



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

CP(IB)/133(CHE)2022

*(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 **RAJESWARI INFRASTRUCTURE LTD***

INTEC CAPITAL LIMITED

708, Manjusha Building 57,
Nehru Place, New Delhi – 110 019.

... Financial Creditor

-Vs-

RAJESWARI INFRASTRUCTURE LIMITED,

Plot No. 248, Door No.18/23,
2nd Cross Street, East CIT Nagar,
(Near CIT Nagar Market),
Nandanam, Chennai 600 035.

...Corporate Debtor

*Order Pronounced on **10th May 2023***

CORAM:

**Justice RAMALINGAM SUDHAKAR, PRESIDENT
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

For Financial Creditor : Mr. B.Prashanth Nadaraj, Advocate

Mr. Dhruv Parwal, Advocate

For Corporate Debtor : Ms. Ragha Sudha, Advocate

ORDER

(Hearing conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by one **INTEC CAPITAL LIMITED** (hereinafter referred to as '**Financial Creditor**') 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 **RAJESWARI INFRASTRUCTURE 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 Non-Banking Financial Company (NBFC). The registered office address of the Financial Creditor as per the Application is stated to be situated at No.708, Manjusha building 57, Nehru Place New Delhi – 110 019. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. Arvind Kumar Jha, Associate Vice President of the Financial Creditor by virtue of a verifying Affidavit dated 03.03.2022 which is placed at Page Nos.24- 26 of the Application typeset.

3. Part II of the Application reveals that CIN of the Corporate Debtor is L72300TN1993PLC024868. The Corporate Debtor was incorporated on 19.04.1993 and the registered office of the Corporate Debtor is situated at Plot No. 248, Door No.18/23, 2nd Cross Street, East CIT Nagar, (Near CIT Nagar Market), Nandanam, Chennai 600 035.

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4. 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. Sanjay Mehra**, having Reg.No. IBBI/IPA-001/IP-P-01818/2019-2020/12784; Email ID: sanjay.mehra64@gmail.com.

5. From Part-IV of the Application, it is seen that the Corporate Debtor approached the Financial Creditor to avail the loan/finance facility to purchase machinery as provided in Schedule II of the Loan Agreement. The Corporate Debtor and the Financial Creditor have entered into two Loan Agreements. The details of which are as under:-

Loan Agreement No.	Amount (INR)
LNCHE01413-140002713	2,53,32,804
LNCHE00713-140002860	1,59,59,956
Total	4,12,92,760

6. It is stated that post sanctioning of the loan, the Corporate Debtor and the Financial Creditor entered into a Loan Agreement dated 28.08.2013 and 14.10.2013. Subsequently another Loan Agreement was entered into on 24.10.2013.

7. On execution of the Loan Agreements, the loan amounts were disbursed to Corporate Debtor by the Financial Creditor. The details of the disbursements are provided as below:-



LOAN AGREEMENT NO	DATE	AMOUNT (INR)
LNCH01413-140002713	06.09.2013 06.09.2013 13.09.2013 23.10.2013	1,89,99,603
LNCH00713-140002860	24.10.2013 18.03.2014	1,19,68,843
Total amount		3,09,68,446

8. The Financial Creditor has provided the bank account statement showing the disbursement made to the Corporate Debtor.

9. The Financial Creditor claims the total amount in default to be **Rs.7,74,08,876/-** (Rupees Seven Crores Seventy Four Lakhs Eight Thousand Eight Hundred and Seventy Six only). Further, it is stated that the default in repayment of loan occurred as the Corporate Debtor was not able to maintain the financial discipline. The Financial Creditor sent Loan Recall Notice on 06.02.2015 recalling the entire loan amounts sanctioned to the Corporate Debtor. The Loan Recall cum Arbitration Notices are attached at Annexure-II (ii) of the Application.

10. Subsequent to the commencement of the arbitration, Arbitral Award happened to be passed in favour of the Financial Creditor on 05.11.2015. However, the Corporate Debtor failed to make the payment of the award amount.



11. It is further stated that since the Corporate Debtor failed to honour the Arbitral Award and made multiple defaults in the repayment schedule of the Loan Agreements, the Financial Creditor, exercising its rights under Clause 5.2 of the Loan Agreements presented the Post Dated Cheques (PDCs) which were issued by the Corporate Debtor in favour of the Financial Creditor for the repayment of its loan.

12. The Financial Creditor claims that the default was of a continuous nature as per Section 18 & 19 of the Limitation Act, 1963, and continued as and when the PDCs (given as valid acknowledgment of debt on part of the Respondent), which were due and payable by the Respondent, were presented on their due dates and the same were dishonoured.

13. According to the Corporate Debtor, the last of such PDCS got dishonoured in 2018. The details of which are given below:-

LOAN AGREEMENT No	DATE	CHEQUE No/ECS	AMOUNT
LNCH01413-140002713	03.09.2018	39198	6,18,862
LNCH00713-140002860	17.10.2018	43984	3,96,173

14. Thus, according to the Financial Creditor, 17.10.2018 is a last date on which the debt was acknowledged as per Section 18 & 19 of the Limitation Act, 1963.



