

**Intimation to the Regulatory Authorities of the Corporate Debtor**

Date : 27-5-20

**NOTICE**

To,

The Registrar of Companies  
Reserve Bank of India  
Employees Provident Fund  
Income Tax Officer  
National Stock Exchange of India  
Respected Sir/Madam,

**Subject:** Intimation of Corporate Insolvency Resolution Process (CIRP) against M/s Cybermate Infotek Limited: Regd Office: Plot No.19 & 20, Moti Valley, Thirumalghirry, Secunderabad, Telangana 500-015 and appointment of Interim Resolution Professional (IRP)/RP

1. I hereby intimate you that Corporate Insolvency Resolution Process (CIRP) has been initiated in respect of M/s Cybermate Infotek Limited: Regd Office: Plot No.19 & 20, Moti Valley, Thirumalghirry, Secunderabad, Telangana 500-015 under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code") by an order of National Company Law Tribunal ("NCLT") Hyderabad Bench made in vide CP(IB) No.215/07/HDB/2017 dated 26-3-18 with effect from 26-3-18. As against that order the said company filed an appeal before the Honble NCLAT and the Honble Court was pleased to dismiss the said appeal vide order dated 22-5-20.
2. As per section 17 of the Code, the powers of the [ Board of Directors ] of M/s Cybermate Infotek Limited: Regd Office: Plot No.19 & 20, Moti Valley, Thirumalghirry, Secunderabad, Telangana 500-015 ]stands suspended, and such powers shall be vested with me, Dr K Lakshmi Narasimha, Ph.D (Law), Advocate & Insolvency Professional / Interim Resolution Professional , having IP Registration no. IBBI/IPA-001/IP-P00107/2016-17/10214, Off: H No 16-11-20/13, Saleem Nagar -2, Opp Tahsildar Office/Revenue Bhavan: Malakpet, Hyderabad 500-036, Telangana, India as I am appointed as the Insolvency Resolution Professional.
3. It may further be noted that in consonance with the stipulations contained in Sec.14 of the Code, a moratorium has been declared vide the afore said order passed by the Hon'ble NCLT, whereby, inter-alia, the following shall be prohibited:
  - (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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16-11-20/13, Opp Tahsildar Office/Revenue Bhavan, Near TV Tower, Malakpet, Hyderabad  
500-036, Telangana, India

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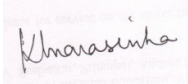
**Dr. K. Lakshmi Narasimha, Ph.D. (Law)**  
**Advocate & Insolvency Professional**

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- (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.
4. In accordance with the above mentioned provision you are advised to co-operate with me/us in providing access to documents and records pertaining to M/s Cybermate Infotek Limited: Regd Office: Plot No.19 & 20, Moti Valley, Thirumalghirry, Secunderabad, Telangana 500-015 [ Corporate Debtor ] as and when requisitioned by me/us for the smooth conduct of the corporate insolvency resolution process.
  5. The instant intimation with reference to the initiation of CIRP and appointment of Interim Resolution Professional/RP is for your information and record. I/We shall keep the statutory authorities posted on further developments in this regard, as and when it is felt necessary.
  6. I wish to bring to your notice that by virtue of IBC, the existing Directors are now “suspended Directors” and would have no say in the affairs of the company till the disposal of the case.
  7. This is for your information and necessary action please.

Thanking you,

Yours faithfully,



Dr K Lakshmi Narasimha, Ph.D (Law)  
[IP Registration no. ] IBBI/IPA-001/IP-P00107/2016-17/10214

Encl:

- (i) A copy of the NCLT order dated 26-3-18
- (ii) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (iii) Copy of the order dated 22-5-20 passed by the Honble NCLAT New Delhi dismissing the appeal preferred by the above said company

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

CP(IB) No.215/07/HDB/2017  
U/s 7 of IBC, 2016  
R/W 4 of I & B (AAA) Rules, 2016

**In the Matter of**

1. Wincere Inc.,  
# 4340 Stevens Creed Blvd  
270, San Jose, CA 95129,  
USA.
2. Himanshu P. Kansara  
S/o Pravinchandra Kansara,  
R/o 3298, Vin Santo Ln,  
San Jose, CA 95148,  
USA

...Petitioners/  
Financial Creditors

**VERSUS**

Cybermate Infotek Limited,  
Regd Office at Plot No.19 & 20,  
Moti Valley,  
Thirulgherry,  
Secunderabad  
Telangana-500 015

... Respondent/  
Corporate Debtor

**Date of Order: 26.03.2018**

**C O R A M:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

**Parties/Counsels Present:**

For the Applicants : Mr. Muddu Vijai, Advocate

For Respondent : Mr. Anirudh Krishan with  
Mr. Hema Shankar, Advocates



**Per: Rajeswara Rao Vittanala, Member (Judicial)**

**ORDER**

1. The Present Company Petition bearing C.P(IB)No.215/07HDB/2017) is filed by Wincere Inc & Himanshu P.Kansara, U/s 7 of the Insolvency and Bankruptcy Code, 2016 , R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process(CIRP) in respect of Cybermate Infotek Limited, the Corporate Debtor.

2. Brief facts, leading to filing of the present Company petition, are as under:-

1) Wincere Inc.,(herein after referred to as Financial Creditor No.1), is represented by its Managing Director, Mr. Himanshu P.Kansara, who has been authorized by the Financial Creditor, pursuant to a Board Resolution dated 07.07.2017 adopted by its Board of Directors. The date of its Incorporation is 27.05.2009, having its Identification Number EIN: 270290122/California Corporate No. C3209983.

2) Himanshu P. Kansara, (herein after referred to as Financial Creditor No. 2), is an individual, and he is the Managing Director of Financial Creditor No. 1. The Financial Creditor No 2 has dual citizenship of USA and India with OCI (Overseas Citizen of India) with Adhaar card No 8664 5401 1642.

3) Cybermate Infotek Limited, (herein after referred to as Corporate Debtor),is a Company incorporated on May 5<sup>th</sup>, 1994 and its authorized share capital is Rs.85,00,00,000 and paid-up share capital is Rs.14,48,83,920. The Cybermate Infotek Ltd Inc and Cybermate Infotek Ltd are one and the same. The



Cybermate Infotek Ltd is also operating in USA, hence INC was added. Board of Directors of both is one and same.

- 4) It is stated that the Promoters of the Corporate Debtor have availed a loan from Financial Creditor, on behalf of the Corporate Debtor for a sum of Rs. 2,50,00,000/- on different dates from a related concern of the Financial Creditors i.e. Wincere Solutions India Private Limited for which Wincere Solutions India Private Limited reserves its right to initiate legal action separately against the Corporate Debtor and the Promoters.
- 5) In pursuant to the loan agreement dated 31.08.2013 entered into by the Corporate Debtor with the related entity Wincere Solutions India Private Limited, the Corporate Debtor, through its Promoters had agreed to repay the entire loan of **Rs. 4,45,11,110/-** with an agreed interest @ 22.5% per annum if the loan was repaid by February 01, 2014 and March 31, 2014 in two installments of Rs. 2.5 Crores and Rs. 1.94 Crores respectively. It was further agreed that in case of failure to repay the first installment by February 01 2014, interest @ 36% compounded on a quarterly basis would become applicable.
- 6) Thereafter, in pursuant to a Settlement Deed dated September 7, 2016, entered into between the Financial Creditors and the Promoter Directors of the Corporate Debtor, the Directors of the Corporate Debtor promised to repay the aforesaid debt along with other amounts borrowed by the Corporate Debtor from the Financial Creditors and their related entities on or before December 31, 2016. On



February 1, 2017, the Corporate Debtor even issued a letter on its letterhead signed by its Promoter Directors, whereby the Corporate Debtor acknowledged the loans obtained by it from the Financial Creditors, and have admitted to a total outstanding liability of Rs. 7,37,00,000/- as of December 2016.

