

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

I.A.(I.B.C.) 1184/KB/2022
with
C.P. (IB) 367/KB/2021

C.P. (IB)367/KB/2021

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

SREI Equipment Finance Limited, a company within the meaning of Companies Act, 2013 having CIN: U70101WB2006PLC109898 and having its registered office at “Vishwakarma’, 86C, Topsia Road, Kolkata- 700046, West Bengal.

..... *Financial Creditor/ Petitioner*

-versus-

Dadheech Infrastructures Private Limited, a company within the meaning of Companies Act, 2013 having CIN: U14219WB2007PTC114838 and having its registered office at 9/12, Lal Bazar Street ‘E’ Block, 4th Floor Kolkata - 700001, West Bengal.

..... *Corporate Debtor/ Respondent*

And

I.A.(I.B.C.) 1184/KB/2022

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

Dadheech Infrastructures Private Limited

..... *Corporate Debtor/ Applicant*

-versus-

SREI Equipment Finance Limited

..... *Financial Creditor/ Respondent*

Date of Pronouncement of the order: 26 June 2023

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Mr. Jishnu Saha, Sr. Adv.

Mr. R. Mitra, Adv.

Mr. S. Sarkar, Adv.

Mr. I Basu, Adv.

Mr. T. Sett, Adv.

For the Corporate Debtor:

Mr. Joy Saha, Sr. Adv.

Mr. N. Berlia, Adv.

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **SREI Equipment Finance Limited**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Dadheech Infrastructures Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. Pleadings are complete.
4. The Corporate Debtor is a private limited company incorporated on 29 March 2007. The authorized share-capital of the company ₹2,00,00,000/- and the paid-up share capital of the company is ₹1,93,45,000/-.
5. The total amount claimed to be in default by the Financial Creditor, is ₹1,31,35,08,457/- (Rupees One Hundred Thirty-One Crore Thirty-Five Lakh Eight Thousand Four Hundred Fifty-Seven Only). The date of default is 23 August 2021.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

6. The Financial Creditor has relied on the various documents in support of its claims, including:

- a) Master Data of the Corporate Debtor, annexed as Annexure **C**;
- b) Agreement dated 03 October 2015, annexed as Annexure **F**;
- c) Agreement dated 22 November 2015, annexed as Annexure **G**;
- d) Agreement dated 15 October 2017, annexed as Annexure **H**;
- e) Agreement dated 22 February 2018, annexed as Annexure **I**;
- f) Agreement dated 15 September 2018, annexed as Annexure **J**;
- g) Agreement dated 05 July 2018, annexed as Annexure **K**;
- h) Agreement dated 05 July 2020, annexed as Annexure **L**;
- i) Agreement dated 16 June 2017, annexed as Annexure **O**;
- j) Agreement dated 28 September 2020, annexed as Annexure **P**;
- k) Agreement dated 05 January 2021, annexed as Annexure **Q**;
- l) Demand Letter dated 23 August 2021, annexed as Annexure **R**.

7. **Averments contained in petition filed by Financial Creditor are summarized as under:**

6.1 The case of the Financial Creditor is that it executed various loan agreements with the Corporate Debtor and disbursed the following amounts as aggregate loans:

- a. Loan Agreement dated 03 October 2015, for disbursing a sum of ₹22,52,00,000/-;
- b. Loan Agreement dated 22 November 2015, for disbursing a sum of ₹15,63,00,000/-;
- c. Loan Agreement dated 15 October 2017, for disbursing a sum of ₹16,00,00,000/-;
- d. Loan Agreement dated 22 February 2018, for disbursing a sum of ₹12,00,00,000/-;
- e. Loan Agreement dated 15 September 2018, for disbursing a sum of ₹15,00,00,000/-;
- f. Loan Agreement dated 15 December 2018, for disbursing a sum of ₹15,00,00,000/-;

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

g. Loan Agreement dated 05 July 2020, for disbursing a sum of ₹6,75,00,000/-
;

- 6.2 The aforementioned loans were secured by the Corporate Debtor by creation of charges in favour of the Financial Creditor for which the Corporate Debtor executed various documents.
- 6.3 After availing the said loans, the Corporate Debtor stated defaulting in repayment of its dues. Accordingly, various proceedings were initiated by the Financial Creditor against the Corporate Debtor.
- 6.4 The Corporate Debtor entered into a contract no. DG MAP/PH-11/PKG 25 (R&C) 01 dated 11 October 2013 with DG MAP for completion of balance work as stated therein. The Corporate Debtor was required to furnish Bank Guarantees in the said contract. The Corporate Debtor while acknowledging its default, sometimes in June 2017 approached the Financial Creditor for facilitating in obtaining the said Bank Guarantees so that the Financial Creditor can avail the receivables, that the Corporate Debtor will get as consideration of the said contract. The said request was acceded by the Financial Creditor and thereto Bank Guarantees to the tune of ₹24,42,00,000/- (Rupees Twenty- Four Crore Forty-Two Lakh Only) were arranged by the Financial Creditor. Accordingly, an agreement dated 16 June 2017 was executed, thereby recording the understanding between the parties. The said agreement consists of seven Bank Guarantees, that the Financial Creditor executed.
- 6.5 On or about 28 September 2020 and 04 January 2021, the said contractor invoked the aforementioned seven Bank Guarantees in two tranches. According to clause 4.2 of the said agreement dated 16 June 2017, if the contractor invokes the said Bank Guarantees, the Corporate Debtor will owe the said amount under the Bank Guarantees to the Financial Creditor as loan and the same shall be payable on demand accruing interest @ 16% per annum till repayment. It was further stated in the said agreement dated 16 June 2017, that the Corporate Debtor will execute loan agreements in consonance with the said amount under the Bank Guarantees. Accordingly, two agreements were executed by and between the Financial Creditor and the Corporate Debtor as mentioned herein below:

