IN THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH, CHENNAI

MA/462/2018 in CP/540/IB/2018 filed under Section 60 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016

In the matter of **M/s. PRC International Hotels Private Limited**

Jonathan Mouralidarane

... Applicant

-vs

Mr. S. Rajendran, Resolution Professional

...Respondent

Order delivered on 31st July, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Applicant : Mr. Gagan Bothra, (Power Agent)
For Resolution Professional: Mr. Shankarnarayanan, Sr. Counsel
Mr. N. P. Vijay Kumar, Ms. M. Savitha Devi &
Ms. R.V Yajura Devi, Counsels

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. 1. Under adjudication is MA/462/2018 in CP/540/(IB)(CB)/2018 filed by the Applicant viz. Mr. Jonathan Mouralidarane, through his power agent viz.

Gagan Bothra, against the Resolution Professional (RP) for rejection of his claim. The Applicant prayed as under:

> *a) Set- aside the order of rejection passed by the Respondent dated 17.09.2018 and direct the Respondent to admit the claim of the Applicant as mentioned in FORM-C.*
>
> *a) (i) set aside the order dated 30.04.2019 passed by the resolution professional. [Amended vide order dated 22.07.2019 passed in M.A No. 700 of 2019]*
>
> *b) Pass an order of Interim stay of the meetings of the Committee of Creditors pending disposal of the above petition.*
>
> *c) Direct the respondent to reconstitute the Committee of Creditors.*
>
> *d) Pass any other order/direction as this Hon'ble tribunal may deem fit and proper in the facts and circumstances of the case.*

2. At the outset it is important to mention that the Corporate Debtor is undergoing the CIR Process by virtue of

order dated ***24.07.2018*** passed by this Authority in CP/540/(IB)/CB/2018.

3. The Applicant has filed his claim in Form 'C' on 14.08.2018 before the Resolution Professional viz. Ebenezar Inbaraj, which has been rejected by his letter of rejection dated 17.09.2018. Subsequently, the Resolution Professional viz. Ebenezar Inbaraj was replaced by Mr. S. Rajendran by order of this authority dated 26.02.2019. The newly appointed Resolution Professional has re-considered the claim of the Applicant and rejected the same vide letter of rejection dated 30.04.2019. The reasons for rejection as stated in the said letter are as follows:

> *"There are no documentary evidence for having paid the amount of Rs. 5,10,72,990/- (Rs. 3 Crores principal and balance claimed as interest) to the Corporate Debtor. All payments are reportedly in cash. The financial statements of the company do not reflect the borrowings. There is no duly signed loan agreement or contract. The claimant says he has been paying sums despite no repayment coming up and no interest payment made by the*

borrower. Claimant has not cared to get prior authorization or approval from the board of directors by way of a resolution approving such huge borrowings.

Therefore, the RP is unable to admit the claim of Mr. Jonathan Mouralidarane for Rs. 5,10,72,990/- in the absence of acceptable evidence of the money having been brought into the accounts of the Corporate Debtor.

Therefore, the Resolution Professional hereby determine the claim of Mr. Jonathan Mouralidarane, as financial creditor, after having regard to all records and information made available, clarifications called for, after having give him opportunity to present his case and further papers in support of his claim, as "NIL"."

4. The Applicant has submitted that the Corporate Debtor had financial dealings with the Applicant since 2014 and for such borrowing the Corporate Debtor, through its Managing director had executed documents i.e., stamped letter of acknowledgment of debt dated 21.02.2017, confirming the total borrowing and total debt due of Rs. 3,00,00,000 /- (Three Crore) as on 21.02.2017 and also

executed a fresh Pronote dated 21.02.2017 for a sum of Rs, 3,00,00,000/-, and promised to repay the same on demand.

5. The Applicant has claimed that the total amount due and payable by the Corporate Debtor as on the date of filing Form 'C, is Rs. 5,10,72,990/- (Five Crore ten lakhs seventy two thousand nine hundred and ninety only) including interest @ 3% on the principal of Rs. 3,00,00,000/-.

6. The Applicant has submitted that on repeated request and demands to repay the loan amount with interest, the Corporate Debtor issued Cheque(s) signed by the managing director and the other director for a sum of Rs. 1,25,00,000 (One Crore and Twenty five lakhs) bearing No. 126838 dated 12.06.2017, for the discharge of the part liability, but the same was dishonored and returned unpaid for the reasons "FUNDS INSUFFICIENT" by the return memo dated 13.06.2017.