- 7) In pursuance to the said agreement , the Corporate Debtor has issued a Cheque bearing No. 557093 dated 20.03.2017 drawn on IndusInd Bank, Karkhana, Secunderabad for a sum of Rs. 3,87,00,000/- towards repayment of the legally enforceable debt, which became due and payable to the Financial Creditors. Hence, there is an admitted debt due and payable by the Corporate Debtor to the Financial Creditors which is a sum of Rs. 3,87,00,000/- (Rupees Three Crore Eighty Seven Lakhs Only) together with agreed future interest @ 36% per annum from the date the amount became due until the debt is realised.
- 8) An amount of Rs. 7,37,00,000 /- (Rupees Seven Crores and Thirty Seven Lakhs Only) is the minimum undisputed quantum, which remains due and payable by the Corporate Debtor to the Financial Creditors as per the Corporate Debtor's letter dated February 1, 2017. The Financial Creditors are restricting their claim under this present IBC Application for Rs. 3,87,00,000/- (Rupees Three Crore Eighty Seven Lakhs Only) and reserve their right to claim the balance admitted amount of Rs. 3,50,00,000/- from the Corporate Debtor, and its Promoters Directors through their



related entity Wincere Solutions India Private Limited.

9) It is stated that since the date of obtaining the aforesaid loans from the Financial Creditors, the Corporate Debtor has not repaid a single Rupee towards clearing the loan. Despite several requests from the Financial Creditor for release of the aforesaid dues, the Corporate Debtor failed and neglected to pay the same. Till date, the Corporate Debtor has not made payments to the Financial Creditor. Hence the present Company petition is filed, by seeking to initiate CIRP against Corporate Debtor.

3. The Corporate Debtor, has opposed the Company petition, by filing its counter dated 19.12.2017 by inter alia contending as follows:

- a) The Petitioners are not creditors and thus petition is liable to be dismissed *in limine* for the sole reason that the petition has been erroneously filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code"). Notwithstanding anything stated herein and for the sake of convenience, the Petitioners may be referred to as Financial Creditors and Respondent may be referred to as Corporate Debtor in the Counter hereunder.
- b) The Corporate Debtor herein is not the borrower as falsely alleged by the Financial Creditors, since no loan has been extended by the Financial Creditors to the Corporate Debtor herein and therefore the Corporate Debtor is not liable for repayment of any of the sums claimed by the Financial Creditors.
- c) The Corporate Debtor is neither a Party to any alleged Loan Agreement dated 31.08.2013 ("Loan



Agreement") nor any alleged Settlement Deed dated 07.09.2016 ("Settlement Deed"). The Financial Creditor, at the contemporaneous point in time, had adequate knowledge of the fact that the borrower of the alleged debt was neither authorized to sign the loan agreement nor did he have the right to receive any monies (which were nevertheless not paid) on behalf of the Corporate Debtor. It is therefore evident that the Financial Creditors have no privity of contract with the Corporate Debtor. It is well settled law that no right can be enforced by or against a person who is not a party to the contract. It is also well settled law that unless a party has executed a contract of guarantee or a contract of indemnity promising to discharge the liability of a third party, such party cannot be held liable for performance of such third party. In the present case, since the Corporate Debtor has neither executed any contract of guarantee or indemnity, the present Petition is not maintainable against the Corporate Debtor. The Financial Creditor, is neither in the business of money lending, nor have the Financial Creditors obtained any documents whatsoever from the Corporate Debtor, to secure the alleged sums of money advanced by them to the Corporate Debtor, including but not limited to any promissory notes, charge on the receivables, etc. The Financial Creditors have not obtained any regulatory approvals nor have they furnished a copy of the board resolution from the Corporate Debtor, in respect of the alleged loan transactions, which the Financial Creditors ought to have obtained in the event they were extending the alleged loan to the





Corporate Debtor. All the above make it abundantly clear that the Financial Creditors have not extended any loan to the Corporate Debtor, and that the alleged claims on the Corporate Debtor is only an afterthought by the Financial Creditors. Since there is no liability of the Corporate Debtor to repay any of the alleged amounts to the Financial Creditors, there cannot be any default has occurred according to Section 7 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor has also come to know of the fact that the Financial Creditor has been amalgamated/ restructured and hence, does not have any legal existence for it to claim any right under the provisions of the Code. The Corporate Debtor thus puts the Financial Creditor to strict proof of its existence.

- d) Further, the Financial Creditors' allegation that there was a cheque bearing No. 557093 dated 20.03.2017 drawn on IndusInd Bank, Karkhana, Secunderabad for a sum of Rs. 3,87,00,000/- issued to the Financial Creditors towards repayment of a legally enforceable debt, is false and denied. On the contrary, the Financial Creditors are aware that there was a dispute that existed in both civil and criminal *inter alia* any document, be it the alleged Loan Agreement, or the alleged Settlement Deed and proceedings with regard to the same are pending before the Hon'ble V Junior Civil Judge and XI Addl. Chief Judge at Hyderabad in O.S. No. 201 / 2017, O.S. No 505 / 17 and CMA No. 43 of 2017, for perpetual injunction and for cancellation of registered deposit of title deeds dated 31<sup>st</sup> August 2013. The Financial Creditor No. 2 along with the



Financial Creditor No. 1's related entity, M/s. Wincere Solutions Pvt. Ltd. are contesting the said disputes and the Financial Creditors are suppressing the said facts from this Hon'ble Tribunal. Furthermore, it was the Financial Creditors, who have threatened the Directors of the Corporate Debtor with dire consequences and forcibly obtained signatures on the blank cheque and other documents. A police complaint dated 17.03.2017 was filed against the Financial Creditors before the Assistant Commissioner of Police, P.S. Banjara Hills, Hyderabad. Therefore, in view of the pendency of suits and appeal as stated supra, and the matters being subjudice before the courts mentioned above, this Company Petition is not maintainable and is liable to be rejected in limine. The Respondent further denies issuance of any cheques and documents including a letter dated 01.02.2017 which is a fabricated document filed by the Petitioners for the purpose of the present Petition and the Respondent denies issuance of any such letter. Since there was no agreement entered into by the Respondent with the Petitioners, such a letter could not have been issued by the Respondent. The legal basis of the Financial Creditor's claim is on the basis of the letter dated 01.02.2017 amounting to a guarantee that is provided by the Company (the Corporate Debtor herein) on behalf of its Directors. And such a guarantee by the Company on behalf of its Directors is prohibited under the provisions of the Indian Contract Act, 1872 and under such circumstances; such a stand taken by the Financial Creditors against the Corporate Debtor is not valid



and liable to be rejected in limine. The Corporate Debtor has provided software services to the Financial Creditors, and the said payments have been made by the Financial Creditors against the following invoices:

- i. Invoice No. 31 dated 27.12.2012 for a sum of USD 225,000/- raised by the Corporate Debtor to Financial Creditor No. 1, towards Software Consultancy Charges for the month of December 2012,
  - ii. Invoice No. 44 dated 01.06.2012 for a sum of USD 125,000 raised by Cybermate Infotek Ltd Inc., a related entity of the Corporate Debtor to the Financial Creditors herein, towards Software Consultancy Charges for the month of May 2012,
- e) It is asserted that the Financial Creditors, having availed the said software services, are now falsely claiming the said amounts alleging that the payments were made as a loan to the Corporate Debtor. The said allegations of the Financial Creditors are wholly denied as false, misleading and fabricated solely for the purpose of harassing the Corporate Debtor through the present petition. In light of the same, having availed the software services from the Corporate Debtor for the monies paid to it, it is but unjust for the Financial Creditor to allege the existence of debt and thereby projecting itself as the "Financial Creditor" with a sole reason to harass the Corporate Debtor.
- f) It is further denied that an amount of USD 150,000 from Financial Creditor No. 2 on 06.06.2012 was received by the Corporate Debtor. To the contrary,



the said amount was received by Cybermate Infotek Ltd Inc., a related entity of the Corporate Debtor, towards payment of the above mentioned invoice no. 44 dated 01.06.2012 towards Software Consultancy Charges for the month of May 2012. The statement of accounts of the Corporate Debtor's bank account for the period between May to September 2012 clearly establishes that an amount of USD 150,000 has not been received by the Corporate Debtor from Financial Creditor No. 2.