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- a. By an agreement dated 28 September 2020, being Coded GT 188985, the Corporate Debtor availed an aggregate loan for a sum of ₹ 7,69,76,790/- (Rupees Seven Crore Sixty-Nine Lakh Seventy-Six Thousand Seven Hundred Ninety Only) from the Financial Creditor ;
 - b. By an agreement dated 05 January 2021, being Coded GT 189745, the Corporate Debtor availed an aggregate loan for a sum of ₹ 22,69,66,882/- (Rupees Twenty-Two Crore Sixty-Nine Lakh Sixty-Six Thousand Eight Hundred Eighty-Two Only) from the Financial Creditor.
- 6.6 The Corporate Debtor started making defaults in paying the timely instalment to the Financial Creditor. Several demands were made by the Financial Creditor to the Corporate Debtor regarding repayment of the said loans, but despite the same, the Corporate Debtor failed to make timely instalments of the said loans to the Financial Creditor.
- 6.7 Under such circumstances, the Financial Creditor by a letter of demand dated 23 August 2021 called upon the Corporate Debtor to make payment of the entire outstanding dues, amounting to ₹ 68,29,91,717/- (Rupees Sixty-Eight Crore Twenty-Nine Lakh Ninety-One Thousand Seven Hundred Seventeen Only) within a period of 7 days from receipt of the letter. It was also contended that in case of failure on the part of the Corporate Debtor to clear the payment, within 7 days, in that case the whole amount being ₹131,35,08,457/- (Rupees One Thirty-One Crores Thirty-Five Lacks Eight Thousand Four Hundred Fifty Seven Only) as on 12.08.2021 would be payable by them.
- 6.8 As per the statement of accounts, a sum of ₹131,35,08,457/- is due and payable on 12-08-2021 by the Corporate Debtor. Thus, the Corporate Debtor is in default of the aggregate sum of ₹131,35,08,457/- as on 12 August, 2021. The Financial Creditor is further entitled to claim interest @ 18% p.a on the principal loan amount till the date of repayment.

7 Stand taken by Corporate Debtor in its reply affidavit is summarized hereinafter:

- 7.1 From 03 October 2015 till date, a total sum of ₹90,67,72,108/- (Rupees Ninety Crores Sixty-Seven Lakhs Seventy-Two Thousand One Hundred and Eight Only) has been transferred from the Financial Creditor to the Corporate Debtor towards the financial

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

facilities provided. Whereas during this period, a total sum of ₹99,91,99,247/- (Rupees Ninety-Nine Crores Ninety-One Lakhs Ninety-Nine Thousand Two Hundred and Forty-Seven only) has been transferred from the Corporate Debtor to the Financial Creditor towards repayment of the financial facilities.

- 7.2 Financial Creditor has been repaid the entire financial assistance provided by it and no further amount whatsoever is due and payable by the Corporate Debtor to the Financial Creditor.
- 7.3 Corporate Debtor was made to sign blank pages which did not contain any of the one-sided extortive clauses as appearing in the purported loan agreements annexed to the Original Application. In view of the loan standing relations between the parties, funds were often transferred both ways in good faith, without any agreement on interest, penalty, etc. The Corporate Debtor was not bound to pay any interest as alleged or at all. The Corporate Debtor never agreed to any of the terms as written in the said purported loan agreements, including but not limited to the terms pertaining to interest, damages, penalty and other coercive clauses. The Corporate Debtor, being in need of funds, signed blank documents in good faith for availing financial facilities from the Financial Creditor.
- 7.4 The Financial Creditor fraudulently inserted incorrect details, information, loan amounts, interest rate, etc. in the purported agreements which are annexures to the Original Application. Moreover, the interest rates which are being claimed by the Financial Creditor in the Original Application have been fraudulently inserted by hand in the purported loan agreements. The hand-written data, which is totally false and unilaterally inserted by the Financial Creditor after having obtained the signatures of the Corporate Debtor on blank papers.
- 7.5 It is stated that owing to the non-payment of the contracted amount by the Ministry, the Corporate Debtor was facing difficulty in continuing execution of the Gujarat Tender contract. The Corporate Debtor made several representations to the Ministry, *inter alia*, raising grievances with respect to the delayed payments. However, the Ministry totally ignored the grievances raised by the Corporate Debtor and illegally terminated the Gujarat Tender contract vide its termination notice bearing no.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

84828/MAP/Ph-II/PKG-25/R&C/1656/E8 dated 04 January 2021. The Ministry terminated the tender contract on account of alleged delay on part of the Corporate Debtor in performing the contract, whereas such delay was attributable to the non-payment of the tender amounts by the Ministry to the Corporate Debtor as stated above.

- 7.6 Corporate Debtor has not only been deprived of its legitimate dues and valuables but has also suffered severe losses and damages in respect whereof the Corporate Debtor has a conservatively estimated claim of more than ₹95,00,00,000/- (Rupees Ninety-Five Crore Only) against the Ministry with respect to the Gujarat Tender. The possibility of the Ministry settling the disputes with the Corporate Debtor and allowing the Corporate Debtor to resume the work, very little of which remains, cannot be ruled out at this stage. The Corporate Debtor was facing difficulty in continuing execution of the Punjab Tender Contract.
- 7.7 It is submitted that owing to the aforesaid circumstances, the Corporate Debtor has not only been deprived of its legitimate dues and valuables but has also suffered severe losses and damages in respect whereof the Corporate Debtor has a conservatively estimated claim of ₹14,00,00,000/- (Rupees Fourteen Crore Only) against the Ministry with respect to the Punjab Tender.
- 7.8 The dues payable to the Corporate Debtor drastically exceed and alleged claim of the Financial Creditor. It is stated that the Corporate Debtor is a going concern, having a bright future.
- 7.9 It is further stated that there are amounts due and payable to the Corporate Debtor by the Ministries of Defence and Health, which shall inevitably be paid to the Corporate Debtor. Despite the victimization suffered by the Corporate Debtor at the hands of the Union of India as aforesaid, the Corporate Debtor managed to repay the amounts to the Financial Creditor and is currently executing a prestigious tender for the Ministry of Health, the admission of the captioned Original Application will cause the Corporate Debtor irreparable hard and injury.
- 7.10 It is denied that the Corporate Debtor acknowledged his default or approached the Financial Creditor for obtaining bank guarantees, as alleged or at all.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

8 **The stand taken by the Financial Creditor in its Rejoinder are summarized hereinafter:**

8.1 It is stated that a Power of Attorney dated 01 April 2022, the Administrator of the Financial Creditor has appointed, constituted and authorized Mr. Sohan Kumar Jha to make and affirm this affidavit.

