Present: Smt Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
MS (Com) 24/2025
CNR No. WBSP18-000175-2024

Order No. 02
Date: 23.04.2025

In the matter of:
Suit for recovery of money together with interest, cost and charges valued at Rs. 1368,68,59,450/-.
AND
In the matter of:

SREI Equipment Finance Limited.
Vs.
Bhaskar Silicon Private Limited.

Appearance:
Mr. Rupak Ghosh…Ld. Advocate.
Mr. Sankarsan Sarkar…Ld. Advocate.
Ms. Aditya Kanodia…Ld. Advocate.
Ms. Shreya Trivedi…Ld. Advocate.

Order

Today the instant matter is listed on the strength of a petition as filed by the plaintiff by which the plaintiff intends to move the application being I.A. No. 01 of 2025 and I.A. No. 02 of 2025 *ex parte*.

Office notes there is no caveat.

Plaintiff also files requisites.

Issue summons accordingly.

At this, Mr. Ghosh assisted with Mr. Sarkar moves the aforesaid applications.

The case of the petitioner is as follows.

The petitioner is a Non-Banking Financial Company (NBFC), *inter alia* engaged in the business of providing holistic solutions in and for financing infrastructure equipment across sectors, as well as infrastructure projects and infrastructure development and credit facilities for diverse purposes, including for real-estate development and construction projects and now, a Resolution Plan has been approved in respect of the Petitioner on August 11, 2023, by the National Company Law Tribunal, Kolkata Bench in C P (IB) No. 295 of 2021 under the provisions of the Insolvency & Bankruptcy Code, 2016. On the other hand, the respondent is, *inter alia*, engaged in the business of developing infrastructure and power generation distribution project.

On or about February 2019, the respondent had approached the petitioner for grant of loans for the purpose of investment in various power generation and distributing projects including refinance. It was assured and represented by the respondent that it is financially equipped to reimburse the loan amount along with all interest, costs, charges, fees and all other requisite amounts in connection with Loan facility. The petitioner by a sanction letter dated February 20, 2019 sanctioned a total loan of Rs.730 Crores to the respondent with liberty to the respondent to obtain disbursement in tranches of such sanctioned loan which split over 3 Term Loan. In terms of the said sanctioned loan by the said sanction letter dated February 20. 2019, the petitioner and the respondent entered into 3 Indentures all dated March 7, 2019 recording the details terms and conditions as agreed in the said sanction letter.

Particulars of the said three loans are written hereunder:

	Loan Agreement No.	Date	Sanctioned Amount	Disbursed Amount
Term Loan 1	1275/ SRE810	07-03-2019	Rs 260 Crs	Rs 260 Crs
Term Loan 2	1276/ SRE810A	07-03-2019	Rs 240 Crs	Rs 240 Crs
Term Loan 3	1277/ SRE810B	07-03-2019	Rs 230 Crs	Rs 212.10 Crs
	Total		Rs 730 Crs	Rs 712.10 Crs

The aforesaid entire loan of Rs.712.10 Crores disbursed by the petitioner to the respondent.

In terms of the Loan Agreements, the respondent was obligated and duty bound to create and maintain a Debt Service Reserve Account equivalent to Rs. 14.25 Crore in respect of the financial assistance of Rs. 260 crores, Rs. 13.15 Crore in respect of the financial assistance of Rs. 240 crores and Rs. 12.60 Crore in respect of the financial assistance of Rs. 230 crores at the discretion of the Lender with interest rate not more than 12% p.a., payable at the time of prepayment / repayment of the Loan Facility in part/full.

Therefore, the respondent was obligated to maintain Debt Service Reserve equivalent to Rs. 40 Crores in total in respect of all the three Loan Agreements. In pursuance of the Loan Agreements and for the consideration of repayment of such loan amount, the respondent claiming to be legal and beneficial owner of several assets and properties, hypothecated the same as and by way of a charge to the petitioner as security of the due repayment of the Loan Amount including all interest, upfront fees, liquidated damages, premium on prepayment or on redemption, costs, charges, management fee, expenses and all other monies due to the petitioner under the Loan Agreements and other Financing Documents.

Accordingly, the petitioner and respondent entered into and executed three respective Deeds of Hypothecation dated 19th April 2019 wherein, the assets and properties of the respondent hypothecated are more fully and particularly described in Schedule I of the said Deeds of Hypothecation.

Further, for the purpose of creating security interest in terms of the aforesaid Loan Agreements, one of the shareholder of the respondent, namely Mriduhasini Power Private Limited, herein agreed to provide security by way of creating first *pari passu* pledge and charge over 40.97% equity shares held by it in the Respondent company in favour of the petitioner. In order to give effect to such arrangement, the said Mriduhasini Power Private Limited executed an Indenture of Pledge dated 19thDecember, 2019 in favour of the petitioner. Additionally, a separate irrevocable Power of Attorney dated 19th December, 2019 was also executed by the said Mriduhasini Power Private Limited authorizing the petitioner to do and perform all acts and deeds as specified therein. The respondent has also duly created charge by filing necessary forms with the Registrar of Companies in favour of the petitioner.