- g) The Corporate Debtor denies that they were a party to the alleged Loan Agreement, and consequently denies that the Corporate Debtor agreed to repay the entire alleged loan of Rs. 4,45,11,110/- along with the alleged interest. A perusal of the alleged Loan Agreement attached at Annexure E of the Financial Creditors' Company Petition clearly shows that the alleged Loan Agreement was only between Wincere Solutions India Private Limited and Mr. Pattapurathi Chenchaiyah Pantulu, and that the Corporate Debtor was never a party to the alleged Loan Agreement. And the agreements are a sham and fabricated documents, and that they are the subject matter of the above referred disputes.
- h) Therefore, it is stated that there is no privity of contract between the Corporate Debtor and the Financial Creditors, since neither the alleged Loan Agreement nor the alleged Settlement Deed is executed by the Corporate Debtor. The Financial Creditors do not have current claims against M/s. Cybermate Infotek Limited and that this Company Petition is not maintainable and is nonest in law.



Hence, it is urged the Tribunal to dismiss the Company petition.

4. The Financial Creditor has filed rejoinder dated 10.01.2018 for the counter filed by the Corporate Debtor by inter-alia stating as follows:

- A. There is a privity of contract between the parties and default under section 7 of the insolvency and bankruptcy code, 2016. As per sub-Sec 5 of Section (7) of the I&BC 2016 Act "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; The Financial Creditors, legally paid/transferred the loan amount to the Corporate Debtor/respondent,. The Cashier's Check dated. 12-06-2012 in favor of the Respondent / Corporate Debtor. The statement from the Citi Business Bank, USA dated. 05-02-2017, as per this statement hundred thousand dollars paid to the respondent/ Corporate Debtor on 26-12-2012, and also paid a sum of hundred thousand dollars to the respondent/ Corporate Debtor on 31-12-2012 Dollars hundred thousand in favor of the Respondent / Corporate Debtor. The Statement of ICICI Bank of the applicants/financial creditors. As per this statement, Rs.1,10,00,000/- was transferred on 31.08.13 through RTGS; on 03-09-2013, another sum of Rs. 1,10,00,000/- transferred in favor of PC Pantulu, who is the Managing Director of Respondent/ Corporate Debtor. As per the ICICI Bank Statement dated 31-12-2013,another sum of Rs.30,00,000/- was transferred to said Mr. P.C.Pantulu.



B. As per 5.(5) of the Act "Corporate Applicant" means—

- (a) Corporate Debtor; or
- (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) a person who has the control and supervision over the financial affairs of the corporate debtor;

As Sec 5(24) of the Act "related party", in relation to a corporate debtor, means—

- (a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;
- (b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor.

As per above section, it is very clear that loan amounts in question were legally transferred to the Respondent/ Corporate Debtor and the Tribunal has got jurisdiction to decide the Company petition and it is maintainable.

C. Mr. P.C. Pantulu, as MD of the Company has executed a registered Memorandum of Entry



Recording Deposit of Title Deeds Vide D.No.3936/2013 dated. 30-08-2013. Cybermate Infotek Limited, a company incorporated under the Companies Act 1956, having its registered office at 11, Sripuri Colony, karkhanna, Secuderabad, 500015, Andhra Pradesh, India, thereafter referred to as the (CYBERMATE) and has been promoted the Depositor. The depositor has approached the Depositee for loans amounting to Rs.4,4400,000, (Four Crores Forty Four Lakhs) for the business and working capital requirements of Cybermate. This clearly shows Corporate Debtor obtained loans from Financial Creditors. Hence Company's petition (IB) is maintainable.



- D. As per Settlement Deed dated. 07-09-2016 which was filed along with the Company petition clearly shows that the P.C.Pantulu is authorized representative of M/s Cybermate Infotek Ltd, Respondent/ Corporate Debtor. In this Settlement Deed, as per clause No.D and Clauses No.F, (1 to 3) Respondent/ Corporate Debtor admitted the amounts as shown in Clause No.5 (a), the Settlement Deed dated. 07-09-2016 shall read as part and parcel of this rejoinder. As per the letter dated. 01-02-2017 (Annexure-G), which was filed along with Company Petition, it was marked to the Petitioner/Financial Creditor No.2 and the said letter was given on a Company letterhead along with office seal and signed by P.C. Panthulu Managing Director and P. Chandrasekhar Director of M/s Cybermate Infotek Limited. With this it clearly establishes that the amounts were given to Respondent/ Corporate Debtor.

- E. The Respondent/ Corporate Debtor, in clause No.2 (b) denied all the cheques given by the respondent/ Corporate Debtor and denied the Letter dated.01-02-2017. Cheques were signed by the P.C.Pantulu Managing Director and P. Chandrasekhar, Director of Respondent/ Corporate Debtor, and the letter was given by the respondent/ Corporate Debtor on the Company letter head signed by the Managing Director and Director of the Respondent/ Corporate Debtor. In the counter, Respondent has stated that the letter dated 01-02-2017 is a fabricated document and it is a false and the said letter dated. 01-02-2017 can be sent to Forensic Laboratory for comparison of the signature of the PC Pantulu and P. Chandra Sekhar is a Director, of Cybermate Infotek Limited, both father and son played fraud upon the Financial Creditors and taken the loan for working capital of Respondent/ Corporate Debtor by telling false stories. The Managing Director Mr. P.C.Pantulu also executed a registered Memorandum of Entry Recording Deposit of Title Deeds dated. 30-08-2013, as per clause No.1, Cybermate Infotek Limited, a Company incorporated under the Companies Act 1956, having its registered office at 11, sripuri Colony, karkhanna, Secuderabad,500015, Andhra Pradesh, India thereafter referred to as the (CYBERMATE) and has been promoted the Depositor. The depositor has approached the Depositee for loans amounting to Rs.4,4400,000, (Four Crores Forty Four Lakhs) for the business and working capital requirements of Cybermate. It is clearly mentioned that the said Memorandum was executed towards the loan given





to the financial creditors. In respect of O.S.No.201 of 2017 on the file of V Junior Civil Judge, C.C.C. Hyderabad, C.M.A.No.43 of 2017 on the file of X Addl. Chief Judge, C.C.C. Hyderabad are filed for Injunction in respect of title deeds deposited as per the Memorandum dated. 30-08-2013. And the appeal C.M.A.No.43/2017 was filed after dismissal of the I.A.No.31/2017 in O.S.No.201/2017 and the said suits were filed by PC.Pantulu. O.S.No.505 of 2017 on the file of XI Addl. Chief Judge, C.C.C. Hyderabad, related to the cancellation of the said Memorandum dated 30-08-2013, all the suits and appeal filed by PC Pantulu, they are nothing to do with the loan amount given to Respondent/Corporate Debtor.

- F. The statement of the Bank (Axis Bank) and the Financial Creditors did not transfer any amount in favor of Axis Bank, are subject to proof of relevancy. Corporate debtor provided false information and false in material particulars and omitted material in the counter filed by the corporate debtor. Sec 77 of the I&BC 2016 Act reads as under

***Where—(a) a corporate debtor provides information in the application under section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or (b) any person who knowingly and willfully authorized or permitted the furnishing of such information under sub-clause (a), such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be***



***less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees.***

As per Sec 77 the Managing Director and other directors of the Corporate Debtor are liable to be the punished.

- G. As per Sec 5 (8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes— (a) money borrowed against the payment of interest. The Corporate debtor, its Managing Director and other directors are liable to pay the principal along with interest as agreed.
- H. As per the rejoinder filed, it clearly proves that the amounts were paid into the account of the Respondent/Corporate Debtor. The Settlement Deed dated. 07-09-2016 and Letter dated. 01-02-2017, the loan amount was paid to the Corporate Debtor and the Petition is maintainable against the Corporate Debtor. The Petitioner No.1 and 2 have not received any remittance from any bank or RTGS from any bank.
- I. In view of the above facts of the case, the Petitioners urge the Tribunal to initiate CIRP in respect of Corporate Debtor as prayed for.
5. The case was listed on various dates viz: 06.10.2017, 10.10.2017, 18.10.2017, 03.11.2017, 07.11.2017, 17.11.2017, 05.12.2017, 19.12.2017, 02.01.2018, 10.01.2018, 29.01.2018, 08.03.2018 and finally on 20.03.2018.
6. Heard Mr. Muddu Vijai, Learned Counsel for the Financial Creditor, Mr. Anirudh Krishan with Mr. Hema Shankar



for the respondent, and have carefully perused the pleadings of both the parties along with extant provisions of IBC, 2016.

