

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P.(IB)-1134(MB)/C-III/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

SREI Equipment Finance Limited

Having Registered Office at: 'Vishwakarma', 86C,
Topsia Road, Kolkata- 700046, West Bengal.

.....**Financial Creditor/Petitioner**

Vs

Supreme Innovative Building Projects Private Limited

Having Registered Office at: Sharma Bungalow,
Behind Lake Castle Building, Hiranandani Garden,
Powai, Mumbai-400076.

.....**Corporate Debtor/Respondent**

Order Pronounced on: 06.03.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Dharshit Dave

For the Corporate Debtor: Adv. Ashish Pyasi

ORDER

Per: - Smt. Lakshmi Gurung (Judicial Member).

1. The Present **Company Petition (IB)-1134(MB)/2022** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **SREI Equipment Finance Limited, (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“CIRP”) against **Supreme Innovative Building Projects Private Limited (“Corporate Debtor/ Respondent”)** for default in repayment of Rs. 122,82,28,882/- (Rupees One Hundred Twenty-Two Crore Eighty-Two Lakhs Twenty-Eight Thousand Eight Hundred Eighty-Two only).

Relevant Facts:

2. Upon the request made by the Corporate Debtor, the Petitioner granted a Loan for Rs. 13,00,00,000/-, Rs. 25,00,00,000/-, Rs. 37,44,00,000/- and Rs. 35,00,00,000/-. The Financial Creditor and the Corporate Debtor executed various Loan Agreements. The details are as follows:

Sr. No.	Loan Agreement No.	Debt Granted (Amount in Rs.)	Date of Contract
1.	140949	13,00,00,000/-	30.06.2017
2.	140739	25,00,00,000/-	18.09.2017
3.	148811	37,44,00,000/-	15.12.2017
4.	156946	35,00,00,000/-	03.04.2018
	Total	1,104,400,000/-	

3. Thereafter, the Corporate Debtor has defaulted in making repayment towards Loan Facilities. The date of default in the present petition is mentioned as 15.11.2019 for all the aforementioned Loan facilities.

4. The Financial Creditor vide Letter dated 25.11.2021 addressed to the Corporate Debtor requested to cure the defaults under the Loan Agreement Nos. 140949, 140739, 148811 and 156946, demanding outstanding dues.
5. The Petitioner has submitted that the Corporate Debtor has acknowledged the entire liability due and payable to the Petitioner in its balance sheet, as can be seen from the Balance Sheet for the year ending on 31.03.2019, under the heading Note 4 - Long Term Borrowings, Secured Loan from NBFC an amount of Rs. 110,35,29,396/-is shown as liability towards the NBFC.
6. Vide order dated 25.11.2022, the right to file reply of the Corporate Debtor was forfeited. On 14.12.2022, the Ld. Counsel appearing for the Corporate Debtor submitted that an application on behalf of CD will be filed for setting aside the ex-parte dated 25.11.2022.
7. Thereafter, the Corporate Debtor filed an IA/1218/2023 to seek following reliefs:
 - a. *To pass an order to admit and allow this application;*
 - b. *To pass an order to condone the delay in filing this application, if any;*
 - c. *To adjourn this matter sine-die till such time that the transfer applications are decided by the Principal Bench;*
 - d. *To pass an order granting an opportunity to the Applicant to file Reply to CP(IB) No. 1134/MB/2022 before the consolidated bench;*
 - e. *To pass any other order in the interest of equity, justice and good conscience.*
8. On 12.06.2023, IA/1218/2023 was rejected, recording reason that “Since the Corporate Debtor has not filed affidavit in reply as per usual practice being followed by this bench in spite of more than two months even after filing of this application, accordingly, the above application is rejected.”

9. The matter was finally heard on 02.02.2024 and the Corporate Debtor was given opportunity to make submissions. The Corporate Debtor has made oral submission that the Documents entered by and between Corporate Debtor and the Financial Creditor is insufficiently stamped, and therefore the deed needs to be stamped properly as per the provisions of the Maharashtra Stamp Act and thus, the Petition deserves to be dismissed.

Observations & Findings

10. Heard the Ld. Counsel for the Parties and perused the record. The Corporate Debtor was proceeded ex-parte vide order dated 25.11.2022, however the Corporate Debtor was given opportunity to make oral submission as well as to file written submission. During the hearing Ld. Counsel for the Corporate Debtor candidly and fairly submitted that the facts of the present case are similar to the facts of C.P.(IB)-225(MB)/C-III/2022 and the Corporate Debtor therein and the present Corporate Debtor are associate companies. Therefore, similar contention regarding insufficient stamping on loan agreement was raised.
11. Now we proceed to examine the Petition. The Petitioner has annexed copies of the following documents with the Petition:
- i) Loan Agreements dated 30.06.2017, 18.09.2017, 15.12.2017 and 15.03.2018 executed by and between the Financial Creditor and the Corporate Debtor.
 - ii) Deed of Hypothecation
 - iii) CIBIL Report of the Corporate Debtor.
 - iv) Demand Notice dated 25.11.2021 addressed by the Financial.
 - v) the Record of Default (RoD Certificate) issued by NeSL with status showing Deemed Authenticated.
12. In relation to the contention that the Documents entered by and between Corporate Debtor and the Financial Creditor is insufficiently stamped.

We have already dealt with this contention in C.P.(IB)-225(MB)/C-III/2022, which is reproduced below:

“17.3

we rely on the judgement **Ashique Poonamparambath vs. Federal Bank - 2021 SCC OnLine NCLAT 1769** wherein, the Hon’ble NCLAT has held that –

“28. The objections raised by the Appellant/Corporate Debtor are unsustainable. First, the Appellant emphasized the alleged insufficiently stamped Term Loan Agreement. However, in addition to the Term Loan Agreement, the Financial Creditor relies on Demand Promissory Note, Hypothecation letter regarding depositing of title deed, a certified copy of the bank statement, and so many other documents filed along with the Application. Therefore, even if it is considered that the Term Loan Agreement is insufficiently stamped and it cannot be accepted in evidence, then also alleged debt and default are proved beyond doubt. Furthermore, the Application filed under Section 7 is complete.

29. Based on the above discussion, we find no merit in the Appeal, hence liable to be dismissed”.

17. 4 In the present case also, the debt and default can be proved from various other documents placed on record, i.e. bank statement showing disbursal, balance sheet of the Corporate Debtor as on 03.03.2020 showing FC as creditor, CIBIL Report, the Record of Default issued by Nesl. Even if we consider that the agreement is not properly stamped there are enough evidence to prove debt and default. Therefore, the present contention cannot be sustained.”

13. In the present case also, the debt and default can be proved from the Record of default and CIBIL Report filed by the petitioner even if we consider that the agreement is not properly stamped. The Corporate

Debtor has not denied the factum of loan availed by it and default committed by it. Despite opportunities, did not file reply. Therefore, the present contention cannot be sustained.

14. In the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was held that-

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

*30. On the other hand, as we have seen, 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 Provided)

15. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.
16. In the facts of the present case, we are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit

mandated in Section 4(1) of the Code. Also the Petition filed is within limitation as date of default mentioned in Part IV is 15.11.2019 and petition is filed on 31.01.2022. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Anup Kumar Singh** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.

17. Accordingly, this Company Petition is **admitted** with the following directions:

- a. **The above Company Petition (IB)1134(MB)/2022 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Supreme Innovative Building Projects Private Limited.**
- b. This Bench appoints **Mr. Anup Kumar Singh**, having Registration No: **IBBI/IPA-001/IP-P-00153/2017-18/10322**, email: anup_singh@stellarinsolvency.com; Address: **162/D/702 Lake Gardens, Kolkata, West Bengal- 700045** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
 - e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
 - h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 - i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
18. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
19. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send

a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**

Arpan, LRA