

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos. 633/2022 & 696/2022  
in  
CP (IB) No.99/Chd/Hry/2020  
(Admitted)**

**Under Section 60(5) of the IBC, 2016**

**In the matter of:**

Rajnikant Nanu Bhai Kapadi  
Proprietor of M/s. Balaji Enterprise

...Operational Creditor

Vs.

RBT Private Limited

...Corporate Debtor

**And in the matter of IA No. 633/2022 & 696/2022-**

Rajan Chadha & Rajiv Chadha  
(Suspended Directors of Corporate Debtors in Personal capacity)  
Having its registered office at  
222, Kailash Hills, East of Kailash Hills,  
New Delhi-110065

...Applicants

Vs.

1. Ajay Kumar Siwach (RP)  
Having its registered office at  
Flat No. 504, Rama Krishna Society,  
Sector-2, Faridabad-121004, Haryana  
...Interim Resolution Professional of RBT Private Limited
2. South Indian Bank Limited  
Having its registered office at  
T.B. Road, Mission Quarters,  
Thrissur 680001, Kerala  
...Non-Applicant/Respondent

IA No. 633/2022 & 696/2022  
in  
CP (IB) No.99/Chd/Hry/2020  
(Admitted)

Order delivered on: 02.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Applicant in  
IA No. 633/2022 &  
696/2022 : Mr. Prateek Gupta, Advocate  
Mr. Rahul Soi, Advocate

For respondent No. 1 in  
IA No. 633/2022 &  
696/2022 : Mr. Anand Chhibbar, Senior Advocate  
Mr. Balwinder Singh Kalsi, Advocate

For respondent No. 2 in  
IA No. 633/2022 &  
696/2022 : Mr. K.V. Singhal, Advocate  
Mr. C.S. Pasricha, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

As both the applications, i.e., IA Nos. 633/2022 & 696/2022 are filed by the same applicant, i.e. Suspended Directors, against the Resolution Professional and the lending Bank on identical issues; these are taken up together for discussion and subsequent disposal.

**IA No. 633/2022**

2. The applicant-Suspended Director of the corporate debtor, in his personal capacity, has stated that before the initiation of the CIRP in the case of the corporate debtor, the Memorandum of Understanding (MOU) was signed on 21.12.2019 between the present applicant and another director of the corporate

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debtor, i.e. Mr. Sanjay Arora, in terms of the conditions of the MOU, the other director-Mr. Sanjay Arora undertook to repay the loan advanced by the South Indian Bank to the corporate debtor and also to get the collateral security of the personal residential house of the applicant released or replaced. In return, Mr. Sanjay Arora was to take over the running of the corporate debtor, and the applicants were to exit from the control and management of the corporate debtor. The exit of the applicant from the shareholding of the corporate debtor was subject to Mr. Sanjay Arora's getting the house released from the lending bank.

3. As Sh. Sanjay Arora defaulted on the payment of the EMIs, and arbitration proceedings in terms of the said MOU dated 21.12.2019 were initiated under the relevant provisions of the Arbitration and Conciliation Act, 1996. The learned Arbitrator directed Mr. Sanjay Arora to discharge the loan liability and make good the EMIs, failing which the collateral security offered by the applicants could become the subject matter under SARFAESI Act, 2002. The said order of the Ld. Arbitrator was challenged before the Hon'ble Delhi High Court by Mr. Sanjay Arora but was dismissed by the Judgment of the Hon'ble High Court dated 05.10.2021. Mr. Sanjay Arora, however, has not complied with the order of the Hon'ble Delhi High Court, and the contempt proceedings against him have been filed by the applicants before the Hon'ble Delhi High Court.

4. In the meanwhile, the corporate debtor, which was operationally managed by Mr. Sanjay Arora in terms of the MOU dated 21.12.2019, came under the CIRP by order of this Bench dated 18.06.2021. The moratorium was declared under Section 14, and it is stated that despite the moratorium, the South Indian

Bank pursued the recovery process, and the applicants have paid the total amount of Rs. 73,39,140/- from their own resources as EMIs against the loan taken by the corporate debtor. These payments were made as the applicant presumed that under the given circumstances, recovery proceedings under the SARFAESI Act, 2002, with regard to their house property could have been initiated by the bank.

5. It is stated that the total amount of Rs. 90,66,140/- has been paid by the applicant till the filing of this application, but the lender bank still pursues the recovery proceedings. In the context of the above, the applicants have prayed for directions to the lending bank not to pursue its recovery proceedings and also to treat the applicant as financial creditors in view of the amounts paid by them towards the EMIs or consider the same to be payments made during the CIRP ranking as CIRP costs. It is further prayed that the respondent bank be directed not to initiate personal insolvency of the guarantors to the terms loans accounts, including but not limited to the invocation of the collateral security.

**IA No. 696/2022**

6. The applicant has repeated the facts mentioned in IA No. 633/2022 and has stated that it has no obligation to discharge the debt of the corporate debtor in view of the MOU dated 29.12.2019 but has still paid the same of Rs. 1,52,90,140/- paid from 18.06.2021 up to 28.04.2022.

7. It is further stated that till date, the bank has not declared the account of the corporate debtor as a Non-Performing Asset. The bank has further issued a guarantee invocation letter dated 26.05.2022, allegedly in violation of the orders

of the moratorium passed by this Tribunal on 18.06.2021. The applicant has prayed for staying the operation of the impugned guarantor invocation letter dated 26.05.2022.

8. We have heard the learned counsels for the rival parties in both these applications and have gone through the relevant records.

9. The issues raised in the aforementioned applications relate to

- I. The nature of payments of EMIs made by the applicants to the lending bank;
- II. The rights of the bank to initiate recovery proceedings against the applicants by invoking the collateral securities.

10. In the present case, the applicant has paid the EMIs to the bank apparently to prevent their house property, which was given as a collateral for Rs. 13 Crores loan taken by the corporate debtor, from being attached by the bank. From the facts mentioned in the foregoing paragraphs, it is clear that the applicants have paid the EMIs just to prevent the corporate debtor from being declared an NPA, leading to further complications for them, which included an attachment of the house property of the applicants, given as collateral security. The present claim of the applicant is that these payments should be treated as a financial debt of the corporate debtor, thereby making the applicant a financial creditor. This claim is not in consonance with the definition of financial debt under Section 5(8), which is extracted below:

*“5. In this Part, unless the context otherwise requires,—*

*(8) “**financial debt**” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) xxxxxx*

*(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;”*

*Xxxxxxxx*

*(Emphasis Supplied)*

11. In this context, we observe that the EMIs paid to the bank do not fall under the definition of “Financial Debt” as it was not disbursed against the consideration for the time value of money and by extension of the same logic, the applicants cannot be accorded the status of the financial creditor.

12. As regards the prayer of the applicant to instruct the bank not to invoke the collateral security, it is observed that a bank guarantee is an independent and separate contract, and the parties are duty-bound to honour the same as per its terms. We, therefore, refuse to interfere in the matter while giving liberty to applicants to explore other appropriate forums to seek redressal of its grievances on this issue.

13. In the result, these IAs are dismissed and disposed of accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

May 02, 2023

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