

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9425 OF 2019**

SREI EQUIPMENT FINANCE LIMITED ... Appellant

Versus

RAJEEV ANAND & ORS. ... Respondents

WITH

**CIVIL APPEAL NO. 1911 OF 2020
CIVIL APPEAL NO. 3112 OF 2020 (Diary No. 45282 of 2019)**

JUDGMENT

R.F. NARIMAN, J.

1. Permission to file appeal granted in Diary No. 45282 of 2019.
2. In the first matter being Civil Appeal No. 9425 of 2019, an application under section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by the appellant before the National Company Law Tribunal (hereinafter referred to as the "NCLT" for brevity) on 16.03.2017. A loan, which was given way back in 2008, was restructured into two loans of Rs.18.86 crores by an agreement dated 01.04.2016, and the second being a loan of Rs.16.80 crores by agreement dated 24.06.2016, with an interest figure of Rs.2.72 crores, the total amount coming to Rs.38.39 crores.

3. To this section 7 application, a counter affidavit was filed by the corporate debtor on 15.05.2017, in which it was stated that though Rs.35.66 crores have become due, yet a section 7 application was premature inasmuch as instalment payments that were agreed upon had not yet matured. It was on this basis that this first application was withdrawn by the appellant on 30.05.2017 with liberty to file a fresh application.

4. A fresh application was filed on 04.08.2017, in which it was claimed that insofar as the 01.04.2016 loan was concerned, the figure of Rs.21.41 crores was still outstanding. The corporate debtor now filed a counter affidavit in which it denied this and stated that, as a matter of fact, from 2008 till date, an amount of Rs.65.60 crores have been repaid by it. A supplementary affidavit was filed by the appellant dated 06.06.2018 which, owing to technical defects, was rejected. A second supplementary affidavit of 03.08.2018 was therefore filed, replacing this affidavit, in which it was explained that, as a matter of fact, the corporate debtor has made payment of Rs.18,86,00,000/- on 13.04.2016 and 16.04.2016, and thereafter of Rs.16,80,62,000/- from 05.07.2016 and 19.07.2016, as would be evident from pages 11 & 12 of the counter affidavit filed on behalf of the corporate debtor. Thus, the sum of Rs.35,66,62,000/- which has been paid by the

corporate debtor to the appellant is on account of its previous outstanding of Rs.35,66,61,986/- which was outstanding on the part of the corporate debtor as on 31.03.2016 as was unconditionally and unequivocally admitted by the corporate debtor in its counter affidavit filed by it in the prior proceeding (I.B. No. 54(PB)/2017). A sum of Rs.18,86,00,000/-, disbursed to the corporate debtor by the appellant on 01.04.2016, is still due and payable to it.

5. On this pleading, the NCLT finally held:

“21. The Corporate Debtor in the previous round of litigation had candidly admitted the restructuring of the total loan amount of Rs.35,66,61,986 by way of executing two contracts firstly being Agreement bearing No. 105996 dated 01.04.2016 for facility of Rs.18,86,00,000/- and secondly being Agreement bearing No. 111305 dated 24.06.2016 for facility of Rs.19,53,00,000/- as detailed in preceding para 5 of the order. It is also evident from a perusal of supplementary affidavit dated 03.08.2018 read with a copy of confirmation of transaction (Annexure-B) that a sum of Rs.18,86,00,000/- was further disbursed by the Petitioner on 13.04.2016 to the Respondent after the aforesaid candid admission by it and the said amount is an independent transaction and having no relevancy with the previous one. It does not lie in the mouth of the Corporate Debtor to take a contrary stand and principles in the nature of estoppel would come in play.”

As a result thereof, the NCLT admitted the application and appointed a Resolution Professional. A Committee of Creditors was also thereafter appointed.

6. The impugned judgment referred to the NCLT order and then held as follows:

“19. Thus, it is clear that document which was already rejected by the Adjudicating Authority, has been made the basis for passing the Order of Admission, which is not permissible under law.

20. Based on loan Agreement dated 1st April 2016 the amount Rs.18,86,00,000/- was disbursed. The bank certificate filed by ‘Corporate Debtor’ shows that while amount has been returned back. But the finding of the Adjudicating Authority that a sum of Rs.18,86,00,000/- was again disbursed to the ‘Corporate Debtor’ is not supported by any evidence. The ‘Corporate Debtor’ has filed the document to prove that he has repaid the said amount through RTGS transfer to the account of the ‘Financial Creditor’.

21. During the argument, it is admitted by the parties that previous petition filed by the ‘Financial Creditor’ was withdrawn. The document(s) filed in the earlier petition, which was dismissed as withdrawn, could not have been relied on by the Adjudicating Authority. Therefore, it is clear that finding of the Adjudicating authority that a sum of Rs.18,86,00,000/- was again disbursed to the ‘Corporate Debtor’ by the ‘Financial Creditor’ which is still due and payable is erroneous, without any basis and unsustainable.”

As a result thereof, the NCLAT allowed the appeal and set aside the NCLT order, thereby making it clear that the section 7 application will have to be dismissed.

7. We have heard learned counsel for the parties, including the parties in Civil Appeal No.1911 of 2020 and Civil Appeal No.3112 of 2020. A bare reading of the NCLT order shows that it is only after a perusal of the documents, pleadings, and the supplementary affidavit of 03.08.2018, including the counter affidavit in the earlier section 7 application, that the NCLT came to the conclusion that a loan amount remained outstanding. The NCLAT, when it dealt with the NCLT order, wrongly recorded that documents which were already rejected by the adjudicating authority could not have been the basis of the order of admission. The NCLAT also wrongly recorded that there was no further evidence in support of the fact that any amount was outstanding. Further, the NCLAT also held that a 'document' filed in the earlier petition that was dismissed as withdrawn could not have been relied upon by the adjudicating authority. The NCLAT is wrong on all these counts. As has been stated earlier, documents evidencing an outstanding loan amount were produced; a supplementary affidavit dated 03.08.2018 was also relied upon; and the admission made in the counter affidavit that was made in the first round of litigation, can by no means be described as a 'document' in an earlier petition that could not be relied upon. The 'document' was not a pleading

by the appellant – it was a counter affidavit by the corporate debtor in which a clear admission of the debt being outstanding was made.

8. For all these reasons, we set aside the NCLAT order and restore that of the NCLT. The resolution proceedings will continue from the stage at which they were interrupted. Accordingly, Civil Appeal No.9425 of 2019 is disposed of.

9. Accordingly, in view of our judgment in Civil Appeal No.9425 of 2019, Civil Appeal No.1911 of 2020 and Civil Appeal No.3112 of 2020 are also disposed of.

10. Intervenors have also been heard. Application for directions by the intervenor is allowed to be withdrawn to be pursued before the appropriate forum.

.....J.
(Rohinton Fali Nariman)

.....J.
(Navin Sinha)

.....J.
(Indira Banerjee)

**New Delhi;
September 08, 2020.**