

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

CP (IB) No.665/7/HDB/2018

U/s 7 of IBC, 2016  
R/w Rule 4 of I & B (AAA) Rules, 2016

**In the matter of:**

State Bank of India  
Stressed Assets Management Branch-II  
(SAMB-II), First Floor  
TSRTC Bus Stand Complex  
Kachiguda  
Hyderabad.  
Corporate Office at State Bank Bhavan  
Madame Cama Road  
Mumbai, Maharashtra.  
represented by its Assistant General Manager  
Mr.C. Prakash Reddy.

.. Petitioner/  
Financial Creditor



**VERSUS**

Messrs Meena Jewellers &Diamonds Private Limited  
Registered Office at:  
Shop No.63, 5-9-58/1-15  
Babukhan Estate  
Basheer Bagh,  
Hyderabad TG 500029.

.. Respondent/  
Corporate Debtor

**Date of order: 26 .11.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

**Parties / counsels present:**

For the Petitioner : Shri Anil Komireddy, advocate  
Shri G.P. Yash Vardhan, advocate.

For the Respondent: Shri R. Raghunandan Rao, advocate.  
Shri G. Bhupesh, advocate.

**Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)**

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dated 21.11.2009, sanction letter dated 26.03.2010, resolution of the Board of Directors of the corporate debtor dated 29.03.2010, agreement of loan dated 31.03.2010, agreement of hypothecation of goods and assets in Form C-2 dated 31.03.2010. deed of guarantee dated 31.03.2010, deed of guarantee in Form C-4 dated 31.03.2010, omnibus counter guarantee dated 31.03.2010, letter-cum-undertaking by corporate-debtor dated 31.03.2010, and several other documents.

(iii) The petitioner- financial creditor has addressed notice dated 01.02.2017 (ANNEXURE 51) under section 12(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the corporate- debtor calling upon it to pay total dues of Rs.74,35,58,832.55 (Rupees seventy four crore thirty five lakh fifty eight thousand eight hundred thirty two and paise fifty five only) as on 31.01.2017 with further interest and incidental expenses and costs.

4. The respondent/corporate debtor filed reply. The objections raised in the counter, in brief, are as under:-

(i) The respondent/corporate debtor had initially approached Vijaya Bank for financial assistance. When facilities as agreed were not disbursed by said Bank the respondent/corporate debtor has approached the petitioner- financial creditor.

(ii) The respondent/corporate debtor has admitted in para 5(c) of its counter that,

*“.. .. unhealthy competition in the market, non-receipt of debts from dealers, global recession including demonetization, imposition of excise duty and closure of shops for 5 to 6 months due to national strike, the account of the corporate debtor was forced to become irregular ... “*

However, respondent/corporate debtor has objected to the petitioner/ financial creditor arbitrarily classifying respondent/corporate debtor as NPA and stated that due to such arbitrary classification the respondent/corporate debtor has lost its 25 years' credibility in the market.

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before the Hon'ble Chief Metropolitan Magistrate, Hyderabad at Nampally seeking appointment of an Advocate Commissioner for taking physical possession of the assets of corporate debtor. The learned Magistrate vide order dated 23.02.2018 has sought certain documents from the petitioner- financial creditor. Said proceedings have ultimately been dismissed by the learned Magistrate on the ground of suppression of material facts.

(ix) It is stated in the counter that the petitioner- financial creditor has preferred writ petitions before the Hon'ble High Court and the Hon'ble High Court has disposed of said writ petitions with liberty to file fresh application under section 14 of the Securitisation Act. The petitioner-financial creditor has preferred such applications before the learned Magistrate and the same are pending as on date.

