

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT-I  
KOLKATA**

**CP (IB) No. 213/KB/2022**

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

**SREI Equipment Finance Limited, Through the Administrator Mr.  
Rajneesh Sharma**

*...Financial Creditor*

*Versus*

**Royal Infrasoftware Private Limited  
[CIN: U45400WB2008PTC151300]**

*...Corporate Debtor*

**Date of pronouncement: 10/11/2023**

**Coram:**

**Rohit Kapoor** : **Member (Judicial)**

**Balraj Joshi** : **Member (Technical)**

**Appearances (through video conferencing):**

For the Financial Creditor : Mr. Jishnu Saha, Senior Advocate  
Ms. Ramya Hariharan, Advocate  
Ms. Asmita Rakhecha, Advocate  
Mr. Soumyajit Saha, Advocate

For the Corporate Debtor : Mr. D.N. Sharma, Advocate  
Mr. Abhishek Jain, Advocate

**ORDER**

**Per Rohit Kapoor, Member (Judicial)**

1. This Court convened through hybrid mode.

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2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by SREI Equipment Finance Limited, Through the Administrator Mr. Rajneesh Sharma, represented by **Shri Pallab Bose**, being the Constituted Attorney of the Financial Creditor authorized *vide* a Power of Attorney<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Royal Infrasoftware Private Limited (“Corporate Debtor”).
3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part –IV of the Petition contains details Financial debt for an amount of **Rs.73,27,80,768/- (Rupees Seventy Three Crore Twenty Seven Lakh Eighty Thousand Seven Hundred and Sixty Eight only)** as on 20.07.2022.
5. The Corporate Debtor was incorporated on 2 June 2008, having CIN: U45400WB2008PTC151300, under the Companies Act, 1956. It’s registered office is at 207 Maharshi Debendra Road, 3<sup>rd</sup> Floor, Room No. 64, Kolkata-700007. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 25<sup>th</sup> July 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs.73,27,80,768/- (Rupees Seventy Three Crore Twenty Seven Lakh Eighty Thousand Seven Hundred and Sixty Eight only)** as on 20.07.2022. The date of default is 20.07.2022 being the date when the Corporate Debtor failed to pay the amount due after Loan Facility was recalled by the Financial Creditor *vide* letter dated 12.07.2022.

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<sup>1</sup> Annexure-A, Pg.23-27 of the Petition

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**Brief facts of the case:**

7. The Financial Creditor executed a loan agreement dated March 30, 2019 with the Corporate Debtor under which a loan facility of Rs. 120,00,00,000 (Rupees One Hundred Twenty Crore) was sanctioned to the Corporate Debtor.
8. The Financial Creditor had disbursed a sum of Rs. 116,00,00,000 (Rupees One Hundred Sixteen Crore) out of the sanctioned amount of Rs. 120,00,00,000 (Rupees One Hundred Twenty Crore) to the Corporate Debtor in different tranches i.e., on May 6, 2019 and May 16,2019 in the bank account No. 911020000134058 (IFSC Code: UTIB0000005).
9. The Corporate Debtor had made a request vide letter dated June 14, 2021 to the Financial Creditor, in view of the pandemic, to foreclose the Loan Facility on payment of Rs. 67,75,00,000 (Rupees Sixty Seven Crore Seventy Five Lakh) by sale of the mortgaged property situated at Plot No. 14A, Section 18, Maruti Industrial Complex, Gurgaon 122001 ("Mortgaged Property") charged with the Financial Creditor but the Financial Creditor refused to accept the offer but agreed to release the Mortgaged Property upon receipt of the entire sale consideration to be derived from the sale of the Mortgaged Property and the balance loan amount shall continue to remain payable as per agreed terms.
10. The Corporate Debtor paid an amount of Rs.64,51,45,950/- (Rupees Sixty Four Crores Fifty One Lakhs Forty Five Thousand Nine Hundred and Fifty only) pursuant to sale of the Mortgaged Property. Out of the said amount an amount of Rs.62,93,82,693/- (Rupees Sixty Two Crore Ninety Three Lakhs Eighty Two Thousand Nix Hundred Ninety Three) was adjusted against the principal amount and the remaining amount of Rs. 1,57,63,257/- (Rupees One Crore Fifty Seven Lakhs Sixty Three

