

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB)No.132/7/HDB/2019

Under Section 7 of the Insolvency and Bankruptcy
Code, 2016, Read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority)
Rules, 2016.

In the matter of:-

M/s. ICSA (INDIA) Limited,

M/s. State Bank of India,
Regd. Office: State Bank Bhavan, 14th Floor,
Madame Cama Road, Nariman Point,
Mumbai, Maharashtra - 400 021.

...Petitioner/
Financial Creditor

Vs

M/S. ICSA (INDIA) LIMITED,
Regd. Office: Plot No.1091, Khanamet, Madhapur,
Serilingampalli Mandal, Hyderabad,
Ranga Reddi, Telangana.

...Respondent/
Corporate Debtor

Order delivered on:21.10.2019

Coram: Shri.K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

M/s. India Law LLP, Counsel.

For the Respondent/Corporate Debtor:

Mr.Y.Suryanarayana, Counsel.



PER: Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL

ORDER

1. The present petition is filed by 'M/s. State Bank of India' (hereinafter referred to as 'Financial Creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/S. ICSA (INDIA) LIMITED (hereinafter referred to as 'Corporate Debtor').

2. The Petitioner/Financial Creditor is having its Registered Office at State Bank Bhavan, 14th Floor, Madame Cama Road, Nariman Point, Mumbai, Maharashtra. Respondent is a Public Limited Company incorporated under the provisions of Companies Act, 1956 on 01/02/1994. The Registered office of the Corporate Debtor is situated at Plot No.1091. Khanamet, Madhapur, Serilingampally Mandal, Hyderabad, Rangareddi, Telangana.

3. Before proceeding with this matter, it would be appropriate to make a note of background facts as stated by the Financial Creditor in its petition and written submission for the purpose of determination of this petition:

a. That the Respondent/CD has availed Fund Based financial assistance in the form of Bank Guarantees from the Petitioner/FC through various Sanction Letters. That, in order to secure the repayment of the above mentioned facilities, the Respondent/CD had executed various documents such as Hypothecation Agreements, Pledge Agreements, Deed of Guarantees and Deposit of Title Deeds etc.,



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- b. That as the Respondent/CD has failed to repay the outstanding loan amounts as per the agreed terms, the Loan Account of the Respondent/CD was classified as Non-Performing Asset by the Petitioner/FC w.e.f. 05.10.2011. In fact, the Account of the Corporate Debtor was classified as NPA on 28.10.2012, with retrospective effect from 05.10.2011 due to the failed restructuring.
- c. That the Petitioner/FC had filed an Original Application against the Respondent/CD before the Debt Recovery Tribunal, Hyderabad (DRT) vide O.A. No.173 of 2018 for the recovery of outstanding amounts payable by the Respondent/CD and the same is pending adjudication.
- d. That the Respondent/CD had taken a specific stand stating that since the present transaction pertains to the year 2011 (05.10.2011) in which the Corporate Debtor had been declared as to have been committed default, the present Company Petition is barred by limitation. It is submitted that, in view of the fact that the Respondent/CD had been disclosing the debt that it is due and liable to the Petitioner/FC in its Balance Sheets till the years 2017-2018, and thus there is a clear admission on behalf of the Respondent/CD of its liability from time to time and once there is an admission in the form of Balance Sheets, the Article 18 of the Limitation Act, comes into play and it would clearly demonstrate that the claim is not time barred as per the provisions of the Limitation Act.
- e. That the Respondent/CD had specifically taken a stand that, there is a stay granted by the Hon'ble High Court in WP No: 6430 of 2019 which was filed by the Respondent/CD against the Petitioner/FC



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and the Forensic Auditor, wherein the Hon'ble High Court was pleased to pass an order dated 27.03.2019 which reads as "for a period of two weeks, no further steps shall be taken against the Petitioner pursuant to the impugned letter dated 28.02.2019".

