



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
**08-03-2023 AT 10:30 AM**

**IA (IBC) 460, 1058 & 1377/2022 in CP (IB) No. 27/7/HDB/2022**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

SREI Equipment Finance Ltd

...Financial Creditor

VS

Deepika Infratech Pvt Ltd

...Corporate Debtor

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders in Company petition is pronounced, recorded vide separate sheets. In the result Company Petition is allowed. Corporate debtor is put into CIRP as per the terms and conditions mentioned in the order.

**IA No.460/2022 & IA No.1377/2022**

IA's dismissed. Both these Applications are dismissed without costs.

**IA No.1058/2022**

IA is allowed in part, rest of the reliefs in this IA are dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.1**

**IA No.460 of 2022  
in  
CP (IB) No.27/7/HDB/2022**

Under section 340 read with section 195  
of the Code of Criminal Procedure read  
with sections 193, 194, 196 and 197 of the  
Indian Penal Code.

In the matter between:  
**Deepika Infratech Private Limited**  
Registered Office: TSR Towers  
B-1 6-3-1090, Rajbhavan Road  
Somajiguda, Hyderabad  
Telangana- 500082.

**... Applicant/  
Corporate Debtor**

Vs.

**SREI Equipment Finance Limited**  
Registered Office: 86C, Topsia Road  
Kolkata – 700046.

[Currently under Corporate Insolvency  
Resolution Process pursuant to order  
dated 08.10.2021 in CP No.294 of 2021  
before the NCLT, Kolkata Bench]

**.. Respondent  
Financial Creditor**

**Date of order : 8<sup>th</sup> March 2023**



**Coram:**

**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**PER BENCH**

**Parties / counsels present:**

For petitioner/  
Corporate Debtor : Dr. P. Bhaskar Mohan, Advocate assisted  
by Smt. L. Madhavalatha, Advocate.

For respondent/  
Financial Creditor : Shri Srikanth Hariharan, Advocate.

**ORDER**

The present IA is filed by Deepika Infratech Private Limited/  
Corporate Debtor, not under the I&B Code, 2016, but under section 340  
read with section 195 of the Code of Criminal Procedure, 1973 and under  
sections 193, 196 and 197 of the Indian Penal Code, 1860. The prayer  
made in this IA are:

*“ .. to initiate action for perjury proceedings against the  
respondent/ Financial Creditor u/s 340 r/w 195 for producing false  
claims and given the same in Form No.1 under section 7 of IBC  
2016 and also concealing the information about the Arbitral Award  
dated 30<sup>th</sup> June 2021 of the learned Sole Arbitrator Sri Shivaji  
Mitra, to obtain necessary orders from this Hon'ble Tribunal by  
misleading and pass orders under clause (a) to (d) 340 of Cr. PC  
and pass further orders directing the court having jurisdiction to  
pass orders u/s 193, 194, 196 and 197 and other applicable sections*



*of Indian Penal Code for initiating criminal proceedings against the respondent/ Financial Creditor.”*

2. It is alleged by the applicant/ Corporate Debtor that the respondent/ Financial Creditor concealed the fact that there is an Arbitral Award dated 30<sup>th</sup> June 2021 (Annexure ‘A’, page 15-56 of the IA) by the learned Sole Arbitrator/ Shri Shivaji Mitra for a payment of Rs.14.27 crores by the applicant. Corporate Debtor in favour of the respondent/ Financial Creditor.

3. It is submitted by the respondent/ Financial Creditor has concealed the above vital information and made a false case against the applicant/ Corporate Debtor under section 7 of the I&B Code in order to make wrongful gain. Such a concealment warrants inquiry under Clause (b)(i) of section 195(1) of the Code of Criminal Procedure against the respondent/ Financial Creditor. Hence the present IA under sections 340, 193 and 195 of the CrPC, which is reproduced hereunder:

4. Section 340 of the Code of Criminal Procedure:

*“CHAPTER XXVI : PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.*

*340. Procedure in cases mentioned in Section 195:-*

*(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of Justice that an inquiry should be made into any offence referred to in clause*



*(b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,–*

*(a) record a finding to that effect;  
(b) make a complaint thereof in writing;  
(c) send it to a Magistrate of the first class jurisdiction;  
(d) take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate, and  
(e) bind over any person to appear and give evidence before such Magistrate.*

*(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under subsection (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.*

*(3) A complaint made under this section shall be signed- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint; (b) in any other case, by the presiding officer of the Court.*

*(4) In this section, “Court” has the same meaning as in Section 195.”*

5. Since the material documents filed by the Financial Creditor are false and since the Financial Creditor has concealed information about Arbitral Award, it amounts to misleading the Tribunal. Hence the present IA.



6. A perusal of the pleadings in this case unequivocally and categorically reveal that the Corporate Debtor had entered into Master Facility Agreement with the applicant as part of restructuring of the existing loans on 03.04.2019. The petitioner also pleaded discharge of the loans covered under the said MFA dated 03.04.2019 as such nothing is payable. Later, the petitioner contended that under the Award it is required to pay only Rs.17.42 crores and as the same has been deposited nothing is due and payable. Thus, the petitioner is consistently inconsistent in raising its defences.

7. The Financial Creditor has filed Counter dated 18.05.2022 contending that:

(i) This Tribunal has no jurisdiction to entertain this IA under sections 195 and 340 of the Code of Criminal Procedure, 1973. This Tribunal is merely an Adjudicating Authority and not a Court to exercise powers under sections 195 and 340 of the Code of Criminal Procedure, 1973. Hence this IA deserves dismissal.

(ii) Even otherwise there is no concealment on the part of the Financial Creditor. The Financial Creditor has not concealed anything in CP IB No.27/7/ HDB/2022.



(iii) As regards Arbitral award, the Financial Creditor denies having received any notice in respect of the said arbitration proceedings from the Arbitrator. Even notice of appointment of Arbitrator, namely, Shri Shivaji Mitra has been served on the Financial Creditor. The arbitral award itself is a nullity and void. The Corporate Debtor has never received any communication from the so called Arbitrator. Not even the Corporate Debtor intimated the Financial Creditor about any dates of hearing of such arbitral proceedings. The Financial Creditor has never consent appointment of Arbitrator. The alleged arbitration award is a forgery and a technique employed by the Corporate Debtor for its unlawful gain.

(iv) The alleged written communication dated 29.04.2019 being an amendment proposed by the Corporate Debtor was not received by the Financial Creditor. Therefore, there is no question of its acceptance. The Financial Creditor is calling upon the Corporate Debtor to produce the notices purported to have been issued.

