



**NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH**
(through web-based video conferencing platform)

Item No. 101

IA No. 300/JPR/2024

IA (IBC) No. 439/JPR/2024

CP No. (IB)- 88/7/JPR/2022

Under Section 7 of IBC, 2016

In the matter of:

Union Bank of India

.... Financial Creditor/Applicant

Versus

M/s Swastik Copper Pvt. Ltd.

...Corporate Debtor/Respondent

Coram: HON'BLE MR. DEEP CHANDRA JOSHI, JUDICIAL MEMBER

HON'BLE MR. RAJEEV MEHROTRA, TECHNICAL MEMBER

Present Through Video Conferencing: -

For the Financial Creditor : Anubha Singh, Adv.
Simran Gupta, Adv.

For the Corporate Debtor : Sanjay Jain, Adv.
Ankita Kedia, Adv.

ORDER

IA No. 300/JPR/2024

Submissions heard. Order is reserved. Learned counsel for the Respondent is permitted to file written submissions, if any, not exceeding 3 pages, within 7 days with any case law relied upon by them and serve advance copy to the opposite counsel.

(Rajeev Mehrotra)
Technical Member

(Deep Chandra Joshi)
Judicial Member

September 10, 2024



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 439/JPR/2024
In CP No. (IB)- 88/7/JPR/2022

IN THE MATTER OF:

UNION BANK OF INDIA

...Financial Creditor

VERSUS

M/S SWASTIK COPPER PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 439/JPR/2024:

M/S SWASTIK COPPER PVT. LTD.

R/o at E-1/1274, Phase-III, Sitapura
Industrial Area, Jaipur- 302022

...Applicant/Corporate Debtor

VERSUS

UNION BANK OF INDIA

Branch office at Asset Recovery
Management Branch, 101-110, First
Floor, Anukampa Tower, Church
Road, Jaipur- 302001

...Respondent/Financial Creditor

FOR THE APPLICANT

:

Sanjay Jain, Adv.
Ankita Kedia, Adv.

FOR THE RESPONDENT

:

Anubha Singh, Adv

Sd-

IA(IBC) No. 439/JPR/2024

In

CP No. (IB)- 88/7/JPR/2022

Sd-



Order Pronounced On:10.09.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Application bearing *I.A. (IBC) No. 439/JPR/2024* has been preferred by *M/s Swastik Copper Pvt. Ltd.* ('Corporate Debtor'/ 'Applicant') through its authorized signatory *Mr. Sandeep Jain* under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 131 of the NCLT Rules, 2016 read with Order 11 Rule 14 of the Code of Civil Procedure, 1908 ('CPC') against *Union Bank of India* ('Respondent'/ 'Financial Creditor') seeking production of documents by the Financial Creditor. The prayer clause of the Application filed by the Applicant is reproduced hereunder:

"a. Allow the present application in favour of the applicant by holding that production of documents enlisted in para 9 of the present Application are necessary for the fair adjudication of the captioned Company Petition;

b. Direct the Financial Creditor to provide the certified copies of the complete set of the documents enlisted in para 9 of the present Application to the Applicant/Corporate Debtor;"

2. The Application bearing *I.A. No. 439/JPR/2024* has been preferred by the Corporate Debtor *vide* Diary No. 2127/2024 dated 02.09.2024 on the following set of facts: -

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- 2.1. The Financial Creditor had filed an Application under Section 7 of the Code bearing *CP No. (IB) 88/7/JPR/2022* seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor for alleged default of Rs 61,81,87,226.6/-(Rupees Sixty-One Crores Eighty-One Lakh Eighty-Seven Thousand Two Hundred and Twenty-Six and Six Paisa Only) as on 31.10.2022.
- 2.2. It was contended that the aforementioned Section 7 Application had been filed maliciously and certain relevant facts have been withheld from this Adjudicating Authority. It was submitted that the alleged credit facilities were renewed in the year 2018 by the Financial Creditor and the said fact had also been mentioned by the Corporate Debtor in its Reply to the Company Petition filed by the Financial Creditor. Further, the said fact had been concealed by the Financial Creditor.
- 2.3. It was submitted that due to the nature of business of the Corporate Debtor, Performance Bank Guarantees were required to be issued in favour of the clients of the Corporate Debtor. Further, the Bank Guarantees were to be encashed only in the case of default in performance by the Corporate Debtor. The said Bank Guarantees were issued for a term of one year, but were renewed for such period on yearly basis. In the instant case, the Financial Creditor has invoked the said Bank Guarantees despite there being no invocation of the

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same by the clients of the Corporate Debtor. Thus, compelling the Corporate Debtor to pay an additional amount which would otherwise have been used for payment of the alleged credit facilities or development of the business of the Corporate Debtor.

2.4. It was submitted that since all the documents qua the aforementioned transactions are under the control and custody of the Financial Creditor Bank, appropriate directions are required to be issued to the Financial Creditor for production of the same.

2.5. The Corporate Debtor through its newly engaged counsel had issued a notice dated 28.08.2024 under Order XII Rule 8 of the Code of Civil Procedure, 1908 ('CPC') seeking production of the following documents:-

- a. *The original sanction letter for the year 2018 pertaining to the renewal of credit facilities alleged to be granted by the Financial Creditor Bank to the Corporate Debtor.*
- b. *The original documents, agreements, guarantees, deeds, hypothecation, mortgages, valuation reports, etc. as may be executed by the Corporate Debtor and / or the alleged guarantors.*
- c. *The original documents, along with duly certified copies of the same pertaining to the request for the renewal of Bank Guarantees received by Financial Creditor Bank from the*

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various clients of the Corporate Debtor for the renewal of the same on maturity since the year 2018.

- d. The original documents along with duly certified copies of the same pertaining to the invocation of the Bank Guarantees received by Financial Creditor Bank from the various clients of the Corporate Debtor for the renewal of the same on maturity since the year 2018.*
- e. The Original documents along with duly certified copies of the same pertaining to the encashment of the Bank Guarantees made by Financial Creditor Bank upon receipt of request for renewal of the Bank Guarantees on maturity since the year 2018.*
- f. The original documents/ basis of calculation, along with duly certified copies of the same, pertaining to the declaration of the account of the Corporate Debtor as Non Performing Asset since the year 2018.*

2.6. A copy of the aforementioned email was also sent to the counsel of the Financial Creditor. It was submitted in the Application that despite the service of the aforesaid notice, the Financial Creditor may refuse to provide the documents as requested by the Corporate Debtor. Further, the said documents are required to prove and expose the wrongful and malicious actions perpetrated by the Financial Creditor against the Applicant/ Corporate Debtor.

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3. The Financial Creditor had not filed any Reply to the instant Application, however, during the course of hearing, the counsel for the Financial Creditor vehemently contested the Application and stated that the entire set of paper book has been furnished in hard copy to the learned counsel for the Corporate Debtor.
4. We have heard the parties and perused the averments made in the Application along with the documents enclosed therein.
5. In the instant case, an Application under Section 7 of the Code bearing *CP No. (IB) 88/7/JPR/2022* was preferred by the Financial Creditor against the Corporate Debtor alleging a default of Rs 61,81,87,226.6/- (Rupees Sixty-One Crores Eighty-One Lakh Eighty-Seven Thousand Two Hundred and Twenty-Six and Six Paise Only) as on 31.10.2022 *vide* Diary No. 3512/2022 dated 01.12.2022. Further, in support of the Petition, the Financial Creditor had filed several documents including copies of documents showing creation of charge, sanction letters, Loan Agreements, CIBIL Report, statement of accounts and certificate as per Banker's Book Evidence Act, and a copy of the demand notice dated 07.05.2021 under the SARFAESI Act.
6. The Corporate Debtor had filed a detailed Reply to the Company Petition *vide* Diary No. 1170/2023 dated 09.05.2023 wherein the Corporate Debtor had raised various objections to the Company Petition preferred by the Financial Creditor. It is pertinent to mention that in its Reply, the

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Corporate Debtor had no where sought production of any document from the Financial Creditor.

7. Subsequently, the instant Application bearing *I.A. IBC 439/JPR/2024* has been filed by the Corporate Debtor *vide* Diary No. 2127/24 dated 02.09.2024 seeking production of documents pertaining to renewal of credit facilities and bank guarantees in the year 2018.
8. It is noteworthy that the instant Application seeking production of document had been filed almost after expiry of two years after filing of the Company Petition seeking initiation of the CIRP against the Corporate Debtor and after more than a year from the date of filing of the Reply by the Corporate Debtor.
9. At this juncture, it is pertinent to mention that in so far as the adjudication of a Section 7 Application is concerned, it is no more *res-integra* that the Adjudicating Authority is only required to ascertain the existence of debt and default.
10. In our opinion, the documents sought by the Corporate Debtor have no bearing in so far as the adjudication of the Section 7 Application filed by the Financial Creditor is concerned. Further, the right of the Corporate Debtor would not be prejudiced as the Corporate Debtor had already filed a Reply to the Company Petition submitted by the Financial Creditor.
11. In view of the aforementioned observations, we are of the considerate opinion that the documents sought by the Corporate Debtor in the instant





Application have no relevance for the adjudication of the Section 7 Application. Thus, we are not inclined to grant the relief sought by the Corporate Debtor.

12. Further, in view of the aforementioned observations, the *IA (IBC) 439/JPR/2024* stands disposed off.

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**DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)**

A handwritten signature in black ink on a yellow rectangular background.

**RAJEEV MEHROTRA
(TECHNICAL MEMBER)**