

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – III**

**C.P.(IB)-225(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 Adjudication Authority) Rule 2016.)

*In the matter of*

**SREI Equipment Finance Limited**

Having Registered Office at: 'Vishwakarma', 86C,  
Topsia Road, Kolkata- 700046, West Bengal.

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

**Vs**

**Supreme Star Villa Private Limited**

Having Registered Office at: Supreme House, Plot  
No. 94/C, Opp. I.I.T., Powai, Mumbai-400076.

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

**Order Pronounced on: 06.03.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI  
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG  
HON'BLE MEMBER (J)**

*Appearances:*

For the Financial Creditor: Adv. Dharshit Dave

For the Corporate Debtor: Adv. Ashish Pyasi

**ORDER**

**Per: - Smt. Lakshmi Gurung (Judicial Member).**

1. The Present **Company Petition (IB)-225(MB)/2022** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **SREI Equipment Finance Limited, (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (**“CIRP”**) against **Supreme Star Villa Private Limited (“Corporate Debtor/ Respondent”)** for default in repayment of Rs. 84,71,02,311/- (Rupees Eighty-Four Crores Seventy-One Lakhs Two Thousand Three Hundred and Eleven only).

**Relevant Facts as stated in the Petition and documents annexed thereto:**

2. Upon an application made by the Corporate Debtor, Financial Creditor issued Offer Letter No. OFFER /HL-Domestic/208-209/SSVPL/01 dated 15.09.2018 offering a loan of Rs. 46,50,00,000/- (Rupees Forty-Six Crores Fifty Lakhs Only) with proposed terms and conditions of the loan and the repayment schedule.
3. It is stated that the loan amount of Rs. 46,50,00,000/- was disbursed on 28.09.2018. The FC has annexed loan agreement no. 171721 dated 29.09.2018 which has been executed by the parties with following salient terms and conditions:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
a.	Interest rate	14.74%
b.	Tenure of Loan	36 Months
c.	Monthly Instalments from	15.10.2018
d.	Mode of Repayment	Direct Bank Credit
e.	Repayment Schedule	35 Instalments within a period of 36 months; starting from

		15.10.2018 upto 15.08.2021 as per Repayment Schedule
f.	Security	<ul style="list-style-type: none"> <li>• Mortgage by deposit of Title Deeds of pieces and parcel of land situated at Nigudvadi, taluka Sangamesh, District Ratanagiri.</li> <li>• Personal Guarantee dated 21.09.2018 by Mr. Adam Ibrahim Shaikh.</li> </ul>

4. As per the Statement of Accounts annexed to the Petition the Corporate Debtor has made re-payment towards the said Loan Agreement to the tune of Rs. 8,00,00,000/- (Rupees Eight Crores Only) on various dates starting from 31.12.2018 to 31.12.2019. The last payment made by the Corporate Debtor on 31.12.2019 for an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only), has been appropriated towards the instalment due on 15.10.2019.
5. Thereafter, the Corporate Debtor has defaulted in making repayment towards Loan Facility. The date of default in the present petition is mentioned as 15.11.2019.
6. The Financial Creditor issued Demand Notice dated 25.11.2021 and called upon the Corporate Debtor to make payment towards the outstanding dues of Rs. 84,71,02,311/- which is annexed to the petition as Exhibit L. The Corporate Debtor failed to reply to the aforementioned Demand Notice.
7. The FC has also annexed Balance Sheet of the Corporate Debtor as on 31.03.2019 and 31.03.2020 as Exhibit M (Colly).

**Submissions of the Petitioner:**

8. The Petitioner has submitted that it can be seen from the Balance Sheet for the year ending on 31.03.2019, under the heading Note 3 - Long Term Borrowings, an amount of Rs. 48,26,65,468/- (Rupees Forty-Eight

Crores Twenty-Six Lakhs Sixty-Five Thousand Four Hundred and Sixty-Eight Only) is reflected as outstanding towards the Financial Creditor. The Balance Sheet for the year ending on 31.03.2020 shows an amount of Rs. 51,80,97,436/- (Rupees Fifty-One Crores Eighty Lakhs Ninety-Seven Thousand Four Hundred and Thirty-Six Only) as outstanding towards the Financial Creditor. Note no. 3 forming part of the Balance Sheet of 31.03.2020 is reproduced as below:

**Note 3 LONG TERM BORROWINGS**

<b>Particulars</b>	<b>As at 31<sup>st</sup> March, 2020</b>	<b>As at 31<sup>st</sup> March, 2019</b>
SREI Equipment Finance Limited	51,80,97,436.00	48,26,65,468.00
Supreme Bungalows Private Limited	3,70,00,000.00	1,20,00,000.00
Supreme Infrastructure BOT Holdings Pvt. Ltd.	2,00,00,000.00	
Supreme Lakeview Bungalows Pvt. Ltd.	35,000.00	
Supreme Housing & Hospitality Pvt. Ltd.	7,700.00	
<b>Total</b>	<b>57,51,40,136.00</b>	<b>49,46,65,468.00</b>

**Reply of the Corporate Debtor:**

- The Corporate Debtor has filed Affidavit in Reply dated 25.04.2022 and has raised the contention that the alleged debt was repaid to the Financial Creditor on the very same day when the Loan was disbursed. The Corporate Debtor has annexed a copy of Bank statement from 01.04.2018 to 31.03.2019 to show that the entire loan amount received vide various entries on 28.09.2018 was paid to the FC on 28.09.2018 vide various entries.

**Rejoinder on behalf of the Financial Creditor:**

10. In response to this, the Financial Creditor filed an Affidavit in Rejoinder dated 11.05.2022 and submitted that the Financial Creditor disbursed the amounts to the Corporate Debtor on 28.09.2018 and upon request made by the Corporate Debtor by its letter dated 28.09.2018, the amounts were repaid towards the accounts of its other group companies.
11. It is the case of the FC that the amount disbursed by Financial Creditor was repaid by the CD towards the outstanding credit facilities of its sister concerns namely Ram Infrastructure Ltd., Supreme Innovative Building Project Private Ltd., BHS Housing Private Ltd., Kotkapura Muktsar Tollways Private Ltd., Kopargaon Ahmednagar Toll ways (Phase D) Private Ltd., and Supreme Housing and Hospitality Private Ltd. The aforesaid companies have provided Letter of comfort to Financial Creditor by their letters dated 28.09.2018.

**Additional Affidavit in Reply on behalf of the Corporate Debtor:**

12. In addition to reply, the Corporate Debtor filed an Additional Affidavit in Reply dated 13.12.2022 and stated that the debt which is the subject matter of the present Petition forms part of the scheme of arrangement under Section 230-232 of the Companies Act, 2013, of Supreme Infrastructure India Limited, i.e., a group/associate company of Corporate Debtor and its financial creditors including the present Financial Creditor. The Corporate Debtor further submitted that its associate company, i.e., Supreme Infrastructure India Limited is entering into Scheme of Arrangement for restructuring of Financial Debt.
13. In addition to this, the Corporate Debtor has raised the preliminary objection that the Documents entered by and between Corporate Debtor and the Financial Creditor is insufficiently stamped, and therefore the deed needs to be stamped properly as per the provisions of the Maharashtra Stamp Act and thus, the Petition deserves to be dismissed.

**Observations & Findings**

14. Heard the Ld. Counsel for the Parties and perused the record.
15. The Petitioner has annexed copies of the following documents with the Petition/Rejoinder:
- i) Loan Offer letter dated 15.09.2018.
  - ii) Loan Agreement No. 171721 dated 29.09.2018 executed by and between the Financial Creditor.
  - iii) Loan Disbursement details.
  - iv) CIBIL Report of the Corporate Debtor.
  - v) Audited Balance Sheet for FY 2018-19 and 2019-20 of Corporate Debtor.
  - vi) Demand Notice dated 25.11.2021 addressed by the Financial Creditor to the Corporate Debtor.
  - vii) Undertaking and Letter of Comfort dated 28.09.2018 issued by the Corporate Debtor to the FC stating that it has paid the amounts on behalf of Supreme Innovative Building Projects Pvt. Ltd., Kopargaon Ahmednagar Tollways (Phase-I) Pvt. Ltd., Kotkapura Muktsar Tollways Private Limited, BHS Housing Private Limited and Ram Infrastructure Ltd.
16. During the hearing of the Present Petition, the Financial Creditor has tendered the Record of Default (RoD Certificate) dated 09.03.2022 issued by NeSL with status showing Deemed Authenticated. We cannot refuse to look into impeccable document like RoD certificate issued by the Nesl.
17. Now we deal with the contention raised by the Corporate debtor.
- 17.1. The contention of the Corporate Debtor that the alleged debt was repaid to the Financial Creditor on the very same day when the Loan was disbursed is not acceptable for following reasons: -
- a. The Balance Sheet of the Corporate Debtor for the year ending on 31.03.2020 shows an amount of Rs. 51,80,97,436/- payable to the Financial creditor.

- b. The Corporate Debtor has admitted the debt in additional affidavit in reply dated 13.12.2022 wherein it has stated that *“the debt which is the subject matter of the present Petition forms part of the scheme of arrangement under Section 230-232 of the Companies Act, 2013, of Supreme Infrastructure India Limited, i.e., a group/associate company of Corporate Debtor and its financial creditors including the present Financial Creditor”*.
- c. The FC has produced “Undertaking and Letter of Comfort” dated 28.09.2018 issued by the Corporate Debtor to the FC stating that it has paid the amounts on behalf of Supreme Innovative Building Projects Pvt. Ltd., Kopargaon Ahmednagar Tollways (phase i) Pvt. Ltd., Kotkapura Muktsar Tollways Private Limited, BHS Housing Private Limited and Ram Infrastructure Ltd.
- d. Repaying the debt to the Financial Creditor on the same day does not pass the test of human probabilities especially when as per the repayment schedule at loan agreement, the loan was repayable in 35 monthly instalments. Therefore, it is not plausible to repay the loan amount on the same day. In the Judgement of **Commissioner of Income-Tax, West Vs. Durga Prasad More** dated 26.08.1971, the Hon’ble Supreme Court has held that *“the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities.”*
- 17.2. The CD submits that associate company of the Respondent M/s Supreme Infrastructure India Ltd. is entering into the scheme of arrangement for restructuring of financial debt under the provisions of Section 230-232 of the Companies Act, 2013 and is pending before another Court. It is further submitted that the scheme undertakes for the debt of its subsidiary companies also and therefore, the alleged claim in this petition is also being restructured pursuant to the

scheme. This submission also deserves to be rejected on following grounds: -

- a. Section 7 petition cannot be scuttled on the ground that the debt under section 7 petition forms part of some scheme of arrangement/ restructuring with creditors under section 230-232 of Companies Act, 2013 propounded by its associate company.
- b. We refer to the minutes of Joint Lender Meetings dated 08.08.2022 of Supreme Infrastructure India Ltd., annexed to the additional affidavit filed by the CD wherein it is stated as follows:-

*“exposures of other companies are not considered herein as proposal is submitted only for resolution of the Supreme Infrastructure India Limited and not of the group companies.”*

- 17.3. Further, in relation to the contention of CD that the documents entered by and between Corporate Debtor and the Financial Creditor is insufficiently stamped, we rely on the judgement **Ashique Poonamparambath vs. Federal Bank - 2021 SCC OnLine NCLAT 1769** wherein, the Hon'ble NCLAT has held that –

*“28. The objections raised by the Appellant/Corporate Debtor are unsustainable. First, the Appellant emphasized the alleged insufficiently stamped Term Loan Agreement. However, in addition to the Term Loan Agreement, the Financial Creditor relies on Demand Promissory Note, Hypothecation letter regarding depositing of title deed, a certified copy of the bank statement, and so many other documents filed along with the Application. Therefore, even if it is considered that the Term Loan Agreement is insufficiently stamped and it cannot be accepted in evidence, then also alleged debt and default are proved beyond doubt. Furthermore, the Application filed under Section 7 is complete.*

*29. Based on the above discussion, we find no merit in the Appeal, hence liable to be dismissed”.*

- 17.4. In the present case also, the debt and default can be proved from various other documents placed on record, i.e. bank statement showing disbursal, balance sheet of the CD as on 3.03.2020 showing FC as creditor, CIBIL Report, the Record of default issued by NeSL. Even if we consider that the agreement is not properly stamped there are enough evidence to prove debt and default. Therefore, the present contention cannot be sustained.
18. The entire loan amount was required to be paid in accordance with the repayment schedule. Considering the contents of the additional affidavit in reply dated 13.12.2022, CD has not denied the execution Loan Offer document dated 15.09.2018, loan agreement dated 29.09.2018, repayment schedule to be paid in monthly in 35 monthly instalments and that the last instalment paid by the CD was adjusted for instalment of 15.10.2019 and that the default occurred on **15.11.2019**. Thus, the FC has been successful in demonstrating that there is debt and default.
19. In the judgement of the Hon’ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was held that-

*“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)**

20. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.
21. We are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation as date of default mentioned in Part IV is 15.11.2019 and petition is filed on 27.01.2022. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Anup Kumar Singh** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
22. Accordingly, this Company Petition is **admitted** with the following directions:
- a. **The above Company Petition (IB) 225(MB)/2022 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Supreme Star Villa Private Limited.**
  - b. This Bench appoints **Mr. Anup Kumar Singh**, having Registration No: **IBBI/IPA-001/IP-P-00153/2017-18/10322**, email: [anup\\_singh@stellarinsolvency.com](mailto:anup_singh@stellarinsolvency.com); Address: **162/D/702 Lake Gardens, Kolkata, West Bengal- 700045** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits 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.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That 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.
- g. That 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
  - i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. 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.
23. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
24. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**

Arpan, LRA