

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

CP (IB) No. 227/MB-V/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

SREI Equipment Finance Limited

[CIN: U70101WB2006PLC109898]

...Financial Creditor/Applicant

V/s

Supreme Bungalows Private Limited

[CIN: U45400MH2011PTC218596]

...Corporate Debtor/Respondent

Order Dated: 14.06.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Rohit Gupta, Advocate.

For the Respondent(s) : Mr. Ashish Pyasi, Advocate.

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 227/MB-V/2022 filed by SREI Equipment Finance Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against Supreme Bungalows Private Limited, the Corporate Debtor, claiming total outstanding of

Rs.253,99,36,198/- (Rupees two hundred fifty-three crore ninety-nine lakh thirty-six thousand one hundred ninety-eight only). The details of outstanding are as under:

Particulars	Amount in Rs.
Overdue Amount	1,59,03,05,065
Principal Outstanding	29,86,49,694
Overdue Charges	65,07,26,732
Other Amount	2,54,708
Total	2,53,99,36,198

2. The Dates of Default as mentioned in Part-IV are as follows:

Loan Agreement	Date of Default
175918	15/12/2019
176942	15/12/2019
178582	15/11/2019
180544	15/01/2020

3. The case of the Financial Creditor is that:

3.1. The Corporate Debtor availed financial assistance to tune of Rs.150,00,00,000/- from the Financial Creditor by 4 different Loan Agreements. To Secure the aforesaid facilities, the Corporate Debtor and the Financial Creditor entered in to various financing Documents to secure the facilities provided by the Financial Creditor to the Corporate Debtor.

3.2. The Loan Agreement No. 178582 dated 15.06.2019 was secured by Personal Guarantee dated 15.06.2019. The Loan Agreement No.180544 dated 21.09.2019 was secured by Personal Guarantee dated 21.09.2019.

3.3. The Financial Creditor issued a Demand Notice dated 25.11.2021 upon the Corporate Debtor claiming total sum of

Rs.2,53,99,36,198/- as on 18.11.2021. The Financial Creditor has filed CIBIL Report dated 10.12.2021.

Reply of the Corporate Debtor:

4. The Corporate Debtor has filed its Reply dated 20.04.2022 and further submits as under:

4.1. The present Petition is not maintainable as the entire debt in question has been repaid by the Corporate Debtor. The copy of the Bank Statement is attached to the Reply which shows how the funds were received from the Financial Creditor and how the same were refunded to the Financial Creditor on the same day.

4.2. The Financial Creditor was repaid, vide several cheques, and a copy of the cheques as available with the Corporate Debtor, which were issued to the Financial Creditor for clearing the amount so received from the Financial Creditor. A perusal of the Bank Statement and the Cheques would show that the entire debt has been repaid. As the Corporate Debtor was not in need of funds, due to further transactions not getting fructified, accordingly, it immediately repaid the same to the Financial Creditor. Accordingly, the Petition filed by the Financial Creditor ought to be dismissed.

Re-joinder of the Financial Creditor:

5. The Financial Creditor has filed its Re-joinder dated 23.05.2022 and submits as under:

5.1. The table below demonstrates the fact that an amount of Rs.150,00,00,000/- was disbursed to the Corporate Debtor. The

Corporate Debtor has made payment towards the outstanding dues of its group entities. A total amount of Rs.107,31,00,000/- has been paid by the Corporate Debtor herein towards the outstanding dues of its group companies. However, an amount of approx. Rs.43,00,00,000/- have been enjoyed by the Corporate Debtor as demonstrated hereunder:

