

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
12-02-2024 AT 10:30 AM**

**Company Petition IB/23/2022**  
u/s. 10 of IBC, 2016

**IN THE MATTER OF:**

Asmitha Microfin Ltd

**...Petitioner**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Learned Counsel Mr. Sachin Sharma, for the counsel on record Mr. Y. Suryanarayana, for the petitioner present through Video Conference. Orders pronounced. In the result, **this petition is dismissed. No costs.**

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH -I**

**CP (IB) NO.23/10/HDB/2022**

**U/s 10 OF IBC, 2016, R/W RULE 7 OF THE INSOLVENCY AND BANKRUPTCY  
(APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016**

**IN THE MATTER OF ASMITHA MICROFIN LIMITED**

Between

Asmitha Microfin Limited  
#1-2-58; Plot No.1-3, N Block,  
Kakatiya Nagar, Habsiguda,  
Hyderabad – 500 007

**.... PETITIONER**

**VERSUS**

RESERVE BANK OF INDIA  
Secretariat Road, Saifabad  
Hyderabad – 500004

**..... RESPONDENT**

**Date of order: 12.02.2024**

**Coram**

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial

Shri Charan Singh, Hon'ble Member Technical

**Appearance:**

For Petitioner: Mr. Y. Suryanarayana, Advocate

For Respondent/: Shri Nalin kumar, Advocate

RBI:

For SIDBI: Dr. S.V. Ramakrishna, Advocate

For SBI: Shri G. Yash Vardhan, Advocate

For Kotak Mahindra Bank: Shri Kailash Nath, Advocate

For PNB/UBI: Shri Peri Rama Krishna, Advocate

For ICICI Bank: Shri. Kalyan Chakravarthy, Advocate

For Indian Bank: Shri Krishna Grandhi, Senior Advocate assisted by Md. Ali,  
& Shri Avinash Alladi, Advocates

For Canara Bank: Shri T. Nagender, Advocate

## **PER: BENCH ORDER**

1. This Petition is filed by M/s Asmitha Microfin Ltd/Corporate Applicant under Section 10 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 7 of Insolvency and Bankruptcy seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Petitioner defaulted in the payment of alleged debt of Rs. 143,69,07,866/-.
2. The averments by the Corporate Applicant i.e. M/s Asmitha Microfin Ltd in brief are:-
  - 2.1 The company was incorporated in the year 2001 with the main object of carrying micro finance business and registered with the Reserve Bank of India as an NBFC vide certificate of Registration dated 07.06.2022.
  - 2.2 The Company was smoothly carrying out its business in 14 States pan India until 2010. However, the enactment of the Andhra Pradesh Microfinance Institutions (Regulation of Money Lending Act), 2010, had impacted the recovery of advances portfolio of the Company in the States of Telangana and Andhra Pradesh (erstwhile State of Andhra Pradesh), which had adversely affected the business operations of the Company.

- 2.3 In order to meet the repayment obligations, the outstanding loans of the Applicant from the commercial banks and financial institutions were restructured in September 2011 under Corporate Debt Restructuring (CDR) by entering into Master Restructuring Agreement dated 24.09.2011 by and between the Petitioner, Small Industries Development Bank of India (SIDBI) and 26 other lenders of the Corporate Debtor. Under CDR, around 30% of the Company's debt amounting to Rs. 350 crores were converted into Optionally Convertible Cumulative Redeemable Preference Shares (OCCRPS) redeemable over a period of seven years at a coupon rate of 12% p.a. The balance debt amounting to Rs. 802.20 crores were structured to be repaid over a period of seven years including one year moratorium with an interest @ 12% p.a. payable from April 30<sup>th</sup> 2012. The Deed of hypothecation dated 24.09.2011 and other ancillary documents have been filed as Annexure-5 (page 109 to 559) to the Petition.
- 2.4 Despite making efforts, the Applicant failed in servicing the debt of its creditors as there were no recoveries from the advance's portfolio of the Applicant.
- 2.5 Besides on account of non-compliance of the norms of the RBI by the Applicant, the RBI had cancelled the NBFC Registration of the Applicant vide its order dated **22.02.2019**, the copy of which is annexed as Annexure-1 (page 16-19 of IA No. 697 of 2023). Thus, the Corporate Applicant ceased to carry on its business w.e.f. **22.02.2019**.
- 2.6 The Applicant has received default notices from the following banks:-

- (i) Andhra Bank
- (ii) HDFC Bank Limited
- (iii) Central Bank of India
- (iv) Syndicate Bank
- (v) Punjab National Bank
- (vi) State Bank of India

2.7 Subsequently, the affairs of the Applicant Company were deliberated upon in the Joint Lenders Meeting held on 19.04.2021, and after exploring various options, a decision to file an application under Section 10 of IBC before this Tribunal was taken. Accordingly, the Applicant addressed letter dated 28.09.2021 to RBI communicating the decision taken at the said Joint Lenders Meeting dated 19.04.2021.

