

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

CP No. 971/(IB)-MB-V/2020

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

Srei Equipment Finance Limited

Registered office at Vishwakarma, 86C,
Topsia Road (South) Kolkata-700046

.... Petitioner/Financial Creditor

Vs.

M/s Muktar Infrastructure India Private
Limited

Registered office at Plot No. B-2/B-3,
Phase-1A Verna Industrial Estate Verna
Goa-403722.

.... Corporate Debtor/Respondent

**2) IA 407 of 2021 in
CP 971 of 2020**

M/s Muktar Infrastructure India Private
Limited

...Applicant/ Corporate Debtor

Vs.

Srei Equipment Finance Limited

...Respondent/ Financial Creditor

Order Pronounced On: 04.10.2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Adv. Rohit Gupta a/w Ativ Patel,
Darshit Dave and Harshad Vyas i/b AVP
Partners

For the Respondent : Adv. Karl Shroff a/w Smita Sawant

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'Srei Equipment Finance Limited' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Muktar Infrastructure India Private Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form-1, under the head “Particulars of Financial Debt” the total amount of Debt granted is stated to be Rs. 49,50,00,000/-, and the amount claimed to be in default is Rs. 65,32,50,908/-. The date of default is stated to be 24.01.2020. Computation of claim is as follows:

Contract No. 155534

Overdue Amount (Rs.)	67,500,000
Principal Outstanding (Rs.)	243,738,337
Overdue Charges (Rs.)	17,445,852
Cheque Bouncing Charges (Rs.)	-
Other Amount (Rs.)	4770
Total (Rs.)	328,688,960

Contract No. 162113

Overdue Amount (Rs.)	52,500,000
Principal Outstanding (Rs.)	261,319,299
Overdue Charges (Rs.)	10,732,030
Cheque Bouncing Charges (Rs.)	10,620
Other Amount (Rs.)	-
Total (Rs.)	324,561,948

BRIEF HISTORY OF THE CASE: -

3. The Petitioner vide two separate Loan Agreements had sanctioned credit facilities to the Corporate Debtor in 2018. The details of loan agreements are as follows:

Contract No.	Debt Granted (Amount in Rs.)	Date of Disbursement
155534	24,50,00,000	09.03.2018
162113	25,00,00,000	28.06.2018

4. The Petitioner enclosed the following documents in support of the credit facilities granted to the Corporate Debtor:

- a) Deed of Personal Guarantee Given by Mr. Shaikh Muktar dated 9th March 2018 to secure borrowing in respect of Contract No. 155534.
- b) Deed of Personal Guarantee Given by Mr. Shaikh Muktar and Shaikh Shamshun dated 28th June 2018 to secure borrowing in respect of Contract No. 162113.
- c) Agreement of Hypothecation with respect to Contract No. 155534 dated 9th March 2018 thereby hypothecating all tangible and movable assets along with all equipment in possession in favour of the Financial Creditor.
- d) Agreement of Hypothecation with respect to Contract No. 162113 dated 28th June 2018 thereby hypothecating all tangible and movable assets along with all equipment in possession in favour of the Financial Creditor.
- e) Mortgage by deposit of title deeds of the property being Showroom No.1 at Ground Floor being House No. 107/44 of constructed upon the land and all other construction and structures standing thereon known as “PONGALLY” or “PINGALLY” or “PIRNA GALLE” measuring about total 7450 Sq mtr under Survey No. 139/1-A, 139/2-A and 139/2-B described in the Land Registration office under no. 9887 in the Land Revenue office under Matriz No. 601, situated at Village- Cortalim, Taluka and Sub- District- Marmugao, District- South Goa.
- f) Copy of CIBIL Report.

Copies of all the above-mentioned documents are annexed to the Petition.

5. On 30.06.2018 the Corporate Debtor categorically acknowledged vide an undertaking Cum Letter of Comfort that the amounts have been received by the Corporate Debtor and that it had transferred the amounts back to the Petitioner towards unconditional irrevocable payments towards the

outstanding dues of its group entities viz. Muktar Minerals Pvt. Ltd., SM Constructions, and Xec Blue Metals Private Limited.

6. The Petitioner submits that the Corporate Debtor has defaulted in repaying the credit facilities availed under Contract No. 155534 and the date of default is 05.09.2018. Similarly in Contract No. 162113, the date of default is 05.12.2018.
7. Due to non-payment of debt on 20.01.2020, the Petitioner issued the Demand Notice to the Corporate Debtor demanding the outstanding amount of financial facility of Rs. 65,10,77,470/-.
8. The Petitioner submits that the Corporate Debtor in its Balance Sheet for the year 2017-2018 has admitted the amount due and payable to the Petitioner.
9. Hence, due to nonpayment of debts the Petitioner file this Petition u/s 7 of the IBC as a Financial Creditor for initiating the Corporate insolvency Resolution process (CIRP).

SUBMISSIONS BY THE CORPORATE DEBTOR: -

10. The Corporate Debtor submits that the Petitioner filed the petition for two separate contracts containing different dates of commencement, repayment and default, in such a case a separate petition can be filed by the Petitioner and the Petitioner cannot clubbed two contracts in one petition.
11. The Petitioner has filed the Petition without resolution, actual approval of the board and the resolution is not annexed with Petition.