7. The Applicant has further submitted that on 06.07.2017, he had issued a statutory notice under Section

138 of the Negotiable Instrument Act, to the Corporate Debtor and all the Directors, to which *no reply* was given by the Corporate Debtor.

8. The Resolution Professional in his *counter* has admitted that there is a demand promissory note dated 21.02.2017 for Rs. 3 Crores and there is no common seal affixed on it. The Resolution Professional has further submitted that there is no *board resolution* authorizing such borrowing and there is no document demonstrating the disbursal of funds, receipt of funds or utilization of funds by the Corporate Debtor. The RP has submitted that the Applicant states this transaction to be cash transaction, which is more than rupees twenty thousands and is in violation of Section 269SS of Income Tax Act, 1961.

9. The Resolution Professional has further submitted in the reply that the transaction between the Applicant and Mr. Senthil are in their personal capacity and the Corporate Debtor has not received any benefit and the Applicant has not produced any original documents till date.

10. The Resolution Professional has also submitted in the reply that the Applicant has not produced any income tax return to demonstrate the *source of such loan*, *actual disbursal of such loan* and *accounting of such loan in books of the Applicant*. It is further stated that the only document relied upon by the Applicant is his cash register (Cash Book). This cash register is not supported by return of income, audited accounts, statement of account and it is sealed with seal of a Chartered Accountant without any details stated therein about the nature of certification, purpose of certification and who is responsible for such certification.

11. Based on the pleadings of the parties and the oral submissions made, the issues involved in the present application are framed as follows:

> *i. Whether the Authorized Representative/Power Agent is legally entitled to argue on behalf of the Applicant?*

ii. Whether the non-filing of the income tax return by the Applicant disentitles him to claim the re-payment of the loan advanced?

iii. Whether the non-compliance with FED master direction No. 6/2015-16 dated January 1, 2016 issued by the Reserve Bank of India annuls the loan transactions between the Applicant and Corporate Debtor?

iv. Whether the claim of the Applicant based on acknowledgment/confirmation letter and pro-note, both dated 21.02.2017 and cheque dated 12.06.2017 is admissible in the absence of entry in the Books of Account of the Corporate Debtor?

12. In relation to the issue No. *i*, the learned Sr. counsel for the Resolution Professional has submitted that Authorized Representative/Power Agent is not legally entitled to argue the case on behalf of the Applicant (Principal) unless he is enrolled as an advocate. In this

regard the learned Sr. Counsel has referred a Judgement of Hon'ble High Court of Madras given in ***K. Anand vs Debt Recovery Appellate Tribunal, reported in 2015 SCC online Mad 12019***, wherein it was held that power agent is not entitled to represent the principal before the DRAT.

13. In reply, the Authorized Representative/Power Agent for the Applicant has referred to Section 432 of the Companies Act, 2013 and Rule 45 of the National Company Law Tribunal, Rules 2016 and submitted that the said provisions empower any other person duly authorized in writing in this behalf to represent the case of a party before this Tribunal or appellate Tribunal, as the case may be. For the sake of convenience the provisions of Section 432 of the Companies Act, 2013 and Rule 45 of the National Company Law Tribunal, Rules 2016 are reproduced as follows;

> ***"432.*** *A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost*

accountants or legal practitioners or ***any other person*** *to present his case before the Tribunal or the Appellate Tribunal, as the case may be."* *(Emphasis supplied)*

"45. Rights of a party to appear before the Tribunal:

(1) Every party may appear before a Tribunal in person or through an authorized representative, duly authorized in writing in this behalf."

The term *'Authorised Representative'* is defined under rule 2(6) of the NCLT Rules, 2016 as under:

"Authorised Representative, means a person authorized in writing by a party to present his case before the Tribunal as the representative of such party as provided under Section 432 of the Act."

14. Besides the above, the *authorized representative* of the Applicant has referred to the judgment of the Hon'ble Supreme Court given in ***Harishankar Rastogi vs Girdhari Sharma and Another, reported in (1978) 2 Supreme Court Cases 165*** wherein, the Hon'ble Supreme Court had granted permission to the petitioner to be represented by a private person as was prayed for.

