

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11.10.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

CP (IB) No. 29/7/HDB/2022
U/s 7 of IBC, 2016

IN THE MATTER OF:

SREI Equipment Finance Ltd

... Financial Creditor

Vs

M/s. Vijaya Mining Pvt Ltd

... Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced and recorded vide separate sheets. In the result, this Company Petition is dismissed with a cost of Rs.10.00 lakhs, payable by the Financial Creditor to the Bharatkosh.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1, HYDERABAD**

CP (IB) No.29/7/HDB/2022
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/s Vijaya Mining Private Limited

Between:

M/S SREI Equipment FINANCE Limited,
'Vishwakarma', 86C, Topsia Road,
(South) Kolkata – 700 046,
West Bengal.

...Applicant/
Financial Creditor

A N D

M/s Vijaya Mining Private Limited,
82, 686/K/27 Road No 12,
Kimtee Enclave, Banjara Hills,
Hyderabad, Telangana – 500 034

...Respondent/
Corporate Debtor

Date of Order: 11/10/2022

Coram:

Hon'ble Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Hon'ble Veera Brahma Rao Arekapudi, Member, Technical

Parties/Counsels present:

For the Petitioner : Srikanth Hariharan, Advocate/Counsel.

For the Respondent : D. Narendra Naik, Advocate/Counsel.

[Per : Bench]

ORDER

1. Under consideration is an Application filed by SREI Equipment FINANCE Limited, through its authorized representative (hereinafter referred to as “Financial Creditor”), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP), against M/S Vijaya Mining Private Limited, (hereinafter referred to as “Corporate Debtor”), seeking the following reliefs:-
 - 1.) To admit the application filed for initiation of Corporate Insolvency Resolution Process;
 - 2.) Other such orders as the Tribunal deems fit.
2. Brief facts of the case, as submitted by the Financial Creditor, are as follows:
 - a) That the petitioner is SREI Equipment FINANCE Limited, a company incorporated on 13.06.2006, under the Companies Act, 1956, having its registered office at Kolkata, West Bengal. The Financial Creditor extended credit facilities through a Loan Agreement dated 05-03-2020 to the tune of Rs.10,00,00,000/- (Rupees Ten Crores Only) in favour of the Corporate Debtor. The Corporate Debtor executed deed of hypothecation securing the credit facilities by way of hypothecation on the movable assets and extension of security of immovable properties. The credit facilities were also secured by virtue of personal guarantee.

- b) That, the corporate debtor failed to make the repayments of installments despite receipts of the disbursements of the loan amounts from the Financial Creditor. As the corporate debtor failed to make the repayments, the financial creditor was constrained to send a demand notice dated 09-12-2021 demanding an amount of Rs.13,76,53,539/- as outstanding dues as on 6-12-2021 from the Financial Creditor. Despite receipt of demand notice, the corporate debtor failed to make the repayments and also failed to send a reply to the said notice. Hence the present application.
- c) That it is submitted that the Corporate Debtor neither alleged to have cancelled the loan nor does they assert that they have refused to accept the loan. It is the case of the Corporate Debtor has repaid the loan by transferring a sum of Rs. 10,00,00,000/- on 18-3-2020. The burden is therefore on the Corporate Debtor to show that the Corporate Debtor has repaid the entire loan amount a put u Agreement. The repayment clause at Clause 1.16 of the Agreement clearly reveals that repayment shall mean repayment of loan amount inclusive of principal and interest and other charges. As per the repayment schedule at Page 125 of the Application it is clear that the total outstanding payable in respect of the loan account exclusive of penal interest and other charges was a sum of Rs. 13,76,53,539/- which has not been paid by the Corporate Debtor. The burden is on the debtor to show that the loan has been repaid with material on record as per the terms of the Agreement. The Supreme Court also in the case of *Anita Rani v Ashok Kumar 2022(1)AL T66* has held that the party pleading

that the repayment of the loan amount amounting to full and final settlement of dues has a huge burden to prove that the repayment amounted to closure of the loan account. No document has been placed before the Tribunal by the Corporate Debtor in the present case to prove that the amounts due under the Loan Agreement have been completely satisfied. It is further submitted that the corporate debtor had also subsequently issued a letter dated 10-2-2020 clearly acknowledging that the amount was used by them for the purposes of their business. The letter is also filed herewith.