7. The learned counsel for the Financial Creditors, while reiterating pleadings made in the Company petition, has also filed written gist of his arguments, which are briefly stated below:

1) The Cybermate Infotek Ltd Inc and Cybermate Infotek Ltd are one and the same. The Cybermate Infotek Ltd is also operating In USA hence INC was added. For the both of them, Board of Directors are the one and same. The financial creditors paid sum of US \$ 150,000.00 on 12-06-2012, and \$100,000 on 26-12-2012 and another \$100,000 on 31-12-2012 to the corporate debtor

2) The corporate debtor entered into a loan agreement on 31-08-2013 clause (A) it was stated that borrower is the promoter of Cybermate Infotek Limited a company incorporated under Indian Companies Act,1956. Clause (B) it was stated that the borrower had approached the lender for a loan of Rs. 44,400,000 (Indian Rupees Four Crores Forty Four Lakhs) (Principal amount) for the business of the company including inter alia working capital requirements and repayments of a term loan. As per clause No.C “ Lender” is also a software solutions providing company. The Lender is contemplating working relationship with Cybermate Infotek Limited, and hence has agreed to provide help to the Borrower, who is the promoter of Cybermate Infotek Limited.” **As per the above it is very clear that borrower is promoter of**



**Cybermate Infotek Limited who is the Managing Director of the said company.**

- 3) The settlement deed dated.07-09-2016 is starts at **Page No.39**, at **Page No.40** serial No 4. Mr..PC Panthulu, a self and authorized representative of Cybermate Infotek Limited and also his son at serial No.5 P.Chandrasekhar who is the Director of the company. **In this page a table was shown which discloses that the amounts given to the Corporate Debtor and to the Managing Director, but the financial creditors claiming the loan amount which was given to corporate debtor not to Mr.Pattaparthi Chenchaiiah Panthulu. In page No.42 at clause No.1**, it was mentioned that the “without prejudice to the obligations of Cybermate as the original borrower and the right of the Lender, Himanshu Kansara and Wincere Inc. to recover such amounts from Cybermate to the extent of the loans extended to it, the borrower and the guarantor shall be jointly and severally liable to make all payments due under this Settlement Deed, including the Loans extended to Cybermate.” Clause No.2 is the repayment of the loan amount. With this it clearly proves that the loan amount was taken by Corporate Debtor.
- 4) The cheques which were given along with the said letter were bounced and the financial creditors had issued a notice on 27-04-2017 U/s 138 of N.I. Act to the Corporate Debtor and other Directors and the cheque bounce case is pending at Delhi court.
- 5) The respondents have filed a counter; at page No.5 of the said counter they admitted that the amount received by the Cybermate Infotek Inc. Related entity



of the corporate debtor towards the payment of Software consultancy charges for the month of May 2012. There is no agreement in respect of Software Consultancy agreement between the Financial Creditors and the corporate debtor. The financial creditor denying all the allegations as false in their rejoinder.

- 6) The Financial Creditor paid sum of \$99,988-00 to favoring Cybermate Infotek Limited that was received by the Bank of Cybermate Infotek Limited USA on 28-12-2012 after deducting transaction charges which was transferred by the financial creditor on 26-12-2012.
- 7) The Corporate Debtor also filed documents stating that the cases are pending. The said cases OS.No.201/2017 which relates to the perpetual injunction between the P.C. Panthulu and Himanshu Kansara in respect of the mortgaged property and Injunction was dismissed vide I.A.No.31/2017 in O.S.No.201/2017 on 12-04-2017 and filed a C.M.A.No.43/2017 on the file of X Addl. Chief Judge, City Civil Court, Hyderabad and the same is pending and the said P.C. Panthulu also filed a suit for Cancellation of Reg. Memorandum of Title Deeds vide O.S.No.505/2017 on the file of XI Additional Chief Judge, City civil court, Hyderabad and the same is pending. There is no case between the Financial Creditors and the Corporate Debtor in respect of the payment of amounts. As per the Judgment reported in **2017 SCC online 754 in Mobilix Innovation Private Limited case** that is related to Section 9 (5) (2) (d) the Act not in respect of the Section 7 of the Insolvency Bankruptcy Act.



**There is no rejection of application in clause No.7 of the Act, hence the said judgment is not applicable to the financial creditors, even as per the para No.57 of the said Judgment the Hon'ble Court held that we have seen that a dispute is said to exists so long as there is a real dispute as to payment between the parties that fall within the inclusive definition contained in Section 5 (6) of the Act.** The dispute mentioned by the Corporate Debtor is not in respect of the payment between the parties and it is not between the Financial Creditors and the Corporate Debtor.

- 8) The Corporate Debtor also raised the issue stating that as per clause No.122 (1) of Memorandum of Articles and Association, a Board of Directors has take their resolution for making loans. The financial creditors do not know about the Articles of the Association of the corporate debtor company, the financial creditors is a private party not related to the corporate debtor, doctrine of Indore Management applies to the financial creditors. As per the reported judgments **2010 (11) SCC 374 at Page No.111**, it was held that **"according to doctrine of indoor management is an exception to the rule of constructive notice.** It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in the memorandum and articles have been properly observed. **Therefore, doctrine of Indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notices protects the**



**insiders of a company or corporation against dealing with the outsiders.”** As per the judgment reported in **SSC online Bombay 425** discussed sec 923 of the company Law 1956 at para 12 discussed about Indore management. **In AIR 1957 All At Page 311 at para 13**, and in **MANU/CL/009/1994 Jagdishchandra Champaklal Parekh vs. Deccan Paper Mills Co. Ltd. and Ors. : BEFORE COMPANY LAW BOARD at Para 15**, with this judgments it is very clear that Indoor management applies to the financial creditors as they are third parties to the company.

- 9) The counsel for Corporate Debtor also mentioned section 185 of the Companies Act. **As per section 185 of the Companies Act** which is in relation to advancing any loan it does not relate to the borrowing of the loan, the heading of the said section reads **loans to Directors etc.**, and also mentioned that: **Provided that nothing contained in this sub-section shall apply to;** (b) a company which in the ordinary course of the business provide loans or give guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.” The said section 185 of the Companies Act not applies to the Financial Creditors.
- 10) As per the reported **Judgment 2018 (2) SCC, Page.674, at Para No.24**, the Hon’ble Supreme Court held that “Even otherwise, the important condition precedent is an occurrence of a default, which can be proved, as has been stated hereinabove, by means of other documentary



evidence. **Take for example the case of an earlier letter written by the corporate debtor to the operational creditor confirming that a particular operational debts is due and payable. This piece of evidences would be sufficient to demonstrate that such debt is due and that default as taken place, as may have been admitted by the corporate debtor.**” Here in this case letter issued by the corporate debtor dated.01-02-2017 is the evidence that the corporate debtor is a due to the financial creditors.

11) Therefore, the petitioners urged the Tribunal to admit the case as prayed for.

8. Mr. Anirudh Krishnan, the learned counsel for the Respondent, while reiterating various pleadings raised in the reply, has further filed written gist of arguments on behalf of the respondents. The following are brief submissions made in it;

1) The Petitioners have filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, claiming a sum of Rs. 3,87,00,000/- (Rupees Three Crores Eighty Seven Lakhs only) from the Respondent on the basis of (i) a Loan Agreement dated 31.08.2013 executed between Wincere Solutions Private Limited and Mr. Pattapurathi Chenchiah Pantulu (“Loan Agreement”); (ii) a Settlement Deed dated 07.09.2016 executed among Wincere Solutions Private Limited, Mr. Himanshu Kansara, Wincere Inc. and Mr. Pattapurathi Chenchiah Pantulu & Mr. P. Chandra Sekhar (“Settlement Deed”); and (iii) a letter dated 01.02.2017 issued by Mr. Pattapurathi Chenchiah





Pantulu & Mr. P. Chandra Sekhar (who are the Promoters/ Directors of the Respondent Company), on the letter head of the Respondent Company, to Mr. Himanshu Kansara, Petitioner No. 2 herein. The Loan Agreement and Settlement Deed in question were entered into by the Promoters / Directors of the Respondent Company in their individual capacity (which itself is a subject matter of dispute, as evidenced by the suits filed by the promoters/ directors) and nowhere is the Respondent Company a party to the said transactions.

**COMPANY IS A JURIDICAL ENTITY SEPARATE FROM ITS SHAREHOLDERS:**

1. The Letter dated 01.02.2017 issued by Mr. P.C. Pantulu and Mr. Chandra Sekhar on the Respondent Company's letter head could at best be a case of the promoters / directors fastening their personal liability on the Respondent Company. However, it is a well settled principle that the Company is a juridical entity having separate legal existence from its shareholders, promoters, directors. In this connection, the Respondent relies on (i) a decision of Division Bench of the **Hon'ble Madras High Court in IndBarath Thermal Power Limited vs. Trimex Industries Pvt. Ltd. & Ors.** (OSA Nos. 319 to 321 of 2017 & CMP Nos. 19853 to 19855 of 2017) (Refer Para 9) wherein it has been held that the Company is a juridical entity separate and distinct from its shareholders; (ii) The Hon'ble High Court of Delhi in **Mukesh Hans & Anr. Vs. Smt. Uma Bhasin & Ors.** [MANU/DE/2160/2010] (at Para 11) has held that the company is a separate



juristic entity which acts through its Board of Directors, and an individual director cannot act on behalf of the company, unless he is so authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. Therefore, any acts of the promoters, shareholders, directors, etc. of the Company cannot bind the Company unless specific authorizations have been obtained by such promoters, shareholders or directors to act on behalf of the Company.

2. The Respondent Company is a Public Listed Company, having about 23,000 shareholders. It is contended that where a transaction is between the Petitioners and the Promoters of a Public Listed Company, the Company cannot be held liable for the debt, even if the said Promoters sign an acknowledgement on the letter head of the Company. The safeguards provided to the shareholders of a company under Section 185 of the Companies Act, 2013, prohibits a public company from giving guarantee or providing security on behalf of the Directors for any loan taken by the Director of the company. Assuming without admitting that the Directors of the Respondent Company issued the aforementioned letter dated 01.02.2017 to the Petitioner No. 2, on the letter head of the Company, the same would at best amount to a security or guarantee by the Company in connection with the loan taken by the director of the Company, and such a transaction is prohibited by virtue of Section 185 of the Companies Act, 2013. The relevant portion of Section 185 of the Companies Act, 2013 is extracted herein below:



*“185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:...”*  
(Emphasis Supplied)

In support of this contention, reference is made to the following decisions: (i) The Hon’ble Bombay High Court in **Niulab Equipment Co. P. Ltd. [(2009) 152 Comp Cas 375]** (at paras 16, 17) has held that a guarantee given by the company in contravention to provisions of Section 295 of Companies Act, 1956 (corresponding provision of Sec. 185 of Companies Act, 2013) is void. (ii) The Hon’ble Supreme Court in **Mannalal Ketan & Ors. Vs. Kedar Nath Khetan & Ors. [(1977) 2 SCC 424]** (at paras 16, 19, 20, 21) has held that a contract which involves in its fulfilment the doing of an act prohibited by a statute is void; (iii) the Hon’ble Madras High Court in **Medchl Chemicals and Pharmaceuticals Pvt. Ltd. and Others vs. Minerals and Metals Trading Corporation Ltd. [(2002) 108 Comp Cas 24]** (at Para 19) has referred to meaning of the term “security” as anything that makes the money more assured in its payment or more readily recoverable.

**CONSTRUCTIVE NOTICE - BOARD RESOLUTION  
NECESSARY TO ACT ON BEHALF OF THE  
COMPANY & TRANSACTION MUST BE LEGALLY  
PERMISSIBLE :**



3. The Hon'ble Madras High Court in **Kotla Venkataswamy vs. Chinta Ramamurthy & Ors.** [AIR 1934 Mad 579] at para 5 has held that a person dealing with a company must be taken to have read the Companies Act and the Articles of Association of the company he is dealing with, and thus to have had constructive notice of their contents. As stated herein above, the transaction is prohibited by Section 185 of the Companies Act, 2013. Further, the Articles of Association of the Respondent Company at Article 122 specifically states that the Company can make loans only by way of a resolution passed at the meeting of the Board. In the absence of any such Board Resolution, it is submitted that the Respondent Company was never authorized to take loans or provide guarantee on behalf of its directors to the Petitioners herein.



**INDOOR MANAGEMENT NOT APPLICABLE SINCE  
THE TRANSACTION IS PROHIBITED BY  
COMPANIES ACT, 2013 AND ARTICLES OF  
ASSOCIATION OF THE COMPANY**

4. The Petitioners cannot take the defense of doctrine of indoor management, since the entire transaction is prohibited by law. The decision relied by the Petitioners, of the Hon'ble Bombay High Court in **NiradAmilal Mehta vs. Genelec Limited &Ors.** [2008 SCC OnLineBom 425] has, at Para 12, expressly laid down that where there is a clear breach of the provision of a statute, the doctrine of indoor management cannot apply, and that in the event of a breach of a statutory provision, the consequences of breach would follow and it would be

no defence to hold that the person dealing with the company, was entitled to assume that all statutory requirements are complied with.

**PAYMENTS MADE BY PETITIONERS TO RESPONDENT ARE FOR THE SERVICES PROVIDED BY THE RESPONDENT AND IS NOT A DEBT TRANSACTION:**

5. The Petitioners are misleading this Hon'ble Tribunal by pointing out to payments that were made by the Petitioners to the Respondent, which was in fact payments towards software consultancy services provided in the year 2012, by the Respondent and Respondent's related entity Cybermate Infotek Ltd. Inc., to the Petitioners herein. The same is also backed by invoices dated 27.12.2012 and 01.06.2012 at **Page Nos. 9 and 12** of the typed set filed along with the Respondent's Counter. The Foreign Inward Remittance Certificates at **Pages 10 and 11** of the typed set filed along with the Respondent's Counter clearly states the purpose of remittance as Software Consultancy services. The Petitioners are misleading this Hon'ble Tribunal by linking the payments made in respect of transactions which are already complete, to a Loan Agreement executed on 31.08.2013 by the director of the Respondent Company in his individual capacity, for payments to be received in the future. It is therefore submitted that the claims of Petitioners against the Respondent Company is without any basis whatsoever and is liable to be dismissed.



**TRANSACTION PROHIBITED UNDER THE A.P.  
(TELANGANA AREA) MONEY-LENDERS ACT, 1349**

**F:**

6. Without prejudice to anything stated herein above, the Respondent submits that the entire transaction is prohibited by Section 2-A of the A.P. (Telangana Area) Money - Lenders Act, 1349 F, which states that a person who is not a Citizen of India within the meaning of the Citizenship Act, 1955 shall not carry on the business of money-lending. Since Petitioner No. 1 is a company incorporated outside India, and the Petitioner No. 2 is not an Indian citizen, it is submitted that the alleged loan given by the Petitioners to the Respondent herein, would be prohibited by virtue of the A.P. (Telangana Area) Money - Lenders Act, 1349 F.

It therefore urges the Tribunal to pass an order dismissing the petition and thereby render justice.

9. The present Company Petition is filed under the provisions of Section 7 of IBC for initiating CIRP in the matter of Cybermate Infotek Limited under IBC, 2016. As per Section 6 of IBC, a Financial Creditor can initiate CIRP in respect of the Corporate Debtor, who committed a default. Section 7(1) (2) deals with the ingredients for initiating CIRP. Section 7(5) deals with issue of admitting the case or rejecting the same.
10. As per above provisions, the issue to be considered for initiation of CIRP is whether the instant Petition is filed in compliance with the above provision and whether default has occurred and there is no disciplinary proceedings against the proposed IRP etc.
11. As stated supra, the impugn action arises out of the loan agreement executed by and between Wincere Solutions



Private Limited (Lender/ Financial Creditor) and Mr. P.C. Pantulu, (Borrower) on 31.08.2013 (Annexure E page 30 to 44). In this agreement, it is stated that borrower is a Promoter of Cybermate Infotek Limited, a Company incorporated under the Companies Act, 1956, having its registered office at 11, Sripuri Colony, Karkhana, Secunderabad- 500015, Andhra Pradesh, India ("Company") and engaged in the business of inter-alia developing web application, wireless applications, middle ware components. The Borrower had approached the Lender for a loan of Rs. 44,400,000 ("Principal Amount") for the business of the Company including inter-alia working capital requirements and repayment of a term loan availed by the Borrower from the State Bank of Travancore, Kukatpally Branch, MIG 155, Ground Gloor, KPR Complex, Road No.1 KPHB Colony, Kukatpally, Hyderabad- 500072. A.P.