- f. That it is contended by the Respondent/CD that since there is a stay granted by the Hon'ble High Court as above, the present petition is not maintainable against it. It is submitted that on a perusal of the entire affidavit filed in support of the Writ Petition No.6430 of 2019 coupled with the relief sought therein would clearly demonstrate that, the said writ petition was filed having been aggrieved by the acts of the State Bank of India pursuant to the letter dated 28.02.2019 and further the orders of the Hon'ble High Court were not to take any steps in pursuance of the Letter dated 28.02.2019. A perusal of the present Petition would go to show that the same is not filed basing upon the purported letter dated 28.02.2019 and that the present petition is filed basing upon the debt and default that was committed several years prior to the letter dated 28.02.2019. In view of the fact that the present petition is filed basing upon the inaction of the Corporate Debtor in not paying back the Debt and committing default which took place much prior to 28.02.2019, the orders passed by the Hon'ble High Court which are specifically restricted not to take action basing upon letter dated 28.02.2019 are as such not applicable to the present Company Petition and as such there is no stay operating against the Financial Creditor as on today from proceeding with the present Company Petition.
- g. The particulars of the Financial Debt as disbursed and claimed by the Petitioner in its Petition are as under:



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➤ PARTICULARS OF FINANCIAL DEBT:

- A. CC - Rs.149,00,00,000/-
 B. WCTL - Rs.34,91,00,000/-
 C. FITL - Rs.22,11,00,000/-
 Total Fund Based - Rs.206,02,00,000/-
 Non-Fund Based - Rs.181,25,00,000/-
 Total Loan Amount - Rs.387,27,00,000/-
 Total Disbursed Amount - Rs.206,02,00,000/-

- Date(s) of Disbursement - 31.03.2012 (Date of last renewal/sanction) (In respect of cash credit, it is a running account and all transactions routed through this account. No specific disbursements will take place.)
- Amount Claimed to be in default - Rs.448,46,42,171/- also, BG liability of Rs.3.44 Crores is outstanding. The Applicant Bank reserves its right enforce and claim the liability under Bank Guarantees are invoked.

The Petitioner/FC has enclosed the following documents along with the Company Petition to prove his claim amount.

| DOCUMENTS | |
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| 1. | Authorisation Letter |
| 2. | Statement of Account |
| 3. | Charge Certificates |
| 4. | Copy of the sanction letter issued by Financial Creditor |
| 5. | Copy of the resolution |
| 6. | Copy of Agreement of loan for overall limit in Form C-1 |
| 7. | Copy of Agreement of hypothecation of goods and assets in Form C-2 |
| 8. | Copy of Agreement of pledge of goods and assets in Form C-3 |
| 9. | Copy of Deed of Guarantee executed by Gopu Bala Reddy along with the then guarantors N Venkat Reddy and P Anitha for overall limits in Form C-4 |
| 10. | Copy of Letter regarding the grant of individual limits within overall limit in Form C-5 |
| 11. | Copy of confirmation letter in Form "A" 2005 |
| 12. | Copy of Memorandum of Deposit of creation of charge for overall limit in Form C-9 |
| 13. | Copy of sanction letter |

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| 14. Copy of the resolution |
| 15. Copy of Supplementary Agreement of loan for increase in the overall limit in Form C-1 'A' |
| 16. Copy of Supplementary Agreement of hypothecation of goods and assets for increase in the overall limits in Form C-2 'A' |
| 17. Copy of Supplementary Deed of Guarantee for increase in the overall limits in Form C-4A |
| 18. Copy of Letter regarding the grant of individual limits within the overall limit in form C-5 |
| 19. Copy of resolution |
| 20. Copy of the revival letter |
| 21. Copy of sanction advice letter of the bank guarantee by Financial Creditor |
| 22. Copy of the resolution |
| 23. Copy of Agreement of loan for overall limit in Form C-1 |
| 24. Copy of Agreement of hypothecation of goods and assets in Form C-2 |
| 25. Copy of Deed of Guarantee for overall limits in Form C-4 |
| 26. Copy of Agreement-cum-Guarantee executed by Gopu Bala Reddy |
| 27. Copy of consent letter executed by Gopu Bala Reddy on behalf of Corporate Debtor |
| 28. Copy of consent letter executed by Gopu Bala Reddy for himself |
| 29. Copy of Memorandum of Deposit of creation of further charge in Form C-10 dated |
| 30. Copy of the sanction letter dated |
| 31. Copy of resolution dated |
| 32. Copy of Supplementary Agreement of loan for increase in the overall limit in Form C-1 'A' |
| 33. Copy of Supplementary Agreement of hypothecation of goods and assets for increase in the overall limits in Form C-2 'A' |
| 34. Copy of Supplementary Deed of Guarantee for increase in the overall limits in Form C-4A |
| 35. Copy of Deed of guarantee for over all limits in Form C-4 |
| 36. Copy of Letter regarding the grant of individual limits within the overall limit in Form C-5 |
| 37. Copy of Agreement-cum-Guarantee executed by Gopu Bala Reddy |
| 38. Copy of consent letter executed by Gopu Bala Reddy on behalf of Corporate Debtor |
| 39. Copy of consent letter executed by Gopu Bala Reddy for himself |
| 40. Copy of the revival letter |
| 41. Copy of the memorandum of recording of extension of mortgage |
| 42. Copy of the confirmation letter in Form "B" |
| 43. Copy of Form 8 |
| 44. Copy of sanction letter |
| 45. Copy of the resolution |
| 46. Copy of Supplementary Agreement of loan for increase in the overall limit in Form C-1 'A' |
| 47. Copy of Supplementary Agreement of hypothecation of goods and assets for increase in the overall limits in Form C-2 'A' |
| 48. Copy of Supplementary Deed of Guarantee for increase in the overall limits in form C-4A |
| 49. Copy of Letter regarding the grant of individual limits within the overall limit in Form C-5 |
| 50. Copy of Memorandum of Deposit of creation of further charge in Form C-10 |