(v) Any attempt by the Arbitrator to arbitrate disputes over 11 Master Facility Agreements by a single arbitral proceeding is untenable, without jurisdiction and contrary to the judgments of the Hon'ble Supreme Court.



8. The applicant/ Corporate Debtor has filed **Rejoinder dated 30.05.2022** submitting that:

(i) The affidavit in the Counter filed by the Financial Creditor is signed by one officer, whereas the main Company Petition under section 7 of the IBC is signed by another officer.

(ii) The Financial Creditor itself is under Corporate Insolvency Resolution Process. It is the Resolution Profession under the instructions of the CoC, who is competent to file Company Petition.

(iii) Section 75 of the I&B Code, 2016 empowers the Tribunal to punish persons who made false statement or furnish false particulars. This Tribunal may take action against the Financial Creditor.

(iv) The Financial Creditor has not issued Demand Notice to the Corporate Debtor for the alleged default of payment from 2019, in spite of an arbitration award dated 30.06.2021.

9. In the light of the aforesaid contentions, the *point* that emerged for our due consideration is:

- Whether the petitioner is entitled for initiation of action against the Financial Creditor in terms of section 340 of the Code of Criminal Procedure, 1973?



10. Heard Dr. P. Bhaskar Mohan, Advocate, who is assisted by Smt. Madhavalatha, learned advocate for the applicant/ Corporate Debtor; and Shri Srikanth Hariharan, learned advocate for the Financial Creditor.

POINT:

Whether the petitioner is entitled for initiation of action against the Financial Creditor in terms of section 340 of the Code of Criminal Procedure, 1973?

11. At the outset it is to be noted that the Arbitral Award dated 30<sup>th</sup> June 2021 passed by the Sole Arbitrator in favour of the petitioner/ Corporate Debtor under challenge before the Hon'ble Calcutta High Court vide Appeal No.AP/647/2022 and the operation of the same, is stayed by the Hon'ble Calcutta High Court until further orders.

12. The main contention raised by the respondent/ Financial Creditor, who is the appellant therein is that it had no notice whatsoever of the Award proceedings, at any stage.

13. Under these circumstances, it is not proper for this Tribunal to come to any conclusion as regards knowledge relating to the proceedings before Arbitrator and passing of Award dated 30.06.2021, by the Arbitrator. In fact, this petition is also premature. The Hon'ble Calcutta High Court while staying the Award observed as follows:



*“Heard counsel appearing on behalf of the parties.*

*The case made out by the petitioner in this section 34 application is that the entire proceeding has proceeded without notice to the petitioner. The documents annexed at page 150 to page 162 clearly indicate that the supposed notices were never served upon the petitioner company.*

*Prima facie I am of the view that since the initiation of the entire proceeding is without proper notice, the entire award is required to be stayed for the time being.*

*It is to be noted that the claim of the petitioner is to the tune of approximately Rs.130 crores and the Arbitral award that has been passed ex parte has awarded a sum of Rs.14 crores to the petitioner company.*

*Mr. Jishnu Chowdhury, counsel appearing on behalf of the respondent submits that records of the Arbitrator should be brought before the Court and the Arbitrator should be examined. In my view, there is no need for examination of the Arbitrator at present time and only record should be brought before the Court for examination.*

*The Arbitrator is directed to have the records sent to the Registrar, Original Side in a sealed cover within a period of seven days from date.*

*In light of the above the entire award is stayed till further orders.*

*Let this matter appear after vacation.”*

14. That apart, the petitioner has not explained how this Tribunal exercising summary jurisdiction in an application under section 7 of the I&B Code, 2016, is entitled to entertain the complaint under section 340 of the Code of Criminal Procedure, 1973. Therefore, we do not find any merit in the application. The petition is liable to be dismissed.



IA No.460 of 2022 in CP IB No.27/7/HDB/2022. Deepika Infratech Vs. SREI. Order dated 08.03.2023.

15. Accordingly IA No.460 of 2022 in CP (IB) No.27/7/HDB/2022 is dismissed.

Sd/-

CHARAN SINGH  
MEMBER (TECHNICAL)

Sd/-

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)

*karim*



**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.1**

**IA No.1058 of 2022  
in  
CP (IB) No.27/7/HDB/2022**

**Under section 60(5) of I&B Code, 2016  
read with Rule 11 of the NCLT Rules,  
2016.**

In the matter between:  
**Deepika Infratech Private Limited**  
Registered Office: TSR Towers  
B-1 6-3-1090, Rajbhavan Road  
Somajiguda, Hyderabad  
Telangana- 500082.

**... Applicant/  
Corporate Debtor**

Vs.

**SREI Equipment Finance Limited**  
Registered Office: 86C, Topsia Road  
Kolkata – 700046.

[Currently under Corporate Insolvency  
Resolution Process pursuant to order  
dated 08.10.2021 in CP No.294 of 2021  
before the NCLT, Kolkata Bench]

**.. Respondent  
Financial Creditor**

**Date of order : 8<sup>th</sup> March 2023**



**Coram:**

**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)  
PER BENCH**

**Parties / counsels present:**

For petitioner/  
Corporate Debtor : Dr. P. Bhaskar Mohan, Advocate assisted  
by Smt. L. Madhaviatha, Advocate.

For respondent/  
Financial Creditor : Shri Srikanth Hariharan, Advocate.

**ORDER**

The Corporate Debtor has filed this IA under section 60(5) of the I&B Code, 2016 read with Rule 11 of the NCLT Rules, 2016, praying that:

*“(a) To stay proceedings of CP (IB) No.27/7/HDB/2022 sine die until Appeal No.AP/647/2022 is disposed of by Calcutta High Court.*

*(b) To allow the petitioner to submit the additional counter on the facts and circumstances of the amount due.”*

2. Averments made in this IA are:
- (i) On 05.09.2022, the Financial Creditor has preferred appeal being No. AP/647 of 2022 before the Hon'ble High Court of Calcutta for setting aside the award passed by the Arbitral Tribunal dated 30.06.2021. The Hon'ble High Court has stayed arbitral award vide order dated 20.09.2022 (ANNEXURE 'A' to this IA) in AP No.647 of 2022. The Corporate



Debtor is making efforts to get the stay order vacated. It is therefore, just and equitable to stay proceedings of CP (IB) No.27/7/HDB/2022 sine die until Appeal No.AP/647/2022 is disposed of by Calcutta High Court. It is contended that two parallel proceedings cannot go together on the same claim.

(ii) Besides the Corporate Debtor prayed that the Corporate Debtor may be allowed to file a detailed additional counter as the Corporate Debtor is contesting on preliminary issue of arbitral award and res judicata.