8.2 The Corporate Debtor along with its sister concerns namely Punctual Supply Pvt. Ltd., Harsha Consortium Pvt. Ltd. Cherry Factrade Pvt. Ltd. had obtained separate several loans from the Financial Creditor. All such group entities of the Corporate Debtor were in default and at the request of the borrowers being group entities of the Corporate Debtor without prejudice to the rights of the Financial Creditor under the respective loan agreements as per request made from time to time by the Corporate Debtor and/or its group entities the payment made by the Corporate Debtor were appropriated and credited to the loan account of some of the aforesaid group entities. A chart showing the adjustment of the money paid by the Corporate Debtor to the Financial Creditor (as reflected in Annexure B to the said affidavit) is tabulated and annexed as Annexure "A" to the instant Rejoinder. Copies of some of such letters requesting adjustment and/or apportionment of the repayment made by the Corporate Debtor into the account of the Financial Creditor in favour of its group entities are annexed to the instant Rejoinder and collectively marked as Annexure "B".

8.3 The Corporate Debtor in the said affidavit has not made any attempt or even alleged that the loans received by the Corporate Debtor were gratuitous in nature. Repayments not having been made in accordance with the schedule of repayment as agreed in the loan agreement attracts penal interest, cost and charges which have been included in the statement of account being Annexure - S to the petition.

8.4 The Corporate Debtor while annexing the table as Annexure - B to the said affidavit, has deliberately suppressed the subsequent loan account and/or the facility accruing and becoming payable by the Corporate Debtor pursuant to invocation of the bank guarantees extended by the Financial Creditor in favour of and/or for the benefit of

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

the Corporate Debtor. The amount under such undisputed facility and/or loan is ₹30,04,00,000/- (Rupees Thirty Crore Four Lakh Only) and is in far excess of the threshold requirement for admitting an application for CIRP.

8.5 The Corporate Debtor has also deliberately suppressed its email dated 05 August 2022 issued by the deponent of the said affidavit and while acting as Director of the Corporate Debtor has requested for restructuring of the loan account in default. A copy of such email dated 05 August 2022 together with the letter attached therewith is annexed hereto and marked as Annexure "C". Such letter issued after the right to file reply had stood closed only establish the desperate and malafide attempt on the part of the Corporate Debtor to delay initiation of CIRP and continue to siphon out funds and assets beyond the reach of the creditor.

8.6 With reference to paragraph 5, 6 and 7 of the said affidavit, as would appear from the aforesaid statements, the Corporate Debtor had from time-to-time availed financial assistance from the Financial Creditor. In course of such financial assistance several loan agreements and/or loan accounts came into existence which were closed upon being repaid and fresh facility and/or loans were obtained. As already stated hereinabove, the Corporate Debtor has admittedly failed to adhere to the loan repayment schedule of the contracts in question and has made on account lumpsum payment from time to time which were accepted without prejudice to the rights of the Financial Creditor under the loan agreements. In fact, the Corporate Debtor has nowhere disputed the repayment schedule appended to each of the loan agreements in question. Therefore, the allegation of the Corporate Debtor as regards amounts being paid by the Corporate Debtor to the Financial Creditor were result of such on account payment and no way reflects any full and final repayment It is an admitted position that after 3rd October, 2015, further sum of ₹90,67,72,108/- Rupees Ninety Crores Sixty-Seven Lakh Seventy-Two Thousand One Hundred Eight Only) has been received by the Corporate Debtor. The statement annexed as Annexure B to the said affidavit reflects the amount received by the Corporate Debtor upto 02 September 2020. The Corporate Debtor has deliberately not disclosed any such chart the amount of ₹24,42,00,000/- (Rupees Twenty- Four Crore Forty-Two Lakh Only) payable by the reason of invocation of the bank guarantee extended by

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

the Financial Creditor. Such invocation is not in dispute. Similarly, the agreement executed on 28 September 2020 and 05 January 2020 are also not in dispute. The amounts reflected in the bank statements have been duly given credit by the Financial Creditor in the statement of account annexed as Annexure S to the present petition. Save as aforesaid contrary allegations are denied and disputed. It is denied that the Corporate Debtor is or could have been shocked to have been dragged into the said application, as alleged or at all. It is denied that the corporate debtor has been dragged into the said application despite having repaid all its dues as aforesaid, as alleged or at all.

8.7 With reference to allegations contained in paragraph 9 of the said affidavit, it is denied that the Corporate Debtor was made to sign blank pages, as alleged or at all or otherwise. It is denied that the blank pages did not contain any of the one-sided extortive clauses as appearing in the purported loan agreements to the said application, as alleged or at all or otherwise. It is denied that in view of the long-standing relations between the parties, funds were often transferred both ways, as alleged or at all. It is denied that the funds were transferred in good faith or without any agreement on interest or penalty or etc., as alleged or at all. It is denied that the Corporate Debtor never agreed to any of the terms as written in the said purported loan agreements, as alleged or at all. It is denied that Corporate Debtor never agreed to the terms pertaining to interest or damages or penalty or other coercive clauses, as alleged or at all. It is denied that the Corporate Debtor, being in need of funds, signed blank documents in good faith for availing financial facilities from the financial creditor, as alleged or at all. It is denied that such agreements were basic templates containing blanks or unfiled tables or schedules, as alleged or at all. It is denied that the blank agreements were basic templates containing blanks or unfiled tables or schedules containing "X" marks on various places, as alleged or at all. It is denied that the financial creditor would instruct the corporate debtor to sign on all such places containing the above mark, as alleged or at all.