Contract No.	Amount Disbursed	Date of Disbursement	Amount collected back	Date of Collection	Collection Adjusted towards
175918	35,00,00,000	31-01-2019	35,00,00,000	31.01.2019 and 01.02.2019	Adjusted Towards Group Company Loan Contracts
176942	65,00,00,000	02-04-2019	32,60,00,000	04-04-2019	Adjusted Towards Group Company Loan Contracts
178582	12,00,00,000	01-07-2019	1,71,00,000	01-07-2019	Other Contracts of Supreme Bunglow Pvt. Ltd.
180544	38,00,00,000	21-09-2019	33,65,00,000	26-09-2019	Adjusted Towards Group Company Loan Contracts
			4,35,00,000	26-09-2019	Other Contracts of Supreme Bunglow Pvt. Ltd.
Total	1,50,00,00,000		1,07,31,00,000		

5.2. By letter dated 26th September 2019 addressed by Supreme Star Villa Private Limited (a group company of the Corporate Debtor) to the Financial Creditor, informing / comforting the Financial Creditor that the Corporate Debtor herein will make payment towards Loan Agreement / contract No. 171721 of Supreme Star Villa Private Limited. The Corporate Debtor herein

unconditionally and irrevocably agreed to make payment of Rs.1,50,00,000/- (Rupees one crore fifty lakhs only) to the Financial Creditor towards the outstanding of Supreme Star Villa Private Limited.

- 5.3. Similarly, on 26th September 2019 Supreme Innovative Building Projects Private Limited addressed a letter to the Financial Creditor, informing / comforting the Financial Creditor that the Corporate Debtor herein will make payment towards Loan Agreement / contract No. 140949, 140739, 14811, 156946 of Supreme Innovative Building Projects Private Limited. The Corporate Debtor herein unconditionally and irrevocably agreed to unconditionally and irrevocably make payment of Rs.30,50,00,000/- (Rupees thirty crores fifty lakhs only) to the Financial Creditor towards the outstanding of Supreme Innovative Building Projects Private Limited.
- 5.4. Further, by letter dated 26th September 2019 addressed by Shweta Housing & Hospitality Pvt Ltd to the Financial Creditor, informing / comforting the Financial Creditor that the Corporate Debtor herein will make payment towards Loan Agreement / contract No.128922 of Shweta Housing & Hospitality Private Limited. The Corporate Debtor herein unconditionally and irrevocably agreed to make payment of Rs.1,65,00,000/- (Rupees one crore sixty-five lakhs only) to the Financial Creditor.
- 5.5. The letter of comfort issued by the group companies were signed by Mr. Siddharth Jain. Further in the Affidavit in Reply filed by the Corporate Debtor, the Resolution produced by them states that Mr. Siddharth Jain is authorized to file the said Reply. In view thereof,

the Corporate Debtor contentions that amounts have been repaid under the said loan agreements is completely frivolous.

5.6. The Corporate Debtor's contention that the loan amount disbursed by the Financial Creditor was transferred back to the Financial Creditor is completely false and without any merit. The Financial Creditor disbursed the amount into the account of Corporate Debtor on 31st January 2019, 2nd April 2019, 1st July 2019 and 21st September 2019 respectively. The group companies of the Corporate Debtor viz., Supreme Star Villa Private Limited, Supreme Innovative Building Projects Private Limited and Shweta Housing & Hospitality Pvt Ltd vide letter dated 26th September 2019 requested the Corporate Debtor to fulfil their repayment obligations for the outstanding payments due and payable to the Financial Creditor. The said fact is evident from the letters dated 26th September 2019. The amounts have been received by the Corporate Debtor and transferred the amounts back to the Financial Creditor towards unconditional, irrevocable payments towards the outstanding dues of its group entities viz. viz., Supreme Star Villa Private Limited, Supreme Innovative Building Projects Private Limited and Shweta Housing & Hospitality Pvt Ltd. On perusal of the statement annexed to the Reply at Exhibit D at Page 22 of the reply, clearly demonstrates that the Corporate Debtor received the amounts from Financial Creditor, which was then returned to the Corporate Debtor towards the outstanding dues of its Group Companies on the very same day. However, the financial assistance advanced to the Corporate Debtor remained outstanding.

5.7. In terms of the said disbursement as agreed upon by and between the parties, the Corporate Debtor and the Financial Creditor had

entered and executed various agreements thereby securing the loan amount disbursed by the Financial Creditor to the Corporate Debtor. Pursuant to the disbursement the Financial Creditor and the Corporate Debtor has executed following documents;

- 5.7.1. Deed of Hypothecation by the Corporate Debtor in favour of Financial Creditor dated 27th May 2021;
 - 5.7.2. Personal Guarantee of Mr. Bhawanishankar Sharma dated 15th June 2019 for loan Agreement No. 178582;
 - 5.7.3. Personal Guarantee of Mr. Vikram Sharma dated 15th June 2019 for loan Agreement No. 178582;
 - 5.7.4. Personal Guarantee of Mr. Vikas Sharma dated 15th June 2019 for loan Agreement No. 178582;
 - 5.7.5. Deed of Guarantee dated 21st September 2019 by Vikram Sharma in favour of the Financial Creditor for the loan Agreement No. 180544;
 - 5.7.6. Charge created in favour of the Financial Creditor has been registered with the Ministry of Corporate Affairs the deed of Hypothecation dated 27th May 2021 executed by and between the Corporate Debtor and the Financial Creditor.
- 5.8. The monies deducted or paid by the Corporate Debtor was pursuant to the letters dated 26th September 2019 addressed by the group companies of the Corporate Debtor. The Corporate Debtor after availing the facilities has entered into various security documents for securing the loans availed by the Corporate Debtor. On 25th November 2021 a demand notice was addressed to the Corporate Debtor calling upon them to make payments towards its

outstanding dues. The Corporate Debtor has failed and neglected to reply to the said demand notice and has also not raised the said dispute raised at this juncture. The said dispute raised by the Corporate Debtor is clearly an afterthought to usurp the monies of the Financial Creditor.

Additional Affidavit-in-Reply of the Corporate Debtor:

6. The Corporate Debtor has filed its Additional Reply dated 04.12.2022 submitting as under:
 - 6.1. The Corporate Debtor is entering into the Scheme of Arrangement for restructuring of the Financial Debt (hereinafter referred as “**the Scheme**”) under the provisions of Section 230-232 of the Companies Act, 2013. The said Scheme is presently undergoing adjudication before the NCLT Bench-II.
 - 6.2. The Corporate Debtor submits that the documents which were requested to be placed on record goes on to demonstrate that the underlying “debt” which is the subject matter of the Company Petition, forms part of the Scheme of Arrangement of Supreme Infrastructure India Limited i.e. a group/associate Company of the Corporate Debtor and its Financial Creditors including the Financial Creditor herein, which is present pending adjudication before the NCLT Mumbai Bench-II.
 - 6.3. In the said Scheme, the directions for holding the meetings and other consequential directions have been issued vide an Order dated 29.07.2022 by this Tribunal. Accordingly, the necessary formalities are being undertaken by the Associate Company in pursuance to the Order passed. The said Scheme caters the repayment of the larger group debt which would be impacted by

the current Petition also. Further, the Financial Creditor is also participating in the Scheme and agreed for the restructuring of the Debt.

- 6.4. Since the Financial Creditor has itself agreed for restructuring of the debt, now the Financial Creditor cannot maintain this Petition. It is settled Law that the provisions of the Code cannot be invoked for recovery of the amounts and the Code is only for the revival of the Corporate Debtor. However, the act of the Financial Creditor is itself evident that the Financial Creditor is not interested in revival of the Corporate Debtor but only in recovery of the amounts. Hence, the present Petition is not maintainable in the eyes of the Law.
- 6.5. Admittedly, the group entity of the Petitioner viz. M/s. SREI Infrastructure Finance Limited has transferred all its Lending business, Interest earning business and Lease business to the Petitioner. The said Business Transfer Agreement is maliciously not annexed by the Financial Creditor herein to conceal and mislead the Tribunal to believe that there is debt due and payable by the Corporate Debtor.
- 6.6. Further, the Financial Creditor is undergoing the Corporate Insolvency Resolution Process and under the provisions of the Code an Administrator is appointed by the Reserve Bank of India. It is to be noted that all transactions carried out by the Financial Creditor have been questioned by the Administrator and, therefore, the Business Transfer Agreement, is also under investigation and there are findings to that effect given in the proceedings before NCLT, Kolkata and NCLAT Delhi.