2.8 Thus submitting, the present application is filed by the Corporate Applicant under Section 10 of IBC, seeking Corporate Insolvency Resolution Process against it.

3.1 The record of this Tribunal reveals that vide order dated 19.08.2022 passed in IA No.554 of 2022 filed by the Corporate Applicant, this Tribunal has allowed impleadment of RBI as proper and necessary party for adjudication. Accordingly, the Corporate Applicant amended the Company Petition by impleading RBI as Respondent in the present petition and granted leave to the RBI to file counter.

3.2 The Respondent filed counter strongly contending that the application is totally misconceived and is liable to be dismissed as the application qua RBI is not maintainable. The contentions raised in the counter of the Respondent are as follows:

- 3.2.1 RBI is one of the “financial sector regulator” in terms of Sub-Section 18 of Section 3 of IBC. By virtue of powers conferred under Section 45L of the RBI Act, 1934, the RBI had cancelled the Cancellation of Registration (COR) in terms of Section 45-IA (6) and had advised the Corporate Applicant to dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of COR, for the company to come out from the Principal Business Criteria (PBC) stipulated for NBFCs, besides directing the Corporate Applicant to submit audited financials for the next three years to monitor if the Corporate Applicant is carrying out NBFC activity unauthorisedly without COR from the Bank or otherwise.
- 3.2.2 According to RBI, it has no role in the CIRP against the Corporate Applicant as it does not fall in the ambit of “financial service provider” as defined in Section 3(17) of IBC w.e.f. 22.02.2019.
- 3.2.2 As per Rule/Notification issued by Central Government dated 18.11.2019, RBI is the appropriate Regulator for NBFCs (which include housing finance companies) with asset size of Rs. 500 crores or more. However, the same is not applicable to the Corporate Debtor as it is no longer an NBFC registered with RBI, which fact has been admitted by the Corporate Applicant in IA (IB) No. 554/2022. As such the Corporate Applicant is neither a “financial service provider” nor RBI is the appropriate “Financial Sector Regulator”.
- 3.2.3 Thus submitting, sought deletion of RBI from the array of party/Respondent as according to Respondent, the RBI is neither a necessary nor a proper party in the instant petition.

4. Out of total 24 financial creditors of the Corporate Debtor, only five financial creditors i.e. SIDBI, PNB, SBI, Kotak Mahindra Bank and Indian Bank have filed their counters. Out of the five, Indian Bank by way of its counter, had stated that it has no-objection if the Application is admitted. However, the other four financial creditors i.e. SIDBI, PNB, SBI and Kotak Mahindra Bank have objected to the Petition primarily on the ground that the Applicant herein is a “Financial Service Provider” in terms of Section 3 (17) of the Code and that CIRP cannot be initiated against the Financial Service Provider.

4.1 **Kotak Mahindra Bank Ltd** (Kotak/Financial Creditor) which is one of the consortium lenders to the Corporate Applicant objected to the averments in the Petition primarily on the ground that a case filed by them is pending before the Hon’ble High Court of Telangana for review of the Scheme of Arrangement previously approved by the Hon’ble High Court and admission of the present petition would violate the procedure laid down under code. It is further contended that until the Petitioner does not dispose its financial assets and brings it below 50% of the total assets, the status of the Petitioner would continue to be a NBFC-MFL and governed by RBI Act and the Cancellation of Registration by RBI would not mean to infer that it ceases to be MFI altogether. The balance sheet of the Company as on 31.03.2021 reveals that the asset size of the Corporate Applicant was Rs.400.08 crores which constitute the loans and advances (financial assets) of Rs.398.69 crores as against the asset size of the Company in the preceding financial year which stood at Rs. 783.33 crores, with financial assets being Rs.780.41 crores. The Contention of the Kotak Bank that the Corporate Applicant instead of

recovering the loans, has written off the loan and advances only with the sole intention to bring the financial assets below the Rs.500 crores threshold prescribed in the notification dated 18.11.2019. Kotak Bank would further contend that the Corporate Applicant without disclosing the fact that interlocutory applications filed by Kotak Bank in OSA 8 of 2017 for review of the approved scheme of merger involving the Corporate Applicant is pending adjudication before Hon'ble High Court Hon'ble High Court has filed the present Petition.

