

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11.07.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

IA(IBC) 585 & 586/2022 in CP(IB) No. 13/7/HDB/2021

U/s 7 of IBC, 2016

IN THE MATTER OF:

Srei Equipment Finance Ltd

...Financial Creditor

Vs

Madhucon Granites Ltd

...Corporate Debtor

CORAM

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

ORDER

IA (IBC)/585/2022

The applicant is at liberty to file additional counter within 3 days from today contending pleas only in respect of representation of administrator appointed by RBI in the main Company petition in default Application stands dismissed.

IA (IBC)/586/2022

We therefore allow this Application and setting aside the order dated 23.02.2022, however on condition that Applicant shall pay costs of Rs.10,000/- to the Bar Association within 3 days from the date of this order.

Main company petition is adjourned for hearing on 14.07.2022.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

IA (IBC)/586/2022

In CP (IB) No.13/7/HDB/2021

Application under rule 11 and 15 of the NCLT rules, 2016

Between

M/s. Madhucon Granites Ltd.,
Having its Registered office at
1-7-70, Jubilee Pura, Khammam,
Telangana-703003.

...Applicant

VS

1)M/s SREI. Equipment Finance Ltd.
Having its office at
Plot. Y-10, Block EP,
Sector- V, Salt lake City, Kolkata-700091,
Having its Registered office at
Vishwakarma, 86C,
Topsia Road, Kolkata-700046,
West Bengal.

...Respondent

Date of order:11.07.2022

Coram

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble, Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties/ Counsels present:

For the Applicant : Mr.Bikki Ravindra Babu, K .Dheeraj Counsels.

For the Respondent : Mr.Dishit Bhattacharjee. Counsel.

PER: BENCH

1. This is an Application filed by the Applicant under rule 11 and 15 of NCLT rules, 2016 seeking directions to set aside the order dated 23.02.2022 and restore the right of the applicant's right to file counter.
2. **Gist of the application is:**
 - a. That the Respondent has filed a petition vide CP (IB) No. 13/7/HDB/2019 under section 7 of IBC. 2016, claiming an amount of Rs. 16,30,09,364/- as total due from the applicant.
 - b. That the respondent company appeared first time before this Hon'ble Tribunal, through an administrator appointed by RBI and later confirmed by the NCLT, Calcutta. After which the matter came up before this tribunal on 23.02.2022 and this tribunal has forfeited the right the applicant to file counter in the company petition.
 - c. That in view of appointment of administrator for the respondent company, the respondent had not taken any steps for amending the cause title of company petition and didn't serve any copy of such amended company petition on the applicant.
 - d. That as amended company petition, bringing on the record of administrator was not filed, the applicant herein couldn't file a counter affidavit due to authorisation issues and the personnel of the applicant were suffering with Covid-19.
 - e. That this tribunal on 17.03.2022 had rejected the Interlocutory Application filed by the respondent herein, as affidavit filed along with the petition was not attested and posted the matter to 18.04.2022.

- f. That further proceeding, without taking the counter affidavit on record in the company petition would cause a grave prejudice especially when several false allegations were levelled against the applicant herein.
- g. Hence, prayed this tribunal to set aside the order dated 23.02.2022.
3. In the above backdrop the point that emerges for consideration by this Tribunal is:
- Whether the Applicant/petitioner has made out sufficient cause for setting aside the order dated 23.02.2022. If so can the petitioner be permitted to file the counter?**
4. At the outset it may be stated that despite extending sufficient opportunity to the Applicant for filing counter if any in the Company Petition the Applicant has not filed the counter, and went on seeking the adjournment on the plea that respondent intends to settle the matter. Therefore, this Tribunal after observing that despite extending sufficient opportunity counter was not filed, forfeited the right to file counter vide order dated 23.02.2022 and listed the matter for hearing the Company petition. Even on that date or immediately thereafter the Applicant did not come forward to file this petition.
5. Later when Company petitioner wanted that the cause title be amended as there was change in the person who is competent to represent the company petitioner and filed an Application seeking replacement of authorized representative who filed the company petition by the representative appointed by the RBI, the Applicant opposed the said petition. Later this Tribunal allowed the same vide order dated

23.02.2022. Even at that time the Applicant did not choose to file counter in the Company Petition.

6. Therefore, the above facts clearly shows that Applicant is not pursuing the matter diligently. As a result the proceedings are getting delayed before this Tribunal. However, in the interest of justice this Tribunal is of the opinion that denying the opportunity to the Applicant to file counter may cause prejudice to the Applicant and for the delay caused Applicant, the Applicant can be saddled with costs. We therefore allow this Application and setting aside the order dated 23.02.2022, however on condition that Applicant shall pay costs of Rs.10,000/- to the Bar Association within 3 days from the date of this order. In default the Application shall stand dismissed. Respondent is at liberty to file rejoinder if any within 7 days thereafter to the counter lest opportunity stands forfeited.
7. With these directions IA stands disposed of.

Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Sd/-

Dr. N.V.Ramakrishna Badarinath
Member Judicial

Yasaswi/Pavani

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For the Respondent : Mr.Dishit Bhattacharjee. Counsel.

PER: BENCH

1. This is an Application filed by the Applicant under rule 11 and 15 of NCLT rules, 2016 seeking directions to set aside the order dated 23.02.2022 and restore the right of the applicant's right to file counter.
2. **Gist of the application is:**
 - a. That the Respondent has filed a petition vide CP (IB) No. 13/7/HDB/2019 under section 7 of IBC, 2016, claiming an amount of Rs. 16,30,09,364/- as total due from the applicant.
 - b. That the applicant herein has filed a preliminary counter in the main petition regarding the maintainability and threshold limit under code.
 - c. That this tribunal vide its order dated 03.06.2022 has allowed I.A. No. 377/2022 with regard the amendment of the cause title of the main petition and permitted the applicant herein to file additional counter to the extent limited to such amendment.
 - d. That the applicant herein in its preliminary counter doesn't plea all the grounds regarding the maintainability. Hence prayed this tribunal to take additional counter on record.
3. In the above backdrop the point that emerges for consideration by this Tribunal is:

Whether the petitioner can be permitted to file the additional counter?

4. At this outset it may be stated that this Tribunal while disposing of IA No.377/2022, no doubt provided opportunity to the Applicant to file additional counter, in so far as it relates to the representation of the Company petition by the Administrator. However, petitioner now sought leave to raise pleas other than those relating to representation of the Administrator appointed by the RBI.

5. It maybe stated that order in IA No.377/2022, since attained finality, if the prayer in this Application is allowed, than it would amount to modifying the order in IA No.377/2022 which is impermissible. Therefore the present Application for leave in re hereby dismissed. However, the applicant is at liberty to file additional counter within 3 days from today contending pleas only in respect of representation of administrator appointed by RBI in the main Company petition in default Application stands dismissed.
6. With this observation Application is disposed of.

Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Sd/-

Dr. N.V.Ramakrishna Badarinath
Member Judicial

Yashaswi/Pavani