15. It is worthwhile to mention that as per the provisions of Section 32 of the Advocates Act, 1961, the court/Tribunal has the *Power to permit any person not enrolled as an advocate under the Act, to cause appearance in particular cases.* For the sake of convenience the provisions of Section 32 of the Advocate Act, 1961 are extracted below:

> *"32. Power of Court to permit appearances in particular cases.-Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."*

16. It is noted that in ***K. Anand's*** *case (supra), cited by* learned Sr. Counsel for the Respondent the provisions of Section 432 of the Companies Act, 2013 and Rule 45 of the National Company Law Tribunal, Rules 2016 were not the subject matter of interpretation before the Hon'ble High Court of Madras. Therefore, the judgment given by the

Hon'ble High Court of Madras cannot be made applicable to the case on hand.

17. On co-joint reading of the provisions of Section 432 of the Companies Act, 2013 and Rule 45 of the National Company Law Tribunal, Rules 2016 r/w., Section 32 of the Advocate Act, 1961 there does not appear any bar against the Authorized Representative/Power Agent to argue the case of the Applicant/Principal. The Authorized Representative/Power Agent is duly authorized in writing in this behalf by the Applicant /principal and he has knowledge of law and already argued his personal cases well before this bench. In view of it, this Authority has permitted the Authorized Representative/Power Agent viz., Mr. Gagan Bothra to argue the case of the Applicant/principal. Accordingly, the issue No. *i*, is decided in favour of the Applicant against the Respondent.

18. In relation to the issue No. ii, the learned Sr. counsel for the Respondent has submitted that the Applicant has not disclosed the alleged amount in the Income Tax Return

as investment. If at all this amount was landed to the Corporate Debtor, he should have shown in his Income Tax Return. It is worthwhile to mention that the proof of payment of tax on income of a lender may be necessary when there is no documentary proof for advancement of the loan. In the present case, the Applicant is relying upon loan confirmation letter and pro-note, both dated 21.02.2017 and Cheque dated 12.06.2017, besides this, the Cash Register/Cash Book from 01.01.2014 to 31.03.2017 *is also placed on record.* Therefore, it is not open to the Corporate Debtor to contend that the lender/Applicant has not paid the tax on the amount advanced to it, so he is not entitled to recover the amount claimed. A similar issue has come up before the Hon'ble High Court of Madras in ***Anbarasu and Anr vs Mukanchand Bothra (deceased) and anr., in Crl. R.C. Nos. 870 to 872 of 2017 (delivered on 24.07.2019),*** wherein the Hon'ble court has observed as follows:

> *"....when a person wants loan from another, he is not required to investigate into the means by which his creditor had amassed wealth. If the accused in these*

cases had wanted to be puritans, they should have told Mukunchand at the threshold itself that, they being puritans, will obtain loan only from a person who is also a puritan and who has disclosed all his earnings to the income tax department. In the opinion of this court, after having obtained a loan, it does not behove of the debtor to repudiate on the ground that the creditor had earned the money through illegal means. In other words, after having borrowed from a compassionate harlot, can the borrower deny the repayment of loan on the ground that she had earned the money immorally and illegally? The answer to this question can only be an emphatic "No" and nothing else. In short, a thief is not entitled to legitimately rob a dacoit."

The case cited above contains similar set of facts and circumstances as are involved in the case on hand. Therefore, this authority relies upon the observations made by the Hon'ble High Court of Madras in the above noted case, on the issue under reference. The Corporate Debtor after availing the loan, cannot take the plea that the Applicant has not produced any income tax return to demonstrate the source of loan. In this connection this authority also relies upon on the judgment given by Hon'ble High Court of Madhya Pradesh, delivered on 07.03.2019 in

Smt. Ragini Gupta vs piyush Dutt Sharma. In the light of the above, the plea taken by the Corporate Debtor stands rejected and the issue is decided in favour of the Applicant.

19. In relation to the issue No. iii, the learned Sr. counsel for the Resolution Professional/Corporate Debtor would contend that the Applicant is the Non-resident Indian therefore, he cannot lend money in cash to the Indian Company. In this regard, the learned Sr. counsel has referred to the Master Direction No.6/2015-16 dated 01.01.2016, issued by the Reserve Bank of India, which says that a company incorporated in India may borrow in INR, on repatriation or non-repatriation basis, from NRIs/PIOs after satisfying certain terms and conditions. Some of the relevant terms and conditions contained in the Master Direction (herein referred as direction) are as follows;-