4.2 **Indian Bank filed** reply stating that it has no objection to the Corporate Applicant being put under CIRP as the Corporate Applicant failed to adhere to the payment terms of the Term Loan of Rs. 25,00,00,000/- sanctioned to the Corporate Applicant and despite the implementation of the CDR package, the Corporate Debtor was not in a position to service its debt, the account of the Corporate Debtor was classified as NPA. The Corporate Debtor had acknowledged its debt vide letter dated 20.01.2017. When the Corporate Applicant failed to make payment of the dues, the Indian Bank had filed OA No.223 of 2020 before DRT, Hyderabad for recovery of the dues and the same is pending.

4.3 **Punjab National Bank has** filed counter stating that the Corporate Applicant has admitted the fact that there is a loan to the tune of Rs. 15.05 crores as on 07.01.2022 that is due and payable by the Corporate Applicant and that the Petitioner failed to follow the due procedure of filing of status report after it failed to implement the Scheme of Arrangement approved by the Hon'ble High Court. It is further submitted that in case the Tribunal orders for CIRP, the Corporate Applicant would

bear the CIRP costs and PNB should not be burdened with additional costs as it has been facing losses on account of credit facilities sanctioned to the Petitioner.

4.4 **Small Industries Development Bank of India (SIDBI)** has also taken a similar view in its counter that it should not be burdened with additional costs if CIRP is ordered against the Corporate Applicant by the Tribunal.

4.5 **State Bank of India** in its counter has contended that the Corporate Applicant after availing the loan facilities and CDR approved packages from time to time, committed default in repaying the outstanding loan amounts as per Master Restructuring Agreements and other documents. It is further contended that the Corporate Debtor also failed to pay the interest accrued to the loan accounts from time to time. The Scheme of Arrangement formulated between the Corporate Applicant along with another Company i.e. SHARE Microfin Limited was approved by the Hon'ble High Court. As per the said scheme, the total liabilities of both the companies were bifurcated between the two Companies and the Corporate Applicant was liable to pay an amount of Rs. 166,97,37,402.00 as on 01.04.2015 and interest thereon at contractual rate, which terms the Corporate Applicant failed to comply. It is contended that an amount of Rs. 177,61,21,873.76 is due and payable as on 30.08.2021 at contractual rate along with penal interest and other charges to the Financial Creditor/. SBI. SBI vehemently contended that the Corporate Debtor is an NBFC which is covered under RBI Rules, cannot invoke the provisions of IBC and that RBI which is the Regulator for the Corporate Applicant as per Rule 5(a)(i), can only file a Petition

seeking CIRP against the Petitioner. SBI further contended that the letter dated 03.04.2019 issued by the RBI does not indicate cancellation of registration of the Petitioner as NBFC. However, according to SBI, the letter clearly states that the Petitioner should dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of Certificate of Registration, but the audited financial statements for the year 2019-20 & 2020-21 indicates that instead of recovering the said debt, the Petitioner has written off its debts only with a sole intention to be outside the purview of Section 277 of the Code. SBI vehemently opposed admission of the petition stating that it is nothing but to halt and thwart the recovery proceedings initiated by the SBI against the Petitioner to recover the outstanding dues. SBI further stated that the Corporate Debtor being an NBFC is covered under RBI Rules and cannot invoke the provisions of IBC and only the appropriate Regulator i.e. RBI can seek initiation of CIRP against the Petitioner under the Code. Thus submitting, prayed for dismissing the present petition.

5. The Petitioner herein rebutted to the objections raised by Punjab National Bank (PNB) and SIDBI by way of similar rejoinders, inter-alia, reiterating/contending as under:-
  - 5.1 In response to the contentions of PNB & SIDBI that the Petitioner is a NBFC, the Corporate Applicant denied the same and submitted that it ceased to carry on the business of Non-banking Financial Institution pursuant to cancellation of NBFC Registration by the Reserve Bank of India vide letter dated 14.03.2019 and further the Petitioner has been instructed by the RBI vide letter dated 03.04.2019, to pass a specific

Board Resolution not to carry on the business of a Non-Banking Finance Institution. It is further contended that barring lending to few mutually aided cooperative societies for maintaining connectivity with borrowers with intent to recover the outstanding, the Petitioner has not undertaken any business.

- 5.2 In response to the next contention that the Petition ought to have been filed after approval of special resolution in shareholder meeting, the Petitioner submitted that it had passed a special resolution on 11.01.2022 with requisite majority and the document evidencing the same is annexed at page 18 of the Petition. through RBI, the Petitioner submits that the said contention is misconceived and devoid of merit as the asset size of the Petitioner is way below the stipulated requirement of Rs. 500 crores.
- 5.3 The Petitioner further submits that the present petition is filed for resolution of insolvency of the Petitioner and not for any other purpose as contended by SIDBI & PNB.
- 5.4 At para 4 of the reply of SIDBI and PNB, since the financial creditors have admitted there is debt due to the Financial Creditors by the Petitioner, the petition ought to be admitted by the Adjudicating Authority.
- 5.5 The Petitioner denies the contention of SIBI and PNB that it failed to obey the directions of Hon'ble High Court to implement the Scheme of Arrangement/compromise, and further submitted that all the Financial

Creditors have implemented the same as per Hon'ble High Court of Hyderabad direction and submitted financials post implementation of the Scheme since FY 2017 to all concerned including regulatory authorities and financial creditors.

- 5.6 The Petitioner submits that the present petition is very well maintainable and states that it has to bear the CIRP costs as contended by PNB and SIDBI is legally untenable and contrary to the provisions of the Code.
6. Written submissions are filed by the Petitioner, SIDBI and State Bank of India, reiterating the averments and contentions raised in the Petition and Counters.
7. In the light of the contest put forth by both the parties the point which arises for our consideration is:
- “ Whether the respondent is a Financial Service Provider as claimed by some of the financial creditors and thus, stands excluded from Corporate Person as defined in Section 3(7) of IBC, 2016 If so, whether the present application for the Corporate Insolvency Resolution Process of the applicant is maintainable? ”
8. We have heard the learned counsels from both sides and the Ld. Counsels for Financial Creditors, perused the record and the written statements and other documents submitted to Tribunal in this case.

**Point.**

“Whether the respondent is a Financial Service Provider as claimed by some of the financial creditors and thus, stands excluded from Corporate Person as defined in Section 3(7) of IBC, 2016 If so, whether the present application for the Corporate Insolvency Resolution Process of the applicant is maintainable? ”

9. Before we proceed to decide the point, we usefully to refer hereunder to Section 3(7), Section 3(17) and Section 227 of IBC, 2016 which are extracted below.

**Section 3(7)**

*“**corporate person**” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.”*

**Section 3(17)**

*“**financial service provider**” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;”*

**Section 227**

*“ Power of Central Government to notify financial sector providers etc.- Notwithstanding anything to the contrary 1 [contained in this Code] or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.”*

### **The Submissions**

10. The petitioner has filed this Company Petition under section 10 of the IBC, 2016, which is under Part-II of the Insolvency Resolution and Liquidation for Corporate Persons. The counsel for the petitioner submits that though petitioner was registered as NBFC vide certificate of Registration dated 07.06.2022 and consequently was a Financial Service Provider but by virtue of powers conferred under Section 45L of the RBI Act, 1934, the RBI had cancelled the registration in terms of Section 45-IA (6) and had advised the Corporate Applicant to dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of COR, for the company to come out from the Principal Business Criteria (PBC) stipulated for NBFCs, besides directing the Corporate Applicant to submit audited financial for the next three years to monitor if the Corporate Applicant is carrying out NBFC activity unauthorisedly without COR from the Bank or otherwise.
11. Petitioner further contend that as per Rule/Notification issued by Central Government dated 18.11.2019, RBI is the appropriate Regulator for

NBFCs (which include housing finance companies) with asset size of Rs. 500 crores or more. However, the same is not applicable to the Corporate Debtor as it is no longer an NBFC registered with RBI, which fact has been admitted by the Corporate Applicant in IA (IB) No. 554/2022. As such the Corporate Applicant is neither a “financial service provider” nor RBI is the appropriate “Financial Sector Regulator”.

12. Out of total 24 financial creditors of the Corporate Debtor, only five financial creditors i.e. SIDBI, PNB, SBI, Kotak Mahindra Bank and Indian Bank have filed their counters. Out of the five, Indian Bank by way of its counter, had stated that it has no-objection if the Application is admitted. However, the other four financial creditors i.e. SIDBI, PNB, SBI and Kotak Mahindra Bank have objected to the Petition primarily on the ground that the Applicant herein is a “Financial Service Provider” in terms of Section 3 (17) of the Code and that CIRP cannot be initiated against the Financial Service Provider.
13. The learned counsels for the financial creditors contend that RBI is one of the “financial sector regulator” in terms of Sub-Section 18 of Section 3 of IBC. It is further contended that until the Petitioner does not dispose its financial assets and brings it below 50% of the total assets, the status of the Petitioner would continue to be a NBFC-MFL and governed by RBI Act and the Cancellation of Registration by RBI would not mean to infer that it ceases to be MFI altogether. The balance sheet of the Company as on 31.03.2021 reveals that the asset size of the Corporate Applicant was Rs.400.08 crores which constitute the loans and advances (financial assets) of Rs.398.69 crores as against the asset size of the Company in the preceding financial year which stood at Rs. 783.33 crores, with

financial assets being Rs.780.41 crores. The counsel for Kotak Bank submitted that instead of recovering the loans as per the condition imposed by RBI the Corporate Applicant has written off the loan and advances only with the sole intention to bring the financial assets below the Rs.500 crores threshold prescribed in the notification dated 18.11.2019. The learned counsel would further contend that the Corporate Applicant without disclosing the fact that interlocutory applications filed by Kotak Bank in OSA 8 of 2017 for review of the approved scheme of merger involving the Corporate Applicant is pending adjudication before Hon'ble High Court Hon'ble High Court has filed the present Petition. Counsel for the Punjab National Bank and **SIDBI** further contended that in case this Tribunal decide to order initiation of CIRP the Corporate Applicant should be ordered to bear the CIRP costs and financial creditors should not be burdened with additional costs as they are already facing huge losses on account of credit facilities sanctioned to the Petitioner. The counsel for the petitioner opposed this contention put forth by PNB and SIDBI.

14. The counsel for SBI contended that the letter dated 03.04.2019 issued by the RBI does not indicate cancellation of registration of the Petitioner as NBFC. However, the letter clearly states that the Petitioner should dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of Certificate of Registration, but the audited financial statements for the year 2019-20 & 2020-21 indicates that instead of recovering the said debt, the Petitioner has written off its debts only with a sole intention to be outside the purview of Section 277 of the Code. SBI vehemently opposed admission

of the petition stating that it is nothing but to halt and thwart the recovery proceedings initiated by the SBI against the Petitioner to recover the outstanding dues. SBI further stated that the Corporate Debtor being an NBFC is covered under RBI Rules and cannot invoke the provisions of IBC and only the appropriate Regulator i.e. RBI can seek initiation of CIRP against the Petitioner under the Code. Thus submitting, counsel for SBI prayed for dismissing the present petition.

***Our Analysis:***

15. Admittedly, the petitioner which is registered as an NBFC with an authorization from Financial sector regulator / RBI to carry on financial services was a ***“financial service provider”*** in terms of **Section 3(17)** and thus in terms of **Section 3(7)** is excluded from Insolvency Resolution and Liquidation for Corporate Persons under section 10 of the IBC, 2016, under Part-II of the Code. But the only short issue which remains for our consideration now is whether the petitioner ceases to be a financial service provider after Cancellation of Registration (COR) by RBI with direction to dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of COR so that petitioner can come out from the Principal Business Criteria (PBC) stipulated for NBFCs.
16. On perusal of the documents , we find that applicant was having a valid NBFC license and thus was a financial service provider, on the date of lending by financial creditors as well as on the date of default by the applicant. These two dates are very important as cause of actions for

filing this application arose on these two dates **i.e creation of debt and in turn default in paying that debt ( debt and default) .** From these facts, we draw a conclusion that applicant beyond doubt was a financial service provider on the dates when cause of actions arose for filing this application, and therefore is barred for filing section 10 application.