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Thousand Two Hundred and Fifty Seven only) was adjusted towards interest. Accordingly, the Financial Creditor provided an NOC dated July 12, 2021 for release of the Mortgaged Property upon receipt of the abovementioned amount paid by the Corporate Debtor by sale of the Mortgaged Property.

11. Clause 2.6 of the Loan agreement provided that the Corporate Debtor was required to pay interest to the Financial Creditor at the rate and in the manner and on the date(s) as mentioned in Schedule 1. Further, the payment of interest was to commence on the first Interest Payment Date i.e. July 31, 2019 falling immediately after the Disbursement Date, i.e. May 6, 2019. The Schedule I to the Loan Agreement provides that as per the Loan Agreement, the applicable interest rate of the Financial Creditor was 6% p.a. (six percent per annum) as fixed interest rate payable quarterly in arrears with exit of 11% (eleven percent). Thus, under the Agreement the interest was payable quarterly.
  
12. Further, Clause 8.1 of the Loan Agreement provides for the events of default. Clause 8.1.2 provides that non- payment by the Corporate Debtor of interest or any other monies payable by the Corporate Debtor under the financing documents of the Loan Facility on the days when such amount was falling due for payment, would constitute an event of default.
  
13. The Corporate Debtor failed to pay the interest amount due and payable under the Loan Agreement for the quarter ending on January 2022 and the quarter ending on April 2022 in complete violation of the terms of the Loan Agreement. In view of the same, the Financial Creditor issued a notice dated June 29, 2022 (Demand Notice") demanding repayment of the overdue interest, no later than 7 (seven) days from the delivery of the notice.

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14. However, the Corporate Debtor failed to take any steps towards the repayment of the amount and also failed to issue any response to the Demand Notice. Therefore, the Financial Creditor was constrained to recall the Loan Agreement vide letter dated July 12, 2022 issued by the Financial Creditor upon the Corporate Debtor, in accordance with clause 8.3.1 of the Loan Agreement, whereby the Corporate Debtor became liable to pay a sum of Rs. 73,27,80,768 (Rupees seventy three crores twenty seven lakh eighty thousand seven hundred sixty eight) within 7 (seven) days from the date of the said letter. However, the Corporate Debtor has neither responded to the said recall letter nor taken any steps to pay the amounts due and payable to the Financial Creditor till date.
15. Thus, due to failure by the Corporate Debtor in making payment of the said sum of Rs. 73,27,80,768 (Rupees seventy three crores twenty seven lakh eighty thousand seven hundred sixty eight) due and payable to the Financial Creditor within 7 (seven) days from the date of issue of the recall letter, the default under the Loan Agreement has occurred since July 20, 2022.
16. The Financial Creditor has placed the following documents on record which includes:
- a. A copy of the Loan Agreement dated 30.03.2019 [**Annexure A @ Pgs. 42-119 of the Company Petition**]
  - b. A copy of the Deed of Hypothecation dated 30.03.2019 [**Annexure B @ Pgs. 120-147 of the Company Petition**]
  - c. A copy of the Declaration dated 03.04.2019 given by Mr. Mahesh Kumar Nagwan for creation of mortgage by deposit of title deeds [**Annexure C @ Pgs. 148-155 of the Company Petition**]
  - d. A copy of the registration of charge in respect of the charge created in favour of the Financial Creditor to secure the Loan Agreement [**Annexure D @ Pg. 156 of the Company Petition**]

