

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 527/JPR/2023
In CP No. (IB)- 18/7/JPR/2023

IN THE MATTER OF:

SREI EQUIPMENT FINANCE LIMITED

...Petitioner/ Financial Creditor

VERSUS

**WORLDWIDE MACHINERY SOLUTIONS
PRIVATE LIMITED**

...Respondent/ Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 527/JPR/2023

**WORLDWIDE MACHINERY SOLUTIONS
PRIVATE LIMITED**

Opp. Kishangarh Kothi Jaipur Road,
Ajmer- 305001 (Rajasthan)

...Applicant

Versus

SREI EQUIPMENT FINANCE LIMITED

*Through the Authorized Representative of the
Administrator appointed by the RBI*

Vishwakarma, 86 C, Topsia Road (South),
Kolkata- 700046 (West Bengal)

...Respondent

COUNSEL FOR APPLICANT(S) : Shivangshu Naval, Adv.

COUNSEL FOR RESPONDENT(S): Anirbhan Bhattacharya, Adv.

Order Pronouncement On: 22.12.2023

ORDER**Per: Shri Rajeev Mehrotra, Technical Member**

1. The present application bearing *IA (IBC) No. 527/JPR/2023* has been filed by *Worldwide Machinery Solutions Pvt. Ltd.* ('Applicant'/ 'Corporate Debtor) under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dismissal of the Company Petition bearing *CP No. (IB)-18/7/JPR/2023*. The main application bearing *CP No. (IB) 18/7/JPR/2023* was preferred by *SREI Equipment Finance Limited* ('Non-Applicant'/ 'Financial Creditor') under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor.
2. The present application has been filed on the following set of facts:
 - 2.1. It has been contended that earlier an Application under Section 227 read with Section 239(2)(zk) of the Code read with Rules 5 & 6 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings for Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 was filed before the NCLT, Kolkata Bench by Reserve Bank of India ('RBI') against the Financial Creditor. The NCLT Kolkata Bench vide order dated 08.10.2021 admitted the said application and initiated the CIRP of the Financial Creditor herein.
 - 2.2. During the pendency of the CIRP of the Financial Creditor, Mr. Rajnish Sharma, Administrator appointed by NCLT Kolkata Bench had preferred the present application under Section 7 of the Code against

the Corporate Debtor before this Adjudicating Authority. Later, the Resolution Plan submitted by National Asset Reconstruction Company Limited ('NARCL') was approved on 11.08.2023 and the administrator was discharged from his duties.

2.3. Since, the Resolution plan of the Financial Creditor has been approved and the Administrator has ceased to be in charge of the Financial Creditor, hence, the present application has been filed by the Corporate Debtor contending that the application filed by the Administrator of the Financial Creditor is not maintainable as the Administrator has no locus to pursue the present Application.

3. The Non- Applicant/ Financial Creditor through its Authorized Representative ('AR'), Mr. Pradeep Faujdar has filed its reply vide diary No. 2552/2023 dated 26.10.2023, stating the following:

3.1. A ratification dated 17.08.2023 was issued by the Implementation and Monitoring Committee ('IMC') of the Financial Creditor authorising the Administrator Mr. Rajneesh Sharma to continue to undertake various activities as are required to ensure that the company's status as a going concern during the implementation of the Resolution Plan. The appointment of Mr. Pradeep Faujdar as AR of the Financial Creditor was also ratified.

3.2. Since the Resolution Plan has already been approved, the Financial Creditor has now been taken over by New Management and Mr.

Pradeep Faujdar is now competent to sign, verify, file and appear on behalf of the Financial Creditor herein and file the present application. In view of the approved Resolution Plan, the new management of the Financial Creditor i.e., NARCL by its second Board Resolution issued by the Implementation and Monitoring Committee ratified the appointment of Mr. Pradeep Faujdar resolving as under:

“Resolving Further that the powers of Attorney already issued by the administrator of SIFL and SEFL during the CIRP to the officials of the company which authorise such persons in the ordinary course of business so that the activities of the SIFL and SEFL are carried out as a going concern, be and are hereby ratified, confirmed and considered valid for the purpose for which the same have been granted for by the Administrator.”

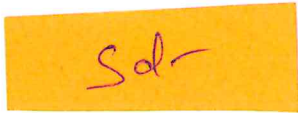

4. The Applicant filed its rejoinder vide Diary No. 2861/2023 dated 04.12.2023, submitting that the order approving the Resolution Plan reveals that the plan is silent on the aspect as to who would continue the present proceedings already initiated at behest of the Financial Creditor by the Administrator. It is only subsequent to the order approving the resolution plan, the Financial Creditor in its reply has relied upon a ratification dated 17.08.2023 issued under the hand of Implementation and Monitoring Committee stated that the Administrator is authorised to continue to undertake various activities as are required to ensure that the company's status as going concern during implementation of the Resolution Plan and has also ratified

the appointment of *Mr. Pradeep Faujdar* as AR of the Financial Creditor. It is submitted that until and unless the Resolution Plan provides for continuation of the litigation instituted at the behest of SREI by the Administrator, the same cannot be continued by the Administrator as the Administrator has not placed on record the Resolution Plan to support its locus or eligibility to maintain the present petition. Secondly, without admitting that the Administrator can further continue pursuing the Section 7 Application, the ratification only provides for initiating or defending any litigations pertaining to the ordinary course of business of SEFL or SIFL and clearly does not provide continuation of any litigation initiated.


5. We have heard the learned counsels for the parties and perused the application, reply along with the documents annexed therein.
6. It is seen that the Applicant had filed the main CP in the present matter through its AR while it was undergoing CIRP. Afterwards when the CIRP of the Applicant was successfully concluded, the AR was discharged from his duties and the Successful Resolution Applicant NARCL took over the management of the Financial Creditor. Hence, the Corporate Debtor has filed this application contending that the Financial Creditor now under the new management of NARCL does not have the locus standi to pursue the application filed against the Corporate Debtor under Section 7 of the Code.
7. The learned counsel for the Applicant contended that in absence of the Resolution Plan, the application filed by the Financial Creditor is not

maintainable because the ratification as submitted by the Financial Creditor only provides for initiating or defending any litigation pursuant to the ordinary course of business and does not provide for continuation of any litigation initiated during the CIRP. The learned counsel for the Financial Creditor has submitted that a ratification was issued on 17.08.2023 authorizing Mr. Rajnish Sharma to undertake activities required so as to ensure company status as a going concern.


8. It is observed that the Financial Creditor, pursuant to the order of NCLT Kolkata Bench dated 11.08.2023 approving the Resolution Plan, is under new management of NARCL. It is seen that the implementation in monitoring committee of the Financial Creditor has duly ratified and appointed Mr. Pradeep Faujdar. There is no bar in pursuing the case filed by the Financial Creditor during its CIRP through AR by the new management of the Financial Creditor. It seems that the Corporate Debtor has filed the present application to delay the proceedings in the main application. The Corporate Debtor has failed to prove that the Applicant is not authorized to pursue the present application filed under Section 7 of the Corporate Debtor after its resolution vide order dated 11.08.2023.
9. In view of the foregoing, the present application is rejected and therefore, stands dismissed.



10. The Corporate Debtor is further directed to file its reply within 15 days from the date of this order in the main application, with advance copy to the opposite counsel, failing which right to file reply shall stand closed.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**