8.8 There is no concrete evidence of any Award or adjudication in favour of the Corporate Debtor and therefore any reference to such terminated contracts is misleading and irrelevant. Admittedly there is no stay on any of the termination of

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

any of the contracts. Even otherwise the Corporate Debtor has not filed any Balance Sheet on or after 31 March 2017 which only shows that the Corporate Debtor is not only in violation of relevant laws but is also concealing its financial statements in order to siphon out money without paying its lender being the Financial Creditor herein. The list of purported assets disclosed have no basis, relevance and is only to mislead and raise a frivolous argument.

8.9 It is denied that the Financial Creditor had approached the co Corporate Debtor in the year 2006-07, as alleged or at all. It is denied that the Financial Creditor proposed to become a financier of the Corporate Debtor which the Corporate Debtor had agreed, as alleged or at all. It is denied that at the time of transferring the aforesaid funds, the Corporate Debtor was never given such agreements to be signed or executed, as alleged or at all. It is denied that the Corporate Debtor was made to sign blank pages which did not contain any of the one-sided extortive clauses as appeared to be printed on such annexures, as alleged or at all or otherwise. It is denied that the blank agreements were basic templates, as alleged or at all. It is denied that the basic templates contain blank or unfiled tables or schedules containing "X" marks on various places, as alleged or at all. It is denied that the Financial Creditor would instruct the Corporate Debtor to sign on all such places containing this mark, as alleged or at all. It is denied that the Corporate Debtor never agreed to any of the terms as written in the said agreement, as alleged or at all. It is denied that the Corporate Debtor never agreed to the terms pertaining to interest or damages or penalty or other coercive clauses, as alleged or at all. It is denied that the Corporate Debtor being in need of funds signed blank documents in good faith for availing financial facilities from the financial creditor, as alleged or at all. It is denied that the financial Creditor dishonestly or fraudulently inserted incorrect details or information or loan amounts or interest rate or etc. in the purported agreements which are annexures to the said application, as alleged or at all. It is denied that the statement of accounts is a document unilaterally prepared by the Financial Creditor, as alleged or at all. It is denied that the documents marked as Annexure "M" of the said application are not recognizable by the Corporate Debtor, as alleged or at all. It is denied that the financial creditor has dishonestly or fraudulently inserted arbitrary

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

details or information in such documents, as alleged or at all. It is denied that the Financial Creditor has not filed any recovery proceeding against the corporate debtor save or except for A.P. Nos. 677 and 678 of 2017 filed before the Hon'ble High Court at Calcutta, as alleged or at all It is denied that the said proceedings were not pursued by the Financial Creditor as the Corporate Debtor had duly made all payments as aforesaid or the matter stood settled, as alleged or at all.

- 8.10 It is denied that the corporate debtor has repaid the entire amount, as alleged or at all. It is denied that the corporate debtor has fully or finally settled the matter with the Financial Creditor, as alleged or at all. It is denied that upon receiving the letter dated 23 August 2021, the Corporate Debtor approached the erstwhile management or confronted them as to why was the corporate debtor being harassed by way of such letter, as alleged or at all. It is denied that the erstwhile management assured the corporate debtor in person that they will look into the matter or withdraw the said letter, as alleged or at all. It is denied that the said letter dated 23 August 2021, is palpably false or absurd, as alleged or at all. It is denied that no amount whatsoever is due or payable by the corporate debtor, as alleged or at all. It is admitted that the Corporate Debtor has not paid the instalment as agreed in the loan agreements. On account payments have been given due credit by the Financial Creditor in accordance with the loan agreements. The falsity of the allegations made in the paragraph under reference is also established from the letter for re-structuring sent by the Corporate Debtor on 05 August 2022 *i.e.*, during the pendency of the present proceedings. Save as aforesaid contrary allegations are denied and disputed.
- 8.11 With reference to allegations contained in paragraphs 37 and 38 of the said affidavits, it is denied that the statements of account have been unilaterally prepared by the Financial Creditor, as alleged or at all. It is denied that the statements of account ought not to be given any credibility, as alleged or at all. By a letter of demand dated August 23, 2021, the Financial Creditor called upon the Corporate Debtor to make payment of the entire outstanding dues, amounting to ₹68,29,91,717/- within a period of 7 days from the receipt of the said letter. In case of failure to comply with the same, the Corporate Debtor was called upon to pay the whole amount of the financial assistance taken by the corporate debtor, being ₹131,35,08,457/- as on 12 August

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

2021. Further, the letter dated 23 August 2021 the amounts of EMI records that the EMIS in default as on 12 August 2021 were ₹68,29,91,717/- which if not repaid within a time of 7 days from the date of such letter, the entire facility would stand recalled and accordingly a sum of ₹131,35,08,457/- would become payable immediately. It is a matter of record that after receipt of the letter dated 23 August 2021, the Corporate Debtor has not disputed such letter or the demand made therein and on the contrary as on 05 August, 2022 requested for re-structuring of the existing defaulted loan account.

