

201

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

CP(IB)/197(CHE)2021

*(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 **RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED***

**MR.J.MOHAN BABU,
PROPRIETOR OF M/S. ANNAI AUDIT FIRM,
DOOR NO.614, THIRUNAGAR, 87,
VEEPAMPATTU, THIRUVALLURE – 602 024**

... Financial Creditor

-Vs-

**RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED
NO.13, SANTHOSH NAGAR, PATTUNOOLCHATHIRAM,
SRIPERUMBUDUR – 602 105**

...Corporate Debtor

*Order Pronounced on **21st July 2022***

CORAM:

**Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Rohan Rajasekaran, Advocate
For Corporate Debtor : Sankar Varadharajan, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by one **MR. J. MOHAN BABU,**
PROPRIETOR OF M/S. ANNAI AUDIT FIRM (hereinafter referred to as
'Financial Creditor') on 14.08.2021 under Section 7 of the Insolvency
and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency
and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,

against **RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Proprietor Firm. The registered office address of the Financial Creditor as per the Application is stated to be situated at Door No.614, Thiru Nagar, 87, Veepampattu, Thiruvallur- 602 024. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. J.Mohan Babu, Proprietor of Annai Audit Firm and the Affidavit verifying Petition duly signed by the Financial Creditor dated 10.08.2021 is placed at Page Nos. 11- 12 of the typed set filed along with the application. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 02.01.2012 with CIN: U74900TN2012PTC083851. The registered office of the Corporate Debtor as per the MCA master data is situated at No.13, Santhosh Nagar, Pattunoolchathiram, Sriperumbudur – 602 105.

3. From Part-III of the Application, it is seen that the Financial

Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Asir Raja Selvan, Reg. No. IBBI/IPA-002/IP-N00498/2017-2018/11554.

4. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.1,15,21,900/- (Rupees One Crore Two Lakhs and Thirty Thousand Only) as on June 2021 plus additional interest @ 12% p.a. from June 2021 till payment and penal interest @ 9% p.a. from 15.04.2021 till date of repayment which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 15.04.2021.

5. Part V of the application describes the particulars of Financial Debt, documents and the same is placed at Annexure -I and the list of documents between the Financial Creditor and the Corporate Debtor is reproduced hereunder:

- a) Minutes of Meeting dated 18.07.2019 -Annexure I(B)
- b) Disbursement Letters dated 26.07.2019 and 30.07.2019 - Annexure I(C)
- c) Demand Letter dated 01.03.2021 - Annexure I(D)
- d) MOU dated 22.03.2021 - Annexure I(E)
- e) Demand Letter dated 30.04.2021 with acknowledgement - Annexure I(F)
- f) Demand Mail dated 18.06.2021 - Annexure I(G)
- g) Relevant bank statements of the Applicant - Annexure I(H)

h) Legal notice dated 05.07.2021 with proof of service - Annexure I(I)

FACTUAL MATRIX OF THE CASE:

6. It was averred in the application that the Corporate Debtor had approached the Financial Creditor seeking for short terms loans in order to meet their financial commitments and working capital requirement. That vide minutes of meeting dated 18.07.2019, the Applicant had agreed to disburse short term loans to the Corporate Debtor repayable at 12% on the following dates;

S. No.	DATE OF DISBURSEMENT	AMOUNT DISBURSED
1	30.07.2019	20,00,000/-
2	31.07.2019	15,00,000/-
3	03.08.2019	15,00,000/-
4	23.03.2021	15,00,000/-
5	24.03.2021	27,00,000/-
6	30.03.2021	10,30,000/-

7. Pursuant to the disbursement requests of the Corporate Debtor, the Applicant had initially disbursed a sum of Rs.50,00,000/ in the month of July and August of 2019, however instead of repaying the said amounts, the Corporate Debtor had approached the Applicant seeking further loans.

8. It was submitted that owing to the good relationship maintained between the parties on 22.03.2021 an MOU was entered into whereby the Corporate Debtor had acknowledged the old dues of Rs.59,53,424/- and the Applicant had agreed to disburse further loan not exceeding Rs.55,00,000/-, repayable with interest @ 12% p.a. The Corporate Debtor had also agreed to repay the entire dues fully with interest on or before 15.04.2021 and on failure to make the payment, they had agreed that additional penal interest @ 9% could be levied.
9. Accordingly, a sum of Rs.52,30,000/- was disbursed by the Applicant to the Corporate Debtor in the month of March, 2021 and the Corporate Debtor had severely defaulted in the repayment in terms of the MOU dated 22.03.2021.
10. The Corporate Debtor had also acknowledged the receipt of Rs.1,02,30,000/- from the Applicant on several occasions but have failed to make any payment in discharge of the said admitted liability.
11. Despite several reminders, legal notice dated 05.07.2021 was issued on behalf of the Applicant, calling upon the Corporate Debtor to repay the financial debt within 10 days. Even after receipt of the said notice, no payments were made. Further, since it is reliably learnt that the substratum of the Corporate Debtor has eroded they are severely indebted, present preferred.

12. The Learned Counsel for the Corporate Debtor had filed a one-page counter wherein the Corporate Debtor admitted the debt amount which is due to be paid to the Financial Creditor.

FINDINGS OF THIS TRIBUNAL:

13. In the present case, it is seen that the Corporate Debtor had admitted its liability in its counter. However, upon perusal of the documents filed by the Petitioner along with the typed set, this Adjudicating Authority vide its order dated 23.11.2021 has passed the following order;

"The Petitioner is represented by Mr. Rohan Rajasekaran, Advocate through the video conferencing platform.

Matter was called in the morning and subsequently passed over. When the matter was called after passed over, there is no representation for the Respondent.

This Application is filed by an individual proprietorship concern claiming financial loan due and payable by the Corporate Debtor.

Heard the representations made by the Learned Counsel for the Petitioner.

The Petitioner could not satisfy this Adjudicating Authority regarding the debt and default. No charge with RoC has been registered by the Corporate Debtor. There was no Board Resolution for sanction of the loan, further the copy of audited accounts statement of the Corporate Debtor not enclosed.

The Respondent is directed to file the complete three years balance sheet of the Corporate Debtor on or before the next date of hearing.

For arguments of the Respondent, list this matter on **10.01.2022.**"

14. Pursuant to the aforesaid order, it could be seen that the Corporate Debtor has filed the copy of the financial statements in the Registry of this Tribunal on 29.03.2022 vide SR No. 2080. A perusal of the Financial Statement for the period 2020 – 2021 would show that under the Long-Term Borrowing, the name of the Financial Creditor is not found. The extract of the same is captured hereunder;

NOTE 3 : LONG-TERM BORROWINGS

Term loans

Particulars	As at 31, March 2021	As at 31, March 2020
	Amount in ₹	Amount in ₹
(A) Secured		
(i) Secured loans from Banks (Secured by Hypothecation of Inventory & Receivables and guaranteed by Directors)		
(B) Unsecured		
Axis Bank	23,44,342	34,45,356
Bafaji Finance MSME	5,99,100	0
Bafaji Finance OD	29,96,125	29,96,125
Hdfc Bank limited	28,76,794	18,59,318
ICICI MSME Loan	19,47,581	0
Religare Bank	20,25,000	0
TATA Capital MSME Loan	4,05,096	0
Tata Capital OD	26,97,404	30,29,925
Others	0	50,00,000
Total	1,58,91,442	1,63,30,724

CURRENT LIABILITIES

NOTE 4 : SHORT-TERM BORROWINGS

Particulars	As at 31, March 2021	As at 31, March 2020
	Amount in ₹	Amount in ₹
(i) OD & CC		
(a) From Banks		
Secured - ICICI Bank	78,54,679	85,57,552
Total	78,54,679	85,57,552

2

NOTE 5 : OTHER CURRENT LIABILITIES

Particulars	As at 31, March 2021	As at 31, March 2020
	Amount in ₹	Amount in ₹
Duties & Taxes	54,94,965	18,45,988
Total	54,94,965	18,45,988

NOTE 6 : SHORT-TERM PROVISIONS

Particulars	As at 31, March 2021	As at 31, March 2020
	Amount in ₹	Amount in ₹
a. Provision for Employees Benefit		
ESI Payable	4,40,369	2,40,880
PF Payable	34,69,564	19,29,344
Salary & wages Payable	44,00,000	51,91,444
b. Others		
Rent Payable	15,000	15,000
Provisional for tax	2,64,575	20,29,374
Audit fee	1,00,000	2,00,000
Total	86,89,508	96,06,042

NOTE 10 : SHORT-TERM LOANS AND ADVANCES

Particulars	As at 31, March 2021	As at 31, March 2020
	Amount in ₹	Amount in ₹
(A) Loans and Advances to related parties		
Secured, considered good	1,64,18,558	2,97,05,090
	1,64,18,558	2,97,05,090
(B) Advances and Deposits		
a) Rent Advanced	31,000	-
	31,000	-
Total	1,64,49,558	2,97,05,090

15. When the aforesaid fact was pointed out to the Learned Counsel for the Corporate Debtor, it was replied that the "amount

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received from the Financial Creditor is included in the loans and advances, which are placed at Page No.66 under the head "Short Term Loan" under Note-10". It is observed from Note 10 in the balance sheet covers the asset side of the balance sheet and not the liability side, where the loans obtained by the Corporate Debtor are normally reflected.

16. The aforesaid statement made by the Corporate Debtor in conjunction with the financial statements would manifest the fact that the Corporate Debtor is the one who has given loan to the Financial Creditor. A perusal of the long terms borrowings as reflecting under Note 3 to the Balance Sheet reveals that the Corporate Debtor is heavily indebted. The Short Terms borrowings stood at Rs.78.54 Lakh and the current liabilities duties and taxes increased to nearly Rs.54.94 Lakh from Rs.18.45 Lakh in the earlier year. The net profit has come down from Rs.57.45 lakh in 2020 to Rs.7.39 Lakh. All this indicate that the Corporate Debtor is facing lot of financial constraints and not able to pay his debts and wishes to take advantage of moratorium under Section 14 of IBC, 2016. 17. Further, it could be seen from the averments that knowing fully well that the Corporate Debtor has not paid the amount, the Financial Creditor again disbursed a sum of Rs.52,30,000/- during the month of March 2021 in and by which the default amount would cross the threshold limit of Rs.1 Crore. Thus, it would prove that the present Application has

been filed by the Financial Creditor in collusion with the Corporate Debtor and it will attract Section 65 of IBC, 2016 which entails imposition of heavy costs.

17. Under such circumstances, the present Application filed by the Financial Creditor stands **dismissed** with a cost of **Rs.3,00,000/-** (*Rupees Three Lakh Only*) payable to the "Prime Minister National Relief Fund", within a period of 7 days from the date of this order.

18. Post this matter on **12.08.2022** for compliance.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice (Retd) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond