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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/1444/2019**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of M/s. Sudha Siva Traders Pvt. Ltd.*

**Ram Chandra Traders Private Limited**

No2, Bharathi Nagar, II Street,  
Villivakam, Chennai – 600 049.

... .. *Financial Creditor*

-Vs-

**M/s. Sudha Siva Traders Pvt. Ltd.,**

No.602, Lakshmipuram,  
Sembarambakkam,  
Chennai – 602 103

... .. *Corporate Debtor*

*Order Pronounced on 1<sup>st</sup> November 2021*

CORAM :

**SUCHARITHA R, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : AG Sathyanarayana, Advocate  
For Corporate Debtor : Rohan Rajasekaran, Advocate*

**ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

Under adjudication, is an **Application filed by** M/s. Ram Chandran Traders Private Limited, (*hereinafter referred as "Financial Creditor"*) under Section 7 of Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, namely,

**M/s. Sudha Siva Traders Private Limited** (*hereinafter referred as "Corporate Debtor"*).

2. From Part-I of the Application, it is seen that the Applicant is a Private Limited Company. Part-II of the Application, discloses the details in relation to the Corporate Debtor, from which, it is seen that the Corporate Debtor is a company incorporated on 20.03.1995 with CIN: U51909TN2011PTC083725 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at No.602, Lakshmipuram, Sembarambakkam, Chennai - 602 103. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Mr. Swaminathan Prabhu, as the Interim Resolution Professional (IRP).

3. Part-IV of the Application, sets out the details of the financial debt, from which, it is seen that the Corporate Debtor has claimed a sum of Rs.35,48,240/- and interest @ 18% per annum.

4. Part-V of the Application, lists out the details of the documents filed by the Financial Creditor in support of the claim, which are as follows:

- a. Working Sheet
- b. Agreement



5. Learned Counsel for the Financial Creditor submitted that the Financial Creditor and the Corporate Debtor have entered into a Memorandum of Agreement on 31.03.2019 in and by which, the amount to the tune of Rs.35,48,240/- was crystallized as the amount which is due and payable by the Corporate Debtor on account of supply of materials by the Financial Creditor and that the parties have mutually converted the said amount as "unsecured loan" which is required to be repaid in 12 months equal instalments commencing from 01.11.2019 to 31.10.2020.

6. The Learned Counsel for the Financial Creditor submitted that as per the agreement, the Financial Creditor is entitled to claim interest at the rate of 18% p.a. on the default amount if the Corporate Debtor has failed to repay the amount on the actual date of payment. Further, it was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor has committed default in repayment of the said amount to the Financial Creditor on the due date and hence the Financial Creditor has filed the present Application seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

7. The Memorandum of Agreement dated 31.03.2019 entered into between the parties is captured herewith;



A-267



தமிழ்நாடு தமில்நாடு TAMIL NADU

RAMACHANDRAN TRADERS

59AB 780936

JACINTHA  
Stamp Vendor-Lic.No.20640/B4/B7/RR  
100-9, Subbes Nagar, Kadungalur  
Chennai-600 081

11 MAR 2019 PVT LTD

**AGREEMENT**

This memorandum of agreement made on this day of 31<sup>st</sup> march 2019 by and between

**Sudha SivaTraders Private Limited** (CIN U51909TN2011PTC083725), a Company registered under the Companies Act 1956 having its Registered Office at No.602 Lakshmiapuram, Sembarambakkam, Poonamallee, Chennai 600056 and represented by its Director Sri.S.Balakrishnan herein after referred to as party of the first part which expression shall unless repugnant to the context or meaning thereof includes its successors, legal representatives, administrators and assignees etc.

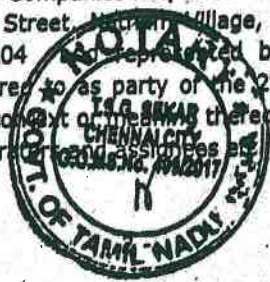
And

**Ram Chandra Traders Private Ltd.** (CIN: U51909TN2011PTC083741), a Company registered under the Companies Act, 1956 having its Registered Office at No.95/A Ellal Amman Koll Street, Madhavaram Village, Panjetty Post., Ponnerel Taluk, Thiruvallur Dist.601 204 represented by its Director Sri Doss Subramani herein after referred to as party of the 2<sup>nd</sup> part which expression shall unless repugnant to the context or meaning thereof includes its successors, legal representatives, administrators and assignees etc.

SUDHA SIVA TRADERS P.V.

For Ramchandra Traders Pvt. Ltd.

Director



Director

Whereas, party of the first part is engaged in trading of all commodities particularly steel products in Chennai and Hyderabad and in due course of business party of the first part procured steel products from time to time for its trading purpose from party of the 2<sup>nd</sup> part.