- d) That it is submitted that the corporate debtor is part of the group companies floated by Mr. C.Vijaya Shekar Reddy Director of the corporate debtor herein. The group companies are M/s. Vijay Engineering Equipment India Pvt. Ltd, and Vijay Mining and Infra Corp Pvt Ltd. The total exposure of credit facility obtained by all the three group companies stands at about Rs.300 crores (approximately). The financial creditor has also initiated applications for Corporate Insolvency Resolution process under Section 7 of IBC vide CP No. 6 of 2022 and CP No. 7 of 2022 pending on the file of National Company Law Tribunal, Amravati bench. It is in this backdrop the corporate debtor has to explain as to whether the loan amounts were obtained to service the credit facilities obtained by the group companies referred to supra.
- e) That it is further submitted that the Financial Creditor had also sent a demand notice dated 06-12-2021 to the Corporate Debtor for repayment of the dues. However, the same has not been replied to till date and It is further submitted that the Adjudicating Authority under Section 7(4) of the Insolvency and Bankruptcy Code, 2016

is required to ascertain from the records of the Financial Creditor. The record submitted before this adjudicating Tribunal clearly reveals that disbursement of the loan amount and also the default committed.

- f) That the Adjudicating Authority is required only to note whether there is a debt and whether there is a default. The factum of debt is admitted by the Corporate Debtor in view of the disbursement of the loan amount. It is clear from the terms of the agreement, that repayment obligation entails payment of the principal amount along with interest and costs as per the terms of this Agreement. The case of the Corporate Debtor is that the payment of Rs. 10,00,00,000/- on 18-3-2022 amounts to repayment under the loan agreement, which is completely contrary to the repayment clause 1.16 of the Loan Agreement which posits that the repayment under the Agreement means repayment of principal amount along with interest. If the said repayment amounts to pre-payment, then it is in violation of the terms of the Agreement i.e., Clause 2.9 which states that there cannot be any pre-payment without the consent of the Lender. The Financial Creditor having not accorded any permission to the Corporate Debtor, the burden is heavily on the Corporate Debtor to prove that payment of Rs. 10,00,00,000/- is duly towards the outstanding payables under the Loan Agreement. No material has been placed by the Financial creditors to show that the payments of Rs. 10.00.00.000 amounts to repayment in due compliances of the terms of the Agreement. In the absence of any material being placed on record to prove contrary to the terms of Agreement, the Tribunal ought to consider the payment of Rs.

10,00,00,000/- as gimmick being played by the Corporate Debtor to avoid its obligations under the Loan Agreement. As the payment is also in violation of the terms of the Agreement extracted supra, in the absence of any material placed by the corporate debtor to prove the repayment of the loan under the loan agreement, the conduct of the Corporate Debtor amounts to default under Section 3(12) of the IBC, 2016.

- g) That the adjudicating tribunal is required to see whether the financial debt i.e., principal amount and interest are due and payable by the Corporate Debtor and whether it has been paid. As the Corporate Debtor has a debt due and payable and the same not having been paid in accordance with the terms and conditions of the Loan Agreement, the same amounts to default under Section 3(12.) of IBC, 2016. As the twin conditions of debt and default are proved, the Tribunal ought to admit the present application. It is further submitted that the Corporate Debtor did not reply to the demand notice dated 06-12-2021 and the defense of repayment is being taken for the first time before this Tribunal solely to avoid the liability under the loan agreement.
- h) That it is further submitted that the Financial Creditor has filed the duly signed Form-2 being the Written Consent of the Insolvency Resolution Professional Mr. Vamsi Khammambettu. As the application is complete under Section 7 of the IBC, 2016, the application is required to be admitted and the process of the corporate insolvency resolution process be initiated against the corporate debtor.

- i) That it is therefore prayed that this adjudicating authority be pleased to admit the present application and initiate the process of corporate insolvency resolution process against the Corporate Debtor.
3. The Respondent/Corporate Debtor filed counter, inter-alia contending as follows:
- a. That the Company Petition is not maintainable under Section 7 and liable to be dismissed in *limine*.
 - b. That the Applicant has failed to make out any case for maintaining a Petition under section 7 of the IBC against the Corporate Debtor and the Petition is liable to be dismissed in *limine*. The present petition is an abuse of provisions of the IBC as the Applicants are trying to coerce the Corporate Debtor for recovering amounts arising out of unsustainable claims made by the Applicants.
 - c. That the Corporate Debtor submits that it is a highly reputed company and engaged in the business of engineering and mining projects. The Corporate Debtor specializes in crushing and screening activities in the mines and during the course of business the Corporate Debtor, the Corporate Debtor intended to avail a loan of Rs. 10,00,00,000/- (Rupees Ten Crores Only) from the Petitioner Finance Institution on 18' March 2020.
 - d. That because of some business understanding, there was no immediate need for the said Rs. 10 Crores and therefore the principal amount of Rs. 10,00,00,000/- (Rupees Ten Crores Only) was repaid on the very same date to the Petitioner Finance Institution and the Petitioner Financial Creditor has

SUPPRESSED this VERY IMPORTANT FACT from this adjudicating authority.

- e. That the Corporate Debtor has filed the Bank Statement at Page 7 of its Counter as Annexure 1. The Ledger Statement being maintained by the Corporate Debtor is filed at Page 8 of its Counter as Annexure 2.
- f. That this is sufficient to prove the fact that the Petitioner has grossly approached this adjudicating authority with extremely unclean hands and this is nothing but malicious prosecution. The Petitioner has blatantly lied in Para 4 of its Form 1 that, *"The Corporate Debtor despite receipt of the amounts failed to make the repayments of installments to the Financial Creditor."* This is a blatant lie without verifying its books before filing the Company Petition and attempting to push the Corporate Debtor which is a fully solvent company into insolvency.
- g. That it is also a fact that the Petitioner has not filed any Reply/Rejoinder to the Counter denying any averment and denial by the Corporate Debtor. Non denial itself is a deemed admission by the Petitioner that the amounts are repaid and there is no outstanding debt.
- h. That it is submitted that on the date of hearing on 24.06.2022 when the matter was taken up for hearing, a pointed question was asked by this adjudicating authority to the Petitioner if he has received the total Loan Amount and it was admitted by the Petitioner that this amount was received. The adjudicating authority also specifically asked the Petitioner if there is any loan outstanding against this specific Corporate Debtor and it is

submitted that against this specific Corporate Debtor which is a separate legal entity maintaining separate books and bank accounts, there is no debt. Therefore the actions of Petitioner in trying to argue that against the entire group company there are some debts and hence even if the amount is repaid the Corporate Debtor is liable to pay debt of other group companies, is absolutely misleading and incorrect and a gross abuse of process of law.

- i. That however, the Petitioner for the first time in arguments took a complete U Turn and said that the Corporate Debtor is not entitled to prepay the Loan and that in case of prepayment, the Corporate Debtor is liable to pay prepayment charges and therefore his claim is for prepayment charges. In the written submissions filed by the Petitioner, the Petitioner has stated that the Corporate Debtor cannot prepay without consent of the Petitioner. The Petitioner has stayed quiet since 18.03.2020 and for the first time only to defend its malafide petition, has made this submission in its written arguments in July 2022. This is also sufficient to show the malafide intentions of the Petitioner.
- j. That this uncertain stand taken by the Petitioner without verifying its books and bank details itself is sufficient for this adjudicating authority to dismiss the Company Petition with maximum exemplary costs under Section 65 of the IBC, 2016.
- k. That it is humbly submitted that the basic ingredients of Section 7 are not met in the present case. There is no debt and consequently there is no default under Section 7(5) to initiate the insolvency resolution process under Section 7 of the

Insolvency and bankruptcy Code, 2016 r/w Rule A of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

1. That the same was reiterated by the Supreme Court in the case of *Innovative Industries Ltd. v. ICICI Bank (2018) 1 SCC 407 under Para 28 –*

"The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within its days of the receipt of the application. It is at this stage or Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

- m. That as there is no default and the repayment was completed on the same day as the receipt of the same, this present petition is liable to be rejected by this adjudicating authority as the same

is not maintainable under Section 7(5)(b) of the Insolvency and Bankruptcy Code, 2016.

n. That it is also submitted that the very fact that there is no security created and no charge registered before the ROC is sufficient to show that there is no loan or debt whatsoever and as such the Petitioner never insisted on creation or perfection of security. The ROC details are enclosed herewith to show that there is no charge created in the year 2020 or thereafter in favor of the petitioner. It is humbly prayed that this adjudicating authority be pleased to dismiss the Petition with exemplary costs for approaching this adjudicating authority in such a casual and carefree manner.

o. That therefore in view of the aforesaid, it is humbly submitted that there is no default or dispute among the parties and therefore there lies no petition under the relevant statute. In view of the above stated true facts, circumstances filed by the Respondent, the adjudicating authority may be pleased to dismiss the above Company Petition with exemplary costs in the interest of justice.