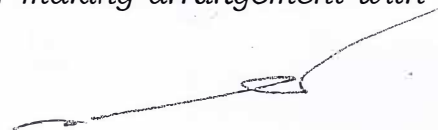
(x) In the meanwhile the respondent/corporate debtor had preferred an appeal against the order of the Hon'ble High Court before the Hon'ble Supreme Court. On such appeal is Appeal No.4786 of 2019 filed by Meena Exclusive Pvt Ltd, which was disposed of by the Hon'ble Supreme Court on 18.02.2019 reiterating the position stated by the Hon'ble High Court, viz. granting leave to the petitioner to file fresh application before the learned Chief Metropolitan Magistrate. Against the said order dated 18.02.2019 the corporate debtor had preferred a review application bearing Diary No.20297 and the same is pending as on date.

(xi) It is also stated in the counter that sister-companies of respondent/corporate debtor had preferred similar appeals before the Hon'ble Supreme Court, which are pending as on date.

(xii) The respondent/corporate debtor relied on the decision of the Hon'ble NCLAT rendered in **S.C. SEKARAN Vs. AMIT GUPTA & OTHERS**, wherein it is held that,

*"The 'Liquidator' is supposed to keep the companies as 'going concern' even during the period of liquidation. If so necessary, the 'Liquidator; can take steps under section 230 of the Companies act, 2013 after consultation with the 'members' or 'the creditors' of the Companies for making arrangement with the third party. ..."*







5. **Rejoinder** is filed by the petitioner/ financial creditor, reiterating the averments made in the petition and denying all the submissions made by the respondent/ corporate debtor in the counter. The petitioner has contended:

(i) That the petitioner- financial creditor has denied all the allegations levelled in the counter and submitted that the petitioner- financial creditor has not suppressed any facts.

(ii) It is submitted in para 7 of the rejoinder that financial assistance has been provided by the petitioner- financial creditor to the respondent- corporate debtor vide sanction letters dated 26.03.2010, 10.02.2011, 30.01.2012, 25.05.2012, 15.10.2012, 17.10.2013, 20.12.2014, 19.01.2016, the petitioner has relied on the admission made by the corporate debtor in **para 5(c)** of its reply that,

*“.. due to unhealthy competition in the market, non-receipt of debts from dealers, global recession including demonetization, imposition of excise duty and closure of shops for 5 to 6 months due to national strike, the account of the corporate debtor was forced to become irregular .. .”*

The petitioner- financial creditor contends that the above admission itself shows that the respondent- corporate debtor was unable to repay the financial assistance availed from the financial creditor as stipulated under the sanction letters. The petitioner- financial creditor would contend that the acts of the corporate debtor becoming irregular and committing default in payment of principle and interest thereon led to the loan account of the corporate debtor getting classified as NPA on 27.09.2016 in accordance with the guidelines relating to asset classification issued by RBI.

(iii) It is submitted in para 8 of the rejoinder that the petitioner- financial creditor submitted that the corporate debtor has admitted in its reply dated 27.03.2017 that it is ready to pay the amounts towards interest due every month regularly. It is denied by the petitioner- financial creditor that the corporate debtor has made any request to revive/ reschedule the facilities. This statement is



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made by the corporate debtor allegedly to counter the notice issued by the financial creditor under section 13(2) of SARFAESI Act, 2002. The petitioner- financial creditor submitted that the corporate debtor has not filed any specific or concrete proposal for resolution of the loan amounts of the corporate debtor.

(iv) It is submitted in para 9 of the rejoinder that the corporate debtor vide its letter dated 22.02.2017 (Annexure-A-52, page no.558, Volume No.3 of the documents filed by the financial creditor) has brought to the notice of the financial creditor that it is organising funds from the funder to clear the outstanding loan amounts of the financial creditor. However, the corporate debtor failed to keep such proposal made in the said letter. The corporate debtor has promised to repay an amount of Rs.5.00 crores and Rs.10.00 crores in first week and second week of March 2017 respectively, but could not keep the promise. The financial creditor has granted two months' time to the corporate debtor and gave indulgence not to take any recovery measures against the corporate debtor. The financial creditor informed the corporate debtor vide its letter dated 31.03.2017 (Annexure A-57, Page No.566, Volume No.3) that it was directed to submit RBI permission and sanction letter issued by a funder, but the corporate debtor did not provide the same. The financial creditor had asked the corporate debtor either to close all the loan accounts by 31.03.2017 or to submit a definite plan for resolution of the loan accounts failing which the financial creditor would be forced to initiate legal proceedings. Thus, the corporate debtor was granted ample opportunity to clear the dues. However, the corporate debtor has neither regularised the loan account by paying the outstanding principle and interest under the loan account nor submitted any concrete resolution plan by way of organising funds from the proposed funder. The financial creditor vide its letter dated 07.04.2017 (Page No.31, Volume-1) has informed the corporate debtor that due to failure of the corporate debtor in repaying the outstanding amount, financial creditor had to invoke the provisions of SARFAESI Act, 2002 calling upon the corporate debtor to repay the entire amount.