Whereas, party of the 2<sup>nd</sup> part is also engaged in trading of steel and allied products and on request of party of the first part party of the 2<sup>nd</sup> part supplied materials to party of the first part as part of its trading activity from time to time.

Whereas, party of the 1<sup>st</sup> Part committed default in payments against supply of materials to the tune of Rs.35,48,240.00 on 31<sup>st</sup> March 2019 and could not pay further amounts due to its liquidity problems.

Whereas party of the 2<sup>nd</sup> part has been continuously demanding for payment of the balance dues, but could not recover the same.

Now both the parties have come together to resolve the issue of outstanding dues in the following manner.

**NOW THIS AGREEMENT WITNESSES THAT:**

1. Both the parties have agreed to crystallize the dues at Rs.35,48,240.00.
2. Upon the request of party of the 1<sup>st</sup> Part, party of the 2<sup>nd</sup> part has agreed to convert the said amount of Rs.35,48,240.00, into an Unsecured Loan
3. The said unsecured loan will be repaid in 12 equal monthly installments commencing from 01.11.2019 to 31.10.2020.
4. The monthly installment to be paid on or before 10<sup>th</sup> every month.
5. Party of the 2<sup>nd</sup> part has agreed that the said unsecured loan will not carry any interest.
6. Party of the 2<sup>nd</sup> part reserves the right to take any action as deemed fit against party of the 1<sup>st</sup> part in the event of default in payment of above installments. Further default interest at 18% per annum will be payable on the defaulted amount from the date of default to the actual date of payment.

SUDHA SIVA TRADERS PVT LTD

Director



For Ram Chandran Traders Pvt. Ltd,

Director

IN WITNESS WHEREOF the parties hereto have signed on this the day month and year above mentioned in the presence of the following witnesses:

SUDHA SIVA TRADERS PVT LTD

For Ram Chandran Traders Pvt Ltd.

Part of the 1<sup>st</sup> Part

*[Signature]*  
Director

Part of the 2<sup>nd</sup> Part Director

*[Signature]*

*[Signature]*  
9/03/2019

**WITNESSES:**

1. C. Lajundra  
NO: 360 Mubachagan Nagar  
Miyur, Thiruvallur Dist

**T.S.G. SEKAR**  
ADVOCATE & NOTARY  
2, II Cross Road,  
R.A. Puram, Chennai - 28.

2. *[Signature]*  
2nd and 3rd Secured Debtor Ch. 118



8. The Respondent has filed counter and it is seen that the Respondent has admitted its liability, however expressed its inability to repay its outstanding debt. Further, it is averred in the counter that the Financial Creditor has failed to establish 'financial debt' in terms of Section 5(8) of IBC, 2016.

9. Heard the submissions made by the Learned Counsel for both the parties. This Adjudicating Authority before passing an order of admission under Section 7 of IBC, 2016 is required to be satisfied

*[Handwritten mark]*

that the Applicant is a 'Financial Creditor' and there exists a 'financial debt' and that the Corporate Debtor should have made 'default' in repayment of such 'financial debt'. Only if the above conditions are satisfied, this Adjudicating Authority can initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

10. As to the facts of the present case, the cause of action for the Applicant to file the present Application stems from the Memorandum of Agreement dated 31.03.2019. As per the recitals of the said Agreement, it is manifestly made clear that the Financial Creditor has supplied steel and allied products to the Corporate Debtor and that the Corporate Debtor has not paid the outstanding dues and the parties hereto have entered into an Agreement to convert the said amount into an unsecured loan.

11. Hence under such a circumstances, the question which is required to be decided by this Adjudicating Authority is that, whether the Memorandum of Understanding as entered into between the parties on 31.03.2019 would partake the character of a 'financial debt' as defined under Section 5(8) of IBC, 2016 which is extracted hereunder;

(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

*Explanation.* -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

15. From the above definition, it is seen that for a Financial Creditor to qualify to file an Application under Section 7 of IBC, 2016, they have to satisfy that there is a 'financial debt' as extracted above. From the recitals made in the Memorandum of Understanding dated 31.03.2019, it is seen that the Financial Creditor has supplied steel and allied products to the Corporate Debtor and the amount which is due and payable as against supply of steel and allied products have been converted in the form of an "Unsecured Loan". Thus, it is seen the Applicant has made an attempt to convert the "operational debt" into a "financial debt" by way of a Memorandum of Understanding.

16. Thus, after perusing the documents filed along with the Application and in view of the discussions made supra, we are of the view that the Memorandum of Understanding dated 31.03.2019 entered into between the parties, does not entitle to treat the Applicant as a "Financial Creditor" and also the 'debt' of the Applicant does not qualify to be an 'financial debt' under Section 5(8) of IBC, 2016 and in such a circumstances, the Application filed by the Financial Creditor is required to be dismissed and accordingly stands **dismissed**. No costs.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

*Raymond*