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| 51. Copy of Agreement-cum-Guarantee executed by Gopy Bala Reddy |
| 52. Copy of consent letter executed by Gopu Bala Reddy on behalf of Corporate Debtor |
| 53. Copy of consent letter executed by Gopu Bala Reddy for himself |
| 54. Copy of the confirmation letter |
| 55. Copy of revival letter |
| 56. OMNIBUS COUNTER GUARANTEE |
| 57. CONFIRMATION LETTER IN FORM 'B' |
| 58. CONFIRMATION LETTER IN FORM 'B' |
| 59. CONFIRMATION LETTER |
| 60. SANCTION VIDE LETTER NO. CAG / HYD / JMT-3 / 2010-11 |
| 61. THE LETTER ISSUED BY CORPOATE DEBTOR TO THE FINANCIAL CREDITOR |
| 62. THE RESOLUTION |
| 63. SUPPLEMENTARY AGREEMENT OF LOAN FOR INCREASE IN THE OVERALL LIMIT IN FORM C-1 'A' |
| 64. SUPPLEMENTARY AGREEMENT OF HYPOTHECATION OF GOODS AND ASSETS FOR INCREASE IN THE OVERALL LIMITS IN FORM C-1 'A' |
| 65. SUPPLEMENTARY DEED OF GUARANTEE FOR INCREASE IN THE OVERALL LIMITS IN FORM C-4 A |
| 66. REGARDING THE GRANT OF INDIVIDUAL LIMITS WITHIN THE OVERALL LIMIT IN FORM C-5 |
| 67. AGREEMENT-CUM-GIARAMTEE EXECUTED BY GOPU BALA REDDY |
| 68. CONSENT LETTER EXECUTED BY GOP BALA REDDY ON BEHALF OF CORPORATE DEBTOR |
| 69. CONSENT LETTER EXECUTED BY GOPU BALA REDDY FOR HIMSELF |
| 70. RECORD OF MEMORANDUM OF DEPOSIT OF CREATION OF FURTHER CHARGE IN FORM C-10 |
| 71. REVIVAL LETTER |
| 72. OMNIBUS COUNTER GUARANTEE |
| 73. LETTER EXECUTED BY CORPORATE DEBTOR |
| 74. UNDERTAKING GIVEN BY CORPORATE DEBTOR |
| 75. DECLARATION GIVENBY GOPU BLA REDDY |
| 76. FORM 8 |
| 77. CONFIRMATION LETTER IN FORM 'B' |
| 78. RESOLUTION OF THE ANNUAL GENERAL MEETING OF THE DEFENDANT NO.1 COMPANY |
| 79. THE RESOLUTION |
| 80. RESOLUTION PASSED BY THE CORPORATE DEBTOR |
| 81. SANCTION LETTER |
| 82. THE RESOLUTION |
| 83. SECURITY TRUSTEE AGREEMENT |
| 84. MASTER RE-STRUCTURE AGREEMENT |
| 85. TRUST AND RETENTION ACCOUNT AGREEMENT |
| 86. PERSONAL GURANTEE AGREEMENT ON 30.03.2012 IN FAVOUR OF SBI CAP TRUSTEE COMPANY LIMITED TO ENFORCE GUARANTEE GIVEN BY COPROATE DEBTOR AND GOPU BALA REDDY FOR DUE REPAYMENT OF LOAN OUTSTANDING DUE TO THE FINANCIAL CREDITOR AND OTHER BANKS |
| 87. UNDERTAKING EXECUTD BY CORPORATE DEBTOR AND GOPU BALA REDDY |
| 88. AGREEMENT OF PLEDGE OF SHARES |
| 89. DECLARATION AND UNDERTAKING |