(iii) On the proposition that the Corporate Debtor is a solvent company having more than 100 employees and more than 500 workmen at the project sites, the Corporate Debtor has relied on the following decisions:

- M/s Vidarbha Industries Power Limited Vs. Axis Bank Limited, Civil Appeal No.4633 of 2021, decided on 12 July 2022 by the Hon'ble Supreme Court of India.
- Swiss Ribbons Private Limited and another Vs. Union of India and others, Writ Petition (Civil) No.99 of 2018, decided on 25.01.2019 by the Hon'ble Supreme Court of India.

(iv) Relying on the above judgments the Corporate Debtor has submitted that no case of default is made out against the Corporate Debtor and no



case is made out for initiation of Corporate Insolvency Resolution Process.

The Corporate Debtor is ready to pay the amount as awarded by the Arbitrator.

3. In the light of the aforesaid contentions, the *point* that emerged for our due consideration is:

- Whether the petitioner is entitled for stay of the present proceedings till disposal of Appeal No.AP/647/2022 pending before the Hon'ble High Court of Calcutta?

4. Heard Dr. P. Bhaskar Mohan, Advocate, who is assisted by Smt. Madhavalatha, learned advocate for the applicant/ Corporate Debtor; and Shri Srikanth Hariharan, learned advocate for the Financial Creditor.

POINT:

Whether the petitioner is entitled for stay of the present proceedings till disposal of Appeal No.AP/647/2022 pending before the Hon'ble High Court of Calcutta?

At the outset it may be stated that proceedings under the I&B Code, 2016, especially sections 7, 9 and 10 of the Code, are time bound, hence every effort shall be made to ensure disposal of matters within the time frame. Insofar as proceedings before the Hon'ble High Court of Calcutta are concerned the same arose on account of challenge made by the Financial Creditor to the Arbitration Award dated 30.06.2021 on the ground that the



Financial Creditor had no notice of proceedings before the Arbitrator at any time and also of passing of the Arbitration Award dated 30.06.2021, which in fact has been passed ex parte. Hon'ble High Court of Calcutta stayed the said award, by observing that:

*“Heard counsel appearing on behalf of the parties.*

*The case made out by the petitioner in this section 34 application is that the entire proceeding has proceeded without notice to the petitioner. The documents annexed at page 150 to page 162 clearly indicate that the supposed notices were never served upon the petitioner company.*

***Prima facie I am of the view that since the initiation of the entire proceeding is without proper notice, the entire award is required to be stayed for the time being.***

*It is to be noted that the claim of the petitioner is to the tune of approximately Rs.130 crores and the Arbitral award that has been passed ex parte has awarded a sum of Rs.14 crores to the petitioner company.*

*Mr. Jishnu Chowdhury, counsel appearing on behalf of the respondent submits that records of the Arbitrator should be brought before the Court and the Arbitrator should be examined. In my view, there is no need for examination of the Arbitrator at present time and only record should be brought before the Court for examination.*

*The Arbitrator is directed to have the records sent to the Registrar, Original Side in a sealed cover within a period of seven days from date.*

***In light of the above the entire award is stayed till further orders.***

*Let this matter appear after vacation.”*

5. Moreover, unlike Arbitration proceedings, the proceedings under the IBC are not for recovery. We have already observed in this matter that the Corporate Debtor has been blowing hot and cold, as regards discharge



of debt. Further, we have observed in our order that the Balance Sheet of the Corporate Debtor for the Financial year ending on 31.03.2019 categorically, under the caption ‘other lenders’ of loans discloses loan of Rs.33 crore due and payable to the Financial Creditor herein and no record has been placed by the Corporate Debtor showing discharge of the said loan. Thus, it is a case of admission of debt by acknowledgement in the Balance Sheet of the Corporate Debtor.

6. That apart section 238 of the Code says as follows:

*“238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

7. Therefore, we find no reason whatsoever to stay proceedings till disposal of Appeal No.AP/647/2022, pending before the Hon’ble Calcutta High Court. Hence we reject the said prayer.

8. However, the prayer as to receive additional counter is granted. Additional counter is taken on record as prayed. IA No.460 of 2022 in CP (IB) No.27/7/HDB/2022 is thus, partly allowed in the aforesaid terms.

Sd/-

CHARAN SINGH  
MEMBER (TECHNICAL)

Sd/-

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)

*karim*



**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.1**

**IA No.1377 of 2022  
in  
CP (IB) No.27/7/HDB/2022**

**Under section 65 of I&B Code, 2016  
read with Rule 11 of the NCLT Rules,  
2016.**

In the matter between:  
**Deepika Infratech Private Limited**  
Registered Office: TSR Towers  
B-1 6-3-1090, Rajbhavan Road  
Somajiguda, Hyderabad  
Telangana- 500082.

**... Applicant/  
Corporate Debtor**

**Vs.**

**SREI Equipment Finance Limited**  
Registered Office: 86C, Topsia Road  
Kolkata – 700046.

[Currently under Corporate Insolvency  
Resolution Process pursuant to order  
dated 08.10.2021 in CP No.294 of 2021  
before the NCLT, Kolkata Bench]

**.. Respondent  
Financial Creditor**

**Date of order : 8<sup>th</sup> March 2023**



**Coram:**

**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**PER BENCH**

**Parties / counsels present:**

For petitioner/  
Corporate Debtor : Dr. P. Bhaskar Mohan, Advocate assisted  
by Smt. L. Madhavalatha, Advocate.

For respondent/  
Financial Creditor : Shri Srikanth Hariharan, Advocate.

**ORDER**

This IA is filed by the Corporate Debtor under section 65 of the I&B Code, 2016 read with Rule 11 of the NCLT Rules, 2016 praying that:

*“ .. .. to appoint an independent auditor to ascertain the debt and default, if any, committed by the Corporate Debtor under all 11 (eleven) disputed loan agreements dated 03.04.2019 entered with the Financial Creditor herein by verifying the concerned accounts of Corporate Debtor and Financial Creditor w.e.f. FY 2009-10 to till date, and report to this Hon'ble Tribunal whether the Corporate Debtor is liable to pay any amounts to the Financial Creditor.”*

2. The averments made in the IA are such that as regards the claim of the Corporate Debtor that the it has paid the amount in its entirety to the Financial Creditor, the Corporate Debtor has relied on Anita Rani Vs.



