

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
19-04-2024 AT 10:30 AM**

CP(IB) No. 273/7/HDB/2023
u/s. 7 of IBC, 2016

IN THE MATTER OF:

M/s. Frontline Enterprises Limited

...Financial Creditor

AND

Sri Nagakrishna Chemicals Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result **company petition is rejected. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

CP(IB) No. 273/7/HDB/2023

Petition u/s 7 of IBC, 2016, r/w Rule 4 of I&B (AAA) Rules, 2016

IN THE MATTER OF M/S SRI NAGAKRISHNA CHEMICALS LTD

Filed by

M/s Frontline Enterprises Limited
6-2-913/914, 2nd Floor, Progressive Towers
Khairtabad, Hyderabad – 500004

...Petitioner

VERSUS

M/s Sri Nagakrishna Chemicals Limited
8-2-1/4, Punjagutta, Opp: SBI
Yellareddyguda Branch
Hyderabad

...Respondent

Date of order: 19.04.2024

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Petitioner: Ms. J.V.L. Bharati, Advocate
For Respondent: Mr. Chakilam Nagarjun Rao, Advocate

PER: BENCH

ORDER

1. This Petition is filed by Frontline Enterprises Limited (hereinafter referred to as “Petitioner”) under Section 7(2) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. Sri Nagakrishna Chemicals Limited, (hereinafter referred to as “Corporate Debtor”), alleging non-payment of Rs. 10,19,00,000 (*Rupees Ten Crores Nineteen Lakhs Only*), plus interest of Rs. 1,25,160.00 is said to be due and payable by Corporate Debtor to the Petitioner as on 31.07.2023.
2. The gist of the averments in the Company Petition is that the Petitioner i.e. M/s Frontline Enterprises Limited had granted loan to the tune of Rs. 10,19,00,000/- from time to time at the request of the Corporate Debtor i.e. M/s Sri Nagakrishna Chemicals Limited under a loan agreement dated 19.08.2019, in order to facilitate the Corporate Debtor to close the loan accounts availed by it from the Banks and Financial Institutions under an OTS, which the Respondent is said to have been extended.
3. According to the Petitioner, the Corporate Debtor has failed in complying the terms and conditions of the Loan Agreement. Hence notice dated 01.08.2023 was sent to the Respondent demanding payment of Rs.

11,44,16,000/- including interest for which reply has been received from the Respondent stating that they could not finalise the OTS with MPSFC despite best efforts and sought six months' time.

4. The Corporate Debtor had entered appearance through its Counsel on 12.03.2024 and filed the following memo, which is signed by the Counsel for the Corporate Debtor alone.

That the Respondent/Corporate Debtor has availed three loans on consortium basis from SBI, UI and M/s Madhya Pradesh State Financial Corporation and settled the loan accounts under OTS with two financial institutions i.e. from SBI and UBI except M/s Madhya Pradesh State Financial Corporation. The OTS proposal submitted by the CD with M/s Madhya Pradesh State Financial Corporation is pending for want of approval of their Board.

Anticipating the closure of three loan agreements under OTS with the financial institutions, the Respondent has entered into an Agreement dated 19.08.2019 with the Petitioner/Applicant to transfer of company assets as the petitioner has agreed to pay the OTS amounts to the bank. The OTS is pending with M/s Madhya Pradesh State Financial Corporation, the respondent could not hand over the company to the petitioner as per the agreement.

5. In the light of the above, the point that emerges for consideration is:

Whether a financial debt exceeding a sum over Rs. one crore due and payable by the Respondent to the Petitioner exist? If so, whether the Respondent defaulted in payment of the same?

6. We have heard Ms. JVL Bharati, Ld. Counsel for the Petitioner and Shri Ch. Nagarjuna Rao, Ld Counsel for the Respondent and Shri Ch Nagaraju Kumar, Director for the Corporate Debtor, perused the reord.

Point

Whether a financial debt exceeding a sum over Rs. one crore due and payable by the Respondent to the Petitioner exist? If so, whether the Respondent defaulted in payment of the same?

7. At the outset it is to be stated that the Petitioner's claim is rested on the document captioned as "loan agreement" dated 19.08.2019 entered by the Petitioner with M/s Nagakrishna Chemicals Private Limited the Respondent herein. It is the specific case of the Petitioner that in pursuance of the aforesaid loan agreement, the Petitioner had advanced loans in all, of a sum of Rs. 1019/- Lakhs i.e. Rs. 120 lakhs on 19.08.2019, Rs. 437 lakhs on 27.02.2023 and Rs. 462/- lakhs on 14.03.2023 respectively to the Respondent enabling the Respondent to discharge its loans availed from the three banks i.e. SBI, UBI (erstwhile Andhra Bank) and Madhya Pradesh Financial Corporation (MPFC) through an OTS.

9. Ld. Counsel for the Petitioner vehemently contended that despite the Petitioner depositing an amount of Rs.1,20,00,000/-in the loan account of the Corporate Debtor in its respective branches, the Respondent failed in obtaining no due certificate on or before 30.06.2023, as required under the loan agreement and as such a notice dated 01.08.2023 has been issued to the Respondent demanding payment of Rs. 10,19,00,000/- within 10 days from the date of the said notice.
10. Ld. Counsel further submits that in response to the same, the Corporate debtor vide letter dated 08.08.2023 stated that the OTS with MPFC since pending, the Corporate Debtor may be granted six months' time to fulfil the obligation and repay the loan. Pursuant thereto, the Petitioner sent another letter dated 17.08.2023 demanding payment of the outstanding amount within 15 days and as the Respondent failed to pay the same, the present proceedings are initiated.
11. Ld. Counsel further stated that, apart from the loan agreement supra, the documents referred in the Company Petition and the memo dated 12.03.2024 filed on behalf of the Respondent firmly establishes the existence of a financial debt of a sum exceeding Rs. One crore, besides its default. Therefore, it is a fit case to admit this Petition and to initiate CIRP against the Corporate Debtor.

12. Since the basis for the present petition being loan agreement, we have carefully perused the same to satisfy ourselves whether the financial debt exceeding Rs. One crore is due and payable by the Respondent to the Petitioner and, if so whether the Respondent had defaulted in repayment of the same.
13. For the purpose of our discussion on the above aspect, we intend to rely on Clauses (1), (2), (3) & (10) of the said loan agreement which are as below:-

Clause (1): That in pursuance of the "offer and acceptance', the Loanse on 19.08.2019 has paid Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakhs only) deposited in his No Lien Account and marked lien in favour of the Consortium Lead Lender, State Bank of India, being 10% of the commitment amount towards One Time Settlement (OTS) amount of the dues of Sri Nagakrishna Chemicals Ltd., (SNCL). The Balance OTS amount of Rs. 10,80,00,000 as and when required to be paid shall be lent to SNCL by Frontline Enterprises Ltd. The SNCL, has to get the OTS sanctions from the respective organizations for the balance amount of Rs. 10,80,00,000/- (Rupees Ten Crores Eighty Lakhs only) shall be paid progressively after obtaining the consent all consortium lenders led by State Bank of India for full and final sanction of OTS by the consortium members viz., State Bank of India, Andhra Bank and Madhya Pradesh Financial Corporation (MPFC) and both parties accepted the same.

Clause (2): In pursuance to the Loan Agreement on payment of 75% of the OTS amount i.e., Rs.9 Crores out of total OTS amount of Rs.12 Crores, M/s.Sri Nagakrishna Chemicals Ltd., shall handover the physical

possession of all the properties located in Damarcherla, Telangana and Shahdol, Madhya Pradesh without any encumbrances to the Loanee as security for the amount lent.

Clause (3): *It is agreed between the parties that on payment of 75% of the OTS amount, the Loanee will have the right to appoint any entity either may be individual or a corporate company as he deems fit as a Director of Sri Nagakrishna Chemicals Ltd, to manage the day to day affairs of the Company along with full control of the company.*

Clause (10): *It is mutually agreed between the parties that in case the liabilities of the Financial Institutions is not cleared and also not obtained the No Due Certificates on or before 30.06.2023, M/s.Sri Nagarksihna Chemicals Ltd., shall repay the amounts lent by the Loanee i.e., Frontline Enterprises Ltd., along with interest @ 15% per annum. In case if the amount is not paid M/s.Frontline Enterprises Ltd., will be at liberty to recover the amount from Sri Nagakrishna Chemicals Ltd by issuing one month notice for recovery.*

14. A bare perusal of these clauses, particularly clauses (1) & (2) clearly discloses that a sum of Rs. 1.20 crores have been deposited in the No Lien Account and the consortium led by lender namely SBI, towards 10% of the commitment amount towards OTS amount of the dues of the Corporate Debtor with SBI and other banks. The said clauses further states that the balance OTS amount of Rs. 10,80,00,000/- will be lent by the Petitioner to the Corporate Detor as and when required to be paid and the Corporate Debtor shall get OTS sanctioned from the respective

organisations, so as to enable the Petitioner to pay the balance loan progressively.

15. Further clause (2) of the loan agreement states that on payment of 75% of OTS amount i.e. Rs. 9 crores, out of the total OTS amount of Rs. 12 crores, the Corporate debtor shall hand over the physical possession of all the properties located in Damarcherla, Telangana and Shahdol, Madhya Pradesh without any encumbrances to the Loanee (Petitioner) as security for the amount lent.
16. Clause 10 of the Loan Agreement specifically states that if the agreed amount is not cleared and no due certificate is issued on or before 30.06.2023, the Corporate Debtor shall repay the loan to the Loanee (Petitioner) along with interest @ 15% per annum.
17. The Petitioner also filed a bank statement to show that payment of Rs. 1,20,00,000/- in terms of Clause (1) of the Loan Agreement has been made. Even as per the aforementioned terms of the loan agreement, a sum of Rs. 1,20,00,000/- has been deposited in no lien account with the Lead Bank of the Consortium of Lenders i.e. SBI, being 10% of the commitment amount towards One Time Settlement of the dues of the Respondent with State Bank of India, UBI and MPF. Therefore, the argument that the Petitioner lent a sum of Rs. 10,19,00,000/- to the

Respondent towards loan, is incorrect even as per the loan agreement relied upon by the Petitioner.

18. In so far as the debit entries of a sum of Rs.4,37,00,000/- and Rs, 4,62,00,000/- dated 27.02.2023 and 14.03.2023 respectively in the account of the Financial Creditor are concerned, the Petitioner failed to place any reliable material to show that the above amounts were credited to the account of the Respondent. In fact, there is neither any pleading nor proof in this regard.
19. Admittedly, the attempt of the Respondent to settle all its dues with the aforesaid banks and financial institution through One Time Settlement did not fructify. In terms of Clause 10 of the Loan Agreement, the Respondent is bound to return the above amount with interest @ 15% p.a, if the settlement fails. Therefore, a simple task that is required to be performed by the Petitioner was to seek return of the amount lying in the no-lien account with the lead bank of the Consortium of Lenders and raise a claim for interest. Instead, the Petitioner filed the present application under Section 7 of IBC. It appears that the intention of the Petitioner is to recover the money and not the resolution of the Respondent. Moreover, as can be seen from the Loan Agreement, upon complying the terms referred therein, the Respondent is required to transfer certain movable

and immovable assets of the Respondent to the Petitioner, hence the said document also requires registration.

19. Thus, in the light of our discussion, when there is no record placed before us to show that a sum of Rs. 1,20,00,000/- parked in the No Lien Account, is not transferred to the account of the Respondent, the existence of financial debt of a sum exceeding Rs. One crore between the Petitioner and the Respondent cannot arise. Moreover, the aim of the Petitioner appears to be recovery of the amount rather than resolution of the Respondent, which act is impermissible under law.
20. We are of the considered opinion that the present petition is misconceived and devoid of merit and substance and liable to be rejected.
21. Accordingly, the petition is rejected. However, without costs.

SD/-

(Charan Singh)
Member (Technical)

SD/-

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