6.7. The fraud of the Financial Creditor is visible from the following instances of the Financial Creditor itself:

- 6.7.1. The CIBIL Report produced by the Financial Creditor itself shows that there was no default. In the document, as per the asset classification for October 2019, the account was standard and as of March 2020, there was no loan or default. It is pertinent to state that the CIBIL Report is an independent document and reflects the data as provided by the Financial Creditor. It further shows that in March 2020, there is no debt and default and then all of a sudden in April 2020 there is debt shown and thereafter from May 2020 to March 2021 there is no debt and zero default or delay. This shows that the accounts and details and the alleged transactions done by the Petitioner are nothing but a fraud upon the Corporate Debtor and now illegally trying to fasten liability upon the Corporate Debtor.
- 6.7.2. There is no signature of the Financial Creditor on the Sanction letter dated 15th December 2018 as these documents were prepared only as a proposal. As the entire exercise was done as a proposal and the money was repaid immediately, there was no debt.
- 6.7.3. The documents relied upon by the Petitioner are forged and fabricated for two different facilities were provided on separate debts on different dates i.e. there is a gap of almost more than 6 months between the two facilities but the stamp paper for both are dated 5th December 2018.

- 6.7.4. Similarly, the Sanction Letter dated 15.12.2018 does not even provide for Personal Guarantee of Shri. B. S. Sharma but if the Deed of Guarantee is to be seen, the same has been done for alleged loan facility bearing no. 178582. It is not possible for the above guarantee to be provided unless some fraud has been played by the Financial Creditor.
- 6.7.5. It is submitted that it is for this very reason that the alleged Corporate Debtor herein never passed any Board Resolution to avail the Financial Assistance from the alleged Financial Creditor, created security documents etc. Thus, there is no financial debt within the meaning of the Code.
- 6.8. It is further stated and submitted that there are various proceedings initiated against the erstwhile management of the Financial Creditor herein pertaining to various sham and fraudulent transaction related to the loans given or alleged to be given by the erstwhile management wherein the transactions have been challenged and adjudication regarding genuineness of the said transactions are pending before the Adjudicating Authorities.

Additional Re-joinder of the Financial Creditor:

7. The Financial Creditor has filed its Additional Re-joinder dated 15.03.2023 and submits as under:
- 7.1. On an application filed by the Reserve Bank of India, the Financial Creditor was directed the Corporate Insolvency Resolution Process by an order dated 8th October 2021, passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench in

Company Petition No. 294 of 2021. By the aforesaid order Mr. Rajneesh Sharma was appointed as the administrator of the Financial Creditor.

- 7.2. The Corporate Debtor in the Additional Affidavit in Reply dated 04.12.2022 has submitted that the associate company of the Corporate Debtor viz. Supreme Infrastructure India Limited is entering into Scheme of Arrangement of the Financial Debt under Section 230-232 of the Companies Act, 2013. The said Scheme of Arrangement under Section 230-232 is between Creditors of Supreme Infrastructure India Limited, which is a separate legal entity from the Corporate Debtor. The Corporate Debtor in the said Additional Affidavit has falsely and without any basis stated that the said Scheme of Arrangement also undertakes the repayment of its subsidiary companies. A bare perusal of the alleged Scheme makes it evident that the alleged Scheme of Arrangement is for the debts of Supreme Infrastructure India Limited and not for the Corporate Debtor herein.
- 7.3. In the Joint lenders meeting of Supreme Infrastructure India Limited held on 8th August 2022, Mr. Vikram Sharma the representative of Supreme Infrastructure India Limited on a question raised by the representative of Financial Creditor has categorically and unequivocally stated that the exposures of the other companies are not considered as proposal is submitted only for the financial debt of Supreme Infrastructure India Limited.
- 7.4. The Corporate Debtor in the said Additional Affidavit in Reply has stated that SREI Infrastructure Finance Limited has transferred all its lending business, interest earning business and lease business to the Financial Creditor. The Corporate Debtor has