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- e. A copy of the letter dated 14.06.2021 issued by the Corporate Debtor requesting grant of NOC/foreclosure of the Loan facility [**Annexure E @ Pgs. 157-161 of the Company Petition**]
  - f. A copy of the NOC dated 12.07.2021 issued by the Financial Creditor upon the Corporate Debtor for sale of the Mortgaged property and reduction of the Loan Facility amount [**Annexure F @ Pgs. 162-163 of the Company Petition**]
  - g. A copy of the demand notice dated 29.06.2022 issued by the Financial Creditor for repayment of dues [**Annexure G @ Pgs. 164-166 of the Company Petition**]
  - h. A copy of the recall notice dated 12.07.2022 issued by the Financial Creditor to the Corporate Debtor in respect of recall of the loan agreements [**Annexure H @ Pgs. 167-170 of the Company Petition**]
  - i. A copy of the CIBIL report dated 27.06.2022 [**Annexure I @ Pgs. 171-175 of the Company Petition**]
  - j. A copy of the Tabular Statement of Accounts [**Annexure J @ Pgs. 176-178 of the Company Petition**]
17. The Financial Creditor has proposed the name of Mr. Sandip Kumar Kejriwal, registration number IBBI/IPA-002/IP-N00236/2017-2018/10687, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

**Contents of Reply Affidavit filed by the Corporate Debtor are summarized as hereunder:**

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18. The Corporate Debtor has contended that the present application is not maintainable and is liable to be dismissed as it is not in the prescribed form as specified under section 7 of the IBC, 2016.
19. The Corporate Debtor contends that no sum is due and payable by the Corporate Debtor to the Financial Creditor, in fact, the Corporate Debtor is entitled to receive a sum of Rs.195.45 crore from the Financial Creditor.
20. The Corporate Debtor states that the Financial Creditor has not approached this Hon'ble Tribunal with clean hands and has suppressed relevant and materials facts. Prior to institution of the section 7 application, the learned advocate representing the Financial Creditor namely Mr. Subhankar Chakroborty had issued a legal notice dated May 7, 2022<sup>2</sup> upon the Corporate Debtor wherein the Financial Creditor had made a purported claim of Rs. 144,48,81,198/- against the Corporate Debtor based on the same transaction arising out of the Rupee Loan Agreement dated March 30, 2019. The said notice was replied by the Corporate Debtor vide s letter dated June 7, 2022<sup>3</sup>.
21. It is contended that the amount which was actually disbursed under the Rupee Loan Agreement was Rs.116.00 crore and after taking into account the payments already made to the Financial Creditor and after taking into consideration the other adjustment and entitlements, it will appear that no sum is due and payable by the Corporate Debtor to the Financial Creditor. This is because the Corporate Debtor had become entitle to claim and seek adjustment because of the loss and damage which the Corporate Debtor had suffered not only due to the pandemic and the effect of the same but also because the pandemic had seriously affected the business and commercial use and exploitation of the subject immovable property being

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<sup>2</sup> Annexure "R-1" of the Reply Affidavit

<sup>3</sup> Annexure "R-2" of the Reply Affidavit

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the commercial space situated at Plot 14A, Sector 18 Maruti Industrial Complex, Gurgaon- 122001.

22. The subject property situated in Gurgaon now known as Gurugram was given by way of lease to the sister concern of the Financial Creditor namely, SREI Infrastructure Finance Limited (SIFL) as the lessee of the subject Gurgaon/Gurugram property morefully described above. This lease agreement had come into effect from April 1, 2010.<sup>4</sup>After the lease deed was entered into between the Corporate Debtor and SIFL, various portions of the subject property immovable property was commercially exploited by the said SIFL at the then prevailing market rate whereby SIFL had earned reasonably rental income from the subject immovable property which would be approximately Rs. 81.91 crores as on March 31, 2019.
23. The Corporate Debtor had received very nominal rent from SIFL. The lease agreement with SIFL was thereafter cancelled and for the purpose of enabling the Corporate Debtor to have the property released from SIFL, the Corporate Debtor had entered into the subject Rupee Loan Agreement with the Financial Creditor dated March 30, 2019 for a sanction limit of Rs. 120 crore out of which only Rs. 116 crore was only disbursed. Further from time to time, Corporate Debtor has made payment to Financial Creditor.
24. During the period 2019-21, the commercial value of the property had deteriorated sharply. This was because of the all development of the area adjoining the subject property within a radius of 4-5 KM and with many new buildings having come up at lower rent as compared to the subject property which had severely impacted the rental business of Corporate Debtor which Corporate Debtor was earning from the subject property. In