9 Submissions of the Corporate Debtor in I.A.(I.B.C) 1184/KB/2022 are summarized hereinafter:

9.1 The instant interlocutory application has been filed on behalf of the Corporate Debtor, seeking the following reliefs:

- a. *That this Adjudicating Authority be pleased to dismiss the captioned original application with costs;*
- b. *That this Adjudicating Authority be pleased to pass such other orders and/or grant such other reliefs as deemed fit and proper;*
- c. *That pending the final hearing and disposal of the instant application, the proceedings in respect of the captioned Original Application be stayed;*
- d. *Ad-interim orders in respect of the prayer above be passed;*
- e. *Such other orders and/or directions be passed and/or such other reliefs be granted as deemed fit and proper.*

9.2 It is submitted that the instant petition appears to have been purportedly signed and verified by one Mr. Projoy Chatterjee, who claims to be the Constituted Attorney of the Financial Creditor by virtue of a purported Power of Attorney dated 31 March 2021 purportedly executed by Financial Creditor. The financial creditor has been taken over by the said Administrator *vide* the said order dated 08 October 2021 passed by this Adjudicating Authority. Since that date, the said Administrator oversees the Financial Creditor. The said purported Power of Attorney having been executed by the erstwhile management, has lost its force, and cannot be relied upon for preferring the captioned Original Application, thereby rendering it non-maintainable, illegal, bad in law and void ab initio.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- 9.3 This Adjudicating Authority, *vide* an order dated 01 July 2022, allowed the Financial Creditor to carry out amendments in the Original Application, while keeping all points on maintainability of the case open. Certain amendments were carried out in the Original Application and served upon the Corporate Debtor. Despite the amendment, the cause title of the Original Application is still defective.
- 9.4 It is submitted that the petition ought to have been filed by the Administrator in his name, which has yet not been done, thereby rendering the Original Application null and void. Along with the amended Original Application, the Corporate Debtor has also been served with a copy of an affidavit dated 06 July 2022 purportedly signed by one Mr. Sovan Kumar Jha, who claims to be the authorized representative of the Financial Creditor being allegedly authorized to reaffirm the Original Application. However, there appears to be no valid authority in favour of Mr. Sovan Kumar Jha to reaffirm and/or sign and/or carry out amendments to the Original Application.
- 9.5 This purported Power of Attorney, even if assumed to be true and genuine without admitting the same, authorizes the said Mr. Jha to merely "commence, initiate and/or sign or withdraw litigation", and not to reaffirm or amend the existing and/or defective petitions such as the Original Application which were wrongly constituted after appointment of the Administrator upon the strength of an illegal authority issued by the erstwhile management. Therefore, the Original Application is not maintainable and is liable to be dismissed.
- 10 **Reply of the Financial Creditor in I.A.(I.B.C) 1184/KB/2022 is summarized as follows:**

- 10.1 It is submitted that the petitioner is under CIRP and is being represented through its Administrator, Sri Rajneesh Sharma appointed by this Adjudicating Authority *vide* an order dated 08 October 2021. The Administrator has not challenged the authority of Sohan Kumar Jha and on the contrary has ratified all his acts by allowing the continuance of the proceedings by Sohan Kumar Jha. A third-party stranger being the Corporate Debtor cannot now be heard to question the authority of Sohan Jha when the Administrator himself has not done so.
- 10.2 The petition was initially filed upon being affirmed by one Projoy Chatterjee who was authorized by a Power of Attorney dated 31 March 2021 (Page 34 of company

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- petition) to file the same and such Power of Attorney was continued by the Administrator by a letter dated 25 October 2021 (Page 39 of company petition). Therein, the Administrator had also given prior written instructions to "Whomever It May Concern", thus, including Sohan Kumar Jha to do the needful in re-signing and re-verifying the said company petition and to take all steps in connection herewith, which includes all actions initiated and/or continued under the Code.
- 10.3 Further, on 01 April 2022, the Administrator executed a specific Power of Attorney dated 01 April 2022 in favour of the said Mr. Sohan Kumar Jha [POA at page 13 of the reply of the financial creditor in I.A. No. 1184 of 2022]. The said Power of Attorney also provides for ratification of all acts of the said Sohan Kumar Jha [Page 25 of the reply of the financial creditor in I.A. No. 1184 of 2022]. Further, according to Sections 186 and 188 of the Indian Contract Act, 1872, the power to verify includes power to reverify and such power is an implied power and is included in the powers granted to Sohan Kumar Jha.
- 10.4 The Financial Creditor had earlier filed an application to amend, re- sign and re-verify the said company petition, being I.A. (I.B.) No. 430/KB/2022. In the said application, the Corporate Debtor also raised the same point of maintainability of the said company petition. By an order dated 01 July 2022, this Adjudicating authority granted liberty to the financial creditor to amend the company petition. In terms thereof, the financial creditor carried out necessary amendment in the cause title of the said company petition.
- 10.5 Mr. Sohan Kumar Jha has been authorized by a valid power of attorney by the Administrator to do all acts and deeds, morefully stated therein, for and on behalf of the financial creditor. Thus, it cannot be said that Mr. Sohan Kumar Jha did not or does not have proper authorization to re-sign and re-verify the instant application. Reliance in this regard may be placed on ***Rajendra Narottamdas Sheth v. Chandra Prakash Jain, (2022) 5 SCC 600, paragraphs 13, 14, 15.***
- 10.6 In view of Explanation II to Section 11 of the Code, the Administrator of the financial creditor is entitled to maintain the instant company petition. Reliance in this regard can be placed on ***Manish Kumar v. Union of India, (2021) 5 SCC 1 paragraphs 304,306,309,310,311.***

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- 10.7 It is settled law that when construing a document, the purpose for which it was executed has to be considered along with the terms of the document. What the power-of-attorney authorizes depends on its terms and the purpose for which it was executed. Reliance in this regard can be placed on *Syed Abdul Khader v. Rami Reddy, AIR 1979 SC 553; Timble Irmaos Ltd., Margo v. Jorge Anibal Matos Sequeira 1977 (3) SCC 474;*
- 10.8 It is further submitted that mere omission in the power-of-attorney to mention expressly the power to re-sign and re-verify does not necessarily preclude the attorney from re-signing and re-verifying the said company petition. As the administrator has authorized the performance of all acts relating to trials and prosecution of petitiones, the administrator must be deemed to have conferred upon the power-of-attorney holder to re- sign and reverify the company petition as well. Reliance in regard can be placed on *AIR 1935 Oudh 305 (307) (DB).*
- 10.9 The question of maintainability of the company petition has already been decided and settled by this Adjudicating Authority by its order dated 01 July 2022. As such, the same is final and binding on the parties herein. Thus, the Corporate Debtor is precluded from again attempts to agitate the same point filing the instant application. In any event by virtue of the said power of attorney dated April 1,2022, all acts past or future stand ratified.