15. The Financial Creditor further relies the order of Hon'ble Supreme Court of India in suo-motu Writ Petition (Civil) No.3 of 2020 and subsequent orders where the Hon'ble Supreme Court has extended the limitation.

16. The Financial Creditor claims that the period from 15.03.2020 to 28.02.2022 to be excluded for the purposes of computing the limitation. The details of which are as under: - (Page No.17)

<u>Date of last post-dated cheque provided by the Corporate Debtor to the Financial Creditor</u>	
Loan Agreement No: LNCHE01413-140002713	03.09.2018
Loan Agreement No: LNCHE00713-140002860	17.10.2018

<u>Limitation originally would have expired (three years from the date of the cheque)</u>	
Loan Agreement No: LNCHE01413-140002713	03.09.2021
Loan Agreement No: LNCHE00713-140002860	17.10.2021
	As per Article 137 of the Limitation Act, Section 7 had to be filed

17. The following documents have been relied upon by the Financial Creditor.

*i. Copy of the Loan Application Forms dated 28.08.2013 for Loan Agreement/Loan Account No. LNCHE01413-140002713 and dated 14.10.2013 for Loan Agreement/Loan Account No. LNCHE00713-140002860 submitted by the Corporate Debtor. **(Annexure I(4) Colly).***

ii. Copy of the Loan Sanction Letter dated 29.08.2013 for Loan Agreement/Loan Account No. LNCHE01413-140002713 and dated 14.10.2013 for Loan Agreement Loan Account No.



LNCH00713-140002860 through which the loan was sanctioned. **(Annexure I(5) Colly).**

iii. Copy of the Board Resolutions of the Corporate Debtor passing the resolution for availing loan facility from the Financial Creditor. **(Annexure I(6) Colly).**

iv. Copies of Form - 8 filed with RoC to create charge along with certificate of charge for both the loan accounts. **(Annexure I(8) Colly).**

v. Copy of Bank Account Statement maintained with the bank by Intec Capital Ltd., showing loan disbursement by the Financial Creditor to the Corporate Debtor. **(Annexure I(9) Colly).**

vi. Copy of the repayment schedules under the Loan Agreement/Loan Account Nos. LNCH01413-140002713 and for Loan Agreement Loan Account No. LNCH00713-140002860. **(Annexure I(10) Colly).**

vii. Copy of the Loan recall cum Arbitration Notices both dated 06.02.2015 sent by the Financial Creditor to Corporate Debtor under Loan Agreement/Loan Account Nos. LNCH01413-140002713 and for Loan Agreement Loan Account No. LNCH00713-140002860. **(Annexure I(11) Colly).**

viii. Copies of the Arbitral Awards in respect of Loan Account No. LNCH01413-140002713 and for Loan Account No. LNCH00713-140002860. **(Annexure I(12) Colly).**

ix. Copies of the Statements of Dues (SOD) till 30.06.2021 along with computation for both Loan Accounts. **(Annexure I(14) Colly).**

x. Certificate Under Section 65B of the Evidence Act.

COUNTER FILED BY THE RESPONDENT:

18. It is seen that **Reply** has been filed by the Corporate Debtor vide SR.No.5910 dated 03.11.2022.

18.1. The main ground taken by the Corporate Debtor is regarding limitation. The Corporate Debtor states that the default occurred in the year 2015 and the claim of the Financial Creditor herein is hopelessly barred by limitation.



18.2. It is also stated that the Financial Creditor herein has served upon the Corporate Debtor similar application in the year 2020. The Corporate Debtor has admitted execution of two Loan Agreements and disbursements.

18.3. The Corporate Debtor further states that they were paying EMIs regularly till March 2014. Thereafter due to financial distress they could not repay the loan.

18.4. In para 13 of the reply that the Corporate Debtor has admitted regarding the existence of the Arbitral Award which was passed on 05.11.2015. The Corporate Debtor further states that a Civil Suit bearing No.558 of 2019 was pending before the Hon'ble High Court of Madras wherein the Respondent prayed on part of the Financial Creditor who has not taken proper insurance for various machineries got damaged in November 2015 due to floods.

18.5. As regards Post Dated Cheques, the Corporate Debtor submits as per Para 17 and 18 of the Counter as under:-

"The Applicant has further sought to state that certain 'post-dated-cheques' dated 03.09.2018 & 17.10.2018 were allegedly issued by the Respondent to the Applicant and have further sought to contend that that the purported cheques would amount to acknowledgment of liability under per Section 18 of the Limitation Act for the purpose of calculating limitation for initiation of CIRP under Section 7 of the IBC. The Respondent further states that though the Applicant has fleetingly made a reference to the post-dated



cheques [evidently in a misplaced attempt to overcome the bar of limitation which the Applicant is clearly aware of), the same is without basis, and is untenable and apart from making such bald references to the cheques, no attempt has been made to substantiate the same with any details, or by providing necessary documentary proof in support thereof.