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<sup>4</sup> Annexure "R-3" of the Reply Affidavit

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view of the above, the rental income of Corporate Debtor was impacted and there was a downfall in the business because the new tenants had preferred to shift to other upcoming premises which have come up in the same area.

25. Subsequently, in March, 2020, the pandemic Covid-19 affected the entire world and because of the work from home practice, many corporates and multinational companies to reduce the cost of infrastructure, had either terminated the existing rental arrangement in commercial buildings or tried to renegotiate with the owners for reduction of the monthly rentals.
26. After receiving the reply dated June 7, 2022 the Financial Creditor had issued a further demand notice dated June 29, 2022 which was followed with another notice dated July 12, 2022 both these notices are part of section 7 application. From such subsequent notices dated June 29, 2022 and July 12, 2022 it will appear that the contents of the said notices do not match with the earlier legal notice which was issued on behalf of the Financial Creditor dated May 7, 2022. The purported claim of the Financial Creditor in the earlier legal notice dated May 7, 2022 is at variance with the subsequent notice dated June 29, 2022. Further the Financial Creditor has also suppressed the earlier legal notice dated May 7, 2022 and the reply which was given on behalf of the Corporate Debtor dated June 7, 2022 while approaching this Hon'ble Tribunal.
27. The Corporate Debtor contends that it is entitled to seek adjustment on account of the monetary benefits derived by SIFL i.e., the sister concern of Financial Creditor for commercially using and exploiting the abovementioned property during the period 2010- 2019 being a sum of Rs.115.73 crore. Further the Corporate Debtor is also entitled to claim adjustment on account of admitted receipt of sale consideration of the subject property which will appear from the bank statement of the

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corporate debtor to show that the entire sale proceeds were paid by the corporate debtor to the Financial creditor/SEFL being Rs.64.51 crores.

28. The particulars of total adjustment to which the Corporate Debtor is entitled to, in view of the benefit already derived by the Financial Creditor and/or its sister concern SIFL is stated to be as follows:-

<b>PARTICULARS</b>		
(a)	Amount of loan disbursed	Rs.116.00 crores
(b)	Adjustment/Set off:	
	i. Admitted part payment made on account of instalment by Corporate Debtor to Financial Creditor/SEFL	Rs. 5.25 crores
	ii. Interest Paid on Loan –	Rs. 9.96 crores
	iii. Adjustment on account of Monetary benefit derived by SIFL [sister concern of CD] for commercially using and exploitation of the subject property during the period 2010-2019-	Rs. 115.73 crores
	iv. Adjustment on account of admitted receipt of sale consideration of the subject property which will appear from the bank statement of CD to show that the entire sale proceed was paid by CD to Financial Creditor/SEFL-	Rs. 64.51 crores
	<b>Total (b) crores</b>	<b>Rs.195.45</b>

29. The Corporate Debtor contends that after taking into consideration the aforesaid adjustment it will appear that no amount is due and payable by the Corporate Debtor to the Financial Creditor and therefore this section 7 application filed by the Financial Creditor is liable to be dismissed.