11 Analysis and Findings:

- 11.1 Heard the Ld. Sr. Counsel behalf of the Financial Creditor, Ld. Sr. Counsel on behalf of the Corporate Debtor and perused the record as mentioned and reffered herein above.
- 11.2 The first issue to be decided by this Adjudicating authority is regarding the maintainability of the company petition for alleged discrepancy in the Power of Attorney signed on behalf of the Financial Creditor. While considering this issue, it is noted;
- i. Instant company petition was filed on 22-11-2021 before this Adjudicating Authority upon being affirmed by Mr. Projoy Chatterjee who was authorized by the Financial Creditor *vide* Power of Attorney

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

("POA") dated 31.03.2021 annexed as Annexure A, on Page No. 33 to 39 of the Petition.

- ii. The Board of Directors of the Financial Creditor (SREI EQUIPMENT FINANCE LIMITED) was superseded on 4th of October 2021 by Reserve Bank of India (RBI), in exercise of its powers under Section 45-IE (1) of the Reserve Bank of India Act, 1934 owing to governance concerns and defaults. Mr. Rajneesh Sharma was appointed as the administrator of the Financial Creditor. (Page No. 39 of the petition)
- iii. Company petition being C.P. (IB) No. 294/2021 under Section 227 read with clause (zk) of sub-section (2) of section 239 of IBC was filed by RBI under the Code. The said petition was admitted by the Adjudicating Authority on 08-10-2021 and in terms of rule 5(a)(iii) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, Mr. Rajneesh Sharma was appointed by the Adjudicating Authority as the Administrator of the Financial Service Provider being Srei Equipment Finance Limited to carry out the functions as per the Code. (Page No. 54 of the Petition)
- iv. The Power of Attorney referred to in para i above was continued by the Administrator by way of letter of letter of authority dated 25th October 2021. Thereafter, the Administrator appointed by RBI on 1st April 2022 executed a Power of Attorney dated 1st April 2022 (Annexure-C, page 21 of supplementary affidavit) authorizing Mr. Sohan Kumar Jha to contest any legal proceedings under the provisions of the Code on behalf of the Financial Creditor company. It further authorised him to contest, as per clause 'i' of this deed and generally to do or cause to be done, execute and perform all other acts, deeds and things in connection as the Company could do the same if the Company were personally present in the case in any court of law,

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

judicial or Quasi-judicial authorities or authorities/forums, including Consumer Dispute Redressal Forums or tribunals etc.”

- v. Further, as evident from this Power of Attorney executed by Mr. Rajneesh Sharma (the administrator), all acts, deeds the Financial Creditor all acts, deeds and things lawfully done or cause to be done by the said Constituted Attorney namely Mr. Sohan Kumar Jha were construed as an acts, deeds and things done by the company, and the Administrator appointed by the RBI in clear terms ratified and confirmed all such acts done by the aforesaid Attorney.
- vi. The Board of the Financial Creditor herein was superseded by the Administrator as indicated hereinabove.

11.3. Therefore, we have no hesitation in holding that the Administrator had lawful authority to execute the Power of Attorney in favour of Mr. Sohan Kumar Jha and further that Mr. Sohan Kumar Jha was duly authorized to continue/contest the present petition on behalf of the Financial Creditor before this Adjudicating Authority and to file further document perform other acts and deeds required for pursuing/contesting the instant petition. The amendments carried out in cause title are in pursuance of the Power of Attorney in favor of Mr. Sohan Kumar Jha and therefore the Corporate Debtor's plea regarding the defective cause title is incorrect and untenable. Based on facts and documents as indicated above, the filing of this petition and its continuation subsequently do not suffer any defects as alleged. As such contentions of respondent are found to be in-correct and untenable.

11.4. The second plea of the Corporate Debtor in its Reply- Affidavit is that it is entitled to receive large amounts of its dues out various contracts with other entities mentioned in para graphs 13,14,18,21,23,26,30 of its reply. It is further averred in para 30 by the Corporate Debtor, admission of this petition will cause it irreparable loss and injury.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

11.5. While deciding this plea of Corporate Debtor, we would like to rely on an order passed by the Hon'ble NCLAT in the matter of *N.K. Kurian vs. Kosamattom Finance Limited*¹, wherein the hon'ble appellate tribunal has held that:

“23 It is aptly pointed out by this Tribunal, that the circumstance under which the ‘Corporate Debtor’, is not able to repay the ‘Financial Debt’, need not be taken as a ‘Defence’, in a proceeding under the Code. The reason for incapacity/inability of a ‘Corporate Debtor’, to pay its ‘Debt’, is not required to be gone into/looked into by an ‘Adjudicating Authority’/ ‘Tribunal’, in the considered opinion of this ‘Tribunal’.”

In *N.K. Kurian* (supra), the hon'ble NCLAT has further been held that:

“39. It cannot be gainsaid that, even if a portion of the debt due and payable is tacitly admitted by a ‘Corporate Debtor’/company and it comes within the threshold sum of the default of Rs.1 crore, as per (Section 4 (1) of I & B code, 2016 vide chapter 1 preliminary part 2) then, the Adjudicating Authority/Tribunal, is endowed with a subjective discretion, to admit the Section 7 Application filed by a party under the I & B Code, 2016 once the ‘Debt and Default’ are proved, to its satisfaction.”

Therefore, in view of the law laid down by Hon'ble NCLAT, plea of corporate debtor, as raised by it is not tenable and the same is liable to be rejected.

11.6. The next issue to be deliberated upon is whether a default on part of the Corporate Debtor has occurred and if the same is covered under the ambit of the Code. While considering this aspect, we note the following documents besides those placed on record by the Financial Creditor.