4. In the above backdrop, the point that emerges for consideration by this Adjudicating Authority is;

- Whether a financial debt claimed as due and payable by the Corporate Debtor exists? If so, whether the Corporate Debtor had defaulted in repayment of the same?

5. We have heard Shri Srikanth Hariharan, Ld. Counsel for the Financial Creditor and Shri D. Narendra Naik, Ld. Counsel for the Corporate Debtor, perused the record and the written submissions.

6.1 At the outset, we wish to trace the legal position set by Hon'ble Supreme Court of India, as regards the Petitions filed under Section 7 of IBC, before we proceed to discuss the above point.

(i) Swiss Ribbons Private Ltd Vs UOI & Ors, 2019 (4) SCC page 17 para 64 held as follows

The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433(e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of —inability to pay debts to —determination of default. The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation.

(ii) Vidharba Industries Power Ltd Vs Axis Bank held at paras 87 & 88 as under:-

87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.

88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decreeal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decreeal amount is incapable of realization. The example is only illustrative

6.2. We also usefully refer to Section 7 of IBC which is as under:-

Section-7 Initiation of corporate insolvency resolution process by financial creditor

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.-- For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that--

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate--

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.]

7. We shall now proceed to decide the above point, on the touch-stone of the law laid down by the Hon'ble Supreme Court of India, in the rulings supra, Section 7 of IBC and the factual matrix of the subject dispute.
8. Availing loan of a sum of Rs. 10 crores by the Corporate Debtor which according to the terms of the loan agreement repayable by way of scheduled instalments, by the Corporate Debtor is not in dispute. However, as the Corporate Debtor had pleaded discharge of the said loan on the very same day, when it was lent, it is necessary to find whether the payment of the entire principal amount by Corporate Debtor amounts to discharge of the entire debt or not?
9. According to the Ld. Counsel for the Corporate Debtor, the loan of a sum of Rs. 10 crores has been sanctioned and disbursed under the Loan Agreement dated 15.03.2020 and as on 06.12.2021 in all a sum of Rs. 13,76,53,539/- comprising overdue amount of Rs. 5,13,74,000/- principal outstanding amount of Rs. 7,02,38,203/- overdue charges of Rs. 1,60,41,336/- has been defaulted by the Corporate Debtor. It is further contended that despite several reminders and Demand Notice dated 10.11.2021, as the Corporate Debtor failed to discharge the said outstanding debt, the present application has been filed.

10. It is pertinent to note that the Financial Creditor in the application filed under Section 7 of IB Code has not even whispered regarding pre-payment of the principal sum of Rs. 10 crores by the Corporate Debtor on the very same day when the Corporate Debtor received the said sum from the Financial Creditor. In fact, the said fact was brought to our notice by the Corporate Debtor through its counter filed in this application. Since, the above material fact which was well within the information and knowledge of the Financial Creditor has been suppressed by the Financial Creditor, as such it is clear that the Financial Creditor has not approached this Adjudicating Authority with clean hands, while seeking the reliefs as prayed.
11. Now, we wish to deal with the issue whether in the light of the undisputable pre-payment of the principal sum of Rs. 10 crores by the Corporate Debtor on the same day when the loan was availed, whether the debt of sum of Rs. 13,76,53,539/- as claimed exists? Needless to say that if such debt exists default in repayment of the said debt requires no probe in this case. Since it is not the case of the Corporate Debtor that the sum over Rs. 10 Crores has been paid.
12. According to the Ld. Counsel for the Financial Creditor, the pre-payment of principal loan of Rs. 10 crores on 18.03.2020 will not exonerate the Corporate Debtor from the debt that was due and payable, as the Corporate Debtor in addition to payment of principal amount is bound to pay the interest and other charges even in cases of pre-payment of loan, as provided in Clause 2.9 Part (A) of the loan agreement, which clause the Corporate Debtor failed to honor.