The contention of the petitioner is that the respondent was irregular in maintaining such DSR Account. After several requests, the Petitioner by a letter dated September 2, 2023 finally called upon the Respondent to forthwith replenish the DSR Account by infusing the shortfall sum of Rs. 29,91,15,726/- within seven days from the receipt of such letter failing which the Petitioner would be constrained to initiate appropriate action in accordance with law.

As per the petitioner, the respondent, by a letter dated September 7, 2023 admitted its default in maintaining the DSR Balance. In the said letter the Respondent has itself represented that the Respondent is going through a financial crunch.

Despite the aforesaid requests, the respondent failed to comply with the demands made in the letter dated September 2, 2023 by the petitioner and failed to cure the defaults committed by the respondent of the said Loan Agreements.

In such circumstances, by a letter dated July 11, 2024, the petitioner recalled the entire loan and called upon the respondent to repay its outstanding dues. The respondent, by a letter dated July 20, 2024, admitted its dues as against the financial assistance but made incorrect, false and misleading allegations and contentions. From the records it is clear that the respondent has failed to maintain such balance and has acted in breach of the Agreements which caused irreparable damage and loss to the petitioner, thereby, leading to recalling of the Loan amount by the petitioner.

Ld. Counsel for the petitioner states that even after the last communication from the petitioner in August 9, 2024, while negotiation had commenced by the respondent, the respondent failed to take any steps to regularize the loan and no settlement whatsoever has arrived at. In the meantime the petitioner has come to learn that the respondent is holding 26% shares of Hiranmayee Energy Limited (hereinafter referred to as HEL Shares) and that in a proceeding relating to insolvency of Hiranmayee Energy Limited, the shareholders of Hiranmayee Energy Limited, being one Power Trust and the Respondent herein have approached the Learned Adjudicating Authority under the Insolvency And Bankruptcy Code for settlement of dues of Hiranmayee Energy Limited for sum in excess of Rs. 1,000 Crores. The petitioner apprehends that the securities created in favour of the petitioner to secure the dues of the petitioner are being used by the respondent to raise funds and/or otherwise settle the dues of Hiranmayee Energy Limited. The said Power Trust and the respondent herein are related entities. Therefore, there is a grave urgency in the matter and the petitioner is required to move urgent interim application in the present application to secure the securities created in favour of the petitioner.

As such the petitioner seeks leave to file the instant suit without exhausting and/or undergoing the remedy by way of pre-institution mediation and settlement as required under Section 12A of the Commercial Courts Act, 2015.

Considering the aforesaid, this Court seems to grant leave under Section 12A of the Commercial Courts Act, 2015 in favour of the plaintiff/petitioner. Accordingly, the I.A. No. 01 of 2025 is hereby **disposed of** granting the leave under Section 12A of the CCA in favour of the plaintiff/petitioner.

Placing the same facts and circumstances as aforesaid, Ld. Counsel for the petitioner prays for an order in terms of the prayer (a) as enumerated in the I.A. No. 02 of 2025.

It appears from the instant record that the petitioner has issued a notice under Section 13(2) of the SARFAESI Act, 2022 to the defendant on February 26, 2025. The Hon'ble National Company Law Tribunal, Kolkata Bench passed the Order in connection with Hiranmaye Energy Limited on 02.01.2024 whereby CIRP proceeding was admittedly initiated against the said Hiranmaye Energy Limited. However, in the subsequent Order dated 24.05.2024, the Hon'ble Tribunal kept in abeyance the said CIRP proceeding wherein the share of said Hiranmaya Energy Limited is in concerned, till a decision is arrived by the CoC on the settlement proposal of the one Power Trust and further listed the matter on 14.06.2024. Therefore, when the matter is on the periphery of the Hon'ble Tribunal for consideration of the aforesaid CIRP and after the aforesaid Order dated 24.05.2024 of the Hon'ble Tribunal, this Court has no any such tool to determine the nature of such CIRP.

Hence, on that score, this Court is not inclined to pass any *ex parte* injunction order as prayed for by the petitioner herein.

Accordingly, the prayer for *ex parte ad interim* order of injunction is hereby considered and rejected at this stage.

Accordingly, issue notice upon the defendant directing them to show cause within ten (10) days of receipt of the notice as to why the order of injunction as prayed for, in the instant application shall not be granted.

Fix on 06.05.2025 at 10:45 a.m. for filing show cause by the defendant.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/- Judge, Commercial Court at Alipore, For South 24 Parganas, Purba Medinipur, Paschim Medinipur &Jhargram	Sd/- Judge, Commercial Court at Alipore, For South 24 Parganas, Purba Medinipur, Paschim Medinipur &Jhargram