

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-06-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE

IA(IBC)376/2022 in CP(IB)12/2021

U/s 7 of IBC, 2016

IN THE MATTER OF:

Srei Equipment Finance Ltd

...Financial Creditor

Vs

Madhucon Projects Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in IA (IBC) No.376 of 2022 in CP (IB) No.12 of 2021 is pronounced vide separate sheets.

1. In the result the IA is allowed by directing the applicant to make necessary amendments in the cause title of the main Company Petition besides wherever it is required and the amendment shall be carried out within 7 days from the date of this order and a neat copy shall be filed within a week thereafter. Additionally, Counter, if any, only to the extent of representation of the main Company Petitioner through the Administrator, alone can be filed within 7 days thereafter.
2. Post the main Company Petition for consideration on 13.06.2022.

Sd/-

MEMBER (T)

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Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

**IA No. 376/2022
in
CP (IB) No. 12/7/HDB/2021**

Application under Section 60 (5) of IBC, 2016

In the matter of M/s MADHUCON PROJECTS LTD

Filed by

M/s SREI Equipment Finance Limited
Plot No. Y-10, Block EP
Sector-V, Salt Lake City, Kolkata -700091

....Applicant/
Financial Creditor

VERSUS

M/s Madhucon Projects Limited
Plot No. 1129/A, Road No.36
Jubilee Hills, Hyderabad- 500033

...Respondent

Date of order: 03.06.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Deepak Bhattacharjee, Senior Advocate
For Respondent: Shri Bikki Raveendra Babu, Senior Advocate

PER: BENCH

ORDER

1. This Application is filed by Financial Creditor, seeking to amend the cause title of the Company Petition i.e. CP(IB) No.12/7/HDB/2021 as follows:-

“M/s SREI Equipment Finance Limited
R/o Vishwakarma 86C, Topsia Road (South)
Kolkata – 700046
(Represented by the Administrator- Shri Rajneesh Sharma)

2. The gist of the Application in brief is that, the company petition i.e. CP (IB) No. 294/2021 filed by Reserve Bank of India under Section 227, r/w Section 229 (2) (zk) of IBC, 2016 against the Applicant herein was admitted by NCLT Kolkata Bench vide order dated 08.10.2021 and put the Financial Creditor i.e. M/s SREI Equipment Finance Ltd into CIRP by appointing Shri Rajneesh Sharma as Administrator under Section 45-IE (1) of the Reserve Bank of India Act, 1934.
3. It is averred that, in terms of the above order dated 08.10.2021, the management of the Financial Creditor has been vested with the Administrator who has been empowered to initiate requisite recovery action against defaulters/debtors. Thus submitting, the Financial Creditor prayed the Tribunal to amend the cause title as under: -

“M/s SREI Equipment Finance Limited
R/o Vishwakarma 86C, Topsia Road (South)
Kolkata – 700046
(Represented by the Administrator- Shri Rajneesh Sharma)

4. Counter has been filed by Respondent urging dismissal of the Application on the ground of failure on the part of the Financial Creditor in

specifically mentioning as to which clause of Section 60 (5) of IBC has the instant application been filed and since the Company Petition filed under Section 7 of IBC is not yet admitted and CIRP has not yet commenced, the instant application does not fall within the ambit of Section 60 (5) (c) of the Code.

5. The Respondent contends that the Administrator appointed for the Financial Creditor by NCLT Kolkata Bench, has been authorized only to perform the functions of the IRP, however, bars him under Section 11 from pursuing the company petition CP (IB) No. 12/7/HDB/2021 of IBC against the Corporate Debtor as the Financial Creditor itself is under CIRP. Thus submitting, prayed the Tribunal to dismiss the application.
6. In the light of the contest as afore-stated, the point that emerges for consideration is;

Whether the Administrator appointed by the Reserve Bank of India can be allowed to represent the Applicant in the present proceedings?

7. We have heard Shri Deepak Bhattacharjee, Ld. Senior Counsel for the Applicant and Shri Bikki Raveendra Babu, Ld. Senior Counsel for the Respondent, perused the records and case laws.

POINT

Whether the Administrator appointed by the Reserve Bank of India can be allowed to represent the Applicant in the present proceedings?

8. According to the Learned Senior Counsel for the Applicant, admittedly, post filing of the above CP (IB) No. **12/7/HDB/2021**, by virtue of the powers conferred under Section 45-IE (1) of the Reserve

Bank of India Act, 1934, vide its notification dated 04.10.2021, superseded the Board of Directors of SIFL/Financial Creditor and appointed Mr. Rajneesh Sharma as the Administrator besides constituted a three member Advisory Committee to assist the Administrator of SIFL in the discharge of its duties. Subsequently vide order passed in CP (IB) No. 294/2021 dated 08.10.2022 the NCLT Kolkata, the Bench while admitting the petition appointed the above Administrator as IRP for conducting CIRP proceedings. Hence, the Administrator has filed this Application enclosing copy of the proceedings of RBI dated 04.10.2021 and the order of NCLT Kolkata Bench dated 08.10.2021 and prayed the Tribunal to allow him to represent the Applicant.

9. Ld. Senior Counsel for the Respondent assailed the maintainability of this Application, contending that the Applicant failed to mention under what provisions of Section 60 (5) of the Code, the Application is filed. It is further contended that as per the order of NCLT Kolkata Bench, the Administrator has been appointed to perform the functions of IRP only and in the present case as the application is not yet admitted the Administrator cannot be allowed to represent the present Applicant. Thus contenting, it is prayed that the application be dismissed.
10. At the outset it may be stated that the scope of enquiry in this petition is limited, only to find whether or not to allow the Administrator, who has been appointed by the RBI, to represent the Applicant, who filed the Company Petition for initiation of the CIRP proceedings against the Corporate Debtor. It may be stated that RBI by virtue of its powers of the RBI Act, has appointed an Administrator to represent the Applicant with effect from 04.10.2021, as such the *locus-standi*, of the

said Administrator to represent the Applicant cannot be questioned before this Tribunal. In so far as the plea that the order of NCLT Kolkata Bench permitted the Administrator to act only as IRP, as such he is not entitled to represent the applicant herein, in as much as the Application is not yet admitted, it may be stated that, even if the said submission is accepted, yet the Administrator can be allowed to represent the Applicant herein, in view of the order of the RBI dated 04.10.2021 appointing the Applicant as Administrator for the Applicant. We therefore, do not find any merit in the contentions of the Respondent that the application should be dismissed.

11. Hence, we allow the application. Consequently, we hereby direct the Applicant to make necessary amendments in the cause title of the Application besides wherever it is required. The amendment shall be carried out within 7 days from the date of the order and a neat copy shall be filed within a week thereafter. Additionally, counter, if any, only to the extent of representation of the Applicant through the Administrator, alone can be filed within 7 days thereafter.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Dr.N.V. Ramakrishna Badarinath)
Member (Judicial)

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