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| 90. DEED OF HYPOTHECATION |
| 91. LETTER OF UNDERTAKING EXECUTED BY GOPU BALA REDDY FOR MEETING STATUTORY DUES |
| 92. SBICAP TRUSTEE COMPANY LIMITED VIDE LETTER HAD CONFIRMED THAT IT WAS APPOINTED AS SECURITY TRUSTEE FOR THE CREDIT FACILITIES AVAILED BY CORPORATE DEBTOR FROM THE SBI CONSORTIUM |
| 93. FORM NO.8 FILED BEFORE THE ROC |
| 94. FORM NO.8 FILED BEFORE THE ROC |
| 95. THE FIRST AMENDMENT AMENDATORY AGREEMENT EXECUTED BETWEEN THE CORPORATE DEBTOR AND THE CONSORTIUM GROUP OF BANKS |
| 96. THE RESOLUTION |
| 97. THE REVIVAL LETTER IN FORM C-6 |
| 98. RESOLUTION |
| 99. REVIVAL LETTER IN FORM C.6 |
| 100. AUDITED BALANCE SHEET OF THE COMPANY AS ON 31.03.2018 ALONG WITH ANNUAL REPORT OF THE AUDITOR OF THE CORPORATE DEBTOR |
| 101. COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BAKERS BOOK EVIDENCE ACT, 1891 (18 OF 1891) UNDER SECTION 2A(A) & (B) UNDR THE BANKERS' BOOKS OF EVIDENCE ACT 1891 |
| 102. REGISTERED SALE DEED |
| 103. REGISTERED SALE DEED |
| 104. REGISTERED SALE DEED |
| 105. REGISTERED SALE DEED |
| 106. UNDERTAKING OF MEETING STATUTORY DUES |
| 107. FINANCIAL CREDITOR'S LETTER INFORMING THE CORPORATE DEBTOR AND ITS MANAGING DIRECTOR THAT THE LOAN ACCOUNTS OF CORPORATE DEBTOR HAVE BEEN TRANSFERRED FROM CORPORATE ACCOUNTS GROUP BRANCH, HYDERABAD TO FINANCIAL CREDITOR |
| 108. DEMAND NOTICE TO THE CORPOATE DEBTOR UNDER SECTION 13(2) OF SARFAESI ACT |
| 109. LETTER ADDRESSED BY FINANCIAL CREDITOR TO THE CORPORATE DEBTOR |
| 110. ACKNOWLEDGEMENT CARD OF CORPORATE DEBTOR AND GOPU BALA REDDY |
| 111. STOCK STATEMENT FOR THE MONTH OF JAN. 2016 |

5. The Respondent/CD has filed its counter and written submissions inter-alia stating as under:

- i. That the Corporate Debtor has availed Working Capital Loans and Term Loans from various Banks viz. State Bank of India (Petitioner), Punjab National Bank, Bank of India and other consortium Banks. The Corporate Debtor was performing extremely well till the year 2011.