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30. The Corporate Debtor contends that the Financial Creditor has failed to give necessary adjustment to the Corporate Debtor to which the Corporate Debtor is entitled to before proceeding to issue the notice dated July 9, 2021<sup>5</sup> and thereafter proceeding to raise the demand by the notice dated June 29, 2022.
31. It is denied and disputed that the Corporate Debtor is liable to pay any interest to the Financial Creditor as suggested or otherwise. Each and every allegation contained in the purported demand notice dated June 29, 2022 demanding repayment by the Financial Creditor are denied and disputed. It is denied and disputed that the Corporate Debtor did not take any steps towards the repayment of the amount as alleged or at all. The loan recall notice dated July 12, 2022 is also not maintainable and is laced with incorrect factual matrix.
32. It is further contended that the section 7 application filed by the Financial Creditor is not maintainable in law and in facts. The Financial Creditor has not approached this Hon'ble Tribunal with clean hands. The section 7 application is barred by law. No sum is due and payable by the Corporate Debtor to the Financial Creditor.
33. The Corporate Debtor contends that it is entitled to seek adjustment of the sum of Rs. 195.45 crore as mentioned above and upon taking into consideration of the same, it will appear that the sum of Rs. 79.45 crore is refundable from the Financial Creditor towards the Corporate Debtor.
34. The Corporate Debtor further contended that the section 7 application is not maintainable as the financial creditor has filed an application under section 66 of the IBC Code, 2016 being I.A No.1007 of 2022<sup>6</sup> calling upon, inter-alia, the corporate debtor herein who is the respondent no.1 in

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<sup>5</sup> Annexure "R-4" of the Reply Affidavit

<sup>6</sup> Annexure "R-5" of the Reply Affidavit

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I.A No.1007 of 2022 along with the other co-respondents in I.A No.1007 of 2022 to pay a sum of Rs.69.40 crores together with interest thereon at the rate of 18% per annum to the financial creditor who is the applicant in I.A No.1007 of 2022 represented by the administrator Mr. Rajneesh Sharma.

35. The Corporate Debtor contends that it appears that the financial creditor which is now represented by the administrator has taken contradictory stand by seeking to enforce the transaction which forms the subject matter of the section 7 petition and thereafter by applying under section 66 of the code by describing the said transaction as 'fraudulent transaction', the same cannot be enforced nor can be relied upon to initiate CIRP of the corporate debtor by placing reliance upon the same transaction while applying under section 7 of the IB Code, 2016. The conduct of the financial creditor demonstrate that the financial creditor is approbating and reprobating.

**Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor:**

36. The Ld. Counsel appearing for the Financial Creditor submitted that the loan amount disbursed by the Financial Creditor is not in dispute. The Corporate Debtor failed to pay the interest amount due and payable on the disbursed loan for the quarter ending on January 2022 and the quarter ending on April, 2022.
37. The Ld. Counsel submitted that the Corporate Debtor has not denied the loan amount availed but has asked for a set off of certain amounts allegedly due and payable by a group company of the Financial Creditor. It submitted that according to Order VIII Rule 6 of the Code of Civil Procedure, set off can be claimed only in respect of certain sums of money legally recoverable between both parties filling the same character and by

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claiming the set-off, the Corporate Debtor has admitted both the debt and the default.

38. The Ld. Counsel further submitted that after the Financial Creditor was admitted to insolvency, the Administrator came across circumstances necessitating filing of application under Section 66 of the Code. Section 7 and 66 of the Code are two independent provisions. Since Section 66 of the Code, does not in any manner impede or contradict the purpose of resolution of corporate insolvency, it cannot be contended that the filing of an application under Section 66 must sound the death knell of an application filed under Section 7 of the Code.

39. The Ld. Counsel submitted that apart from the fact that Section 66 application has not yet been heard or adjudicated, it is a settled law that a party is shackled to his pleadings and cannot seek to prove a case not pleaded by it. The Corporate Debtor acknowledged the debt and default and merely attempted to claim set off on account of alleged sums due and payable to the Corporate Debtor by a group company of the Financial Creditor. Therefore, the present petition must be admitted.

**Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor:**

40. The Ld. Counsel for the Corporate Debtor submitted that the cause of action of Financial Creditor is the alleged default arising out of Rupee Loan Agreement executed between Financial Creditor and Corporate Debtor. This Rupee Loan Agreement has been described by the same financial creditor acting through the administrator in the application filed under section 66 of IBC before this Tribunal being I.A No.1007 of 2022 taken out in the CIRP of SEFL wherein the Rupee Loan Agreement has been described as fraudulent illegal, sham and a device for routing funds from SREI Equipment Finance Limited (SEFL) to SREI Infrastructure Finance Limited (SIFL). The Ld Counsel further relied upon sections 23

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and 24 of the Contract Act and submitted that the same cannot be enforced or relied upon in any Court of law or Tribunal.

41. The Ld Counsel further submitted that in I.A No.1007 of 2022, it is the case of SEFL through the administrator that the transaction under the Rupee Loan Agreement was allegedly collusive and was meant to benefit SIFL which had been impleaded as the respondent no.4 in the section 66 application. Thus, there can be no financial debt under the rupee loan agreement.

42. It is submitted that the date of default mentioned in the section 7 petition as July 20, 2022 is incorrect which will be evident from the repayment schedule<sup>7</sup> whereby Bullet Repayment is to be made after the expiry of 10 years from the initial disbursement date. In the instant case, the loan agreement is dated 30.04.2019 and therefore Corporate Debtor as per the agreement has to make Bullet Repayment only after the expiry of 10 years from the initial disbursement date. Therefore in the absence of any default of Corporate Debtor, the section 7 petition should be dismissed.

43. The Ld. Counsel submitted that the reliance of the Financial Creditor upon Section 19 of the Contract Act, 1872 is not applicable in the present case as because none of the parties to the Rupee Loan Agreement have pointed out that they entered into the said agreement without free consent, rather Section 23 and 24 of the Contract Act, 1872 shall be applicable which clearly stipulates that if the agreement is alleged as void or its object is alleged to be unlawful by a party, the said agreement will be classified as a void agreement.

44. The Ld. Counsel submitted that as per the particulars set out in page 11 of the Reply Affidavit, it will appear that after giving credit to the amount paid by Corporate Debtor under the Loan Agreement including interest as

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<sup>7</sup> Pg. 115 of the Petition

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well as the amount received upon sale of the property which was made over by the Corporate Debtor to the Financial Creditor being a sum of Rs.64.51 crores; it will appear that Corporate Debtor is entitled to receive a same of Rs.79.45 crores from the Financial Creditor.

45. It also submitted that the Administrator has wasted the resources of the Financial Creditor by filling the section 7 petition on the basis of Rupee Loan Agreement which the Administrator himself has referred to and relied upon as allegedly fraudulent and sham document. Further, the Corporate Debtor does not admit that the said Rupee Loan Agreement is fraudulent or sham as has been alleged by the Administrator. Therefore, if the stand taken by the Administrator, even if it is assumed to be correct for the sake of assumption and argument, no claim can be made nor can such agreement been forced in any Court of law or Tribunal including for the purpose of section 7 IBC, 2016. In view of the above facts, the present petition shall be dismissed as no financial debt can arise out the said transaction.

***Analysis and Findings***

46. Heard the Ld. Counsel appearing for both the parties and perused the documents on record.
47. The Corporate Debtor in the Reply Affidavit has admitted that a loan was disbursed by the Financial Creditor by way of a Rupee Loan Agreement dated March 30, 2019. It is also an admitted position that after sale of Mortgaged Property, the sale consideration of Rs.62,93,82,693/- (Rupees Sixty Two Crore Ninety Three Lakhs Eighty Two Thousand Nix Hundred Ninety Three) was adjusted against the principal amount and the remaining amount of Rs. 1,57,63,257/- (Rupees One Crore Fifty Seven Lakhs Sixty Three Thousand Two Hundred and Fifty Seven only) was adjusted towards interest.

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48. While dealing with the first issue, regarding the set off claimed by the Corporate Debtor in relation to the property given on lease to the sister concern of the Financial Creditor i.e., SREI Infrasoftware Finance Limited, we refer to the following judgment which is reproduced hereinbelow:

I. *In Union of India v. Karam Chand Thapar and Ors. (Coal Sales) Limited and Ors*<sup>8</sup>, the Hon'ble Supreme Court held:

*“18. What the rule deals with is legal set-off. The claim sought to be set-off must be for an ascertained sum of money and legally recoverable by the claimant. What is more significant is that both the parties must fill the same character in respect of the two claims sought to be set-off or adjusted. Apart from the rule enacted in Rule 6 abovesaid there exists a right to set-off, called equitable, independently of the provisions of the Code. Such mutual debts and credits or cross-demands, to be available for extinction by way of equitable set-off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the Court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross-suit of his own. When a plea in the nature of equitable set-off is raised it is not done as of right and the discretion lies with the Court to entertain and allow such plea or not to do so.”*

II. Further, in *Bhupendra Narain Singha bahadur v. Bahadur Singh and Ors*<sup>9</sup>, the Apex Court again ruled that a plea in the

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<sup>8</sup> MANU/SC/0209/2004

<sup>9</sup> MANU/SC/0060/1952

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nature of equitable set-off is not available when the cross-  
demands do not arise out of the same transaction.

Keeping in view the facts and the position of law, we are of the view  
that the Corporate Debtor cannot claim set-off.

49. Now coming to the plea of the Corporate Debtor, the present application under Section 7 is not maintainable for the reason that the applicant has filed an application under Section 66 of the Code calling upon the Corporate Debtor, who is the Respondent No.1 in the said Section 66 application being I.A(I.B.C) No. 1007/KB/2022 to pay a sum of Rs. 69.40 crores together with an interest at the rate of 18% per annum, we are of the view:-

- (i) Scope of Section 7 and Section 66 of the Insolvency and Bankruptcy Code, 2016 are entirely different. In the present case, this is a situation of **'intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose'** and as a consequence of it, liability to make contribution to the assets of the Corporate Debtor, whereas Section 7 relates to the initiation of Corporate Insolvency Resolution Process by a Financial Creditor. Both the provisions work in two different domains. Filing of Section 66 application does not restrict or prohibit right of a Financial Creditor to initiate Corporate Insolvency Resolution Process against a Corporate Debtor who owes the debt and is in default in the payment of the same. Therefore we do not find any merits in the plea of the Corporate Debtor and found it to be *not maintainable*.
- (ii) We are also of the view, the amount in default in the present application is Rs.73,27,80,768/-, whereas the amount which is stated to be the subject matter of Section 66 application is different which is Rs. 69.40 crore. Proceedings under section 7 of the Code are not for recovery of the amount due from the Corporate Debtor.

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It is evident from a plain reading of Section 6 and 7 of the Code that the proceedings are for initiation of CIRP against the Corporate Debtor.

50. From the above facts and circumstances, the case laws referred and considering the position of law, this Adjudicating Authority is satisfied that there was a debt and the Corporate Debtor has committed a default in repaying the same. Therefore, we find that the present petition made by the Financial Creditor which is complete in all respects, should be **admitted**. It is hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 213/KB/2022** filed by SREI Equipment Finance Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Royal Infrasoftware Private Limited, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sandip Kumar Kejriwal**, registration number IBBI/IPA-002/IP-N00236/2017-2018/10687, **email:** [sandipkej2@gmail.com](mailto:sandipkej2@gmail.com), is hereby appointed as Interim

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Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses

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arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

51. **CP (IB) No. 213/KB/2022** to come up on **04.12.2023** for filing the periodical report.

52. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

**(Balraj Joshi)**

**Member(Technical)**

**(Rohit Kapoor)**

**Member (Judicial)**

This order is pronounced on the 10<sup>th</sup> day of November, 2023

*FA\_LRA*