very conveniently failed to bring on record the true and correct position of the Business transfer agreement. The Business Transfer Agreement has no bearing on the present Petition. The loan was disbursed by the Petitioner and credit facilities received by the Corporate Debtor from Petitioner herein. Therefore, the aforesaid statement is nothing but another attempt of the Corporate Debtor to mislead this Adjudicating Authority.

- 7.5. The Corporate Debtor in the Additional Reply has also stated that the Financial Creditor has played fraud on the Corporate Debtor. The Corporate Debtor in its audited balance sheet for the financial year 2018-2019 and 2019-2020 has acknowledged the debt due and payable by the Corporate Debtor to the Financial Creditor.
- 7.6. Further, the National E- Governance Service Limited (“NeSL”) report buttresses the submission that the Corporate Debtor has defaulted in repaying the outstanding amount due and payable. The said report categorically states that the date of default. It is an admitted fact that the loan was advanced to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the said loan amount.
- 7.7. The Financial Creditor and the Corporate Debtor had executed four (4) different loan Agreements. The table below demonstrates the date on which the Credit Facilities were disbursed to the Corporate Debtor along with the RTGS details:

Contract No.	Amount	Disbursement date	Particulars
175918	8,00,00,000	31-01-2019	RTGS*ICICR52019013100633012/UTIB0000

			246/SUPREME BU NGALOWS PVT LTD
175918	8,00,00,000	31-01-2019	RTGS*ICICR52019013100633255/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
175918	8,00,00,000	01-02-2019	RTGS*ICICR52019020100707320/UTIB0000 246/SUPREME BU NGALOWS P LTD
175918	8,00,00,000	01-02-2019	RTGS*ICICR52019020100707159/UTIB0000 246/SUPREME BU NGALOWS P LTD
175918	3,00,00,000	01-02-2019	RTGS*ICICR52019020100707693/UTIB0000 246/SUPREME BU NGALOWS P LTD
176942	4,00,00,000	03-04-2019	RTGS*ICICR52019040300346765/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	2,31,00,000	03-04-2019	RTGS*ICICR52019040300347531/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	1,20,00,000	03-04-2019	RTGS*ICICR52019040300347891/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	13,59,00,000	03-04-2019	RTGS*ICICR52019040300432114/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	10,00,00,000	03-04-2019	RTGS*ICICR52019040300433060/UTIB0000 007/SUPREME BU NGALOWS PVT LTD
176942	10,80,00,000	04-04-2019	RTGS*ICICR52019040400551283/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	10,90,00,000	04-04-2019	RTGS*ICICR52019040400550406/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
176942	10,90,00,000	04-04-2019	RTGS*ICICR52019040400551544/UTIB0000 007/SUPREME BU NGALOWS PVT LTD
176942	1,30,00,000	05-04-2019	RTGS*ICICR52019040500680375/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
178582	10,00,00,000	01-07-2019	RTGS*ICICR52019070100522457/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
178582	2,00,00,000	01-07-2019	RTGS*ICICR52019070100526588/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
180544	15,00,00,000	26-09-2019	RTGS*ICICR52019092600319323/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
180544	7,50,00,000	26-09-2019	RTGS*ICICR52019092600319787/UTIB0000 246/SUPREME BU NGALOWS PVT LTD
180544	15,50,00,000	26-09-2019	RTGS*ICICR52019092600320168/UTIB0000 246/SUPREME BU NGALOWS PVT LTD

FINDINGS:

8. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the records.