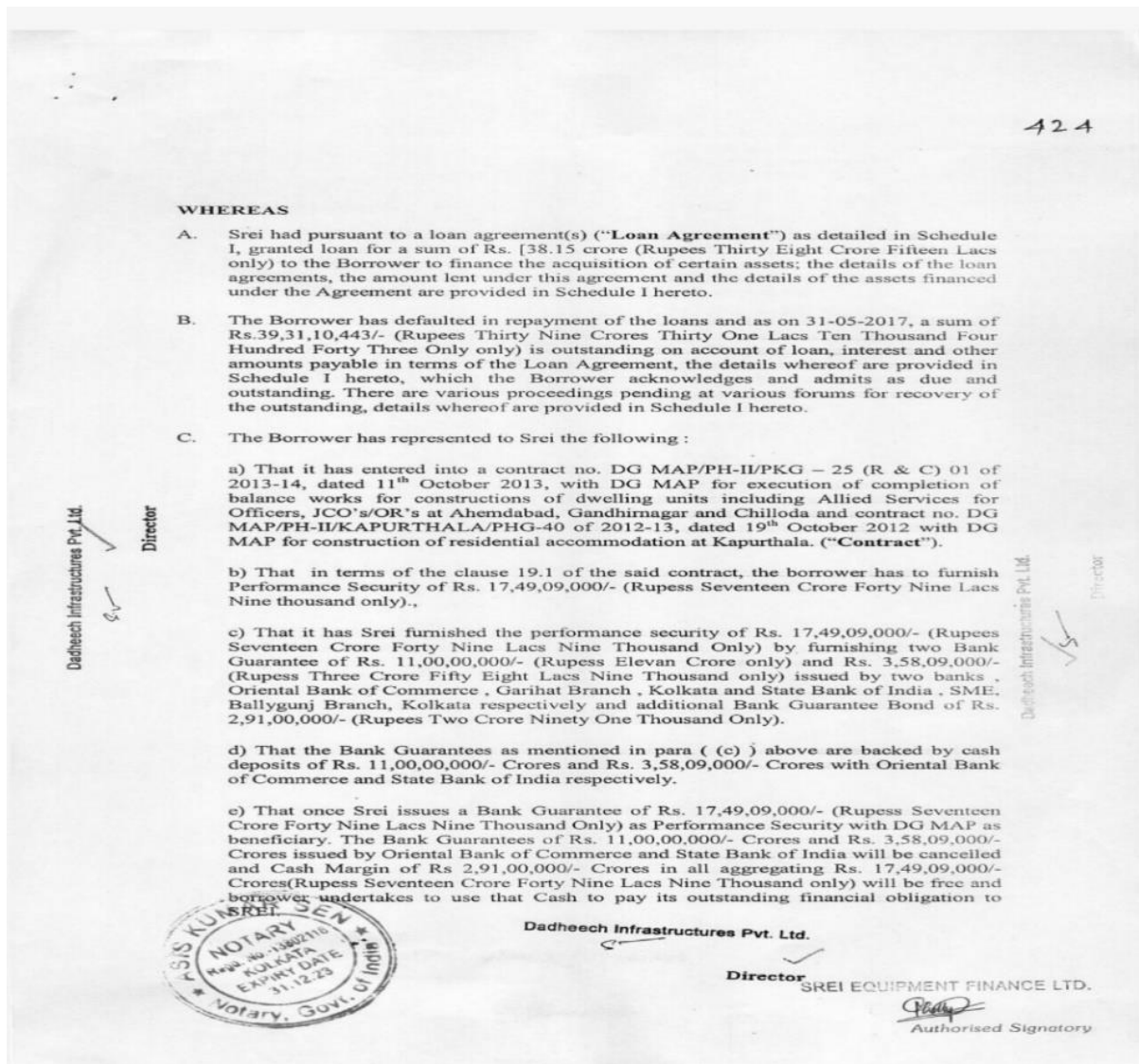
- i. By virtue of agreement executed on 16 June 2017 between the parties for the purpose of giving Bank Guarantees to the Corporate Debtor for its project, the Corporate Debtor *i.e.* the borrower therein

¹ Comp. Appeal (AT) CH (INS) No. 88 of 2023

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

acknowledged its default and outstanding amount of debt on page 424 of the petition. The Corporate Debtor has admitted therein that it has defaulted on repayment of loans as on 31.05.2017 and a sum of ₹39,31,10,443/- (Rupees Thirty-Nine Crore Thirty-One Lakh Ten Thousand Four Hundred Forty Three Only) is still outstanding. The said acknowledgement has been extracted and reproduced below:



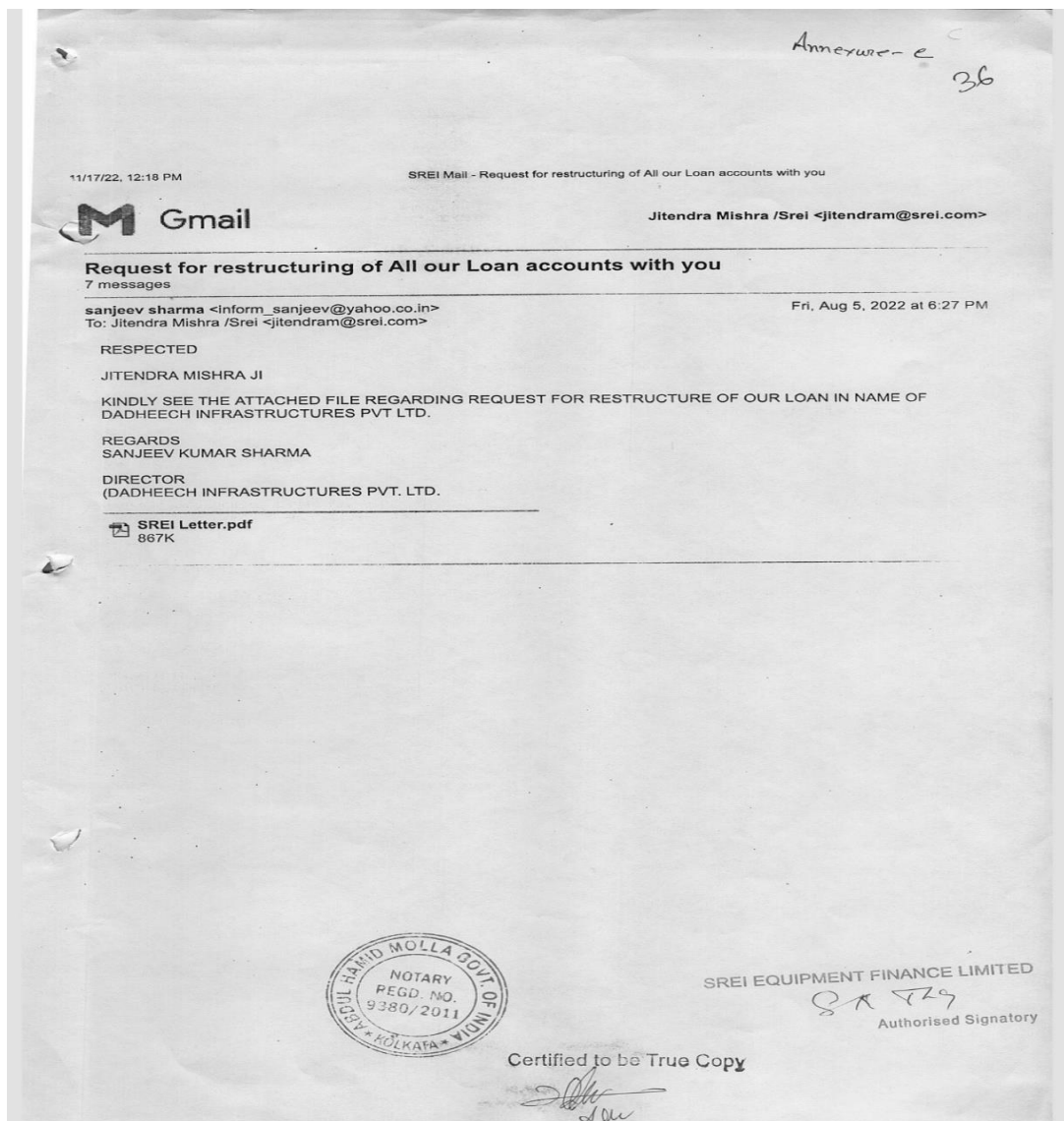
- ii. Further, it was agreed between the parties in clause 4.2 of the said agreement dated 16 June 2017 that the Corporate Debtor would owe to the Financial Creditor interest @16% per annum on the bank guarantees, as is clearly mentioned on page 429 of the petition.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- iii. Financial Creditor vide demand letter dated 23 August 2021 (Annexure R to the petition) raised its demand for payment amount in default/ debt due and payable by Corporate Debtor and the Corporate Debtor failed in the repayment of the same.
- iv. Chart showing adjustment of money paid by Corporate Debtor (Annexure A B) with rejoinder affidavit by Financial Creditor).
- v. **E-mail dated 05-08-2022 by Director of Corporate Debtor to financial creditor** (Annexure C, page 36 of rejoinder affidavit by Financial Creditor) **seeking restructuring of its loan.** The said E-mail is extracted and reproduced hereinafter:

Emphasis supplied.



**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- 11.7. Upon perusal and careful consideration of the above documents, other documents referred to and relied upon by financial creditor in its petition, rejoinder filed by Financial Creditor, averments along with documents in reply/rebuttal by Corporate Debtor, a debt was due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has committed a default in the payment of the same.
- 11.8. Now, coming to the plea of Corporate Debtor the Financial Creditor had obtained signatures of the Corporate Debtor on blank paper and Financial Creditor fraudulently, incorrectly, unilaterally inserted in the agreement dated 16.06.2017, we have perused and considered the averments, rebuttal to it and the said agreement dated 16-06-2017. This Adjudicating Authority is of a considered opinion that such allegations made by the Corporate Debtor on the face of it are without any basis, merely a rhetoric/attempt to wriggle out of its obligations in law to pay its debt due to the Financial Creditor. We may, while rejecting this plea from the corporate debtor, reiterate reference to E-mail dated 5-08-2022 seeking restructuring of debt by Corporate Debtor.
- 11.9. Considering the above-mentioned documents, facts and circumstances and the law laid down and cited above, this Adjudicating Authority is satisfied that a debt was due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has committed a default in the payment of the same. Based on record/documents, we find the instant petition has been filed within the period of limitation. The debt due and in default is more than One crore Rupees. As such, the instant petition deserves to be ***admitted*** and is hereby admitted.
- 11.10. The particulars of Interim Resolution Professional (IRP) have been proposed in the petition. The petition is within the period of limitation. As such, the instant petition is complete in all respects.
- 11.11. It is, accordingly, hereby ordered as follows: -
- i) The application bearing **CP (IB) No. 367/KB/2021** filed by **SREI Equipment Finance Limited** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

Adjudicating Authority) Rules, 2016 for initiating CIRP against **Dadheech Infrastructure Private Limited** (CIN U14219WB2007PTC114838), the Corporate Debtor, is *admitted*.

- ii) There shall be a moratorium under section 14 of the IBC.
- iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v) **Mr. Soumendra Podder** having registration number **IBBI/IPA-001/IP-P00446/2017-18/10789**, email: **soumenpodder@hotmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

SREI Equipment Finance Ltd. vs. Dadheech Infrastructure Pvt. Ltd.
I.A. (I.B.C.) 1184/KB/2022 with C.P (IB) 367/KB/2021

- viii) The Financial Creditor shall initially deposit a sum of ₹4,00,000/- (Rupees Four lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email, and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- x) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 9. IA. (IBC) 1184/KB/2022** shall stand dismissed in view of findings above and CP (IB) No. **367/KB/2021** stands admitted as indicated above. **CP IB) No. 367/KB/2021** to come up on **10.07.2023** for filing the progress report.
- 10.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 26th day of June, 2023