



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.08**  
**IA-2076/2022**  
**IN**  
**IB-18 (ND) 2022**

**IN THE MATTER OF:**

SPML Infra Limited

.... *Applicant*

*Versus*

Riserose Business Private Limited

.... Respondent

**SECTION**  
**U/s 7, IBC 2016**

**Order pronounced on 28.04.2023**

**CORAM:**

**BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**Dr. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

For Applicant: Adv. Shatadru Chakarborty, Adv. Surbhi Anand

For Respondent: Adv. P. Nagesh, Adv. Udayaditya Banerjee

**ORDER**

Order pronounced in open court vide separate sheets. I.A 2076/2022 is ***allowed*** and IB-18/ND/2022 stands ***dismissed***.

**SD/-**

**SD/-**

**Dr. BINOD KUMAR SINHA**  
**MEMBER (T)**

**BACHU VENKAT BALARAM DAS**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT III**

IA-2076/2022  
In  
CP (IB) – 18/ND/2022

**In the matter:**

Riserose Business Private Limited

*...Financial Creditor*

Versus

SPML Infra Limited

*...Corporate Debtor*

**And in the Matter of:**

SPML Infra Limited

*.... Applicant*

Versus

Riserose Business Private Limited

*.... Respondent*

*Order delivered on: 28.04.2023*

**CORAM:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Dr. Binod Kumar Sinha**

Hon'ble Member (Technical)

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**Parties / Counsels present**

For Applicant: Adv. Shatadru Chakarborty, Adv. Surbhi Anand  
For Respondent: Adv. P. Nagesh, Adv. Udayaditya Banerjee

**ORDER**

**Per: Dr. Binod Kumar Sinha, Member (T)**

1. The present application has been filed by the Applicant/  
Corporate Debtor namely M/s SPML Infra Limited against  
the Respondent/Financial Creditor namely Riserose  
Business Private Limited U/s 60 (5) of IBC, 2016 for  
dismissal of C.P No. IB – 18 (ND) 2022 filed by the  
Financial Creditor U/s 7 of the IBC, 2016, seeking the  
following prayers:

a) Dismiss the Application bearing IB- 18 (ND)/2022 filed  
by the Respondent as not maintainable.

2. It is submitted that, the Respondent herein has filed the  
said Application U/s 7 of the IBC, 2016, claiming that a  
Financial Debt to the tune of Rs. 1,16,49,752/- is due  
and payable by the Corporate Debtor/Applicant herein in  
respect of which a default has been committed by the  
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Corporate Debtor.

3. It is further submitted by the Applicant that, the Respondent herein is not a 'Financial Creditor' within the meaning of Section – 5 (7) of the Code, and the Application U/s 7 IBC, 2016 bearing IB/18/ND/2022 has been filed without any proper authorisation as stipulated U/s 21 of the Companies Act, 2013. According to the Applicant herein, Section – 21 of the Companies Act, 2013 stipulates that any document requiring authentication by the company has to be signed by the key managerial personnel or an officer or employee of the company duly authorised by the Board in this behalf, however the Board Resolution annexed with the said Application filed u/s 7, IBC at page 14 does not mention the designation of the authorised signatory or in what capacity one Mr. Subrata Chatterjee is engaged with the Financial Creditor.

4. It is further averred by the Applicant that, the application filed U/s 7 of the Code by the respondent herein is not maintainable under the provisions of the Code owing to

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the fact that no necessary Resolutions were passed under the provisions of section – 186 of the Companies Act, 2013. According to the Applicant, section 186 of the Companies Act, 2013 specifically stipulates that no loan can be granted by any company to another body corporate unless a resolution sanctioning the same is passed at a meeting of the Board with the consent of all the directors present at the meeting.

5. Per contra, the Respondent has denied all the allegations made by the Applicant and further submitted that Section 21 of the Companies Act, 2013 clearly stipulates that not only Key Managerial Personnel but any officer or employee may sign the documents on the behalf of the company provided that they must be authorized by the Board of Directors of the Company. It is submitted that Shri Subrata Chatterjee is an employee of the company duly authorized by the Board. A copy of Authorisation by the Board of Directors dated 01.12.2021 has been placed on record.