> ***"2.i.2 Borrowing in INR by Companies in India:***
>
> *i.* ***

ii. Borrowing is by issuance of non-convertible debentures (NCDs);

iii. The issue of NCDs is made by public offer;

iv. The rate of interest is not more than the prime lending rate of State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting plus three per cent;

v. Period of loan shall not be less than three years;

vi. If the borrowing is on repatriation basis then the percentage of NCDs issued to NRIs/PIOs to the total paid up value of all NCDs issued shall not exceed the ceiling prescribed for issue of equity shares/convertible debentures for foreign direct investment in India. Further, the funds towards borrowing should be received through inward remittance from outside India or by debit to NRE/FCNR (B) account of the investor maintained with an authorised dealer or an authorised bank in India;"

20. Based on the above, the learned Sr. counsel for the Resolution Professional/Corporate Debtor alleged that cash transaction between the Applicant and Corporate Debtor is non-est in law. In support of his argument, he has cited the judgement given in ***Mannalal Khetan vs. Kedar Nath Khetan, (1977) 2 SCC,*** wherein the Hon'ble Supreme Court held that

in addition to the prohibition issued under Order 21, Rule 46 a separate prohibitory order was issued to the company in Form 18 in Appendix E of the First Schedule of the Code of Civil Procedure. Therefore, the company by registering the transfer of shares was obviously permitting the transfer and such action on the part of the company being in violation of the prohibition is contrary to law. The Hon'ble Apex court had further held that when the receiver held the scrips and the transfer forms, it was not open to the persons in whose names the shares originally stood to exercise rights to ownership in respect thereof or to transfer their ownership to anyone else. In view of it, the Hon'ble Supreme Court while interpreting the provisions of Section 108 of the Act, 1956 held that the said provisions are mandatory. It is seen that the case law cited by the Sr. Counsel has no relevance with the issues involved in the present case. Therefore, the same cannot be made applicable to the facts and circumstances of the case on hand.

21. Further, if the arguments of the learned Sr. counsel for the Respondent have any relevancy with case on hand, then it is the company (Corporate Debtor), which has failed to comply with the said direction issued by the RBI and the acceptance of the loan by the Corporate Debtor from the Applicant is the culpability attributable to the Corporate Debtor. It is settled proposition of law that no one can be allowed to reap the benefit of his own wrong. In this connection reliance is placed on the judgment of Hon'ble Apex Court given in **"Oil and Natural Gas Corporation Ltd. Vs. Modern Construction and Company"** reported in (2014) 1 Supreme Court Cases 648, wherein under para 20 of the Order, the Hon'ble Court was pleased to make reference to its earlier ruling given in **"Bhartiya Seva Samaj Trust Vs. Yogeshbhai Ambalal Patel"** reported in (AIR 2012 SC 3285), wherein the Hon'ble court while dealing with a similar issue, observed as follows:-

> *"28. A person alleging his own infamy cannot be heard at any forum, what to talk of a writ court, as explained by the legal maxim alleganssuamturpitudinem non estaudiendus. If a party*

has committed a wrong, he cannot be permitted to take the benefit of his own wrong.... This concept is also explained by the legal maxims commodum ex injuriasua non haberedebet and nulluscommodumcaperepotest de injuriasuapropria."

In the light of the principle laid down by Hon'ble Apex Court in the above noted case, the Respondent cannot take the benefit of its own wrong.

22. However, on perusal of the record, it reveals that the Applicant is resident of Pondicherry and presently residing in United Kingdoms, who has a regular Account No. 12781010000133, NR Others, OD limit:0.00, Currency: INR with HDFC Puducherry II. The Account statements pertaining to the Account of the Applicant issued by the HDFC Bank w.e.f. 01.08.2008 to 27.08.2018 is placed on record. But in this case, the transactions relating to the advancement of loan between the Applicant and the Corporate Debtor have been made in cash, as reflects from the Cash Book (maintained by the Applicant) for the period w.e.f., 01.01.2014 to 31.03.2017, the transactions are also

confirmed by the Respondent/ Corporate Debtor vide its loan acknowledgment/confirmation letter dated 21.02.2017 executed by the managing director viz., Senthil kumar of the Corporate Debtor. Thus, there is no evidence that the money has been brought in by the Applicant from abroad. Therefore, there is no violation of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (borrowing and lending in Rupees) Regulations, 2000 notified vide notification no. FEMA 4/2000-RB dated May 3, 2000, and the FED Master Direction No. 6/2015-16 dated 01.01.2016 as is contended by learned Sr. counsel for the Resolution Professional/Corporate Debtor. Even if, it is assumed that there is violation of said direction, the transactions do not become void, the non- compliance with the direction will entail penalty, if any. It is important to note that the loan transactions took place between the Applicant and the Corporate Debtor with effect from 05.03.2014 to 21.02.2017 and the Corporate Debtor had never raised any issue of