Ashok Kumar, 2022 (1) ALT 66 decided by the Hon'ble Supreme Court. In para II, pages 5 and 6 of the IA, the Corporate Debtor has furnished details of amount received and the amount repaid in support of its claim that the entire amount has been repaid. Bank statements filed at pages 76 to 78 in Additional Counter filed by the Corporate Debtor are relied on as proof of such repayment. Besides, TDS Certificates issued by the Financial Creditor under section 197 of the Income Tax Act and Audited Balance Sheets for the outstanding balances of the Financial Creditor in the books of the Corporate Debtor also relied on.

3. In light of the aforesaid contentions, the point that emerged for our due consideration is:

- Whether the petitioner is entitled to the relief of appointment of an independent auditor to ascertain the debt and default, if any, on the part of the applicant?

4. Heard Dr. P. Bhaskar Mohan, Advocate, who is assisted by Smt. Madhavalatha, learned advocate for the applicant/ Corporate Debtor; and Shri Srikanth Hariharan, learned advocate for the Financial Creditor.

**POINT:**

Whether the petitioner is entitled to the relief of appointment of an independent auditor to ascertain the debt and default, if any, on the part of the applicant?



5. It is to be stated that the scope of inquiry contemplated under the I&B Code, 2016 in an application filed under section 7 of the Code is limited to the extent of finding whether there is a financial debt due and payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same. This power should only be exercised by the Adjudicating Authority, as per the Code. Therefore, delegation of the said power to an independent auditor is ultra vires, the provisions of the Code.

6. Be that as it may, since the petitioner availing credit facilities and execution of MFA are never in dispute, the prayer made in this IA is thoroughly misconceived. Thus, the IA is devoid of any merit, hence liable to be dismissed.

7. Accordingly, IA No.1377 of 2022 in CP (IB) No.27/7/HDB/2022 is dismissed.

Sd/-

CHARAN SINGH  
MEMBER (TECHNICAL)

Sd/-

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)

*karim*



**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.1**

**CP (IB) No.27/7/HDB/2022**

Under section 7 of I&B Code, 2016 read  
with Rule 4 of I & B (AAA) Rules, 2016.

In the matter between:  
**SREI Equipment Finance Limited**  
Registered Office: 86C, Topsia Road  
Kolkata – 700046.

[Currently under Corporate Insolvency  
Resolution Process pursuant to order  
dated 08.10.2021 in CP No.294 of 2021  
before the NCLT, Kolkata Bench]

.. **Petitioner  
Financial Creditor**

**VERSUS**

**Deepika Infratech Private Limited**  
Registered Office: TSR Towers  
B-1 6-3-1090, Rajbhavan Road  
Somajiguda, Hyderabad  
Telangana- 500082.

.. **Respondent  
Corporate Debtor**

**Date of order : 8<sup>th</sup> March 2023**

**Coram:**  
**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA**  
**HON'BLE MEMBER (JUDICIAL)**



**SHRI CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**PER BENCH**

**Parties / counsels present:**

For petitioner/  
Financial Creditor : Shri Srikanth Hariharan, Advocate.

For respondent/  
Corporate Debtor : Dr. P. Bhaskar Mohan, Advocate assisted  
by Smt. L. Madhavalatha, Advocate.

**ORDER**

I.(i) This Company Petition is filed under section 7 of the I&B Code, 2016 by SREI Equipment Finance Limited, an NBC, hereinafter referred to as *Financial Creditor* against the Respondent, a Company Registered under the provisions of the Companies Act, herein after referred to as Corporate Debtor, for initiation of Corporate Insolvency Resolution Process, alleging that the corporate debtor *defaulted* in repayment of a financial debt of a sum of Rs.51,59,08,328/- (Rupees fifty one crore fifty nine lacs eight thousand three hundred and twenty eighty only), stated to be *due and payable* as on 17.11.2021.

(ii). It is averred in the petition that the Financial Creditor had extended a sum of Rs.68,03,87,000/- by virtue of eleven (11) Master Facility Agreements dated 03.04.2019 (ANNEXURE-3) to the Corporate Debtor



as detailed in Part-IV (pages 4 and 5 of the petition). In order to secure such credit facilities the Corporate Debtor had executed the following:

(iii) Deed of Hypothecation dated 31.05.2019 (ANNEXURE-4) in favour of the Financial Creditor. Charge has been registered with the Registrar of Companies. Such Certificate of Registration is at ANNEXURE-5.

(iv) Deed of Hypothecation dated 28.04.2021 (ANNEXURE-6) in favour of the Financial Creditor. Charge has been registered with the Registrar of Companies. Such Certificate of Registration is at ANNEXURE-7.

(v) Deed of Personal Guarantee dated 03.04.2019 (ANNEXURE-8).

(vi) Pledge Agreement dated 03.01.2013 (ANNEXURE-9) pledging the shares of the Corporate Debtor in favour of the Financial Creditor. Under Clause 9 of the said Agreement the Financial Creditor had agreed to continue the security in respect of all the loans obtained by it until it is duly and fully repaid.

(vii) It is further averred in the petition that the Corporate Debtor failed to pay instalments to the Financial Creditor. Statement of Accounts for all the Master Facility Agreements is at ANNEXURE-10. As a result the Financial Creditor has issued Demand Notice dated 24.11.2021



(ANNEXURE-11) to the Corporate Debtor demanding a sum of Rs.51,59,08,328/- due as on 17.11.2021. The Corporate Debtor has neither paid the amount due nor sent reply to the Demand Notice. Hence the present petition.

II. The Corporate Debtor on 28.04.2022 filed its Affidavit-in-Reply stating, *inter alia*, that:

(i) It is alleged by the Corporate Debtor in para (1) of the Reply (page 13) that the Financial Creditor did not disclose the fact of Sole Arbitrator having been appointed and both the parties consented to such appointment in arbitration proceedings. Though all the Arbitration proceedings were in the knowledge of the Financial Creditor, the Financial Creditor concealed the same.

(ii) The Financial Creditor has issued Demand Notices dated 02.05.2017 (ANNEXURE 'C' to the Reply) and 03.03.2018 calling upon the Corporate Debtor to pay an amount of Rs.60,16,83,846/-. The Corporate Debtor had requested for reconciliation of the account, but in vain.

(iii) The Financial Creditor had restructured the outstanding loans for five times during the period from 2011 to 2019 as detailed in para 8, page 5 of the Reply. Such restructuring was done with higher rates of interest



and lesser period of instalments, which had resulted into additional cost of Rs.14,69,68,611/-. This was done without consent of the Corporate Debtor. Basis of such reconstruction was never explained to the Corporate Debtor. In all the above restructured loans, amounts received by the Corporate Debtor or its directors were adjusted to old loans or returned to the bank accounts of the Financial Creditor immediately.

