



SL No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Special Bench (PHYSICAL HEARING)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD- HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 13.03.2023 AT 04:00 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/176/2021
NAME OF THE COMPANY	Raasi Refractories Ltd
NAME OF THE PETITIONER(S)	SREI Equipment Finance Ltd
NAME OF THE RESPONDENT(S)	Raasi Refractories Ltd
UNDER SECTION	7 of IBC

ORDER

Order in **CP(IB) 176/7/2021** pronounced, recorded vide separate sheets. In the result, this application under Section 7 of IBC is hereby rejected.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Syamala



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP(IB) No. 176/07/HDB/2021
[U/s. 7 of IB Code, 2016]

In the matter of:

M/s. SREI Equipment Finance Limited,
Vishwakarma, 86C
Topsia Road
Kolkata – 700 046.

.... Financial Creditor

Vs.

M/s. Raasi Refractories Limited,
15-145/9, Kodandaram Nagar,
Saroor Nagar, Near Sarada Talkies,
Hyderabad – 500 060.

.... Corporate Debtor

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CORAM:

Hon'ble Dr. Venkata Ramakrishna Badarinath Nandula, Member (Judicial)
Hon'ble Sri Satya Ranjan Prasad, Member (Technical)

Counsels present:

For the Financial Creditor: Mr. Srikanth Hariharan, Advocate

For the Corporate Debtor : Mr. Y Suryanarayana, Advocate



[PER: BENCH]

ORDER

1. This is an application filed by the Petitioner, M/s. SREI Equipment Finance Limited/Financial Creditor (FC) against the Respondent M/s. Raasi Refractories Limited/Corporate Debtor (CD), seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default that has committed in discharging the debt that is due to the Financial Creditor.
2. Briefly, the facts as mentioned in the application are as follows:
 - a. Under two Master Facility Agreements dated 01.07.2019, the Financial Creditor extended the credit facility to the Corporate Debtor to the tune of Rs.8,00,00,000/- and Rs.20,00,00,000/- for purchase of general plant and machinery and one Mr. Konda Laxmaiah, being the Authorized Signatory of the Corporate Debtor executed a Personal Guarantee, vide Deed of Guarantee dated 01.07.2019 (**Annexure 10**). In order to secure the amount, the Corporate Debtor also executed a Supplemental Deed of Hypothecation dated 16.03.2020 for hypothecation of the assets mentioned in the Schedule-II (**Annexure 11**).
 - b. Since, the Corporate Debtor was failed in repaying the instalments towards the credit facility extended by the Financial Creditor as per the Agreements dated 01.07.2019, the Financial Creditor



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issued a Demand Notice dated 24.11.2020 (**Annexure 15**), requesting to remit an outstanding liability of Rs.35,26,07,409/- as on 23.11.2020. Further, the Financial Creditor issued a Demand Notice dated 17.05.2021 (**Annexure 16**), demanding to remit an outstanding liability of Rs.39,16,02,530/- as on 30.04.2021, but the Corporate Debtor has not made any payments. Hence, this application.

COUNTER

3. The Corporate Debtor filed a reply stating that all the averments, allegations and contentions made by the FC are denied as false, baseless and are made with the intention to mislead the Hon'ble Tribunal.
 - a. Submitted that the FC has failed in submitting the evidence before the Adjudicating Authority, towards the disbursement of the said claim of Rs.39,16,02,530/- to the CD except enclosing the Agreements entered between both the parties, hence it is false, fraudulent and malicious.
 - b. Submitted that for the averments made by FC in Para 5 of the Petition, the Bank Statements (**Annexure-1**) of the CD are the evidences that no such amounts have been disbursed to the CD on the specified date. Further, submitted that as per Article II Clause



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2.1 of the said Agreements, the mode of disbursement of the facility/amount advanced is as follows:

ARTICLE II: Facility and Dues:

2.1 Facility:

“The Disbursement of the Facility may be made by cheque(s) or authorizations or demand draft or by Real Time Gross Settlement (RTGS) or any other mode of disbursement as the Company may in its sole discretion, determine and all collection remittance and/or other charges in this connection shall be borne by the Borrower.”

- c. Submitted that without producing any evidence proving the existence of debt and disbursement, the FC has filed the Petition which is not only incomplete but also filed with an intention of recovering the amounts from the CD and hence, liable to be dismissed and rejected with exemplary costs for filing such fraudulent and malicious Petitions.

REJOINDER

4. The Financial Creditor filed a rejoinder to the Counter, containing the following submissions:
- a. In reply to Para 3 of the Counter Affidavit, submitted that by virtue of a request made by the Corporate Debtor, vide its letter dated 24.09.2019, an amount of Rs.20.00 crores was disbursed to the Account of M/s. Ram Laxman Parboiled Rice Pvt. Ltd. It is further



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stated that by virtue of Statement of Account filed along with the application, the Corporate Debtor has made part payments for instalments to the Financial Creditor in respect of both the loan accounts. Hence, the averment that there has no disbursement of the loan amount is untenable and liable to be rejected.