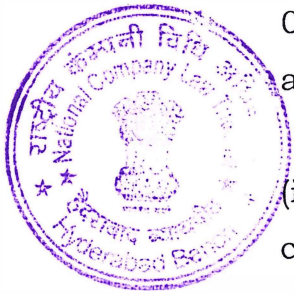
(v) It is submitted in para 10 of the rejoinder that the financial creditor has denied that it has initiated measures under section







(viii) It is submitted in para 13 of the rejoinder by the financial creditor that the proceedings in Crl. M.P. Nos.99-103 of 2018 before the Hon'ble Chief Metropolitan Magistrate, Hyderabad at Nampally, orders passed by the Hon'ble High Court of Hyderabad in favour of the financial creditor in Writ Petitions No.41784 of 2018 and other petitions and subsequent filing of Cr. MP Nos.48 of 019 and other applications and the Hon'ble Supreme Court dismissing SLP No.4786 of 2019 holding that it is not inclined to interfere with the impugned judgment passed by the Hon'ble High Court of Hyderabad in WP No.41784 of 2018 in favour of the financial creditor, are all part of the record. It is submitted by the financial creditor that **it is the settled law that pendency of proceeding before any court/ tribunal will not bar the financial creditor from filing an application under 7 of the IBC.** The financial creditor under section 7 of IBC has only to establish debt and default. In the present case, the financial creditor has produced all necessary documents to establish that the corporate debtor has availed financial assistance and also proved the default committed by the corporate debtor in repayment of the outstanding loan amounts. It is submitted by the financial creditor that the corporate debtor itself vide its OTS proposals dated 26.05.2017 and 01.08.2017 (Pages 33-41 in Volume No.1) has admitted its liability and the debt payable to the financial creditor.



(ix) It is submitted in para 14 of the rejoinder by the financial creditor that the corporate debtor has resolved to obtain financial assistance from the financial creditor in its minutes of the following meetings:

Meeting dated	Document filed by the financial creditor available at
01.02.2012	A-16, Page No.182 &183, Volume-I of the documents filed by the financial creditor.
02.06.2012	A-19, Pages No.195 & 196, Volume-I of the documents filed by the financial creditor.
18.10.2013	A-35, Pages No.298 & 299, Vol.II of the

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documents filed by the financial creditor.

Said financial assistance from the financial creditor is to be secured by creation of deposit of title deeds of immovable properties of the corporate debtor and guarantee to be given by the directors. Pursuant to such resolutions only the corporate debtor has **executed various agreements and other confirmation letters vide pages no.350-385, Volume-II.** The question of being any dispute with regard to the properties mortgaged and guarantees executed does not arise. It is submitted by the financial creditor that in OTS proposal offered by the corporate debtor, the corporate debtor has admitted the amount due and liable to be paid to the financial creditor.

(x) It is submitted in para 15 of the rejoinder by the financial creditor that the lives of the employees and their families will not be put on roads as is claimed by the corporate debtor; on the contrary they will be protected by the IRP. It is submitted that the retail shops have been closed for more than two years and the shops remain sans activity, sans jewellery stocks. It is submitted that the purpose of the IBC is not to liquidate but to revive them. Bearing the said object in mind the financial creditor has filed the Company Petition in order to ensure that the interest of all the stakeholders of the corporate debtor is protected and the company is revived.