(iv) The Financial Creditor had sold the hypothecated machineries without the consent/ knowledge of the Corporate Debtor, frustrating the Hypothecation Agreement. Not only that even the properties of the promoters were sold by the Financial Creditor to recover the alleged amounts in addition to the hypothecated assets.

(v) The Financial Creditor has issued NOC on recovery of repossessed assets; offered to restructure the existing loan account vide Master Facility Agreement (MFA) dated 03.04.2019 giving moratorium for six months for payment, viz. upto 30.09.2019. The Corporate Debtor, with intent to restart its operation, was constrained to agree the offer and had entered into Master Facility Agreement MFA dated 03.04.2019. On the same day a new Hypothecation Agreement dated 03.04.2019 was entered into with revision of rate of interest. It is contended by the Corporate Debtor the said MFA and certain Schedules thereto are undated and events of default



are not specified. Hence the Hypothecation be treated as invalid document.

**III.** The Corporate Debtor on 20.10.2022 has filed one more Counter Affidavit/ Additional Counter Affidavit, stating that:

(i) No liability exists in respect of eleven Loan Agreements for Rs.63.08 crores by virtue of Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Hon'ble Sole Arbitrator Shri Shivaji Mitra, Kolkata. A copy of said award is produced at page 74 of the Affidavit-in-Reply dated 28.04.2022 filed by the Corporate Debtor.

(ii) It is further alleged that for the said amount of Rs.63.08 crores, towards Loan Agreement dated 31.05.2019, a fabricated hypothecation deed was executed on 28.04.2021. A copy of the alleged Hypothecation Deed dated 28.04.2021 is annexed at page 43 of the Counter/ Annexure 'B'. It is further alleged that Form CHG-1 (paced at page 35 of the Counter/ Annexure 'B') is without digital signature of the Corporate Debtor, hence it is fraudulent. Thus, the Corporate Debtor prays to call for records for verification of veracity of the same.



(iii) The Financial Creditor has issued NOC in the years 2004 and 2017 to the Corporate Debtor for some equipment/ machinery, repossessed the same and sold the same. Sale proceeds were not credited to the outstanding loan accounts.

(iv) The Corporate Debtor has furnished statements related to new loans for the Financial Years 2009-10 to 2012-13 and for restructured loans for the Financial Years 2013-14 to 2020-21, interest accrued, amounts paid and net amount due for each relevant year. It is submitted that the value of repossessed assets was not adjusted in the outstanding loans payables by the Corporate Debtor worth Rs.10.34 crores, having distress value of not less than Rs.5.0 crores.

(v) The Corporate Debtor is prepared to remit an amount of Rs.17.42 crores by way of Demand Draft to the Financial Creditor in *lieu* of the award. It can be seen that Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Hon'ble Sole Arbitrator Shri Shivaji Mitra, Kolkata has Claims No. 1, 2 and 7 and disallowed Claims No.3, 4, 5 and 6. A copy of said award is produced at page 74 of the Affidavit-in-Reply dated 28.04.2022 filed by the Corporate Debtor.

(vi) The Financial Creditor had extended pretended loan facility to the Corporate Debtor under which the Corporate Debtor had received certain



amounts on 03.09.2015 and 04.09.2015. Said amounts have been repaid on the same day by the Corporate Debtor to the Financial Creditor. A copy of Bank statement evidencing such deposits and withdrawals is annexed at ANNEXURE 'E' (pages 72 and 73 of the Counter). So is the case of pretended loan facility occurred on 04.07.2017. Amounts were received and credited back to the account of the Financial Creditor in similar manner on 04.07.2017. A copy of Bank statement evidencing such deposits and withdrawals is annexed at ANNEXURE 'G' (pages 75 of the Counter). Similar pretended loan facility transaction have further occurred on 04.04.2019. A copy of bank statement is at ANNEXURE 'H' (page 76-78 of the Counter).

(vii) Under Mater Facility Agreement dated 03.04.2019 an amount of Rs.68.03 crores was received by the Corporate Debtor. The said amount was repaid on the same day. A copy of Bank statement evidencing such deposits and withdrawals is annexed at ANNEXURE 'L' of the Counter. The Corporate Debtor in its audited financial statements reported with MCA and Income Tax Department had never recorded the outstanding balances. That confirms repayment. Copy of extract of Financial Statements for the period from 2009 to 2021 are produced at ANNEXURE 'M'.



(viii) The Corporate Debtor has preferred an appeal being AP No.647 of 2022 before the Hon'ble High Court of Calcutta against the order of this Tribunal dated 28.04.2022. Said appeal stood posted on 14.11.2022 and is subjudice.

(ix) The Corporate Debtor has submitted that the Corporate Debtor/ company is a solvent company. It is able to discharge all its liabilities to all its creditors including the Financial Creditor herein. However, there is neither debt nor default nor any amount due nor any amount remained unpaid in respect of the Financial Creditor herein. In support of the said contention the Corporate Debtor relied on TDS Certificates, Bank statements, CIBIL Report to prove repayment of the entire loan amount and the outstanding amounts against the disputed Master Facility Agreement dated 03.04.2019.

IV. The Financial Creditor on 21.11.2022 has filed *Reply* in response to Counter Affidavit/ Additional Counter Affidavit dated 20.10.2022 filed by the respondent/ Corporate Debtor, contending that,

(i) The Corporate Debtor had executed Deed of Hypothecation from time to time, created charge over the assets. Charge has been registered with the Registrar of Companies. Whenever assets are sold, due credit has



been given to the respective contract/ loan account as reflected in the Statement of Accounts. After execution of loan and hypothecation documents, the Corporate Debtor was requested to complete CHG-1 and to provide digital signature for registration of charge. As the Corporate Debtor failed to do the same the Financial Creditor was constrained to file necessary charges without digital signature of the Corporate Debtor under the provisions of the Companies Act.

(ii) A duly registered charge under section 77 of the Companies Act, 2013 is required to be taken into consideration while adjudicating a petition under section 7 of the I&B Code, 2016 for initiating Corporate Insolvency Resolution Process against Corporate Debtor. In this regard the Financial Creditor has relied on decision of the NCLT, Mumbai in *Halliburton Offshore Services Inc. and others Vs. Mercator Petroleum Limited and others*, wherein it was held that:

*“Date of registration of charge is to be considered while admitting claim of a creditor whether it is a liquidation under Companies Act or Resolution Process/ Liquidation under IBC”*

(iii) The Financial Creditor has preferred application being AP/647/2022 under section 34 of the Arbitration Act before the Hon’ble High Court of Calcutta for setting aside arbitral award alleged to have been obtained by the Corporate Debtor fraudulently. Said award was



passed in a clandestine manner by the Arbitrator solely to benefit the Corporate Debtor.