As the Security for the loan, the Borrower has agreed to mortgage the immovable property situated at (a) Housing bearing number 8-2-293/82/NL/213, Plot No. 213 in Sy.No. 125 & 126, situated at Vijaya Co-operative House Building Society, Yousufguda, Hyderabad Andhra Pradesh (Security Asset-I) and (b) Smt P. Padmavathammai.e Plot No. 79, 80, 81, 82 & 83 in Survey No. 557 at Kavali Town, Nellore District, Andhra Pradesh (Security Asset 2) by tendering the original ownership documents of the said properties to the Lender. Parties acknowledge that the Security Asset-1 was mortgaged with the State Bank of Travancore against a term loan secured by the Company, and part of the proceeds of the Principal Amount have been used by the Borrower to repay the said loan and get the mortgage on

security Asset -I Released. The Borrower and the Lender have separately documented the terms of the mortgage.

12. Subsequently, there is a settlement deed executed on 07.09.2016 by and between Wincere Solutions Private Limited (Lender / Financial creditor-1 herein), Himanshu Kansara (Financial Creditor-2), Wincere Inc, and Mr. P.C. Pantulu (Borrower and Mr P. Chandra Sekhar, (Guarantor). In this it clearly acknowledged the loan amount of Rs. 4,40,00,000/- on different occasions to the Borrower and at the Borrower and Guarantor's instructions to Cybermate Infotek Limited in the following manner.

S. No.	Date	Amount	Borrower's Name
01.	06.06.2012	Rs. 84,00,000/-	CybermateInfotek Limited
02.	26.12.2012	Rs. 55,00,000/-	CybermateInfotek Limited
03.	31.12.2012	Rs. 55,00,000/-	CybermateInfotek limited
04.	31.08.2013	Rs.1,10,00,000/-	Mr. P.C. Panthulu
05.	03.09.2013	Rs.1,10,00,000/-	Mr. P.C. Panthulu
06.	20.12.2013	Rs. 30,00,000/-	Mr. P.C. Panthulu



The Borrower also issued cheques in favour of the Lenders towards discharge of its liability of the borrower / guarantees and Cybermate. However, the cheques issued to the Lenders got dishonoured. Therefore, the settlement agreement was executed:-

- (a) One of the terms of this agreement, which is relevant to the issue is

**“The Borrower and Guarantor agree and acknowledge that the Borrower and Guarantor are jointly and severally liable to repay the amounts borrowed by the Borrower and**



Cybermate which after taking into account the interest and penalties has been settled and agreed at Rs. 7,37,00,000/- (Rupees Seven Crores Thirty Seven Lakhs only) ("Loan Amount"). The Loan Amount shall be repaid by the Borrower and/or the Guarantor on or before December 31<sup>st</sup>, 2016, in the manner set out herein. Without prejudice to the obligations of Cybermate as the original borrower and the right of the Lender, Himanshu Kansara and Wincere Inc to recover such amounts from Cybermate to the extent of the loans extended to it, the Borrower and the Guarantor shall be jointly and severally liable to make all payments due under this Settlement Deed, including the loans extended to Cybermate. The Borrower and Guarantor agree and acknowledge that the amount set out herein has been mutually agreed and settled, and neither the Borrower, nor the Guarantor shall raise any objection to the amount agreed herein.

- (b) It is not in dispute that Shri P.C. Panthulu is the Managing Director and Shri P. Chandra Sekhar, S/o Shri P.C. Panthulu, is the Director, who have issued joint letter dated 01.02.2017 on the Company letter head of Respondent (Cybermate Infotek Limited) to Himanshu Kansara. And both are father and son and P.C.Sekhar is now opposing the Company petition by raising frivolous and un-tenable grounds.
- (c) Shri P.C. Panthulu is also a subscriber and one of the four first Directors of Respondent No.1 Company.



13. Cybermate Infotek Ltd Inc and Cybermate Infotek Ltd are one at the same and Cybermate Infotek Limited is also operating in USA hence INC was added and Board of Directors of both the Companies are one and the same. It is not in dispute that a sum of US \$ 150,000.00 was paid on 12.06.2012 and \$ 100,000 on 26.12.2012 and another \$100,000 on 31.12.2012 to the Corporate Debtor. It is also not in dispute that Shri P.C. Panthulu, Borrower is promoter and Managing Director of Cybermate Infotek Limited and documents filed by the Financial Creditors clearly establishes that loans in question were extended to the Corporate Debtor.
14. On perusal of Complaint (OS No.201/2017), it is clear that suit in question relates to the perpetual injunction between Shri P.C. Panthulu and Himanshu Kansara in respect of mortgage and another suit bearing OS No.505/2017 is for cancellation of Reg. of Memorandum of Title Deeds on the file of XI Additional Chief Judge, City Civil Court, Hyderabad. Both the suits are stated to be pending in the respective Courts. The Apex Court judgment in Mobilix Innovation Private Limited (2017 SCC online 754) relates primarily to Section 9 (5) (2) (d) of the Act and not in respect of Section 7 of IBC, under which the present CP is filed. Moreover, at para 57 of the Judgment, the Hon'ble Supreme Court held that dispute is said to exist so long as there is a real dispute as to payment between the parties that fall within the inclusive definition contained in Section 5 (6) of the Act. Therefore, the contention of the Respondent that there is a dispute basing on the suit is without any basis. Pending of suits have nothing to do with the present proceedings, which are initiated under the provisions of IBC as detailed supra.



15. The other main contentions raised by the Respondent that there is no privity of contract between the Petitioner and Respondent; Mr. P.C. Panthulu is not incharge of the Respondent Company; and Company is not responsible of for the acts of its MD etc, are not at all tenable and hereby rejected. It is also to be noted here that the Counter is filed by Shri P. Chandra Sekhar, S/o Shri P.C. Panthulu, who is admittedly a party to the loan taken by the Company. It is also not in dispute that Shri P.C. Panthulu, is the Managing Director of the Corporate Debtor. As stated supra, the loan in question was extended by the Financial Creditors to repay the loan of the Respondent Company and the Borrower (Shri P.C. Panthulu) had admittedly executed the loan agreement on behalf of the Company. There is no iota of doubt that Shri P.C. Panthulu is not only the Managing Director of Respondent Company and loan in question was also taken for the affairs of the Company to clear the loan as stated supra. As stated supra, Respondent has also issued cheque No.557093 dated 20.03.2017 drawn on IndusInd Bank, Karkhana for a sum of Rs. 3,87,00,000/- towards repayment of debt which were dishonoured and loan admittedly was not paid so far. Therefore, it is to be held that the petitioner has established beyond that defaulted amount is Rs. 3,87,00,000/- and the cheques as stated supra, stands dishonored and not paid so far. The other contention that letter dated 1.2.17 admitting the debt on behalf of the Company is forged one is not acceptable and it is hereby rejected. Moreover, the said letter has to be read in the light of entire gamut of the case and not in isolation. Therefore, there is a debt and default as defined under the



provisions of Section 7 of IBC and thus the case is eligible to be admitted.

16. The present Company Petition is filed under Section 7 of IBC, 2016 to initiate CIRP against the Respondents and the main ingredients of this Section, for the purpose of admission of the case are as follows:-

- (a) Default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order admit such application; or
- (b) Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution profession, it may, by order, reject such application.



7(1) The Financial Creditor either by itself or jointly with other financial creditors may file an application for initiating CIRP against a Corporate Debtor before the Adjudicating Authority when a default as occurred.