13. Ld. Counsel for the Financial Creditor would further submit that in terms of clause 2.9 pre-payment of loan requires prior approval of the lenders, besides prior written notice from the borrower of its intention to repay the full or part amounts and since there was no such compliance by the Corporate Debtor, the Corporate Debtor is liable to pay the amount as claimed in the present application.

14. *Per-contra* the Ld. Counsel for the Corporate Debtor, at the outset contended that the Financial Creditor suppressed the material fact of receipt of Rs. 10 crores from the Corporate Debtor on the very same day when the loan amount of Rs.10 crores was credited to the account of the Corporate Debtor despite being well within its knowledge, and the same itself is sufficient to dismiss the present application. According to the Ld. Counsel, when the Principal sum has been repaid on the same day, of its receipt, payment of interest and other charges as claimed, does not arise at all. Ld. Counsel further contends that the plea of the Financial Creditor that the pre-payment of loan is in violation of Clause 2.9 (A) of the Loan Agreement is unsustainable and unacceptable. Ld. Counsel contends that the fact that the Financial Creditor had retained the entire amount of Rs. 10 crores ever since 18.03.2020 without demur or communicating its decision if any in terms of Clause 2.9 of the Loan Agreement the Financial Creditor, is estopped under law from now contending that the said payment is violative of Clause 2.9 of the Loan Agreement.

15. In the light of submissions as put-forth, we have carefully examined the clauses in loan agreement relied upon by both the sides which are as follows:-

1.2: “Default Interest” means interest levied by SREI from the due date till payment on happening of any Event of Default as set out in Article 7 of this Agreement.

1.3: “Due Date” means the date(s) on which any amounts in respect of the Borrower’s Dues including the principal amounts of the loan, interest and/or any other monies, fall due to specified in the Transaction Documents.

1.5 “Equated Monthly Instalment (EMI)” means the amount of monthly payments required to be paid to the Lender to amortise the Loan with interest over the tenure of the Loan.

1.10 “Loan” means the amount disbursed by the Lender to the Borrower for the purpose and includes all and any other amount due and payable by the Borrower to the Lender as per the terms and conditions of this Agreement.

1.14: “Prepayment” means premature repayment of the Loan as per the terms and conditions laid down by the Lender that behalf and as in force at the time of prepayment.

1.16 “Repayment”: means the repayment of the principal amount of the loan, interest thereon, commitment and other charges, premium, fees or other dues payable under this Agreement to the Lender.

2.9 (a) The Lender may, in its sole discretion and on such terms as to pre-payment fees, etc, as it may prescribe from time to time, permit pre-payment or acceleration of EMIs at the request of the Borrower. If permitted by the Lender, the Borrower shall be entitled to give prior written notice of his intention to pre-pay the full/part amount of loan in accordance with the terms as set out in point g of the schedule and

pay to the lender such pre-payment charges mentioned in the schedule, subject to change by the Lender from time to time.

2.9(b) If the Borrower pre-pays only a part of the amount payable by the Borrower to the Lender, the Lender shall be entitled to adjust the amount pre-paid against the amount payable by the Borrower in such manner as the Lender thinks fit. Save and except as mentioned above, the Borrower shall not be entitled to make any pre-payment. Notwithstanding all above, if the Borrower pays any amount to the Lender before the Due Date, the Lender shall be entitled to appropriate the same in such manner as it deems fit and the Lender will give the Borrower credit for the same only on due date and not before.

Schedule-H Repayment Schedule: Total amount to be repaid by the Borrower inclusive of interest @ 14% (IRR) per annum in 44 monthly instalments within a period of 48 months of which the first 4 months will be the moratorium period is detailed herein.

16. A bare perusal of clause 2.9 (a) of the Loan Agreement discloses that the Lender may, in its sole discretion and on such terms as to pre-payment fees, etc, as it may prescribe from time to time, permit pre-payment or acceleration of EMIs at the request of the Borrower. If permitted by the Lender, the Borrower shall be entitled to give prior written notice of his intention to pre-pay the full/part amount of loan in accordance with the terms as set out in point g of the schedule and pay to the lender such pre-payment charges mentioned in the schedule, subject to change by the Lender from time to time.
17. Further a perusal of clause 2.9 (b) of the Loan Agreement discloses that if the Borrower pre-pays only a part of the amount payable by the Borrower to the Lender, the Lender shall be entitled to adjust the amount pre-paid against the amount payable by the Borrower in such manner as the Lender thinks fit. Save and except as mentioned above,

the Borrower shall not be entitled to make any pre-payment. Notwithstanding all above, if the Borrower pays any amount to the Lender before the Due Date, the Lender shall be entitled to appropriate the same in such manner as it deems fit and the Lender will give the Borrower credit for the same only on due date and not before.