- b. In reply to Para 5 of the Counter Affidavit, submitted that the Corporate Debtor submitted a personal guarantee dated 01.07.2017 confirming the amount of Rs.28.00 crores having been received by the Corporate Debtor and further executed a supplemental deed of hypothecation dated 16.03.2020 confirming that the credit facility extended for a sum of Rs.28.00 crores. Subsequently, the CD also registered the charge in favour of the FC duly confirming the amount of Rs.28.00 crores having been received from the FC. Hence, the contention about non-release of the disbursement amount is false and liable to be rejected.
- c. In reply to Para 6 of the Counter Affidavit, submitted that at request of CD only, the amounts were transferred to M/s. Ram Laxman Parboiled Rice Pvt. Ltd., who is the promoter shareholder of CD.
- d. In reply to Para 10 of the Counter Affidavit, submitted that the CD had never raised any objection that the amounts have not been received by him. Hence, the objection to the alleged non-disbursement is an afterthought and cannot be countenanced.



- e. In reply to Para 16 of the Counter Affidavit, the CD has not issued any reply notice to the Demand Notices dated 24.11.2020 & 17.05.2021.

MEMO FILED BY CD

5. The Corporate Debtor filed a Memo on 22.03.2022, containing the following submissions:
- a. Submitted that, as mentioned by the FC in his rejoinder, it is evident that the loan amount was granted to M/s. Ram Laxman Parboiled Rice Pvt. Ltd and not to CD.
- b. Submitted that M/s. Ram Laxman Parboiled Rice Pvt. Ltd is having a common Director and therefore, the CD could obtain the Bank Statement of the said Company and it is evident from the said bank statement that the amounts were received by M/s. Ram Laxman Parboiled Rice Pvt. Ltd from the FC and the same was immediately remitted back to the FC on the same day **(Annexure 1)**.
6. Further on 06.02.2023, the CD filed an Affidavit on 06.02.2023 stating that, as per the directions dated 24.01.2023 of the Adjudicating Authority, submitted the Financial Statements of the Corporate Debtor for the Financial Years 2015-2016 to 2020-2021**(Annexure1)** providing the clarification for the liability shown



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in the Balance Sheet for the Financial Year 2021-2022 and a copy of the Daily Report dated 24.01.2023 (**Annexure 2**) also submitted.

7. Learned Counsels for both sides have submitted the Written submissions.
8. In the light of the contest, as afore stated, the point that emerges for consideration of this Adjudicating Authority 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 *defaulted* in payment of the same?

9. We have heard the Learned Counsel for Financial Creditor, Mr.Srikanth Hariharan and the Learned Counsel for Corporate Debtor, Mr.Y.Suryanarayana, perused the records.
10. According to the Learned Counsel for the Financial Creditor, during the year 2019, the respondent/Corporate Debtor, approached the applicant/Financial Creditor for credit facilities for the purposes of purchase of general Plant and Machinery to the tune of Rs.8,00,00,000/- (Rupees Eight Crores only) and Rs.20,00,00,000/- (Rupees Twenty Crores only), and pursuant thereto, the Financial Creditor sanctioned two credit facilities as sought for by the Corporate debtor vide its offer letters dated 15.05.2019 for a sum of Rs.8,00,00,000/- (Rupees Eight Crores only) and Rs.20,00,00,000/- (Rupees Twenty Crores only). The



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offer letters dated 15.05.2019 are filed as Annexures 4 & 5 of the application respectively.

11. Learned Counsel further submits that, the parties herein on 01.07.2019 have entered into two Master Facility Agreements vide Contract No.178538 and 179605 and an amount of Rs.8,00,00,000/- and Rs.20,00,00,000/- has been released and disbursed to the Corporate Debtor on 01.07.2019. However, the corporate debtor breached the terms of repayment, hence, on 24/11/2020 and 17/05/2021 the applicant got issued notice demanding payment of the outstanding amount of Rs.39,16,02,530/-. As the respondent failed in complying the terms of the demand notices, the present application for initiation of CIRP against the respondent has been filed.

12. However, the Learned Counsel for Corporate Debtor denied availing of the Credit Facilities under the above two Master Facility Agreements dated 01.07.2019, contending, inter alia, that the Financial Creditor has not released or disbursed the above amounts on 01.07.2019 or on any other date in favour of the respondent. Learned Counsel further submits that none of the documents relied on by the applicant establishes release and disbursement of the above-mentioned amounts to the Respondent, as such, the application is liable to be dismissed. In this regard the Learned Counsel relied on the disbursement clause in the above agreements, which is as below.



ARTICLE II: Facility and Dues:

2.1 Facility:

“The Disbursement of the Facility may be made by cheque(s) or authorizations or demand draft or by Real Time Gross Settlement (RTGS) or any other mode of disbursement as the Company may in its sole discretion, determine and all collection remittance and/or other charges in this connection shall be borne by the Borrower.”

and contended that the Applicant failed in establishing compliance of the above clause.