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ii. That the operation of the Corporate Debtor was reaching to a great height until the period of June 2011 to September, 2011. The Corporate Debtor underwent grave financial distress and was facing some liquidity crises due to the situations which were beyond the control of the Corporate Debtor and due to the non-support of the Banks. The financial distress not only affected and disturbed the operations and projects of the Corporate Debtor to a great extent but also resulted in mismatch in cash inflow and because of the delay and non-payment of the dues from the parties of the Projects. That in spite of having an unutilized limit of Rs. 288 crores with the Corporate Debtor, the Banks refused to issue Bank guarantees due to which the Corporate Debtor could not participate in tenders and the financial health was affected drastically. That the banks refused to co-operate and issued letters of credit to the Corporate Debtor for an amount lower than the requirement in spite of having the higher available limit. The Corporate Debtor retired the Letter of Credit. Despite honouring the Letter of Credit worth the available value, the Banks did not cooperate and refused to issue letters of credit for the required amount which resulted in cancellation of the Contract worth Rs. 395 crores.

iii. That the instant section 7 Application filed by the Financial Creditor is barred by Limitation in view of the order dated 18th September, 2019 passed by a three member Bench of the Hon'ble Supreme Court in Civil Appeal No.4952 of 2019 in the matter of Guarav Hargovind bhai Vs.



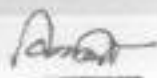

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Asset Reconstruction Company India Ltd and Another, while dealing with the aspect of applicability of Article 62 of the Limitation Act to Applications filed under section 7 of the Code.

- iv. That in the instant case the account of the Corporate Debtor was declared as NPA on 05.10.2011 and the section 7 Application was filed in the month of January 2019. Applying the aforesaid judgement of the Hon'ble Supreme Court to the instant case it is clear that the instant Application filed under section 7 by the Financial Creditor herein is terribly barred by Limitation and except the matters specifically admitted herein, the contents of the application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("The Code") are denied in its entirety as being false and incorrect. Nothing contained in the Application shall be deemed to be admitted only on account of non-traversal thereof.

- v. That the CDR Scheme approved by the Petitioner bank along with other banks was a systematic plan enabling the Corporate debtor to clear the debts owed to the Banks within a period of 10 years in quarterly installments. On the request of the Corporate Debtor the Banks approved the clause "Till implementation of the package, Holding on Operation (HOO) shall be allowed". That they were delaying the implementation and execution of the terms of the sanction of the CDR Scheme on one pretext or the other and the same led to severe hardships to the Corporate Debtor in initiating, maintaining and




completion of the projects and the Corporate Debtor also had lost several Potential Clients/ business. It also resulted in cancellation of various projects, invoking of Bank guarantees etc.

vi. That after the drastic failure of CDR Mechanism, the Corporate Debtor filed an Application under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 with the Board of Industrial and Financial Reconstruction (BIFR) requesting the Board to declare the Corporate Debtor as a Sick Company. There were various allegations made by the Petitioner Banks but the same could not be proved by the Petitioner Bank and other consortium banks. The Hon'ble Bench of BIFR in the hearing held on 18.11.2013 issued certain directions.

vii. That the as per the directions of the Hon'ble Bench of BIFR, no precipitate or coercive actions were to be taken by the Lender banks against the Corporate Debtor but the Lender banks had sent a notice to the Corporate Debtor under section 13(4) of the SARFAESI Act and a sale notice was also issued by the lender banks clearly disobeying the directions of the Hon'ble Bench of BIFR.

viii. That the proceedings of the above mentioned Application were yet to be concluded but with the commencement of Insolvency and Bankruptcy Code, 2016, the Sick Industrial Companies (Special Provisions) Act, 1985 was repealed and the BIFR was dissolved with effect from 1st December, 2016 resulting in the abatement of the proceedings of the said application filed by the Corporate Debtor with BIFR. Consequently




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all the matters relating to revival of Companies were to be filed with NCLT.

ix. That as on 31.07.2016 there were no fund available with the Corporate Debtor and all the projects of the Corporate Debtor were cancelled and there were only 5 projects worth Rs. 6.6 crores were ongoing with the Corporate Debtor due to which the Corporate Debtor was not only incapable to pay the loans of the banks but there were several other dues which were outstanding like Statutory dues (Dues to Income Tax authorities, Sales Tax and service tax, Provident Fund and other taxes), dues to other Creditors for which certain legal suits were filed by other creditors, other current liabilities, unsecured loans from FCCB Holders, Canara Bank, Aditya Birla Limited and other related dues.