6. The respondent had also responded to the second

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contention raised by the Applicant and submitted that, the definition of financial debt under Section 5(8) of the IBC does not refer to or incorporates any reference of Section 186 of the Companies Act, 2013, therefore the maintainability of Section – 7 application cannot be questioned on that ground.

7. We have heard the submission made by the parties and perused the pleadings. At this juncture, we would like to refer to Section 186 of the Companies Act 2013, which stipulates the provisions relating to the granting of loan and/or making any investment by a company. The contents of Section – 186 of the Companies Act, 2013 are reproduced below for ready reference: -

**“186. Loan and investment by company.**— (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies: Provided that the provisions of this sub-section shall not affect,—

(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment

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*subsidiaries beyond two layers as per the laws of such country;*

*(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.*

*(2) No company shall directly or indirectly — (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.*

*(3) Where the giving of any loan or guarantee or providing any security or the acquisition under subsection (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.*

*(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the*



*recipient of the loan or guarantee or security.*

*(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.”*

8. According to Section – 186 (2) of the Companies Act of 2013, a Company can grant loan to any person or other body corporate up to sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is higher.

9. That further, from perusal of the contents of Section 186(3) of the Companies Act 2013, it can be observed that when a Company has given a loan exceeding the limits specified under Section 186(2) then, prior approval by means of a Special Resolution passed at a general meeting ‘EGM’ shall be required. Further, section 186(5) of Companies Act 2013 makes it mandatory to pass a



Board Resolution with the consent of all the Directors present at the meeting before making an investment or giving a loan.

10. It is observed that the Respondent (Financial Creditor) has failed to produce or bring on record any such Board Resolution passed in terms of Section 186(5) of Companies Act, 2013, for granting the impugned amount as loan to the Corporate Debtor.

11. It is pertinent here to refer the judgement of Hon'ble NCLAT passed in the case of ***M Sai Eswara Swammy vs. Siti Vision Digital Media Pvt. Ltd. Company Appeal (AT) No. 706 of 2021.*** The relevant para of the said judgement is reproduced below for reference: -

*“7.Ld. Adjudicating Authority has also held that no Board Resolution was filed in regard to advance loan to Corporate Debtor Company as required under Section 186 of the Companies Act, 2013. In this regard, Ld. Sr. Counsel for the Appellant submitted that the Corporate Debtor Company in his balance*



*sheet acknowledged the debt. Therefore, such resolution is not required to maintain the petition under Section 7 of the IBC. We are not convinced with this argument. We found no flaw in the findings of Ld. Adjudicating Authority”.*

12. The said judgement was also upheld by the Hon’ble Supreme Court vide order dated 28.01.2022 passed in Civil Appeal No. 7132/2021. The same is reproduced below for reference: -

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 7132 OF 2021**

**M SAI ESWARA SWAMY**

**APPELLANT(S)**

**VERSUS**

**SITI VISION DIGITAL MEDIA PVT. LTD.**

**RESPONDENT(S)**

**O R D E R**

**We have heard learned counsel for the parties.**

**We find no reason to interfere in the order impugned dated 9<sup>th</sup> September, 2021 passed by the National Company Law Appellate Tribunal, New Delhi, in Company Appeal (AT)(Ins) No. 706 of 2021.**

**The Civil Appeal is, accordingly, dismissed.**

**Pending application(s), if any, shall stand disposed of.**

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13. In the light of the decisions referred to **supra**, we are of the considered view that no application under section – 7 of the Code is maintainable in relation to loans advanced by a company to a Corporate Debtor until and unless the application is backed by a resolution passed by the Board of Directors of the company as required under section – 186 of the Companies Act, 2013. Since, the Respondent/Financial Creditor i.e., M/s Riserose Business Private Limited have failed to place on record any such Board Resolution, authorising giving of impugned amount as loan to the Corporate Debtor, the application filed u/s 7 of IBC, bearing (IB) 18/ND/2022 cannot be maintained by the Financial Creditor.

14. Accordingly, the instant I.A 2076/2022 is hereby allowed and consequently the application filed U/s 7 i.e., IB-18/ND/2022 stands **dismissed** as not maintainable.

15. No orders as to cost.

**SD/-**  
**Dr. BINOD KUMAR SINHA**  
**MEMBER (TECHNICAL)**

**SD/-**  
**BACHU VENKAT BALARAM DAS**  
**MEMBER (JUDICIAL)**

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