18. Thus, from sub-clause (b) of clause 2.9, supra, it is clear that notwithstanding what has been stated in sub-clause (a) of Clause 2.9 of the Loan Agreement, the borrower is entitled to pay any amount to the lender before the due date and the lender shall be entitled to appropriate the sum in such manner as it deems fit, however, the Lender shall give credit for the same only on the due date and not before.
19. A perusal of the pre-payment schedule of the Loan Agreement, supra, states that the amount to be repaid by the Corporate Debtor is inclusive of the interest @ 14% p.a payable in 44 monthly instalments within the period of 48 months of which first 4 months will be the moratorium period as indicated in the Schedule. In the Schedule it has been clearly pointed out that the 1st EMI amount of Rs. 30,22,000/- as payable on 15.07.2020.
20. As already stated, since there is no dispute as regards payment of Rs. 10 crores by the Corporate Debtor on 18.03.2020 as per sub-Clause (b) of Clause 2.9 of the Loan Agreement supra, the lender appropriate the said sum in such manner as it deems fit but to give credit of the same only on the due date. As already stated, the first repayment by way of EMI of RS. 30, 22, 000 was due and payable on 15.07.2020. The Financial Creditor, therefore ought to have appropriated the payment of Rs. 10 Crores on or before 15.07.2022. Strangely, the

Financial Creditor has not even whispered about the receipt of Rs. 10 crores in the application, leave alone communicating the decision if any taken on the said pre-payment. Therefore is quite clear that the Financial Creditor has not followed Clause 2.9. So much so, the present contention that the pre-payment of loan by the Corporate Debtor, is not in conformity with Clause 2.9, as such the Corporate Debtor can claim any valid discharge, is unsustainable and unacceptable. In fact the same is nothing but an afterthought. If the payment of Rs. 10 crores made on 18.03.2020 was not in accordance with the terms of the loan agreement, more particularly Clause 2.9 of the Loan Agreement, it was incumbent on the part of the Financial Creditor to inform the Corporate Debtor that the said payment was not in conformity with sub clause (a) of Clause 2.9 of the Loan Agreement, or should give credit for the same on or by 15.07.2020, which was the first due date of payment. The Financial Creditor did neither. Only when the Corporate Debtor brought to the notice of the Tribunal about the said deposit, the Financial Creditor has taken shelter under Clause 2.9 of the Loan Agreement in an attempt to buttress its plea of existence of debt and default as alleged in the Petition. Thus, it is nothing but an afterthought.

21. We therefore hold that the Financial Creditor has not produced as acceptable record or material establishing debt of a sum of Rs. 13,76,53, 539.00 due and payable by the Corporate Debtor besides its default. Hence, we are satisfied that default has not occurred in the present case.
22. Needless to say that, an enquiry in Petition filed under Section 7 of IBC shall be confined to the records placed by the Financial Creditor

in terms of sub-section 3 of Section 7 of IBC, while arriving at satisfaction on whether the debt and default as claimed exists or not. As already stated, the Financial Creditor failed in placing record establishing the alleged debt and its default. So much so, embarking into a detailed enquiry on the belated plea of breach or otherwise of Clause 2.9 of the Loan Agreement is uncalled for in the present petition.

The point is answered accordingly.

23. Before we part with, we would like to point out that the conduct of the Financial Creditor in filing the present petition by suppressing the receipt of sum of Rs. 10 crores which is well within its knowledge is unacceptable. The object and the purpose of the Financial Creditor in filing the present petition appears to be to coerce the Corporate Debtor to pay the sum claimed as debt and not resolution, which is against the object of the IB Code. Therefore, it is a fit case of financial suppression of material facts. We direct payment of cost of Rs. 10 lakhs to PAO, Chennai through the Non-Tax Receipt Portal (Bharatkosh) which shall be paid within 15 days of receipt of the copy of the order and file the receipt in the Registry NCLT Hyderabad, one week thereafter.

24. In the result, this petition is dismissed with costs of Rs. 10 lakhs.

Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Sd/-

Dr.N.V. Ramakrishna Badarinath
Member Judicial