8.1. The captioned Petition has been filed by the Financial Creditor under Section 7 of the Code for initiating CIRP against the Corporate Debtor claiming Rs.253,99,36,198/- as on 18.11.2021. As per the submissions of the Financial Creditor, the Corporate Debtor availed financial assistance from the Financial Creditor to the tune of Rs.150,00,00,000/- under 4 different Loan Agreements. The Financial Creditor has filed the details of the disbursement which are as follows:

Contract no	Date	Amount	Disbursement date	Particulars
175918	31.01.2019	8,00,00,000	31-01-2019	RTGS*ICICR52019013100 633012/UTIB0000246/SUP REME BU NGALOWS PVT LTD
175918		8,00,00,000	31-01-2019	RTGS*ICICR52019013100 633255/UTIB0000246/SUP REME BU NGALOWS PVT LTD
175918		8,00,00,000	01-02-2019	RTGS*ICICR52019020100 707320/UTIB0000246/SUP REME BU NGALOWS P LTD
175918		8,00,00,000	01-02-2019	RTGS*ICICR52019020100 707159/UTIB0000246/SUP REME BU NGALOWS P LTD
175918		3,00,00,000	01-02-2019	RTGS*ICICR52019020100 707693/UTIB0000246/SUP REME BU NGALOWS P LTD
176942	02.04.2019	4,00,00,000	03-04-2019	RTGS*ICICR52019040300 346765/UTIB0000246/SUP REME BU NGALOWS PVT LTD
176942		2,31,00,000	03-04-2019	RTGS*ICICR52019040300 347531/UTIB0000246/SUP REME BU NGALOWS

				PVT LTD
176942		1,20,00,000	03-04-2019	RTGS*ICICR52019040300 347891/UTIB0000246/SUP REME BU NGALOWS PVT LTD
176942		13,59,00,000	03-04-2019	RTGS*ICICR52019040300 432114/UTIB0000246/SUP REME BU NGALOWS PVT LTD
176942		10,00,00,000	03-04-2019	RTGS*ICICR52019040300 433060/UTIB0000007/SUP REME BU NGALOWS PVT LTD
176942		10,80,00,000	04-04-2019	RTGS*ICICR52019040400 551283/UTIB0000246/SUP REME BU NGALOWS PVT LTD
176942		10,90,00,000	04-04-2019	RTGS*ICICR52019040400 550406/UTIB0000246/SUP REME BU NGALOWS PVT LTD
176942		10,90,00,000	04-04-2019	RTGS*ICICR52019040400 551544/UTIB0000007/SUP REME BU NGALOWS PVT LTD
176942		1,30,00,000	05-04-2019	RTGS*ICICR52019040500 680375/UTIB0000246/SUP REME BU NGALOWS PVT LTD
178582		10,00,00,000	01-07-2019	RTGS*ICICR52019070100 522457/UTIB0000246/SUP REME BU NGALOWS PVT LTD
178582	15.06.2019	2,00,00,000	01-07-2019	RTGS*ICICR52019070100 526588/UTIB0000246/SUP REME BU NGALOWS PVT LTD
180544		15,00,00,000	26-09-2019	RTGS*ICICR52019092600 319323/UTIB0000246/SUP REME BU NGALOWS PVT LTD
180544		7,50,00,000	26-09-2019	RTGS*ICICR52019092600 319787/UTIB0000246/SUP REME BU NGALOWS PVT LTD
180544	21.09.2019	15,50,00,000	26-09-2019	RTGS*ICICR52019092600 320168/UTIB0000246/SUP