12. The Corporate debtor submits that the loan agreements (Contracts) are unstamped/insufficiently stamped as per Article 5(h)(A)(iv) of the Maharashtra Stamp Act. These documents are required to be stamped as per the Stamps Act.
13. The Corporate Debtor submits that as per the Arbitration Clause if any disputes arise between the Petitioner and the Corporate Debtor then the dispute should be resolved as per the Arbitration and Conciliation 1996, so the Adjudicating Authority has no jurisdiction to decide the case.
14. The Corporate Debtor submits that the Corporate Debtor replied to the Demand Notice of the Petitioner via Advocate on 21.02.2020 but the Petitioner did not mention about the reply sent by the Corporate Debtor.
15. The Petitioner had disbursed the alleged loan amounts into the accounts of the Corporate Debtor and then on the very same day the said amounts have been transferred back into the accounts of the Petitioner. This has been done in multiple installments. The alleged disbursement and the transfer of the same Petitioner's account have been done in the case of both the loan agreements. Therefore, the Corporate Debtor is left with no funds as disbursed by the Petitioner and hence there is no liability on the part of the Corporate Debtor.
16. The Corporate Debtor submits that this Petition is an abuse of process of law and to file to pressurize the Corporate Debtor in making payment of an unjustified and unsubstantiated amount.

REJOINDER BY THE PETITIONER: -

17. The Petitioner Submits that the Corporate Debtor does not mentioned that which document is not sufficiently stamped. It is just an allegation without any factual basis. The Corporate Debtor has to show the deficiency. The Corporate Debtor fails to show that how and how much the document is unstamped or deficiently stamped. The Petitioner submits that the loan agreement is adequately stamped as per the Indian Stamp Act, 1988 as applicable in the state of West Bengal.
18. The issue regarding the Arbitration clause was resolved in the matter of SREI Equipment Finance Limited V/s Muktar Minerals Private Limited Company Petition No. 1087 of 2020, wherein one of the group entities viz. Muktar Mineral Private Limited of Corporate Debtor was a party and the same is undergoing CIRP via order dated 05.05.2021 passed by the Hon'ble Tribunal Mumbai Bench. Therefore, this ground is no longer available to the Corporate Debtor.
19. The Petitioner submits that the Petitioner disbursed the amount into the account of Corporate Debtor on 09.03.2018 and 30.06.2018, respectively to purchase few assets from its group entity. Since those assets were hypothecated to the Petitioner under the different loan facility extended to the said group entities under the different loan agreements. The said fact is evident from the letter dated 30.06.2018 issued by the Corporate Debtor whereby the Corporate Debtor acknowledged that the amounts have been received by the Corporate Debtor and transferred the amounts back to the Financial Creditor towards unconditional, irrevocable payments towards the

outstanding dues of its group entities viz. Muktar Minerals Pvt. Ltd., SM constructions and Xec. Blue Metals Private Limited.

SUR- REJOINDER BY THE CORPORATE DEBTOR: -

20. The Corporate Debtor submits that there is sufficient stamp duty paid as applicable in the state of West Bengal or otherwise. The relevant sections and schedules of the Stamp Act would demonstrate that appropriate stamp duty has not been paid.

FINDINGS: -

21. CP (IB)-971/2020 has been filed by the Financial Creditor M/s Srei Equipment Finance Limited u/s 7 of the IBC against M/s Muktar Infrastructure India Private Limited Corporate Debtor. As mentioned in Part IV of Form 1 of the Petition the total outstanding debt submitted by the Financial Creditor along with interest is Rs.65,32,50,908/-. The Bench further notes that the Financial Creditor had sanctioned viz. two credit facilities to the Corporate Debtor under two separate loan Agreements which are as under: -

- I. Loan Contract No. 155534 for an amount of Rs.24,50,00,000/- disbursed on 09.03.2018;
- II. Contract No. 162113 for an amount of Rs.25 crores was disbursed on 28.06.2018.

22. The Bench also notes that, to secure the credit facilities the Financial Creditor had entered into various security Agreements with the Corporate Debtor which included personal guarantee given by Mr. Shaikh Muktar,

hypothecating all tangible and movable assets along with all equipments to the Financial Creditor and mortgaged by deposit of Title Deed of a showroom in south Goa.

23. The Bench further notes that vide letter dated 30.06.2018 an undertaking was given by the Corporate Debtor acknowledging that the amounts have been received by the Corporate Debtor and have been transferred back to the Financial Creditor towards unconditional, irrevocable payment towards outstanding of its due of its group entities viz. Muktar Minerals Pvt Ltd, SM Constructions and Xec Blue Metals Private Limited. It has been brought on record in this Petition by the Financial Creditor that in the facilities availed under Contract No.155534 the Corporate Debtor defaulted in payment on 05.09.2018 and for Contract No. 162113 the date of default is 05.12.2018. It is on record before this Bench that the Financial Creditor on 20.01.2020 issued a loan recall notice to the Corporate Debtor for a total outstanding of Rs.65,10,77,470/-.