The Petitioner / Financial Creditor vide letter dated 09.02.2017 approved the OTS Proposal for payment of Rs. 47.52 crores in various tranches against the total dues of Rs. 394.91 Crores. The Corporate Debtor paid Rs. 3.2 Crores to the Financial Creditor / Petitioner towards the OTS scheme. However, due to constant loss and bad financial crisis, the Corporate Debtor could not complete the payment to the Financial Creditor / Petitioner, and therefore the Financial Creditor had cancelled the OTS approved to the Corporate Debtor.

xi. That Petitioner Bank had issued a Show cause notice dated 4th August, 2016 to the Corporate Debtor directing the Corporate Debtor to show cause and make submissions in writing within 30 days from the date of



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the letter as to why the name of the Corporate Debtor should not be included in the list of Willful Defaulters as per the RBI guidelines. The Petitioner bank has stated its reasons for declaring the Corporate Debtor as the Willful Defaulter as per the RBI Master Circular No. RBI/2015-2016/100 DBR No. CID.BC.22/20 dated 1st July, 2015. However, the Respondent denied the justifications given by the Petitioner and provided a detailed reply dated 3rd September, 2016 to the Show Cause notice mentioning the reasons as to why the Corporate Debtor should not be treated as the Willful Defaulter and clarifying the reasons of the downfall of the Corporate Debtor.

xii. That inspite of the detailed reply and clarification submitted by the Corporate Debtor stating that the reasons for the downfall in the business of the Corporate Debtor was due to the CDR Mechanism and the external factors which were beyond the hands of the Corporate Debtor, the Petitioner through its Willful Defaulter Identification Committee declared the Corporate Debtor as Willful Defaulter on 18.01.2018.

xiii. That in view of the above declaration of the Corporate Debtor as the Willful Defaulter, on 7th August, 2018, the Corporate Debtor had filed a Writ Petition No. 28016/2018 with the High Court challenging the declaration as Willful Defaulter. After considering the facts mentioned in the Petition, the Hon'ble High Court passed an Interim Stay Order in favor of the Corporate Debtor.




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xiv. It is stated that in their Joint Lenders meeting held on 23.10.2017, the

Consortium Banks have decided and passed a resolution for conducting Forensic Audit of the Corporate Debtor for a period of five years commencing from 2012 to 2017. That the Forensic Auditor had conducted its audit and on 28.02.2018, the Financial Creditor/ Petitioner issued a letter of observations to the Corporate Debtor for providing explanation on the same without providing the Forensic Audit report. The Corporate Debtor was not served a copy of the Forensic Audit report and was only provided with the observations made by the Forensic Auditor. The Corporate Debtor requested the Financial Creditor to provide the Forensic Audit report so as to enable the Corporate Debtor to provide the explanation/ reasons for the same. The Corporate Debtor vide email dated 15.03.2019 updated the Financial Creditor/ Petitioner that it is in the process of preparing the explanations and again requested the Financial Creditor/ Petitioner for providing the Forensic Audit Report. On 22.03.2019 the Financial Creditor/ Petitioner sent a letter to the Corporate Debtor rejecting the request of the Corporate Debtor to provide the copy of the Forensic Audit Report and stated that "we regret to inform you that we are unable to accept your request to provide a copy of forensic audit report. However, please note that we have already shared with you the major observations of the said report and sought the explanations on the critical point out by the auditor."



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xv. That in view of the above mentioned facts, the Corporate Debtor had challenged the observations dated 28.02.2019 made by the Forensic Auditor in his Forensic Audit report by filing a Writ Petition vide it's No 6430/2019 along with seeking a copy of the Forensic Audit Report. Accordingly, the Hon'ble High Court of Telangana, after determination of facts mentioned in the petition, had passed an order dated 27.03.2019 directing the Respondent not to take any further steps against the Petitioners. The said order is still in force and the Writ Petition is pending before the Hon'ble High Court. It is pertinent to note that from the prism of the Financial Institutions initiation of the Corporate Insolvency Resolution Process (CIRP) may not be construed as a coercive step but for the Corporate Debtor it shall result into a coercive action as the Management of the Corporate Debtor will be suspended and the entire operations shall be taken over by the Resolution Professional which may ultimately culminate into takeover of the Corporate Debtor by a third party Resolution Applicant or initiation of Liquidation Proceedings. Thus viewed from any angle, in so far as the Corporate Debtor and its management are concerned the action of the applicant in filing and prosecution of the instant application is a coercive action. Thus the prosecution of the instant Application by the Applicant is in blatant contravention of the interim order dated 27.03.2019 passed by the Hon'ble High Court of Telangana.



