

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.333/2022

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the Impugned Order dated 21.07.2022 in CP(IB)
197(CHE)/2021, passed by the 'Adjudicating Authority' (National
Company Law Tribunal, Chennai Bench)**

In the matter of:

J. Mohan Babu

... Appellant

V

Ramya Outsourcing Solutions Pvt. Ltd.

...Respondent

Present :

For Appellant : Mr. Rohan Rajasekaran, Advocate.

For Respondent : Mr. Sankar Varadharajan, Advocate.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 21.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Chennai Bench) by which a petition i.e. CP (IB) 197/CHE/2021 filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (In short 'Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') on 14.08.2021 against M/s Ramya Outsourcing Solutions Pvt. Ltd. (Corporate Debtor) has been dismissed with cost of Rs. 3,00,000/- which has been directed to be deposited in the Prime Minister National Relief Fund within a period of 7 days from the date of this order.

2. Counsel for the Appellant has submitted that in Part IV of the application filed under Section 7 of the Code, a sum of Rs. 1,15,21,900/- calculated as on June, 2021 plus additional interest @ 12% p.a. from June 2021 till repayment and penal interest @ 9% p.a. from 15.04.2021 till the date of repayment has been claimed. The date of default has been mentioned as 15.04.2021. It is further submitted that in Part V of the application, the Appellant has given the particulars of the financial debt and placed the following documents, namely, minutes of meeting dated 18.07.2019, disbursement letters dated 26.07.2019 and 30.07.2019, demand letter dated 01.03.2021, MOU dated 22.03.2021, demand letter dated 30.04.2021 with acknowledgement, demand mail dated 18.06.2021, relevant bank statement of the Applicant and legal notice dated 05.07.2021 with proof of service.

3. It is the case of the Appellant that the amount in question has been disbursed in different tranches. The chart of the said disbursal is reproduced as under:-

S. No.	Date of Disbursement	Amount disbursed
1.	30.07.2019	20,00,000/-
2.	31.07.2019	15,00,000/-
3.	03.08.2019	15,00,000/-
4.	23.03.2021	15,00,000/-
5.	24.03.2021	27,00,000/-
6.	30.03.2021	10,30,000/-

4. It is submitted that initially the Appellant disbursed a sum of Rs. 50,00,000/- and subsequently an MOU was entered into with them on 22.03.2021 in which not only the old dues of Rs. 59,53,424/- were acknowledged but it was agreed to disburse a further loan, not exceeding Rs. 55,00,000/-, repayable with interest @ 12% p.a. It is further alleged that the Corporate Debtor had agreed to repay the entire dues with interest on or before 15.04.2021 and on failure to make the payment, they had agreed that additional penal interest @ 9% can be levied. It is also the case of the Appellant that the Corporate Debtor had acknowledged the receipt of Rs. 1,02,30,000/- on different occasion but failed to make any payment in discharge of the said liability. Counsel for the Appellant has submitted that vide order dated 23.11.2021, the Respondent was directed to file complete three years balance sheet of the Corporate Debtor which was filed on 29.03.2022 by the Respondent but the Adjudicating Authority has observed that in this said statements the name of the Financial Creditor (J. Mohan Babu) is not reflected, therefore, the Adjudicating Authority has observed that the Financial Creditor is in collusion with the Corporate Debtor and thus imposed heavy costs of Rs. 3,00,000/-.

5. Counsel for the Appellant has referred to various entries in its bank statements in regard to the disbursement of the amount to the Respondent on various dates, mentioned in the earlier part of this order in a chart and submitted that the only issue on which the Tribunal has dismissed the application is that the amount advanced by the Appellant to the Respondent is not being reflected in the

financial statements of the Respondent which had been placed on record. In this regard, it is submitted that the Corporate Debtor in the reply filed to this appeal has categorically admitted its liability. It is submitted by the Respondent in the reply that the error in the financial statements has been rectified by including the Appellants name under the head 'long term borrowings' in the financial year ending 31.03.2022 and the copy of the said financial statements is also annexed with the reply which reflects the entry of the amount in question with the name of the Appellant in the column of long term borrowings. The said entries are reproduced as under:-

**“Note 3: Long-Term Borrowings
Term Loans**

Particulars	As at 31st March, 2022	As at 31st March 2021
	Amount in Rs.	Amount in Rs.
(A) Secured		
(i) Secured loans from banks (Secured by hypothecation of inventory & receivables and guaranteed by directors		
(B) Unsecured		
Axis Bank	13,27,903	23,44,342
Balaji Finance MSME	5,15,848	5,99,100
Balaji Finance OD	29,57,325	29,96,125
HDFC Bank Limited	24,25,857	28,76,794
ICICI MSME Loan	13,17,723	19,47,581
RBL Bank	15,16,628	20,25,000
TATA Capitals MSME Loan	3,33,287	4,05,096
TATA Capital OD	9,99,477	26,97,404
Mohan Babu	1,02,30,000	1,02,30,000
Total	2,16,24,048	2,61,21,442

6. Once, the amount in question has been shown by the Respondent in his balance sheet as on 31.03.2022 in the long term borrowings in the name of the Appellant and liability is also admitted in their reply, the impugned order which has been passed by the Adjudicating Authority dismissing the application filed under Section 7 of the Code by the Appellant on the ground that the amount advanced as loan by the Appellant does not reflect in the balance sheet of the Respondent does not survive.

7. In view of the aforesaid discussion, the present appeal succeeds and the impugned order is hereby set aside. However, the matter is remanded back to the Adjudicating Authority to proceed further in this case in accordance with law.

The parties are directed to appear before the Adjudicating Authority on **7th August, 2023.**

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mrs. Shreesha Merla]
Member (Technical)

New Delhi
27th July, 2023.

Sheetal