13. In the light of the afore stated contest, it is imperative for the Financial Creditor to establish that the amounts covered under the two Master Facility Agreements dated 01.07.2019 were released and disbursed on 01.07.2019 to the Corporate Debtor, lest the financial debt claimed as due and payable by the Corporate Debtor in favour of the Applicant cannot be accepted. Admittedly, the Master Facility Agreements provide for the procedure of disbursement of the amount agreed to be advanced to the respondent under the Master Facility Agreements, and the applicant has not filed any document evidencing disbursement/credit of the amount agreed to be advanced to the Corporate Debtor, on 01.07.2019 or on any later date. Thus, when disbursement of the amount agreed to be lent under the Master Facility Agreements to the respondent itself is not established the



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applicant is not entitled to claim any debt much less a financial debt is due and payable by the respondent.

14. Ld. Counsel for the Financial Creditor, relying on the Letter dated 24.09.2019, also contended that the Corporate Debtor had authorised the Financial Creditor to disburse Rs.20,00,00,000/- in favour of M/s. Ram Laxman Parboiled Rice Pvt. Ltd. and accordingly, the said sum of Rs.20,00,00,000/- has been credited to the account of said M/s. Ram Laxman Parboiled Rice Pvt. Ltd. Therefore, the Respondent cannot deny the liability in respect of the said amount of Rs.20,00,00,000/-. This plea is not found in the application or in the Demand Notice, besides, no documentary proof of disbursement of the said sum of Rs.20,00,00,000/- in pursuance of the letter dated 24.09.2019 has been filed by the Financial Creditor. However, the Bank Statement of M/s. Ram Laxman Parboiled Rice Pvt. Ltd. filed by the Respondent discloses that a sum of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs) only has been disbursed by the Financial Creditor, by crediting the said amount to the Bank Account of M/s. Ram Laxman Parboiled Rice Pvt. Ltd. on 25.09.2019 and on the same day, the said amount has been returned, to the Financial Creditor which is evidenced by the entry dated even as per the Bank Statement. The Bank Statement relied on by the Corporate Debtor is neither denied nor disputed by the Financial Creditor. Therefore, the letter dated 24.09.2019 is of no assistance in establishing existence of a Financial Debt in favour of the Applicant as claimed in the application.



15. In so far as the other contention of the Applicant that the corporate debtor in its Annual Financial Report for the year 2020-21, under the head 'borrowings' has shown SREI Equipment Amortisation- Vehicle Loan of Rs.16,91,55,388/- as outstanding, hence the Corporate Debtor is precluded under law from contending that there is no liability to pay the financial debt claimed in this application, as the same also amounts to acknowledgement of debt, Ld. Counsel for the corporate debtor, without disputing the legal position that the entries in the Balance Sheet as regards the liability amounts to acknowledgement of liability, vehemently contended that, the entry in the financial report of the corporate debtor relied on by the applicant has nothing to do with the subject debt as the same is a brought forward entry of a debt that pertains to a third party of the year 2015-'16, as such, the same will not amount to acknowledgement of the purported subject debt dated 01/07/2019 the disbursement of which has not even established. In support of the plea that the said entry is carried from the year 2015-'16 onwards, Ld. Counsel relied on the financial statements of the Corporate Debtor from the year 2015-2016 till the year 2021-2022.

16. We have carefully perused the financial statements and we are convinced that the entry relied on by the Applicant in support of its plea of acknowledgement of debt, is an entry that has been brought forward since the Financial Year 2015-'16. That apart, the said entry relates to a Vehicle loan and not Plant & Machinery loan



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sanctioned on 01.07.2019 under the two Master Facility Agreements by the Applicant. Moreover, we have already held that the applicant failed in establishing disbursement of the amount under the Master Facility Agreement dated 01.07.2019 to the account of the respondent on any date much less on 01.07.2019. Therefore, we cannot place any reliance on the entry relied on by the Applicant for the purpose of concluding that the said entry amounts to an acknowledgement of debt claimed as due and payable by the Applicant under the above stated Master Facility Agreements dated 01.07.2019.

17. Needless to say that in terms of Section 7 *sub clause* (4) of IBC, the Adjudicating Authority shall ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3) and as per *sub clause* (5) if the Adjudicating Authority is satisfied that— (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

18. In the light of our discussion above, we are satisfied that the Applicant failed in placing record of information utility or any 'other document' in support of its plea of existence of financial debt



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of a sum of over Rs.1,00,00,000/- by the Respondent. Therefore, this application deserves to be rejected.

19. Accordingly, we hereby reject the same. However, under the circumstances there shall be no order as to costs. In the result, the application **CP(IB) 176/7/HDB/2021 is rejected, however** without costs.

Sd/-

**SATYA RANJAN PRASAD
MEMBER (TECHNICAL)**

Sd/-

**DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)**

VL/Syamala