7(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7(3) The financial creditor shall along with application furnish-

- (a) Record of default recorded with the information utility or such other record or evidence of default as may be specified;

(b) The name of the resolution professional proposed to act as an interim resolution professional;

17. The Petition can be admitted if the Adjudicating Authority is satisfied that there is an existence of debt and a default has occurred, petition filed is complete and there is no disciplinary proceedings pending against the proposed IRP.

18. In the instant case, as stated supra, the Petition is filed in prescribed form and IRP (namely Dr. K. Lakshmi Narasimha, Advocate & Insolvency Professional) was also suggested and total amount claim to be in default is Rs.3,87,00,000/- as on 20.03.2017. There are no disciplinary proceedings stated to be pending against the proposed IRP. As per Section 3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the Corporate Debtor, as the case may be; "debt" has been defined under Section 3 (11) means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

19. As per Section 3 (12) default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and is not repaid by the debtor or the Corporate Debtor, as the case may be. The parameters and scope of adjudication in cases filed under the provisions of IBC, 2016 are no longer res integra in view of various judgments rendered by the Hon'ble Supreme Court and Hon'ble NCLAT as quoted supra. Viz Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited etc.



20. In view of the above facts and circumstances of the case, I am satisfied that instant case/ Company Petition is filed in accordance with law, duly complying with all the extant provisions and there is admittedly debt and default in question, as elaborated in the preceding paras . The IRP suggested is prima facie eligible to be appointed basing on the documents filed in the case and he is also stated not undergoing any disciplinary proceedings as per his declaration. Therefore, it is fit case to admit the instant company petition duly initiating CIRP in respect of Corporate Debtor.

21. By invoking powers conferred on this Adjudicating Authority, under Section 7(5) of IBC, 2016, the Company Petition bearing CP (IB) No. 215/7/HDB/2017 is hereby admitted with following consequential orders under the extant provisions of Bankruptcy Code, 2016.



(a) Hereby appointed Dr. K. Lakshmi Narasimha, Advocate & Insolvency Professional, H.No. 16-11-20/13, Saleem Nagar-2, Opp. Tahsildar Office/Revenue Bhavan, Malakpet, Hyderabad - 500036 (Certificate No. IBBI/IPA-001/IP-P00107/2016-17/10214), as Interim Resolution Professional, by exercising powers under section 16 of IBC, 2016.

(b) Hereby declared the following Moratorium by prohibiting the following actions:-

(i) 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:

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002);
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (v) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016 and on [www.ibbi.gov.in](http://www.ibbi.gov.in) (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to [public.ann@ibbi.gov.in](mailto:public.ann@ibbi.gov.in), in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in their Official website.
- (vi) Directed the Interim Resolution Professional to constitute a Committee of Creditors, after collation of all claims received against the



Corporate Debtor and determination of financial position of Corporate Debtor, as per Section 21 of IBC. The First meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of the IBC.

- (vii) Direct the personnel of M/s Cybermate Infotek Limited, its promoters or any other person associated with the management of M/s Cybermate Infotek Limited to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.
- (viii) Direct the Interim Resolution Professional to strictly adhere to all extant provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and shall file progress report of case promptly to this Tribunal by way of sworn affidavits so as to see time lines as prescribed under the code should be strictly adhered to.
- (ix) Post the case on 1<sup>st</sup> May, 2018 for report of IRP.

*Sd/-*

**(RAJESWARA RAO VITTANALA)**  
**MEMBER (JUDICIAL)**

*G. Anantha Lakshmi*  
Dy. Regr./Asst. Regr./Court Officer  
National Company Law Tribunal, Hyderabad Bench

प्रसंगित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER. CP(IB) No. 215/7/HDB/2017  
निर्णय का तारीख  
DATE OF JUDGEMENT. 26.3.2018  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON. 10.4.2018





**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 181 of 2018**

(Arising out of Order dated 26<sup>th</sup> March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CP(IB) No. 215/07/HDB/2017)

**IN THE MATTER OF:**

**P. Chandra Shekhar**

**...Appellant**

**Vs.**

**Wincere Inc. & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Varun Mishra, Advocate.**

**For Respondents: - Mr. Anand Varma, Mr. Abhishek Prasad, Ms. Akansha Dixit, Mr. Dhairya Madan and Mr. Shwetank Singh, Advocates.**

**J U D G M E N T**

**Bansi Lal Bhat, J.**

Joint application of 'Wincere Inc.'- (Respondent No.1) and 'Mr. Himanshu P. Kansara' (Respondent No.2) (hereinafter referred to as 'Financial Creditors') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) came to be admitted as against Respondent No.3- 'Cybermate Infotek Limited'- ('Corporate Debtor') in terms of the impugned order dated 26<sup>th</sup> March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad

Bench, Hyderabad with consequential orders of appointment of 'Interim Resolution Professional' and slapping of 'Moratorium' on the assets of the 'Corporate Debtor'.

2. Through the medium of instant appeal, Sh. P. Chandra Sekhar, Director of the 'Corporate Debtor' has assailed the impugned order on various grounds said out in the memo of the appeal to which we shall advert to at the appropriate stage.

3. A brief reference to the factual matrix is inevitable. Be it seen that the case of the 'Financial Creditors' for triggering of the 'Corporate Insolvency Resolution Process' is based on a Loan Agreement dated 31<sup>st</sup> August, 2013 and a subsequent Settlement Deed dated 7<sup>th</sup> September, 2016. The 'Corporate Debtor', engaged in the business of developing software for computer systems and providing consultancy services, was incorporated under the Companies Act, 1956. It set up a wholly owned subsidiary in USA and its wholly owned subsidiary rendered software consultancy services to Respondent No.1. Invoice was raised in regard to rendering of the aforesaid software consultancy services.

4. The 'Corporate Debtor' availed a loan of Rs. 4.44 Crores from 'Financial Creditors' and 'Wincere Inc.' on different dates commencing from 6<sup>th</sup> June, 2012 to 20<sup>th</sup> December, 2013. Loan Agreement dated 31<sup>st</sup> August, 2013 was executed between 'Wincere Solution Pvt. Ltd. (WSPL)' and Mr. P.C. Pantulu, on behalf of the 'Corporate Debtor' in the capacity

of its Promoter. This was followed by a Settlement Deed dated 7<sup>th</sup> September, 2016 executed between the parties to discharge liability of the 'Corporate Debtor', the amount borrowed by the 'Corporate Debtor' being settled at Rs.7.37 Crores. Parties to the Settlement Deed, besides Respondent Nos. 1 & 2 are WSPL (the lenders), Mr. P.C. Pantulu acting as authorised representative of 'Corporate Debtor'- 'Cybermate Infotek Limited' (Borrower) and the Appellant- Mr. P.C. Shekhar, the director of 'Cybermate Infotek Limited' as Guarantor. The 'Corporate Debtor' also issued letter dated 1<sup>st</sup> February, 2017 admitting its liability and undertaking to repay the dues through issue of cheques described in the letter. Since there was a default in clearing the liability, the 'Financial Creditors' triggered 'Corporate Insolvency Resolution Process' by filing an application under Section 7 of the 'I&B Code' before the Adjudicating Authority culminating in passing of the impugned order.

5. It is contended on behalf of the Appellant that the 'Corporate Debtor' is not a signatory to the Loan Agreement dated 31<sup>st</sup> August, 2013 which has been executed *inter se* WSPL as lender and Mr. P.C. Pantulu as borrower. Thus, it is contended that there is no privity of contract between the 'Corporate Debtor' and the 'Financial Creditors'. It is further submitted that even in the Balance Sheet for the year ending 31<sup>st</sup> March, 2015, WSPL has acknowledged Mr. P.C. Pantulu as a borrower and not Respondent No.3, whose name is conspicuously absent in the Balance Sheet.

6. It is further submitted that even if Respondent No.3 is assumed to be the borrower under the aforesaid Loan Agreement, it is not the lender (WSPL), but Respondent Nos.1 and 2 i.e., 'Wincere Inc.' and 'Mr. Himanshu P. Kansara' who have approached the Adjudicating Authority with application under Section 7 of the 'I&B Code' claiming to be the 'Financial Creditors'.