24. The Bench notes that the execution of loan documents is not in dispute. The execution of hypothecation and guarantees in favour of Petitioner is also not in dispute. There is also no dispute regarding disbursement having taken place of the loan. In its reply the Corporate Debtor had raised three defences. These defences are as under: -

- I. The Corporate Debtor mentions that Section 7 Petition is defective and without any authority;
- II. The loan document is inadequately stamped under Indian Stamp Act and therefore may be dismissed; and

III. That the loan amount disbursed by the Financial Creditor was immediately transferred back to the Financial Creditor and, therefore, there is no amount is due and outstanding.

25. The finding of the Bench on the above three points are as under: -

- I. The Bench notes that as per Annexure A of the Company Petition it can be seen that in the 63rd meeting of the Board of Directors of Srei Equipment Finance Limited of 25.10.2017 an explicit authority was given to the Credit & Investment Committee authorising them to initiate and or defend proceedings under the IBC. In pursuance to that, the Bench notes that, in January 2020, in the 320th meeting of the Credit & Investment Committee of Srei Equipment Finance Ltd, Mr. Sanjay Agarwal and Others were authorised to initiate filing Insolvency proceedings. Therefore, it is very clear to this Bench that there is no merit in the contention of the Corporate Debtor in saying that the Petition has been filed without proper authority.
- II. The Bench notes that the contention raised by the Corporate Debtor that the loan document is inadequately stamped is just a mere averment and no proof backing up its contention has been submitted by the Corporate Debtor. Contrary to the contention of the Corporate Debtor, the Financial Creditor mentions that the loan document is adequately stamped as per the Indian Stamp Act, 1988. The Bench further notes that even if the documents are inadequately stamped, it is a curable act and cannot render the documents as void.
- III. Regarding the contention made by the Corporate Debtor that the loan amount disbursed by the Financial Creditor was transferred back by the Corporate Debtor to Financial Creditor appears to be fret. The Bench notes that and as apparent from the letter dated 30.06.2018 issued by the

Corporate Debtor that the Corporate Debtor along with other group companies had taken several loans from the Financial Creditor. The Bench notes that the loan amount which after it was received by the Corporate Debtor was returned to the Petitioner NBFC to give credit for other group entities under different loan Agreements. In the letter dated 30.06.2018 issued by the Corporate Debtor, the Corporate Debtor clearly admits that the amounts have been received by the Corporate Debtor and the amounts have been transferred back to the Financial Creditor towards unconditional, irrevocable payment towards the outstanding dues of its group entities with Muktar Minerals Pvt Ltd, S.M. Constructions and Xec Blue Metals Private Ltd. This clearly shows that Corporate Debtor had received the amount from the Financial Creditor and it was used by the Corporate Debtor on its own volition for the payment of outstanding dues of other group companies and, therefore, this loan advanced to the Corporate Debtor rightly so remained outstanding. The Bench also notes that the Corporate Debtor not only has admitted to this vide its letter dated 30.06.2018, but also subsequently deposited the original title deed of the property to secure the said facility availed from the Applicant vide its letter dated 08.08.2018. This action on part of the Corporate Debtor itself establishes the liability of the Corporate Debtor towards the payment of facility to the Financial Creditor.

26. The Bench notes that Corporate Debtor has admitted its outstanding in its balance sheet for the Financial Year 2017-18 which has been annexed by the Petitioner with its Rejoinder. In view of the above, the Bench has absolute clarity that the loan facility extended by the Financial Creditor and disbursal made is a financial debt in terms of Section 5(8) of IBC and there is a

default in non-payment of debt in terms of sec 3(12) of the Code. In view of this, the Bench “Admits” the Petition.

27. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.

28. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

29. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Anup Kumar Singh, having registration No. IBBI/IPA-001/IP-P00153/2017-2018/10322, having an address at Ideal Plaza, South Block, 4th Floor, Room No. 405,11/1 Sarat Bose Road, Kolkata 700020, Email id: info@sumedhamanagement.com, Phone No. 033 46006550 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

30. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor, etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during

Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

31. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
32. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

IA 407 of 2021

33. The Corporate Debtor has filed the IA 407 of 2021 for the reason that there are disputes between the parties and that it has to be sorted out in terms of the Arbitration and Conciliation Act, 1966. The Bench notes that the existence of the Arbitration Agreement cannot be termed as a dispute. In addition, these types of Arbitration Agreement cannot be taken as a defense in a petition filed under Section 7 of the Code. Further, it is clear that there is an existence of Debt as per Section 3(11) and default in terms of Section 3(12) of the Code. In view of this, the bench is inclined to 'Dismiss' IA 407 of 2021 challenging the admission of CP 971 of 2021.

34. In view of the above, the Bench orders the following:

- I. **IA 407/2021** challenging the Admission of Petition of CP No.971 of 2020 filed by the Petitioner u/s 7 of the IBC 2016 is 'Dismissed'.

- II. The Company Petition No. **971/(IB)-MB-V/2020** u/s.7 initiating CIRP against the Corporate Debtor M/s Muktar Infrastructure India Private Limited is 'Admitted'.
- III. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

35. Ordered Accordingly.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)