such violation with the Applicant. Further, it is *necessary to place on record that the Corporate Debtor has not pleaded anything in its counter with regard to the violation of the Foreign Exchange Management Act.* In view of the discussion made, the cash transactions between the Applicant and the Corporate Debtor do not involve any violation *of FED master direction No. 6/2015-16 dated January 1, 2016 issued by the Reserve Bank of India, as contended.* Accordingly, the issue no. iii stands decided in favour of Applicant and against the Respondent.

23. In relation to the issue No. iv, the Respondent would contend that there is no document to substantiate the claim of the Applicant. There is a demand promissory note dated 21.02.2017 for Rs. 3 Crores and there is no common seal affixed on it, there is no board resolution authorizing such borrowing and there is no document demonstrating the disbursal of funds, receipt of funds or utilization of funds by the Corporate Debtor, the only document relied upon by the Applicant is his cash register (it is Cash book). This cash

register is not supported by return of income, audited accounts, statement of account and it is sealed with seal of a Chartered Accountant without any details stated therein about the nature of certification, purpose of certification and who is responsible for such certification.

24. In rebuttal, the Applicant referred to the minutes of the 6th CoCs' meeting, wherein at page No. 6. Para No.A-05, it is mentioned that the *RP was of the view that the audit of the accounts of the Company was not conducted properly and many material facts were not disclosed in the auditor's report.* The relevant extract of the minutes of 6th CoCs' meeting are as follows:

> *"RP was of the view that the audit of the accounts of the Company was not conducted properly and many material facts were not disclosed in the auditor's report. RP also stated that the accounts of the Company were not audited for the financial year ended 31st March 2018 (a non-compliance under Companies Act, 2013). The provisional accounts for the period 1st April 2018 to 24th July 2018 have not been signed by any of the directors of the company.*

RP strongly opined that the accounts needed to be urgently complied for 2017-18 and an independent auditor/firm should be appointed immediately for auditing of accounts..."

25. From the statement of the RP quoted above, it becomes clear that the Corporate Debtor has not been maintaining the accounts properly, for which the Applicant cannot be made liable, as the same pertains to the internal management of the Respondent/ Corporate Debtor. Therefore, the absence of any entry in the Books of Account of the Corporate Debtor, about the loan taken from the Applicant, cannot be a valid ground for rejection of the claim of the Applicant, in the face of the bulk of the documentary evidence, i.e., loan confirmation letter, pro-note and Cheque including Cash Book produced by the Applicant, to substantiate his claim.

26. As to the issue of the Board Resolution, the Applicant has referred to the acknowledgment/*confirmation letter 21.02.2017* executed by the managing director viz., Senthil kumar of the Corporate Debtor and contended that the said

document clearly provides that the loan was taken with the consent of all the Directors of the Corporate Debtor. For the sake of convenience the relevant portion of the *acknowledgment/confirmation letter 21.02.2017* is extracted as follows;-

> *"I have borrowed various amounts from you on various dates since 2014 for the business of M/s. PRC International Hotels Pvt. Ltd and on behalf of M/s. PRC International Hotels Pvt. Ltd agreeing to pay interest thereon and as on this date the total amount due by us to you is Rs. 2,50,00,000/- (Two Crore and fifty Lakhs Only). Today we have received a further sum of Rs. 50,00,000/- (Fifty Lakhs Only) by cash from you and as on this date M/s. PRC International Hotels Private Limited owns you a total sum of Rs. 3,00,00,000/- (Three Crores only). All the borrowings are made for the business of M/s. PRC International Hotels Pvt. Ltd* ***with the knowledge, consent and permission of the other directors.***
>
> *Today I have executed a new Pronote for the total amount if Rs. 3,00,00,000/-(Three Crore Only) in capacity as the Managing Director of M/s. PRC International Hotels Pvt Ltd agreeing to pay principle together with interest at the rate of Three percent (3%) per month, agreeing to pay interest every month. This letter is given to you in confirmation of the receipt of the*

above amount and in confirmation of executing the Pronote dated 21.02.2017. I have received back the old original promissory notes that were executed by us as and when the borrowings were made.