(iv). The Corporate Debtor itself has admitted that as per the award it owes a sum of Rs.14.27 crores. However, the Hon'ble High Court of Calcutta vide order dated 20.09.2022 has been pleased to grant interim stay of the impugned award, wherein it was observed that:

***“It is to be noted that the claim of the petitioner is to the tune of approximately Rs.130 crores and the Arbitral Award that has been passed ex parte has been awarded a sum of Rs.14 crores to the petitioner company.”***

(v) The Corporate Debtor on 31.03.2021 categorically admitted its liability to the tune of Rs.14,94,99,999.00. Its liability is reflected in CIBIL Report, which is the evidence of the debt and default on the part of the Corporate Debtor. According to the applicant the Adjudicating Authority has to only see whether there is a default. Even if the debt is disputed, as long as debt is due, the application deserves to be admitted. Besides, no evidence is coming forth from the Corporate Debtor with regard to payment of debt.

(vi). The Financial Creditor on 15.12.2022 filed Written Submissions reiterating its oral submissions and also placed reliance on the decision of



the Hon'ble Supreme Court in Innoventive Industries Vs. ICICI Bank, (2018) 1 SCC 407, wherein it was held that,

*“30. .. .. in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.” (Emphasis is ours).*

(vii). The Corporate Debtor on 07.11.2022, filed a memo stating that Hon'ble High Court of Calcutta vide order dated 24.11.2022 in AP No.647 of 2022 has directed the Corporate Debtor to deposit the amount awarded before the Registry of the Hon'ble High Court within four weeks and pursuant to the said order it has deposited a sum of Rs. 17.45 cores before the Registrar, High Court Kolkata, as such the subject debt stood discharged and the company petition therefore is liable to be dismissed.

(viii). The Corporate Debtor has filed Written Submissions reiterating its oral submissions and also relied on the following Rulings.



- Order dated 11.10.2022 of the **NCLT, Hyderabad** Bench in SREI Equipment Finance Limited Vs. Vijaya Mining Ltd in **CP IB No.29/7/HDB/2022**, where under the Company Petition has been dismissed with cost of Rs.10 lacs.
- Order dated 26.10.2022 of the **NCLT, Amaravati** Bench in SREI Equipment Finance Limited Vs. Vijay Engineering Equipment India Pvt Ltd in CP IB No.7/7/AMR/2022, where under the company petition was dismissed.
- Vidarbha Industries Power Limited Vs. Axis Bank Limited, (2022) 8 SCC 352, wherein the Hon'ble Supreme Court held that:

*“90. We are clearly of the view that the Adjudicating Authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a Corporate Debtor was in default in payment of the debt there would be no option to the Adjudicating Authority (NCLT) but to admit the petition under Section 7 of the IBC.”*

**V.** In the light of the aforestated contentions, the *point* that emerged for our due consideration is:

*Whether a financial debt of a sum over rupees one crore is due and payable by the respondent to the applicant? If so, whether the respondent has defaulted in repayment of the same?*

**VI.** We have heard Shri Srikanth Hariharan, learned counsel for the applicant/Financial Creditor; and Dr. P. Bhaskar Mohan, learned counsel,



assisted by Smt. L. Madhavalatha, learned counsel, for the respondent/corporate debtor, perused the record, case law and the written submissions.

POINT:

Whether a *financial debt* of a sum over rupees one crore is *due and payable* by the respondent to the applicant? If so, whether the respondent has *defaulted* in repayment of the same?

(i). At the outset it may be stated that the present application being one under section 7 of the I&B Code, 2016, upon establishing existence of a *financial debt* of a sum of over rupees one crore *due and payable* by the respondent/corporate debtor to the applicant/financial creditor, and its *default by the* respondent/corporate debtor, the Adjudicating Authority can *trigger* Corporate Insolvency Resolution Process, herein after referred to as ‘CIRP’, against the respondent herein.

(ii). This legal position can be traced from the ruling of the Hon’ble Supreme Court of India, in *re*, Innoventive Industries Ltd Vs. ICICI Bank, 2017 SCC OnLine SC 1025, wherein it was held by the Hon’ble Apex Court that,

“30. .. .. in the case of a corporate debtor who commits a default of a financial debt, the *adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not*



*yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”(Emphasis is ours).*

(iii). Subsequently, Hon’ble Supreme Court of India, in Vidarbha Industries Power Limited Vs. Axis Bank Limited in Civil Appeal No.4633 of 2021, held that:

*“87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.*

*88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits.”*

**VII.** Therefore, in light of the above legal *frame* coupled with the *factual matrix* of this case, we proceed to decide the above point.

**VIII.** Before we proceed further with our discussion on the *point* above, it is pertinent to mention that, the respondent/ corporate debtor in its first *Affidavit-in-Reply* filed on 28.04.2022, stated as below.

“i). The Financial Creditor has issued Demand Notices dated 02.05.2017 and 03.03.2018 calling upon the Corporate Debtor to pay an amount of Rs.60,16,83,846/-. The Corporate Debtor had requested for reconciliation of the account, but in vain.



ii). The Financial Creditor had restructured the outstanding loans for five time during the period from 2011 to 2019 as detailed in para 8, page 5 of the Reply. Such restructuring was done with higher rates of interest and lesser period of instalments, which had resulted into additional cost of Rs.14,69,68,611/-. This was done without consent of the Corporate Debtor. Basis of such reconstruction was never explained to the Corporate Debtor. In all the above restructured loans, amounts received by the Corporate Debtor or its directors were adjusted to old loans or returned to the bank accounts of the Financial Creditor immediately.

iii) The Financial Creditor has issued NOC on recovery of repossessed assets; offered to restructure the existing loan account vide Master Facility Agreement (MFA) dated 03.04.2019 giving moratorium for six months for payment, viz. up to 30.09.2019.

iv). The Corporate Debtor, with intent to restart its operation, was constrained to agree the offer and had entered into Master Facility Agreement MFA dated 03.04.2019. On the same day a new Hypothecation Agreement dated 03.04.2019 was entered into with revision of rate of interest. It is contended by the Corporate Debtor the said MFA and certain Schedules thereto are undated and events of default are not specified. Hence the Hypothecation be treated as invalid document.”

**IX.** Strangely, the respondent/ corporate debtor in its *subsequent* additional pleading filed on 20.10.2022 has stated that;

“i). No liability exists in respect of even Loan Agreements for Rs.63.08 crores by virtue of Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Hon’ble Sole Arbitrator Shri Shivaji Mitra, Kolkata.

ii) The amount of Rs.63.08 crores, towards Loan Agreement dated 31.05.2019, a fabricated hypothecation deed was executed on 28.04.2021.



iii). That Form CHG-1 is without digital signature of the Corporate Debtor, hence it is too is fraudulent.

iv). The Financial Creditor has issued NOC in the years 2004 and 2017 to the Corporate Debtor for some equipment/ machinery, repossessed the same and sold the same. Sale proceeds were not credited to the outstanding loan accounts.

v) The Corporate Debtor has furnished statements related to new loans for the Financial Years 2009-10 to 2012-13 and for restructured loans for the Financial Years 2013-14 to 2020-21, interest accrued, amounts paid and net amount due for each relevant year.

vi). It is submitted that the value of repossessed assets was not adjusted in the outstanding loans payables by the Corporate Debtor worth Rs.10.34 crores, having distress value of not less than Rs.5.0 crores.

v). The Corporate Debtor is prepared to remit an amount of Rs.17.42 crores by way of Demand Draft to the Financial Creditor in lieu of the award.

(vi) The Financial Creditor had extended pretended loan facility to the Corporate Debtor under which the Corporate Debtor had received certain amounts on 03.09.2015 and 04.09.2015. The said amounts have been repaid on the same day by the Corporate Debtor to the Financial Creditor. So is the case of pretended loan facility occurred on 04.07.2017. Amounts were received and credited back to the account of the Financial Creditor in similar manner on 04.07.2017. Similar pretended loan facility transaction have further occurred on 04.04.2019.

vii). Under Mater Facility Agreement dated 03.04.2019 an amount of Rs.68.03 crores were received by the Corporate Debtor. The said amount was repaid on the same day.

viii). The Corporate Debtor in its audited financial statements reported with MCA and Income Tax Department had never recorded the outstanding balances.



viii) The corporate debtor preferred an Appeal being AP No.647 of 2022 before the Hon'ble High Court of Calcutta against the order of this Tribunal dated 28.04.2022. Said appeal stood posted on 14.11.2022 and is, sub-judice.

ix) There is neither debt nor default nor any amount due nor any amount remained unpaid in respect of the Financial Creditor herein.

x). CIBIL Report prove repayment of the entire loan amount and the outstanding amounts against the disputed Master Facility Agreement dated 03.04.2019.”

**X.** The contents of the Affidavits in reply as well as the additional reply were denied by the applicant by filing a *reply*.

**XI.** Therefore, in the above backdrop, the veracity of the fresh assertions of the respondent in the additional reply that “it had repaid the same (the loan under Master Facility Agreement MFA dated 03.04.2019), on the same day”, and that, “no liability exists in respect of even Loan Agreements for Rs.63.08 crores by virtue of Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Hon'ble Sole Arbitrator” needs to be examined in the undeniable background of conspicuous absence of assertion of “discharge of the same on the same day” in the earlier sworn Affidavit-in-Reply filed by the respondent.



**XII.** The *indisputable* reason behind execution of ‘Master Facility Agreement’ (MFA) dated 03.04.2019, with *moratorium for six months* being restructuring of the existing loan account, amply demonstrates that the credit facilities which have been availed already by the respondent from the applicant remain undischarged by the respondent. In fact, a bare perusal of the respondent’s balance sheet for period ending on 31/3/2019, i.e. just two days prior to entering into Master Facility Agreement, under the head ‘**other loans**’ clearly discloses the outstanding loan of Rs. 33 crores of the applicant besides Rs.17.50 crores of an ARC.

**XIII.** The firm contention of the applicant that the respondent *defaulted* in repayment of the loan amount payable as per the terms of the above *Master Facility Agreement (MFA) dated 03.04.2019*, is *refuted* by the respondent, inter alia,

*Firstly*, by contending in its additional counter affidavit that, on the day on which Master Facility Agreement has been executed it has repaid the said loan,

*Secondly*, that no liability exists in respect of Loan Agreements for Rs.63.08 crores by virtue of Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Sole Arbitrator,



*lastly*, that as per the Award, respondent is liable to pay only a sum of Rs.17.42 crores, which has already been deposited.

**XVI.** Having given our thoughtful consideration to the above submissions and upon careful perusal of the record placed by both sides, we have no hesitation to hold that the above defence apart from being self-contradictory and self-destructive, is *unsustainable* and *untenable* either under law or on facts. We hereunder state reasons for our conclusion.

**(i). Repaid the amount on the date of execution of Master Facility Agreement itself.**

a). In support of the above plea, the respondent relied on a copy of Bank statement filed as Annexure 'L'. We have carefully perused the annexure 'L', which is at pages 110 to 142 of the counter affidavit filed on 20.10.2022. Since the plea of repayment of the loan 03.04.2019 itself, the relevant financial year to find the entry if any relating to the said repayment is 2019-20. Strangely, the respondent did not choose to file its balance sheet for the year 2019-2020, as latest of the balance sheets filed as annexures L & M are for the period ending as on 31/3/2019. That apart, the statement that the audited financial statements reported with MCA and



Income Tax Department (Annexure ‘M’) had never recorded the outstanding balances and confirms repayment, is yet another palpably made incorrect statement, as annexure M, which is at pages 143-164 of the affidavit in reply does not contain any audited financial statement depicting repayment of loan amount due under the Mater Facility Agreement dated 03.04.2019. Needless to say that the balance sheets filed under annexures L & M, being for the period ending as on 31/3/2019 and the Master Facility Agreement having been entered on 03.04.2019, the said balance sheets cannot be reckoned for the purpose of proof of repayment of the loan on 03.04.2019. Moreover, when admittedly the terms of Master Facility Agreement provide for moratorium of six months for repayment up to 30.09.2019, it is preposterous to plead repayment of the said loan on the date of execution of Master Facility Agreement itself, especially in the absence of proof of repayment.

b). A bare perusal of the respondent’s balance sheet for period ending on 31/3/2019, under the head ‘**other loans**’ clearly discloses the outstanding loan of Rs. 33 crores of the applicant besides Rs.17.50 crores of an ARC.

How this outstanding loan of Rs.33 crores has been repaid by the respondent by 3.4.2019, when the CIBIL record of the respondent, which



also can be accepted as *record of default*, also confirms overdue of the subject loan of the applicant as on 30/06/2022.

c). That apart, if really the loan under the Master Facility Agreement dated 03.04.2019 has been repaid on the same day itself, then where is the necessity for the respondent to invoke Arbitration clause contained in the very same Master Facility Agreement post 03.04.2019, invite an Award dated 30.06.2021, *ex-parte*, and even voluntarily deposit the sum of Rs.17.42 crores, before the Registrar, High Court of Kolkata?

d). Therefore, the theory of discharge of the loan amount payable under the Mater Facility Agreement on the very date of its execution, as propounded by the respondent is false hence shall *fail* invariably.

**(ii). No liability exists in respect of Loan Agreements for Rs.63.08 crores by virtue of Arbitration Award dated 30.06.2021 rendered in Case No.003 of 2020 by the Sole Arbitrator.**

a). On 06.12.2022, the respondent filed a memo stating that, Hon'ble High Court of Kolkata, vide order dated 24.11.2022 in AP No.647 of 2022 has directed the respondent /corporate debtor to deposit the amount awarded under the above arbitration Award, before the Registry of High Court within four weeks and accordingly the amount of Rs.17.42 Crores



has been deposited. However, on perusal of the order of the High Court, we found that the above assertion of the respondent is factually incorrect as no such direction was passed by the High Court.

The order reads as below.

***“The Court: Mr. Mitra, learned senior counsel appearing on behalf of the award debtor, wishes to deposit the awarded amount before the Registrar, Original Side.***

*The said sum be deposited with the Registrar, Original Side within a period of four weeks from date. Upon receipt of the said sum the Registrar, Original Side is directed to put in the deposit the money in an interest-bearing fixed deposit with any nationalised bank immediately.*

*Both parties are granted liberty to inspect the records that had been sent by the Arbitrator in Court.*

***The above amount that has been deposited by the Deepika Infratech Pvt Ltd is without prejudice to the rights and contentions of the SREI Equipment Finance Ltd.***

*The subsisting interim order staying the execution of the award is extended for a further period of three months from date.”*

b). Therefore, the above deposit by the respondent was voluntary besides without *prejudice* to the rights and contentions of the applicant herein. The applicant has admittedly did not accept the said Award. Therefore, the said deposit constitutes *partial discharge of the financial debt claimed by the applicant*, as such the *default* in discharging the debt in its entirety is apparent and stands established.

c). This, plea is nothing but *approbate and reprobate* as, on one breath, the respondent pleaded in its additional reply affidavit that an amount of



Rs.68.03 crores payable under the Master Facility Agreement dated 03.04.2019 has been repaid on the same day, and *with the same breath*, now contends that under the Award, *supra*, it was required to pay only a sum of Rs.17.42 crores in respect of the loan under the Master Facility Agreement dated 03.04.2019, and as the said sum has been deposited before the Registrar, High Court of Kolkata, nothing is due and payable to the applicant now.

d). More admittedly the applicant has challenged the said Award, and the Hon'ble High Court of Calcutta vide order dated 20.09.2022, stayed the Award, observing as below;

*“Heard counsel appearing on behalf of the parties.*

*The case made out by the petitioner in this section 34 application is that the entire proceeding has proceeded without notice to the petitioner. The documents annexed at page 150 to page 162 clearly indicate that the supposed notices were never served upon the petitioner company.*

***Prima facie I am of the view that since the initiation of the entire proceeding is without proper notice, the entire award is required to be stayed for the time being.***

*It is to be noted that the claim of the petitioner is to the tune of approximately Rs.130 crores and the Arbitral award that has been passed ex parte has awarded a sum of Rs.14 crores to the petitioner company.*

*Mr. Jishnu Chowdhury, counsel appearing on behalf of the respondent submits that records of the Arbitrator should be brought before the Court and the Arbitrator should be examined. In my view, there is no need for examination of the Arbitrator at present*



*time and only record should be brought before the Court for examination.*

*The Arbitrator is directed to have the records sent to the Registrar, Original Side in a sealed cover within a period of seven days from date.*

***In light of the above the entire award is stayed till further orders.***

*Let this matter appear after vacation.”*

e). Therefore, when once the Arbitration Award itself has been stayed by High Court till further orders, the respondent is precluded under law from placing any reliance on the said award as long as the order of stay is in force.

**XV.** Now we shall deal with the rulings relied on by the Respondent.

i). As regards the ruling in Vidarbha Industries Power Limited Vs. Axis Bank Limited, (2022) 8 SCC 352 (supra), relied on by the learned counsel for the respondent in support of the praying to defer the admission order if any, it may be stated that the facts in Vidarbha, (supra), unlike the case on hand disclose that the amount awarded under an Arbitration Award in favour of the Corporate Debtor therein was far more than what has been claimed as financial debt due and payable in the application filed by the Financial Creditor. Besides, the Award, unlike in the case on hand was



not stayed by any court. Therefore, on facts, the said ruling is not applicable to the present case.

**ii).** Coming to the rulings in re. (i) M/s SREI Equipment Finance Limited Vs. M/s Vijaya Mining Private Limited, order dated 11.10.2022 in CP (IB) No.29/7/HDB/2022 of NCLT, Hyderabad, and (ii) SREI Equipment Finance Limited Vs. M/s Vijay Engineering Equipment India Private Limited, order dated 26.10.2022 in CP (IB) No.7/7/ AMR/ 2022 of NCLT, Amaravati bench at Mangalagiri, the Tribunal rejected the claim of the Financial Creditor in both the above cases, having found that no financial debt was found to be due and payable by the corporate debtor. Therefore, the ruling of this Tribunal (supra) is not applicable to the facts of the present case.

**XVI.** Therefore, in light of our discussion and on careful perusal of the record, we are *satisfied* that a financial debt of a sum over Rupees one crore is due and payable by the Corporate Debtor has been defaulted by the Corporate Debtor. We also find that the application is in order. Therefore, it is a fit case for admitting the Corporate Debtor into Corporate Insolvency Resolution Process.



**XVII.** Hence, the Adjudicating Authority, hereby, admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

-

(A) Corporate Debtor, M/s Deepika Infratech Pvt Ltd. is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government,



State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of moratorium shall have **effect from the date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints Shri [Mr. Kambhammettu Sri Vamsi](#), having Registration No. IBBI/IPA-001/IP-P00664/2017-2018/11141 as Interim Resolution Professional, whose contact details are:

e-mail ID: casrivamsi[at]gmail[dot]com

Address: Plot No. A-85, Flat No. DX-4, Sri Varasiddhi Nivas, Road No. 11, Opposite Sai Baba Temple, Jubilee Hills, Hyderabad, Telangana ,500033



He shall carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 28.12.2021. His Authorisation for Assignment is valid till 18-12-2023. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

**31.** The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

**32.** The petitioner is directed to communicate this order to the proposed IRP.

**33.** Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under Corporate Insolvency Resolution Process.

**34.** Accordingly, this Petition is admitted.

Sd/-

CHARAN SINGH  
MEMBER (TECHNICAL)

Sd/-

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)

*karim*