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6. The present petition was filed on 04.03.2019 and after scrutiny by the registry, the same was first listed on 06.03.2019, when the counsel for the petitioner was directed to send notice to the Respondent for appearance and file proof of service on the next date of hearing i.e. on 25.03.2019. Between 25.03.2019 to 04.10.2019 hearings were conducted and adjourned several times as the parties reported that they are making sincere efforts to settle the matter by way of OTS. Some time was also allowed for filing counter affidavits, and rejoinders at the request of the counsels of the parties.

Heard both the sides and perused the record including written submission.

8. It is the case of the Petitioner that it has provided various Fund based and Non-Fund based facilities to the Corporate Debtor for which the Corporate Debtor was liable to pay and the Corporate Debtor has defaulted in re-payment of the same. The Corporate Debtor in its counter has mainly raised the following rebuttals:

- i. That the petition is barred by Limitation
- ii. That there is an interim order by Hon'ble High Court of Telangana in favour of Corporate Debtor against the Financial Creditor.

9. With regard to the contention of the Corporate Debtor regarding the plea of Limitation, this Adjudicating Authority observes that the



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Respondent/CD has been reflecting the impugned Financial Debt as due and payable to the Financial Creditor herein in its Audited Financial Statements including for the Financial Year ending 31.03.2018. In its Note No. 11 to the Notes to Accounts attached with the Balance Sheet as on 31.03.2018 Long Term Borrowings from Banks is shown as Rs.136,07,53,158/- and from Financial Institutions is shown as Rs.216,59,93,719/-. Below these figures the following note is appended:

i. "Terms and Conditions from long term borrowings from banks

a. Term loan from banks include loan from Andhra Bank, which is secured with exclusive charge to them on the wind mills at Tamil Nadu & Karnataka.

b. Term loan from banks include loan from Oriental Bank of Commerce, Interest accrued & due on borrowings in note no. 17 (b) to banks (Andhra bank, Bank of India, IDBI Bank Limited, Oriental Bank of Commerce, Punjab National Bank, State bank of India and Union Bank of India) and Current Maturities If Long Term Debts in note no. 17(a) to banks (Andhra Bank, Bank of India, IDBI Bank Limited, Punjab National Bank, State Bank of India and Union Bank of India) are secured with pari passu 1st charge on Fixed Assets of the company (excluding wind mills) of the company and are secured with pari passu 2nd charge on Current Assets of the company. The bankers have sold the land, building and plant & machinery of the Meter Factory at Pashamylaram, Patancheru Mandal, Sanga Reddy District, Telangana, vide their e-auction dated 24.11.2017 and the properties have been sold for Rs. 10.31 crores to Gland Pharma Limited and the amount have been paid to the State Bank of India, SAMB-II and the appropriation of the amounts among the banks are yet to be done.

c. The loans of State Bank of India is also secured with exclusive charge on the company owned Flat no. 1092, SFS Flats, Vasanthkunj, Sector A, Pocket A, New Delhi-110 070. The Flat was sold by the State Bank of India vide e-auction dated 24.11.2017 for Rs.2.11 cores and adjusted against the outstanding dues to State Bank of India

d. The term loans, Funded interest term loans and working capital term loans are further secured by personal guarantee of Mr. G Bala Reddy, Chairman and Managing Director of the Company".

9. Section 18(1) of the Limitation Act, 1963 provides that fresh period of

Limitation shall be computed from the time of acknowledgement of liability



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made in writing which is unqualified and in clear terms. In case of SBI Vs. Kanhaiya Lal & Anr. RSA No.248/2015 decided on 2nd May, 2016 the Hon'ble Delhi High Court laid down that any written acknowledgment after the confirmation of balance amount can safely be deemed as a promise to pay and not mere acknowledgment of liability. In various judicial pronouncements, the following, inter-alia, have been held to constitute 'acknowledgement' for the purpose of Section 18 of the Limitation Act, 1963.

(i). E-mails acknowledging the debt constitute a valid and legal acknowledgement even though not signed, as it is recognized to be legally valid under the Information Technology Act, 2000.

