsequently reduced to 9% p.a.

6. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has started defaulting in payment of the regular EMI's without intimating any reasons and as a result of which the account of the Corporate Debtor has remained overdue

for a period of more than 90 days, due to which the loan has been classified as "Non – performing Asset" (NPA) on 04.07.2019. Thereafter, the Financial Creditor has issued a notice under Section 13(2) of the SARFAESI Act, 2002 demanding payment of the entire outstanding amount of Rs.3,24,83,847/- as on 14.10.2019 along with future interest at the rate of 9% p.a. in terms of the loan agreement, however it was submitted that the Corporate Debtor has ignored the same and did not take any initiative to pay the outstanding amount due against the loan agreement. Under the said circumstances, the Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is not in a position to repay its dues which is payable to the Corporate Debtor and prayed for the initiation of the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen from the records that the matter first came up for hearing on 02.03.2020 and then on 21.10.2020 this Tribunal directed the Registry to issue notice to the Corporate Debtor. Thereafter, when the matter came up for hearing on 04.12.2020, it is seen that the notice which has been taken up by the Registry was served upon the Respondent on 13.11.2020 and that last chance was given to the Respondent for its appearance on 05.01.2021. However on 05.01.2021, none appeared on behalf of the Respondent and this Tribunal was

constrained to proceed with this Application in the absence of the Corporate Debtor.

8. From the submissions made and upon perusing the documents filed by the Financial Creditor, it is seen that the Corporate Debtor was a co-borrower in relation to a housing loan which was obtained to the tune of Rs.3,05,02,991/- and also the Corporate Debtor has executed a loan agreement in respect of the same. Further, from the Mortgage Deed dated 27.12.2016, it is seen that the same has been entered into by one Mr. E. Moorthy, i.e. in the name of an individual and not in the name of the Corporate Debtor. Also no documents have been placed on record to show that the money has been disbursed directly into the coffers of the Corporate Debtor. The Financial Creditor also has not placed on record the Balance sheet of the Corporate Debtor in order to show that the said amount is reflecting as due and payable to the Financial Creditor. Also these documents are least required in order to prove that the 'debt' of the Financial Creditor qualifies to be a 'Financial debt' as laid down under the provisions of IBC, 2016.

9. Further, eventhough the Financial Creditor has placed on record the Board Resolution as passed by the Corporate Debtor in and by which it was resolved to grant Corporate Guarantee to the Financial Creditor, no Deed of Guarantee which was executed

between the parties, was placed on record before this Adjudicating Authority in this regard.

10. Thus, for the aforestated reasons, we find that the application as filed by the Financial Creditor is devoid of any merits and the Applicant has also failed to prove the 'financial debt' and its default on the part of the Corporate Debtor. Hence, the Application stands **dismissed**, however without costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond