

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT III**

**C.P. No. (IB) 132/MB/C-III/2022**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

***In the matter of***

**SREI Equipment Finance Ltd.**

Having office at:

'Vishwakarma', 86C, Topsia Road, Kolkata – 700046, West Bengal

***...Financial Creditor/Petitioner***

Versus

**Shweta Housing and Hospitality Pvt. Ltd.**

Having office at:

Sharma Bungalow, Hiranandani Complex Behind Lake Castle View Building, Powai, Mumbai – 400076, Maharashtra

***...Corporate Debtor/Respondent***

**Order pronounced on: 18<sup>th</sup> December 2023**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

For the Financial Creditor: Adv. Rohit Gupta a/w Adv. Harsad R. Vyas

For the Corporate Debtor: Adv. Shreya Pednekar

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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1. This Petition has been filed by SREI Equipment Finance Limited (“**Petitioner/ Financial Creditor**”) to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Shweta Housing and Hospitality Private Limited (“**Respondent/Corporate Debtor**”) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 35,90,58,448/-** (Claim Amount of Rs. 27,02,74,828/- plus interest of Rs. 88,768,620/- and cost of Rs. 15,000/-) as per the Arbitral Award passed by the Ld. Sole Arbitrator Mr. Samrat Mukherji (“**Sole Arbitrator**”). The date of default is **04.02.2020** (i.e. the date of Award).
2. The Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 having its registered office at Mumbai, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The Financial Creditor is a Non-Banking Financial Institution (NBFC) who is currently undergoing CIRP process pursuant to Order dated 08.10.2021 passed by the NCLT, Kolkata Bench in **CP (IB) No. 294/KB/2021** filed by the Reserve Bank of India. Consequently, Mr. Rajneesh Sharma has been appointed as the **Administrator** who is at present vested with the management of the Financial Creditor. The Administrator vide letter dated 02.12.2021 appointed Mr. Ganesh Prasad Bagree as the Authorised Representative of the Financial Creditor who was also empowered to issue letter of authorization. Consequently, Mr. Ganesh Prasad Bagree vide letter dated 17.01.2022 appointed Mr. B C Bhandari to represent the Financial Creditor in legal proceedings.
4. The Financial Creditor vide offer letters dated 09.06.2017 proposed Credit Facilities to the Corporate Debtor for an amount of Rs. 18,09,00,000/-. Consequently, the Financial Creditor and the Corporate Debtor signed a Loan Agreement on 13.06.2017.

5. The Corporate Debtor provided various securities to the Financial Creditor such as:

I. **Primary Security:** First and exclusive charge on all the piece and parcel of land bearing farmhouse no. 5 & Measuring 4 Bighas and 16 Biswas comprised in Mustail No. 19, Killa No. 11 (4-16), situated in the Revenue Estate of village Jonapur, Royal Park Lane, Tehsil Hauz Khas, Mehrauli, New Delhi together with a residential building having about 7000 sq. ft. built up area constructed thereon, along with approach Road, common areas and facilities.

II. **Collateral Security:**

<b>Name of the Pledger</b>	<b>Name of the Company whose shares are Pledged</b>	<b>Number of Shares Pledged</b>
Shweta Sharma	Shweta Housing and Hospitality Private Limited	8000
Vikas Sharma	Shweta Housing and Hospitality Private Limited	2000

III. **Personal Guarantee** dated 13.06.2017;

Mr. Vikash Sharma s/o Mr. Bhavani Sankar Sharma; and  
Ms. Shweta V. Sharma, w/o Mr. Vikash Sharma

IV. Charge Certificate with Charge Form filed with the Registrar of Companies (RoC) for the aforesaid Securities.

6. The Corporate Debtor defaulted in making payments as per the Loan Agreement, therefore the Petitioner/ Financial Creditor initiated Arbitration Proceedings as per Clause 17 of the Loan Agreement dated 13.06.2017. The Petitioner by Letter dated 06.02.2019 nominated and appointed Advocate Mr. Samrat Mukherjee as the Arbitrator. The

Arbitrator passed an award in favor of the Financial Creditor on 04.02.2020. The Arbitrator awarded the following:

<b>Particulars</b>	<b>Amount</b>
Award Amount (Rs.)	27,02,74,828
Interest on Award (Rs.)	8,87,68,620
Cost of Reference (Rs.)	15,000
<b>Total</b>	<b>35,90,58,448</b>

Further interest at the rate of 18% per annum from date of award till payment and / or realization.

7. The Financial Creditor issued Demand Notice dated 01.12.2021 to the Corporate Debtor recalling the outstanding dues of Rs. 35,90,58,448/-, and has also informed CIBIL of status of the Corporate Debtor.
8. However, the Corporate Debtor failed to repay the loan amount, and hence the present Petition is filed under section 7 of the Code.

#### **Submissions of the Corporate Debtor**

9. The Corporate Debtor submits that the present application has been filed based on the Arbitral Award dated 04.02.2020 which is in process of being challenged under section 34 of the Arbitration and Conciliation Act, 1996 by the Corporate Debtor before the Hon'ble Kolkata High Court. Execution proceedings of the Award are also underway before the Hon'ble Delhi High Court.
10. The Application is pre-mature as the Arbitral Award has not become final as on date. In accordance with section 34 of the Act, an appeal can be preferred against an Arbitral Award within a period of 3 months from the date of the Award. Due to outbreak of the Covid-19 pandemic, the Hon'ble Supreme Court passed an Order dated 10.01.2022 in Suo Moto Writ Petition No. 3 of 2020 excluding the period commencing from 15.03.2020 till 28.02.2022 from calculating the period of limitation under any general or special laws. The aforesaid order allows the Respondent herein to

challenge the Arbitral Award until May 2022 and the process for the same is underway. In light of the above, the debt itself has not been crystallized. It is, therefore, stated that proceedings cannot be initiated on the basis of Arbitration Award.

11. The amount claimed by the Financial Creditor is on the basis that no instalments were paid by the Corporate Debtor which is completely false and incorrect and therefore a 'dispute' exists between them which has to be decided in an arbitration as per clause 17 of the Loan Agreement dated 13.06.2017.
12. The Application has been filed on the basis of an award dated 04.02.2020 passed by the Sole Arbitrator, Mr. Samrat Mukherjee, execution proceedings of which have already been initiated before Hon'ble Delhi High Court. It is the case of the Financial Creditor that the Corporate Debtor has failed to liquidate the amount of Rs. 35,90,58,488/- liable to be paid to the Financial Creditor by the Corporate Debtor under Arbitral Award.
13. However, the appointment of the Sole Arbitrator was unilateral in contravention of section 12 of the Arbitration and Conciliation Act, 1996 and the Arbitral Award is being challenged by the Corporate Debtor before Hon'ble Kolkata High Court on various grounds.
14. It is submitted that the term of the loan granted under the Loan Agreement dated 13.06.2017 was 60(sixty) months i.e. till 12.06.2022. Despite payment of certain instalments by the Corporate Debtor, the Financial Creditor prematurely and illegally terminated the Loan Agreement on 24.01.2019. In any event, it is the case of the Financial Creditor that no instalments have been paid by the Corporate Debtor. It is submitted that the Corporate Debtor made the payment of instalments amounting to Rs. 40 Lakhs.

**Rejoinder of Financial Creditor**

15. In response to the Corporate Debtor's Reply, the Financial Creditor filed a Rejoinder wherein it was submitted that the Financial Creditor had in fact initiated execution proceedings before Hon'ble Delhi High Court and the Court by its order dated 13.04.2022 directed the Corporate Debtor to restrain from selling, alienating, transferring or encumbering the property being Farm No. 5, Sharma House, Royal Park Farm, Near Police Check Point, Jaunpur, Gadarpur, Delhi – 110030.
16. The award has attained finality as the same has not been challenged by the Corporate Debtor. Further, the Corporate Debtor has not disputed the existence of debt and default. The Corporate Debtor's own showing in its Reply makes it evident that there is no dispute that the Corporate Debtor has received the amounts and has defaulted in repaying the debt which has become due and payable.
17. To support the submissions, the Financial Creditor relied on the observations of Hon'ble Supreme Court in **Dena Bank (now Bank of Baroda) vs. C. Shivkumar Reddy and Anr** and **K. Kishan vs. M/s Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 of 2017]**.

**FINDINGS**

18. Heard the Counsels and perused the documents placed on record.
19. In the present case, the documents on record clearly indicate that the Corporate Debtor had availed the loan and has committed default in repayment of the outstanding loan amount. The Corporate Debtor has not denied the existence of debt and default. The Corporate Debtor, in its Reply itself, stated that they have paid a total amount of Rs. 40,00,000. On perusal of the Repayment Schedule, it is seen that the repayment has been made only of few instalments. For reference, we reproduce the Repayment Schedule:

Loan Amount (Principal)	Amount to be repaid in instalments/EMI with interest @14% (in Rs.)	Date of instalment	No. of Instalments
	19,50,000/-	15.08.2017	1.
	19,50,000/-	15.09.2017	2.
	5,00,00,00/-	15.10.2017	3.
	195,00,00/-	15.11.2017	4.
	195,00,00/-	15.12.2017	5.
	5,00,00,00/-	15.01.2018	6.
	195,00,00/-	15.02.2018	7.
	195,00,00/-	15.03.2018	8.
	5,00,00,00/-	15.04.2018	9.
	195,00,00/-	15.05.2018	10.
	195,00,00/-	15.06.2018	11.
	5,00,00,00/-	15.07.2018	12.
	195,00,00/-	15.08.2018	13.
	195,00,00/-	15.09.2018	14.
	5,00,00,00/-	15.10.2018	15.
	195,00,00/-	15.11.2018	16.
	195,00,00/-	15.12.2018	17.
	5,00,00,00/-	15.01.2019	18.
	195,00,00/-	15.02.2019	19.
	195,00,00/-	15.03.2019	20.
	5,00,00,00/-	15.04.2019	21.
	195,00,00/-	15.05.2019	22.
	195,00,00/-	15.06.2019	23.
	546,30,00/-	15.07.2019	24.
	546,30,00/-	15.08.2019	25.
	546,30,00/-	15.09.2019	26.
	546,30,00/-	15.10.2019	27.
	546,30,00/-	15.11.2019	28.

	546,30,00/-	15.12.2019	29.
	546,30,00/-	15.01.2020	30.
	546,30,00/-	15.02.2020	31.
	546,30,00/-	15.03.2020	32.
	546,30,00/-	15.04.2020	33.
	546,30,00/-	15.05.2020	34.
	546,30,00/-	15.06.2020	35.
	546,30,00/-	15.07.2020	36.
	546,30,00/-	15.08.2020	37.
	546,30,00/-	15.09.2020	38.
	546,30,00/-	15.10.2020	39.
	546,30,00/-	15.11.2020	40.
	546,30,00/-	15.12.2020	41.
	546,30,00/-	15.01.2021	42.
	546,30,00/-	15.02.2021	43.
	546,30,00/-	15.03.2021	44.
	546,30,00/-	15.04.2021	45.
	546,30,00/-	15.05.2021	46.
	546,30,00/-	15.06.2021	47.
	546,30,00/-	15.07.2021	48.
	546,30,00/-	15.08.2021	49.
	546,30,00/-	15.09.2021	50.
	546,30,00/-	15.10.2021	51.
	546,30,00/-	15.11.2021	52.
	546,30,00/-	15.12.2021	53.
	546,30,00/-	15.01.2022	54.
	546,30,00/-	15.02.2022	55.
	546,30,00/-	15.03.2022	56.
	546,30,00/-	15.04.2022	57.
	546,30,00/-	15.05.2022	58.

20. It is clear that repayment of only 3(three) out of 58(Fifty-eight) instalments have been made as acknowledged by the Corporate Debtor in its Reply. Therefore, it is not incorrect to hold that the Corporate Debtor has defaulted on the repayment of the outstanding loan amount. Moreover, apart from all the above documents, the Financial Creditor has also submitted the **Certificate dated 09.03.2022** issued by the National E-Governance Service Limited (**NESL**) evidencing the default. In view thereof, we are satisfied that there is debt and default as mandated under the Code.

21. The Respondent has contended that claim arising out of an Arbitral Award cannot be considered as financial debt. In this regard, it is useful to refer to the Hon'ble Madras High Court's Judgment in **Cholamandalam Investment and Finance Company Ltd. V. Navrang Roadlines Private Limited [O.S.A (CAD) No. 115 of 2022]** wherein it has been held as follows:

***“12. ... Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.”***

*(Emphasis Provided)*

Accordingly, liability arising out of Arbitral Award can be treated as financial debt, if the nature of underlying claim stands crystallized in the arbitral proceedings, which in the facts of the case has been crystallized.

22. With respect to the applicability of limitation period, this Tribunal is of the view that since the instant Petition has been filed on the basis of the Arbitral Award passed on 04.02.2020, the limitation period begins from the date of the Arbitral Award i.e. 04.02.2020. We are supported by the decision of the Hon'ble Supreme Court in the case of **Kotak Mahindra**

**Bank Limited Vs. A. Balakrishnan [2022 SCC Online SC 706]** wherein it was held as under:

*“once a claim has fructified into a final judgment post adjudication by a tribunal or court, the amount payable under the judgment, decree, order or recovery certificate, will give rise to fresh cause of action in favour of the creditor. It also held that such a decree could be used as proof of debt to initiate proceedings under the Insolvency and Bankruptcy Code'2016 **within three years from the date of the decree.**”*

*(Emphasis Provided)*

Keeping in view the above judgment, we hold that the Petition is within the prescribed limitation.

23. The Corporate Debtor contends that the Petition is pre-mature because of the possibility of an appeal being triggered against the said Arbitral Award dated 04.02.2020. To support its case on limitation, it is submitted that as per the Hon'ble Supreme Court's ruling in **Suo Moto Writ Petition (C.) No. 3 of 2020**, the Corporate Debtor is entitled to challenge the Arbitral Award until May 2022. However, it is seen that till date the Corporate Debtor has not preferred any Appeal under section 34 of the Arbitration and Conciliation Act, 1996 against the Arbitral Award dated 04.02.2020 passed by the Learned Sole Arbitrator nor any documents have been placed before the Bench evidencing the same. By not adhering to the stipulated time limit for preferring appeal under section 34, the right of the Corporate Debtor to prefer an appeal is now barred by limitation. Therefore, we find no reason to hold the present petition as pre-mature. In this regard, we are supported by the decision of the Hon'ble Supreme Court in **K. Kishan vs. M/s Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 of 2017]** which also has been relied upon by the Financial Creditor and wherein it was held as follows:

*“19) We may hasten to add that there may be cases where a Section 34 petition challenging an Arbitral Award may clearly and unequivocally be barred by limitation, in that it can be demonstrated to the Court that the period of 90 days plus the discretionary period of 30 days has clearly expired, after*

*which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed. **It is only in such clear cases that the insolvency process may then be put into operation.***

*(Emphasis Provided)*

In the facts of the case, since the Respondent has not filed appeal under section 34 of the Arbitration and Conciliation Act, 1996 within limitation/ extended limitation, the Arbitral Award has attained finality.

24. As regards the averment of the Corporate Debtor regarding the discrepancy in the appointment of the Ld. Sole Arbitrator, it is mentioned that this Tribunal cannot adjudicate upon the same. The Adjudicating Authority's power is finite under the Code, and particularly with respect to matters under section 7 thereunder. This has been emphasized by the Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

***“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.***

***30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”***

*(Emphasis Provided)*

25. Further, in **M. Suresh Kumar Reddy vs. Canara Bank & Ors. [Civil Appeal No. 7121 of 2022]**, the Hon'ble Supreme Court sustained its decision in **Innoventive Industries (supra)** and held as follows:

**“10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application Under Section 7.**

*Default is defined Under Sub-section 12 of Section 3 of the IB Code which reads thus: 3. Definitions: In this Code, unless the context otherwise requires -*

*(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;*

***Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission Under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application Under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”***

*(Emphasis Provided)*

Accordingly, the contentions relating to appointment of Arbitrator or there being any discrepancy in the same cannot be looked into and adjudicated by this Tribunal.

26. Upon perusal, this Tribunal is of considered opinion that the application made by the Financial Creditor is complete in all respects as mandated under the Code and the default amount is also in excess of the minimum amount stipulated in section 4(1) of the Code. The Petition is filed within the limitation period, and therefore we are satisfied that the present petition is maintainable.

27. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 132 of 2022 is **admitted** and ordered as follows:

**ORDER**

- i) The above Company Petition No. (IB) 132 (MB)/2022 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process

(CIRP) is ordered against **Shweta Housing and Hospitality Pvt. Ltd.**

- ii) The Petitioner has proposed the name of **Mr. Anup Kumar Singh**, Registration No. IBBI/IPA-001/IP-P00153/2017-2018/10322), to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 21.01.2022 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 31.12.2021. Accordingly, **we appoint Mr. Anup Kumar Singh (anup\_singh@stellarinsolvency.com) as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
  - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its

property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
  
- v) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
  
- vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  
- vii) The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
  
- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
  
- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xiv) In the result, Company Petition No. 132 of 2022 is **admitted**.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Sd/-

**Lakshmi Gurung**  
**Member (Judicial)**

Uma, LRA