(ii). Debentures are acknowledgement of debt.

(iii). Balance sheets are an admission of indebtedness and sufficient acknowledgement under the Limitation Act. (Bengal Silk Mills

Co. v/s Ismail Golam Hossain Ariff [AIR 1962 Cal 115])

Since the Respondents have clearly acknowledged in their audited and approved Balance Sheet as on 31.03.2018, the debt payable to the Financial Creditor, their arguments based on limitation fails.

10. As regards the claim of the interim stay order by the Hon'ble High Court, restraining to take any further steps in terms of impugned letter dated 28.02.2019, it is seen from the copy of the aforesaid order of the Hon'ble

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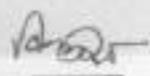
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High Court that the interim stay has been extended until further orders. However, the said interim stay is clearly with regard to any possible action to be taken by the Financial Creditor for the alleged violations committed by the Respondent's as reported by the Forensic Auditors under the terms of Facility Agreements entered into by the parties, which is not a subject matter of the IBC, 2016, under which the instant Application has been filed.

11. It has been categorically laid down by the Hon'ble Supreme Court in the case of **Innoventive Industries Ltd vs. ICICI Bank**, 2018(1) SCC 407 that the proceedings under IBC "are not adversarial to the Corporate Debtor but, in fact, protective of its interests". Therefore, any steps taken to resolve insolvency of the Corporate Debtor cannot be termed as 'coercive'.

12. Further, the provisions of IBC, 2016, have been held to have an overriding effect, so long as there is no inconsistency between the provisions of IBC and any other law for the time being in force. Since the steps taken by the Financial Creditor for violation of terms of Facility Agreement by the Respondent are not inconsistent with the provisions of IBC, 2016, the provisions of IBC will have overriding effect in terms of Section 238.

13. Again as held by the Hon'ble Apex Court in **Innoventive Industries Supra** time is of essence in IBC. Referring to the Preamble of the Code, Hon'ble Apex Court observed: "The Code is first and foremost, a Code for


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reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time bound manner, the value of assets of such persons will deplete".

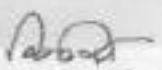
14. In view of the above factual and legal position, this Adjudicating Authority is of considered view that the stay granted by the Hon'ble High Court against action as per the Forensic Audit Report will not operate as a bar against the instant proceedings under the IBC, 2016.

15. In view of the submissions made and evidences produced, this Adjudicating Authority is satisfied that the Financial Creditor have fulfilled all the requirements under the provisions of Section 7 of the IBC, 2016, and the Petitioner/FC has also proposed the name of IRP after obtaining his written consent in Form-2.

16. In view of the above observations, this Adjudicating Authority is inclined to admit the petition filed Under Section 7 of the IB Code, 2016 by the petitioner.

17. Therefore, the instant petition is hereby admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall get completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.


18. We hereby appoint Mr. Gonugunta Murali as the Interim Resolution Professional. His name has been proposed by the Financial Creditor and


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his name is also reflected in IBBI website. He has also filed his written consent in Form-2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

19. This Adjudicating Authority declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:



a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

c) *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*


[Signature]
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[Signature]

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

20. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

21. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

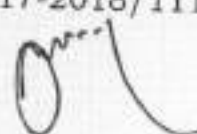
22. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

23. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

24. The address details of the IRP is as follows: -

Mr. Gonugunta Murali
Address : H No:16-11-19/4, G-1,
Sri Laxmi Nilayam,
Saleem Nagar Colony ,
Malakpet, Hyderabad,
Telangana - 500 036.

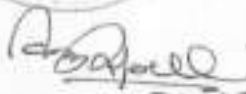
Email: gmurali34@gmail.com
Reg. No: IBBI/IPA-001/IP-P00654/2017-2018/11139.








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25. The present Petition bearing CP (IB) No.132/07/HDB/2019 is hereby admitted.


21.10.19
Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

KSK & NKG.


K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL


Dy. Regr./Asst. Regr. Court Officer/
CP (IB) Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या CP (IB) No - 132/7/HDB/19
CASE NUMBER
निर्णय का तारीख 21/10/19
DATE OF JUDGEMENT
प्रति वैधता दिनांक 30/10/19
COPY MADE READY ON