We undertake to discharge your entire loan with interest at the earliest and we are making arrangements to repay your amount within a period of four months from today."

27. In the light of the content of the loan confirmation letter, the relevant portion of which is extracted above, it becomes clear the all the directors of the Board had consented to the borrowings of the loan from the Applicant and the loan confirmation letter has been signed by the managing director viz., Senthil kumar, having affixed the seal of the Corporate Debtor that leaves no doubt, that he (the director) has due authority to represent the Corporate Debtor. Therefore, the plea raised by the Corporate Debtor with regard to the Board resolution for obtaining loan from the Applicant is misdirected, the same stands rejected.

28. Besides the above, the Applicant has referred to the Cash book for the period January 1st 2014 to March 31st

2017, which is Audited and reflects the cash transactions date wise, by which loan to the tune of Rs,30000000 (three crores) was advanced to the Corporate Debtor. Therefore, the entries made in the *'Cash book'* strengthen the case of the Applicant. Further, the Cheque dated 12.06.2017 issued by the Managing director to the applicant was presented before the Bank, which got dishonored on 13.06.2017, on account of 'insufficient funds' and not for any other reason, even for mismatch of the signature. The Applicant has given the notice on 06.07.2017 under Section 138 of the Negotiable Instrument Act, 1881 to the Corporate Debtor, but no reply was given to the same. Further, there is statutory presumption that the Cheque dated 12.06.2017 and Pro-note dated 21.02.2017 issued by the Managing director viz., Senthil kumar after having affixed the seal of the Corporate Debtor is in discharge of a legally enforceable debt or liability. In this regard, reliance is placed on the judgement of the Hon'ble Supreme Court given in the case of ***T.P Murugan (Dead) Thr. LRS vs Bojan, reported in (2018) 8***

SCC 469, wherein the Hon'ble Supreme Court has held that *"under Section 139 of the N.I Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan."* In the case on hand, the Respondent/ Corporate Debtor did not deny the signature, thus the presumption under Sec. 139 would operate. The Respondent failed to rebut the presumption by adducing any cogent or credible evidence. In addition to this a *pronote* has also been executed by the managing director viz., Senthil kumar on 21.02.2017. Therefore, the Applicant has proved his case by over-whelming evidence to establish his claim based on acknowledgment/confirmation letter and pro-note, both dated 21.02.2017 and Cheque dated 12.06.2017 [along with 'Cash Book'] that are admissible in evidence which were issued by the Corporate Debtor

towards the discharge of an existing liability and legally enforceable debt. Accordingly, issue No. iv is decided in favour of the Applicant against the Respondent.

29. It is noted that as per the recitals of the loan confirmation letter dated 21.02.2017, executed by managing director viz. Senthil Kumar, the amount of loan was agreed to be repaid by the Corporate Debtor to the Applicant with interest @ 3 % per month, which seems to be excessive. Therefore, in order to strike the balance and to do substantial justice between the parties, the rate of interest is fixed at Rs 24% p.a., which will be effective from the date of the *'loan confirmation letter and execution of pro-note i.e., 21.02.217'* till the date of approval of the Resolution Plan by the CoC i.e. 24.06.2019, on the Principal amount of Rs. 3,00,00,000 (Three Crore). Accordingly, the Applicant is held legally entitled to the re-payment of Rs. 3,00,00,000/- (Three crores) along with the interest @ 24 % p.a. Consequently, the order of rejection passed by the Respondent/Resolution Professionals dated 17.09.2018 and

30.04.2019 are set aside. In view of this, the instant application stands allowed.

30. This authority takes judicial notice that during the pendency of this Application, the Resolution Plan came to be approved by the CoC, which has been filed before this Authority under Section 30(6) read with Section 31(1) of the IBC, 2016. In view of this order, the Resolution Professional is directed as follows:-

a). to treat the Applicant at par with other unsecured financial creditors and make the appropriate provision for payment to which he is entitled, in consultation with the CoC and the Resolution Applicant, and file the supplementary affidavit to that effect before this authority, or

b*). to withdraw the Resolution Plan and constitute the CoC afresh to get the Resolution Plan(s) approved with suitable modifications, as may be required.*

31. In terms of the above, the MA/462/2018 filed in CP/540/ (IB)/CB/2018 stands disposed of. There is no order as to costs.

32. The order is pronounced in open court.

-Sd-

(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

/VISHNU/