				REME BU NGALOWS PVT LTD
--	--	--	--	----------------------------

8.2. To secure the aforesaid facilities, the Corporate Debtor and Financial Creditor executed Deed of Hypothecation dated 27.05.2021. The Corporate Debtor has not disputed that the Corporate Debtor had availed the financial assistance from the Financial Creditor for an amount of Rs.150,00,00,000/-. The disbursement of the said amount is also reflecting in the Statement of Accounts filed by the Financial Creditor which is at Exhibit "K", Exhibit "L", Exhibit "M" and Exhibit "N" of the Petition. The Counsel for the Financial Creditor in his Written Submissions dated 24.04.2022 has claimed that an amount of Rs.107,31,00,000/- has been paid by the Corporate Debtor but the said amount was paid towards the outstanding dues of its group companies. In this regard, the Counsel for the Financial Creditor has not been able to refer to any documents which could show that an amount of Rs.107,31,00,000/- was due from the Group Companies of the Corporate Debtor. The counsel for the Financial Creditor has further not been able to refer to written communication/instruction given by the Corporate Debtor that the amount of Rs.107,31,00,000/- was being repaid out of the outstanding amount of the group companies. In the absence of such documents, it cannot be said that the said amount of Rs.107,31,00,000/- was repaid by the Corporate Debtor towards the outstanding dues of the group companies. Therefore, the said amount is deemed to have been repaid by the Corporate Debtor. However, even the repayment of Rs.107,31,00,000/- is taken into consideration, an amount of Rs.43,00,00,000/- is yet clearly outstanding against the Corporate Debtor.

8.3. The Financial Creditor has filed the details of the above repayment as follows:

Contract No.	Amount Disbursed	Date of Disbursement	Amount collected back	Date of Collection	Collection Adjusted towards
175918	35,00,00,000	31-01-2019	35,00,00,000	31.01.2019 and 01.02.2019	Adjusted Towards Group Company Loan Contracts
176942	65,00,00,000	02-04-2019	32,60,00,000	04-04-2019	Adjusted Towards Group Company Loan Contracts
178582	12,00,00,000	01-07-2019	1,71,00,000	01-07-2019	Other Contracts of Supreme Bungalows Pvt. Ltd.
180544	38,00,00,000	21-09-2019	33,65,00,000	26-09-2019	Adjusted Towards Group Company Loan Contracts
			4,35,00,000	26-09-2019	Other Contracts of Supreme Bungalows Pvt. Ltd.
Total	1,50,00,00,000		1,07,31,00,000		

The aforesaid chart relied upon by the Financial Creditor also proves that the outstanding dues are to the tune of Rs. 43 Crores. It is well settled that once it is proved that the Corporate Debtor has committed a default of more than Rs. One Crore, it renders itself vulnerable to be admitted under Section 7 of the Code. Any dispute with regard to the total outstanding amount pales into insignificance as the exact amount, which might be outstanding, can always be ascertained by the IRP/RP when the claim is

actually filed by the Financial Creditor after the commencement of the CIRP.

8.4. During the course of arguments, the Counsel for the Corporate Debtor has contended that the Corporate Debtor has repaid the entire amount disbursed by the Financial Creditor and on this ground alone, the Petition is liable to fail. In this regard, the Counsel for the Petitioner has relied upon the statement of account Exhibit-A attached with the reply filed by the Corporate Debtor which shows certain disbursements on 03.04.2019 which were reversed the very next day, i.e. on 04.04.2019. There are certain more credit entries made on 03.04.2019 which are also shown to have been reversed on the same day. The Counsel for the Corporate Debtor has further pointed out that certain credit entries of Rs. 108 Crores and 109 crores were also shown to have been reversed on the same day. The same is the position in respect of certain entries of Rs. 13 Crores made on 05.04.2019 which are shown to have been reversed on 09.04.2019, 10.04.2019 and 11.04.2019. In the light of the bank statement Exhibit-A annexed with the reply, it has been urged by the Counsel for the Corporate Debtor that nothing is outstanding as the all amounts received from the Financial Creditors have been repaid.