7. It is further submitted that as regards the Settlement Agreement dated 7<sup>th</sup> September, 2016, Respondent No.3 is not even a party to such Settlement Agreement and Mr. P.C.Pantulu has signed the Agreement in his personal capacity and not for and on behalf of Respondent No.3.

8. It is further submitted that the Settlement Agreement does not in any way alter the nature of the loan or the position of the lender and the borrower and Mr. P.C.Pantulu continues to remain the 'Borrower' and WSPL continues to remain the 'lender'. The position in regard to the status of borrower as reflected in the Balance Sheet of the year 2015 is stated to have again found reflection in the Balance Sheet of the year ending 31<sup>st</sup> March, 2017. It is submitted that this is significant since this Balance Sheet has been drawn up after the execution of the Settlement Agreement dated 7<sup>th</sup> September, 2016. Validity of the Loan Agreement and the Settlement Agreement has been under challenge before Civil Court at Hyderabad and this fact has been suppressed by the 'Financial Creditors' before the Adjudicating Authority. It is further

submitted that even if it is assumed that the payment made to the 'Cybermate Infotek Ltd. Inc.' was in fact a loan, such loan taken by a subsidiary cannot be foisted on its parent company, the two being distinct legal entities. It is submitted that the Loan Agreement and the Settlement Agreement have not been executed on behalf of the Company and Respondent No.3 is not even a party to such agreements.

9. It is lastly submitted by the Appellant that the debt as claimed by the 'Financial Creditors' is not due in the sense that it is not payable in law or in fact and the impugned order cannot be sustained.

10. Per contra, it is submitted on behalf of the 'Financial Creditors' that the loan amount was advanced by the 'Financial Creditors' to the 'Corporate Debtor' for its business and working capital requirements and this fact is manifestly clear from the stipulations in the Loan Agreement and the Settlement Deed.

11. It is further submitted that the 'Corporate Debtor' has admitted its liability in its letter dated 1<sup>st</sup> February, 2017 assuring repayment of loan amount by issuance of cheques. It is submitted that the promoter of the 'Corporate Debtor' is the 'Borrower' who had approached the 'Financial Creditors' for the business of the 'Corporate Debtor' and this fact is clearly borne out by the Loan Agreement. With reference to the Settlement Deed dated 7<sup>th</sup> September, 2016, it is submitted that the same has been executed between the Respondent Nos. 1 and 2 and

WSPL as 'lenders' with Mr. P.C. Pantulu acting as authorised representative of 'Cybermate Infotek Limited' i.e., the 'Corporate Debtor' as 'borrower' with the Appellant- Mr. P.C.Shekhar, i.e., the Director of the 'Corporate Debtor' acting as 'Guarantor'. It is submitted that the Settlement Deed was in furtherance of the loan amount extended by the 'Financial Creditors' to the 'Corporate Debtor' to discharge the liability of the 'Corporate Debtor'.

12. It is submitted that in terms of the letter dated 1<sup>st</sup> February, 2017 issued by the 'Corporate Debtor' liability for an amount of Rs.3,87,00,000/- towards the 'Financial Creditors' was admitted whereas liability in regard to the remaining amount was admitted towards WSPL. It is further submitted that the cheques issued towards repayment of dues were dishonoured upon presentation which manifested in filing of the complaints under Section 138 of the Negotiable Instruments Act, 1881 which are pending for determination before the Competent Court.

13. It is submitted that the 'Financial Creditors' have restricted their claim to Rs.3,87,00,000/- i.e., the liability admitted by the 'Corporate Debtor' towards the 'Financial Creditors' in letter dated 1<sup>st</sup> February, 2017. According to the 'Financial Creditors', 'Cybermate Infotek Ltd. Inc.' and 'Cybermate Infotek Ltd.' are one and the same and 'Cybermate

Infotek Limited' is also operating in USA because of which INC was added to it by the 'Corporate Debtor'.

14. It is further submitted that the Board of Directors of both the Companies comprises of the same persons. It is further submitted that the Appellant cannot resile from its admission that the loan amount was transferred to 'Corporate Debtor' by the 'Financial Creditors' as it emerges from paragraph 5 of the memo of appeal. Further, there being clear admission of debt on the part of the 'Corporate Debtor' in its letter dated 1<sup>st</sup> February, 2017 towards the 'Financial Creditors' with the assurance to repay the amount through issue of cheques which were earlier dishonoured, the Appellant cannot raise the issue as sought to be raised through the medium of this appeal.

15. Heard learned counsel for the parties at length and perused the record meticulously.

16. It is not in controversy that Sh. P.C.Pantulu is the Managing Director while Appellant- Mr. P. Chandra Shekhar, son of Sh. P.C.Pantulu, is the Director of 'Cybermate Infotek Limited'- ('Corporate Debtor'). The father and son duo have jointly issued letter dated 1<sup>st</sup> February, 2017 on the letter head of the 'Corporate Debtor' to Mr. Himanshu P. Kansara (Respondent No.2) clearly admitting the liability of the 'Corporate Debtor' towards the 'Financial Creditors' and assuring repayment of the admitted amount by issuance of cheques. This



admission knocks the bottom of the plea taken in regard to there being no privity of contract between the 'Financial Creditors' and the 'Corporate Debtor', and the promoters/ directors foisting their personal liability on the 'Corporate Debtor'. This fact is writ large on the face of the aforesaid letter, genuineness whereof has neither been seriously disputed nor challenged before any competent forum. Even issuance of cheques in pursuance of the aforesaid acknowledgment of liability to the extent of Rs.3,87,00,000/- towards the 'Financial Creditors', (the remaining admitted towards WSPL), which were later dishonoured upon presentation as manifested by invoking of jurisdiction of Criminal Court under Section 138 of the NI Act, stares in the face of the Appellant and 'Corporate Debtor', who cannot wriggle out of the liability by taking the fake plea of 'Cybermate Infotek Ltd. Inc.' and the 'Corporate Debtor'- 'Cybermate Infotek Ltd.' being separate and distinct entities.

17. Perusal of records clearly bears out the fact that father and son have been working in tandem to defraud the Creditors and raising the false plea of there being no privity of contract between the 'Corporate Debtor' and the 'Financial Creditors' while being fully conscious of the fact that the financial assistance was obtained for promoting the business of the 'Corporate Debtor'. While Mr. P.C. Pantulu acted as authorised representative of the borrower- 'Cybermate Infotek Limited', son Mr. P. Chandra Shekhar (Appellant), Director of the 'Corporate Debtor', acted as Guarantor. The Settlement deed dated 7<sup>th</sup> September,

2016 executed between the lenders including the 'Financial Creditors' and the aforesaid father and son duo is in furtherance of loan extended by the 'Financial Creditors' to the 'Corporate Debtor' towards discharge of liability of the 'Corporate Debtor'. The Letter dated 1<sup>st</sup> February, 2017 issued by the 'Corporate Debtor' to Respondent No.2 is also to the same effect. This conclusion is further reinforced from the fact that Mr. P.C.Pantulu is clearly reflected as Promoter of the 'Corporate Debtor' in the Loan Agreement with further stipulation that the loan has been raised for working capital requirements of the 'Corporate Debtor'. It is, therefore, futile to contend that the 'Corporate Debtor' is not a signatory to the Loan Agreement and there is no privity of contract between the 'Corporate Debtor' and the 'Financial Creditors'. The Settlement Agreement dated 7<sup>th</sup> September, 2016 and the letter dated 1<sup>st</sup> February, 2017 admitting the debt on behalf of the 'Corporate Debtor' confirm these conclusions. It is, therefore, of no avail for the Appellant to contend on behalf of the 'Corporate Debtor' that the debt, liability in respect whereof has been admitted and acknowledged and default has been committed by dishonour of cheques, was not payable in law or in fact.

18. The issue raised and the arguments advanced on behalf of the Appellant being devoid of merit are repelled. The impugned order does not suffer from any legal infirmity or factual frailty.

The Appeal is accordingly dismissed. However, there shall be no order as to costs.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[ V.P. Singh]  
Member (Technical)

[ Shreesha Merla ]  
Member (Technical)

NEW DELHI

22<sup>nd</sup> May, 2020

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