Further, even proceeding on the demurrer such an argument is tenable, the supposed post-dated-cheques' would not extend the limitation as it fails to satisfy the ingredients of Section 18 of the Limitation Act. Sub-section (1) of Section 18, itself starts with the words "*Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...*" Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the Application, in other words, if the period of limitation prescribed has already expired, it would not stand extended in any manner under Section 18 of the Limitation Act. It is only during subsistence of a period of limitation, if there is an acknowledgement within the meaning of the provision, would a fresh period of limitation commence from the said date of acknowledgement. In the present case, the dates as prescribed in the purported cheques is 03.09.2018 & 17.10.2018 which is more than 3 years after the date of default i.e. 06.02.2015. Therefore, proceeding on a demurrer and even assuming that there were post-dated cheques issued, details of which are not even sought to be provided, the proceedings would still be time barred."

18.6. The Corporate Debtor prays for dismissal of the present application.

REJOINDER:

19. The Applicant had filed the **Rejoinder** vide SR.No.664 dated 10.02.2023.

19.1. As regards the limitation stated under Para No.3 of the



Rejoinder are as follows:-

"Respondent has completely ignored the fact that the Respondent has itself acknowledged the debt pertains to the Petitioner's Loan Accounts/Loan agreements in the balance sheet for the accounting year of 2018-2019, 2019-2020 and 2020-2021 and same is acknowledgement in terms of Section 18 and 19 of Limitation Act, 1963 read with Article 137 of the Schedule to the said Act which confirms that the present Petition is under the limitation.

Reliance is placed on **Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr., Civil Appeal No. 323 of 2021 passed by the Hon'ble Supreme Court (Relevant Para 33, 34 & 35)** a three-judge Bench of the Supreme Court has held that for the purposes of Insolvency and Bankruptcy Code, 2016 (IBC), balance sheet entries could constitute an acknowledgment of debt under Section 18 of the Limitation Act, 1963. Reiterated herin:

33. It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar (supra) is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020.

34. The NCLAT, in the impugned judgment dated 22.12.2020, has, without reconsidering the majority decision of the Full Bench in V. Padmakumar (supra), rubber-stamped the same. We, therefore, set aside the aforesaid impugned judgment also.

35. On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority Judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is



remanded to the NCLAT to be decided in accordance with the law laid down in our judgment

Copy of the relevant pages of the Balance Sheets for the years of 2018-2019, 2019-2020 and 2020-2021 are marked and annexed as Annexure-1."

FINDINGS:

20. Heard the Counsels for the Financial Creditor and the Corporate Debtor and perused the documents. It is an admitted fact that the loan was applied, was sanctioned and disbursed by the Financial Creditor herein and that the loan repayment was defaulted, for this rely upon the Arbitral Award and the Recall Notice dated 06.02.2015.

21. It is not in question whether the payments subsequent to the Arbitral Award were made.

22. We have also perused the extracts of the financial statements of the Corporate Debtor for the year 2018-2019; 2019-2020 and 2020-2021 as annexed by the Financial Creditor along with the Rejoinder. In all these financial statements, the Corporate Debtor has acknowledged the liability towards the loan dues. The extract of the financial statements for the year 2021 is as stated in page 20 of the Rejoinder as follows:

NAME OF INSTITUTION	AMOUNT DEFAULT ON	PERIOD OF DEFAULT	REMARKS
Intec Ltd	2,49,91,433	More than 6 months	Loan taken for Printing Machinery. Machinery damaged in Floods and



			Insurance process initiated. Under dispute regarding coverage of insurance. Classified as NPA
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23. Relying upon the judgement in "**Asset Reconstruction Company (India) Limited -vs- Bishal Jaiswal & Anr., Civil Appeal No.323 of 2021 passed by the Hon'ble Supreme Court of India**", we hold that there is a debt there is a default of more than Rs.1 crore and the said acknowledgment of debt in the financial statements extends the limitation as such the debt is within limitation.

24. Under these circumstances, we are forced to order for CIRP of the Corporate Debtor and consequently admit the petition.

25. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor in terms of the code.

26. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;



- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;



27. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

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28. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

29. The Financial Creditor has proposed the name of **Mr. Sanjay Mehra**, having **Reg.No. IBBI/IPA-001/IP-P-01818/2019-2020/12784**, **Email ID: sanjay.mehra64@gmail.com** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for assignment till **26.03.2024**.

30. **Mr. Sanjay Mehra**, is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section



15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

32. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

33. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the

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Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

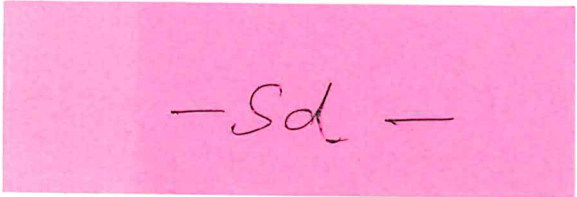
34. Accordingly, the present petition stands **admitted**.



— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

Srinivasan



— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT