

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**IA No. 70/CTB/2019  
Connected with  
TP No. 26/CTB/2019  
Arising out of  
CP (IB) No. 934/KB/2018**

**CORAM: 1. Shri Rajasekhar V.K, Member (Judicial)  
2. Shri Satya Ranjan Prasad, Member (Technical)**

**In the matter of:  
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

-And-

**In the matter of:  
An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 and  
Rule 11 of the National Company Law Tribunal Rules, 2016.**

-And-

**In the Matter of:  
SREI Equipment Finance Ltd., being a company registered under the Companies Act, 1956,  
having its Registered Office situated at 'Vishwakarma', 86 C Topsia Road, Kolkata – 700 046,  
W.B.**

... .. **Applicant/Financial Creditor**

-Versus-

**Shri Avishek Gupta, Resolution Professional of Sri Ganesh Sponge Iron Pvt. Ltd. (undergoing  
CIR Process) having office situated at P.O. Joda, District– Keonjhar, Odisha – 758 034.**

... .. **Respondent**

**Counsels appeared for the Petitioner (s):**

1. Mr. Rishav Banerjee, Adv.
2. Mr. Rajarshi Banerjee, Adv.



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**Counsels appeared for the Respondent (s):**

1. Mr. Avishek Gupta RP

**Date of pronouncement of Order: 26.07.2021.**

**ORDER**

**Per Shri Satya Ranjan Prasad, Member (Technical):**

1. This application has been filed on July 16, 2019 under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules. Application is filed by M/s SREI Equipment Finance Limited, a Company registered under the Companies Act, 1956, represented by Mr. Pulak Bagchi, Group Legal Head of the Company, authorised to represent the Company by the Board Resolution dated 6<sup>th</sup> November 2017.
2. The respondent in the instant matter is Mr. Avishek Gupta, Resolution Professional of Sri Ganesh Sponge Iron Pvt. Ltd. The Company Sri Ganesh Sponge Iron Pvt. Ltd. has its registered office at P.O. Joda, District – Keonjhar, Odisha – 758034. The Company was incorporated on 10.10.2001 and is presently under Corporate Insolvency Resolution Process (CIRP).
3. The Corporate Insolvency Resolution Process has been commenced against the Corporate Debtor by an Order dated February 18, 2019.

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4. This application has been filed by the applicant on the grounds that it is one of the Financial Creditors of the Corporate Debtor. The applicant states that it had entered into a Facility/Loan Agreement dated June 30, 2012 wherein, it had granted loans and/or financial assistance to Corporate Debtor. Pursuant to initiation of CIRP, the applicant Financial Creditor filed its claim of Rs. 6,77,07,586/- in Form "C" under Regulation 8 of the CIRP Regulations 2016 before the Respondent Resolution Professional (RP) with the supporting documents. It is sated that the claim filed by them was duly in consonance with the terms and conditions of the loan and/or Facility Agreement dated June 30, 2012 which was executed between the Applicant and the Corporate Debtor. Despite that RP has admitted claim only to the tune of Rs.2,56,34,154/-. Applicant states that the RP refused to take in account the overdue charges, which were taken into consideration by the Applicant as per the terms and conditions of the loan agreement dated June 30, 2012. Also, that RP stated in an e-mail dated May 27, 2019 to the Applicant that the overdue charges are extortionate in nature although, no application under IBC, 2016 has been filed by the RP claiming that the loan transaction between the Applicant and the Corporate Debtor as extortionate transaction. Applicant has enclosed copy of the aforesaid email from RP as Annexure "E" to the application.
5. Applicant had subsequently informed the RP that the overdue charges including the interest charged by them are duly in consonance with the relevant RBI Circulars, rate of interest to be charged by a Non-Banking Financial Company (NBFC) which includes the Applicant, is governed by the terms and conditions of the loan agreement entered into between the borrower and the NBFC. The Applicant also pointed out to RP that the transaction in question cannot be termed as extortionate credit transaction, since the

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transaction being the loan agreement in question was not executed by the corporate debtor within 2 years preceding the insolvency commencing date in respect of the Corporate Debtor.

6. The applicant has filed this application seeking various reliefs which are as under –

**“Reliefs: -**

- (i) Order for setting aside and/or quashing the decision of the RP in reducing the claim of the Applicant from Rs.6,77,07,586/- to Rs.2,56,34,154/-
- (ii) Directing the Resolution Professional to restore and /or admitting and/or including the entire claim of the Applicant Financial Creditor to the tune of Rs. 6,77,07,586/- and consequently grant the Applicant Financial Creditor a seat in the Committee of Creditors with the voting percentage of 5.68%.
- (iii) Stay of any further voting process during the CIRP held till adjudication of the instant application.
- (iv) Directing the Respondent Resolution Professional to give voting percentage of 5.68% to the Applicant Financial Creditor till adjudication of this instant application.
- (v) Ad-interim orders in terms of prayers (d), (e), (f) and (g) above.
- (vi) Such further or other Orders be passed and/or direction or directions be given as this Hon’ble Tribunal may deem fit and proper.”

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7. The Resolution Professional has filed reply to this application. He has alleged that the applicant has sold one of the assets under the loan agreement for Rs. 19.00 lakh but not disclosed the same in Form C, while making the claim. Applicant on the basis of mere overdue charges calculated at the rate of Rs.1/- for each Rs. 1000/- on monthly rest which effectively comes to 42.57 % p.a. and has increased the principal loan amount from Rs.95,12,364/- to Rs.6,77,07,586/- which also includes interest. As per the calculations given by the applicant the overdue charges come to Rs.5,67,25,301/- which is more than 5 times of the principal claim. RP has relied on “NBFC Fair Practices Code” prescribed by the Reserve Bank of India and also Clause 35 of the Master Direction DNBR.PD.008/03.10.119/2016-17 issued on September 01, 2016, which inter alia states “Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Claiming 5 times as overdue charge on the principal claim is extortionate and exorbitant.” Further, to the effect that overdue charges over and above the interest component as part of the claims are not maintainable as they amount to “usurious penal interest” in view of Section 3 of the Usurious Loan Act, 1918.
8. RP also submits that he exercised his wisdom and powers under Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016. Keeping in mind the interest of other Financial Creditors and stakeholders and in his wisdom rejected the claim of overdue charge and admitted claim of the applicant as per the principal and interest at the rate of 17.24 %, which comes to a sum of Rs.2,56,34,154/-. RP has also given reference to one

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Arbitration Matter - Agreement No. LBW 192/HL0059247(12297) dated 30.06.12 between Srei Equipment Finance Ltd. and Shri Ganesh Sponge Iron Pvt. Ltd. & Anr. and stated that the applicant is not entitled to claim any Over Due Charges in view of the Arbitration Order.

9. In regard to allegation of sale of asset value of Rs.19.00 lakh the applicant in its rejoinder dated August 21, 2019 has given reference to a letter dated February 16, 2017 of the Corporate Debtor through its Advocate, which indicate that the assets in question are lying in the factory premises of the Corporate Debtor and based on the same the applicant has denied that the said assets were sold by them in an auction on January 23, 2015.
10. We have heard the submissions of the parties in detail. The question that arises in the instant matter is that whether the RP has Adjudicating Powers and it has jurisdiction to reduce the claim of a Financial Creditor.
11. Hon'ble Supreme Court in the matter of "**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. – Writ Petition (civil) No. 99 of 2018**" has held that 'Resolution Professional' has no adjudicatory power. The 'Resolution Professional' has to vet and verify the claims made and ultimately determine the amount of each claim. As opposed to this, the 'Liquidator' in the Liquidation proceedings under the I & B Code has to consolidate and verify the claims and either admit or reject such claims under Section 38 to 40 of the Code."

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12. Hon'ble NCLAT by its judgment dated 30<sup>th</sup> January 2019 in the matter of **M/s. Dynepro Private Limited Vs. Mr. V. Nagarajan – Company Appeal (AT) (Insolvency) No. 229 of 2018** has held that 'Resolution Professional has no jurisdiction to decide the claim of one or other creditor, including 'Financial Creditor', 'Secured Creditor' or 'Unsecured Creditor'. .....
13. The Applicant in its rejoinder submitted on August 21, 2019 has further stated that as per Section 50 of the Insolvency and Bankruptcy Code, 2016, a transaction can be termed as an "extortionate credit transaction" if such transaction has been entered into two years preceding the insolvency commencement date. In the instant case at hand, the provisions as regards to the extortionate credit transaction under Section 50 of the IBC Code are not attracted. The loan agreement was executed in the year 2012.
14. Applicant has submitted that RP can act if the provisions as regards to overdue charges were not stated and/or laid down in the loan agreement in question and that the transaction in question cannot be termed as extortionate credit transaction as has been defined under Section 50 of the IBC, 2016. Further, that the RP has not filed any application challenging the terms and conditions of the loan agreement executed in the year 2012 between the Applicant and the Corporate Debtor as an extortionate credit transaction. Furthermore, the said transaction in question being a loan agreement cannot be termed as extortionate credit transaction as the loan agreement was executed in the year 2012 that is almost 7 years prior to the date of initiation of CIRP in respect of the Corporate Debtor. As per Section 50 of the IBC, 2016, a transaction can be termed as

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“extortionate credit transaction” if such transaction has been entered into two years preceding the insolvency commencement date.

15. Applicant has also stated that “The Insolvency and Bankruptcy Code under Section 238 contains non obstante clause. This proceeding shall be governed by the provisions of the IBC, 2016 in case a provision of a statute /Act is inconsistent with the provisions of IBC 2016, then the provisions of IBC 2016 shall have an overriding effect over such Act/statute. In the instant case at hand, whether a transaction is extortionate transaction or not will be governed by the provisions of IBC, 2016, more particularly Section 50 of the IBC, 2016 and not the Usurious Loans Act, 1918.”

16. Sections 50 and 51 of the IBC, 2016 deals with Extortionate Credit Transactions. Section 50 (1) is reproduced as under:

“Where the Corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional, as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.”

17. Relying on the above, more particularly the Orders of NCLAT, we are of the view that RP does not have Adjudicatory Powers. Also, that if RP was of the view that the claimed overdue charges are extortionate in nature, it was required to file application under the applicable provisions of IBC, 2016 claiming that the loan transaction between the Applicant and the Corporate Debtor as extortionate transaction. It has not done so.

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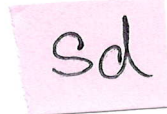
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18. In view of the above facts and circumstances of the case, this IA No. 70/CTB/2019 is **ADMITTED**. Decision of RP in reducing the claim of the Applicant from Rs.6,77,07,586/- to Rs.2,56,34,154/- is set aside. RP is directed to restore the claim of the Applicant and in accordance with the same grant voting percentage to the applicant in the Committee of Creditors.

19. Registry is hereby directed to communicate this Order to the petitioner and respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.

  
**Satya Ranjan Prasad  
Member (Technical)**

  
**Rajasekhar V.K  
Member (Judicial)**

*Signed on this, the 26<sup>th</sup> day of July, 2021.*

Ravijeet \_P.S.