8.5. We have considered the aforesaid contentions raised by the Counsel for the Corporate Debtor and have gone through the bank Statement, Exhibit-A relied upon by the Corporate Debtor. No doubt, certain credit entries are shown to have been reversed

with an equal amount the very same day or within a period of one or two days thereafter, but so far as the credit entry of Rs. 13 Crores dated 05.04.2019 is concerned, the debit entries made on 10.04.2019 and 11.04.2019 are transferred to Supreme Infrastructure and not to the Financial Creditor. Therefore, on the basis of the bank statement Exhibit-A annexed with the reply which is not even certified under the Bankers Evidence Act, it cannot be said that the entire payment received by way of disbursement stands repaid to the Financial Creditor. In this regard, it has been rightly argued by the Counsel for the Financial Creditor that had the entire loan being repaid by the Corporate Debtor in the year 2019 itself, it would not have executed the Deed of Hypothecation in favour of the Financial Creditor on 27.05.2021 (Exhibit-O). Not only this, a charge was also created in favour of the Corporate Debtor on 23.06.2021 (Exhibit-P). The execution of documents clearly militates against the plea of the Corporate Debtor that the entire loan had been repaid in the year 2019 itself.

- 8.6. The Counsel for the Corporate Debtor has contended that M/s Supreme Infrastructure Limited is entering into a Scheme of Arrangement for restricting of Financial Debt under the provisions of Section 230-232 of the Companies Act, 2013 and the documents which were requested to be placed on record goes on to demonstrate that the underlying “debt” which is the subject matter of the Company Petition, forms part of the Scheme of Arrangement of Supreme Infrastructure India Limited i.e. a group/associate Company of the Corporate Debtor and its

Financial Creditors including the Petitioner herein, which is presently pending for adjudication before the NCLT Mumbai Bench-II. However, this Bench is of the considered opinion that the said Scheme of Arrangement under section 230-232 is between Creditors of Supreme Infrastructure India Limited which is a separate legal entity from the Corporate Debtor. Further, the said Scheme of Arrangement is for the Debts of Supreme Infrastructure India Limited and not that of the Corporate Debtor. Hence, the above-mentioned contentions of the Corporate Debtor have no merit and the same cannot be considered.

- 8.7. The Counsel for the Corporate Debtor has further contended that since the Financial Creditor itself is undergoing Corporate Insolvency Resolution Process, it is not entitled to file a Petition under Section 7 of the Code. However, this contention is baseless and is without any merits. This Bench observes that the Company undergoing CIRP can proceed to file an Application under Section 7 of the Code as envisaged under Section 11 of the Code. Section 11 of the Code is reproduced as under:

“Section 11: Persons not entitled to make application.

11. The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: —

(a) a corporate debtor undergoing a corporate insolvency resolution process 1[or a pre-packaged insolvency resolution process]; or

[(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or]

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

[(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or]

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation [I]. —For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

[Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.]”

- 8.8. From a bare perusal of Explanation II of Section 11 of the Code, it becomes clear that a Corporate Debtor undergoing CIRP can initiate CIRP against another Corporate Debtor. Hence, this Bench finds no merit in the above-mentioned contention of the Corporate Debtor and the same is hereby rejected.
- 8.9. From the above discussion, this Bench is of the considered view that the Petitioner has been able to prove the existence of Financial Debt and its default committed by the Corporate Debtor. Therefore, the Petition deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The Application bearing C.P. (IB) No. 227/MB-V/2022 filed by **SREI Equipment Finance Limited**, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Supreme Bungalows Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process is ordered by this Bench against Evenness **Supreme Bungalows Private Limited**.
- b. This Bench hereby appoints **Mr. Anup Kumar Singh**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00153/2017-2018/10322 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no. 227 of 2022 is **admitted**.
1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)