17. Further, we have perused letter No.DNBS (H) CMS No./ 1586/00.00.468/ 2018-19 dated 03.04.2019 addressed by General Manager, Reserve Bank of India, Department of Non-Banking Supervision, Hyderabad to M/s Asmitha Microfin Ltd. for cancellation of Certificate of Registration of the Corporate Debtor. We reproduce hereunder para 2 of the said letter for more clarity:

***“2. In continuation of the aforementioned letter, we further advise that your company still continues to be governed by the relevant provisions of the RBI act, 1934 and various directions/ instructions issued by RBI from time to time. In order to comply with PBC Norms, you should dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of Certification of Registration. You are also directed to submit audited financials for the next three years.”***

18. We have also perused order dated 22.09.2019 issued by the Executive Director, Reserve Bank of India, Department of Non-Banking Regulation, Central Office, Mumbai in respect of cancellation of Certificate of Registration, para 7 of which states as under:

***“7. The company’s failure to achieve the specified NOF and CRA is in violation of the condition subject to which the company was***

***permitted to continue to carry on the business of a non-banking financial institution and the same amounts to violation of the directions issued by the Bank in exercise of its powers under Chapter III B of the Reserve Bank of India Act.”***

19. On careful perusal of the above letters we find that (1) the Corporate Debtor's Certificate of Registration had been cancelled in view of its failure to achieve NOF and CRA and not because of change of its activity (2) Reserve Bank of India has categorically clarified that the Company will continue to be governed by the relevant provisions of the Reserve Bank of India Act, 1954 and various directions/ instructions issued by Reserve Bank of India from time to time even after cancellation of Certificate of Registration and (3) RBI had directed the applicant for disposal of financial assets and bring them below 50% within a period of three years from the date of cancellation of COR.
20. The contention of the applicant that it is no more governed by RBI on account of cancellation of COR can not be accepted as RBI has made it very clear in para 2 of its letter No.DNBS (H) CMS No./ 1586/00.00.468/ 2018-19 dated 03.04.2019 . Further, the intention of RBI , while giving direction to applicant to dispose of its financial assets and bring them below 50% within a period of three years from the date of cancellation of COR, must have been that the petitioner will recover the amount lent to the borrowers and in turn will pay that amount to Financial Creditor or use it for reducing the accumulated losses. But we observe that petitioner has not done disposal of financial assets which can be done either through recovery from borrowers or by selling off these assets on some discounted value to asset reconstruction companies/ banks etc.

On the contrary, the applicant wrote off these assets from the books by passing simple entries in the books of account and thus, brought it down to 50% of the total assets. Thus, the above act of the applicant can not be treated as compliance to the direction given by RBI in its letter of cancellation of COR.

21. Finally , on analyzing all the facts as discussed above , we find that beyond doubt the petitioner was FSP as on the date of credit facilities sanctioned by the financial creditors and also on the date of default by petitioner and even as on date also its activities continue to be the same and still it is regulated by RBI . Further, we observe that COR issued by RBI was containing a condition to dispose of the financial assets and bring it below 50% of the total assets within three years from the date of cancellation of COR so that petitioner can come out from the Principal Business Criteria (PBC) stipulated for NBFCs but the petitioner has not placed any record of disposal of its financial assets bringing them below 50% as directed by RBI , instead *wrote them off* from the books which in our considered opinion will not amount to compliance of direction given by RBI. We also find merit in the submission of SBI that instead of recovering the said debt, the Petitioner has written off its debts only with a sole intention to be outside the purview of Section 277 of the Code.
22. Therefore, in the light of our discussion as above, we are of the firm view that the respondent is a *Financial Service Provider* and thus, stands excluded from definition of 'Corporate Person' as defined in Section 3(7) of IBC, 2016 and therefore, Chapter II of I&B Code, is not applicable to the present petition for initiation of Corporate Insolvency Resolution

Process, consequently, the Petition is not maintainable at the behest of the applicant. The point is decided accordingly.

23. In the light of our discussion and finding on Point above, this petition is liable to be dismissed. Hence, we here by dismiss the same, however without costs.
24. In the result this petition is dismissed without costs.

SD/-

(Charan Singh)  
Member (Technical)

SD/-

(Dr. N. Venkata Ramakrishna Badarinath)  
Member (Judicial)

*Binnu*