(xi) It is submitted in para 16 of the rejoinder by the financial creditor that existence of debt has amply been proved in the preceding paragraphs. As regards default committed by the corporate debtor, the corporate debtor has admitted its liability to repay outstanding loan amounts by the following among other documents:

- (a) OTS request letters dated 26.05.2018 and 01.08.2017 (Pages 39, Volume No.1 of the documents filed by the corporate debtor).
- (b) Statement of account of the corporate debtor along with the certificate under Bankers Book of Evidence.

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debtor that the account was treated as NPA on 28.10.2016. The counsel contended that the corporate debtor after receipt of notice under section 13(2) of SARFAESI Act, 2002 requested the financial creditor to revive/ re-schedule the facilities basing on the high value of the assets which are secured by the financial creditor. The counsel contended that in fact, the corporate debtor even sent another detailed OTS proposal on 26.05.2017. However, the financial creditor initiated action under section 13(4) of SARFAESI Act, 2002 on the very same day and further issued possession notice.

10. The counsel contended that the corporate debtor has submitted revised OTS proposal dated 01.08.2017 with a request to settle the account at Rs.15 crores. The financial creditor again rejected the OTS proposal. The corporate debtor is searching for a strategic investor to revive the company. The counsel contended that the corporate debtor filed written submissions before the Debt Recovery Tribunal in OA No.402 of 2017. The counsel contended that the financial creditor filed petition before the Court of the learned Chief Metropolitan Magistrate, Hyderabad for appointment of Commissioner to take possession of the assets of the corporate debtor. The counsel contended that after hearing the corporate debtor the learned Chief Metropolitan Magistrate dismissed the petition. The financial creditor filed writ petition which was disposed of by the Hon'ble High court.

11. The financial creditor thereafter filed fresh petitions before the learned Chief Metropolitan Magistrate and the corporate debtor preferred appeal to the Hon'ble Apex Court against the order of the Hon'ble High Court and the same was also disposed of by the Hon'ble Apex Court reiterating the stand taken by the Hon'ble High Court. The counsel contended that the object of the Code is to revive the company, but not to see the company to be liquidated. The counsel contended that there is no bona fide on the part of the financial creditor in initiating action against the corporate debtor and the application is liable to be dismissed.

12. The petitioner is the financial creditor. The petitioner has filed various documents in proof of its case that it has granted loan



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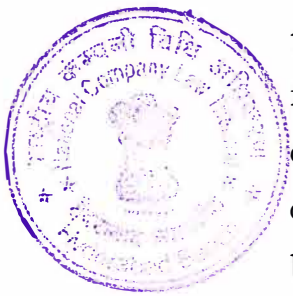
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to the corporate debtor towards working capital limits of Rs.68 crores and the corporate debtor committed default. It is true that the financial creditor has filed number of documents which would go to establish the case of the financial creditor that it has sanctioned working capital limits of Rs.66 crores to the corporate debtor and that the corporate debtor also executed revival letters and balance confirmation letter in favour of the financial creditor and thereby acknowledged the debt due to the financial creditor.

13. The corporate debtor filed various documents to show that proceedings are initiated against it by the financial creditor under SARFAESI Act, 2002 and the matter was taken up to the Hon'ble Apex Court and the Hon'ble Apex Court has also confirmed the order passed by the Hon'ble High Court. Mere fact that proceedings are already initiated against the corporate debtor under SARFAESI Act, 2002 is not a bar for the financial creditor to initiate action against the corporate debtor under section 7 of the IB Code. It is the settled law that the provisions of the IB Code prevail over other enactments. Pendency of proceedings before the Debt Recovery Tribunal is not a bar for the financial creditor to initiate action under section 7 of the IB Code against the corporate debtor.

14. Absolutely there is no proof that the corporate debtor paid to the financial creditor more than the loan availed by it from the financial creditor. There is nothing to show that the corporate debtor has discharged the debt due to the financial creditor. On the other hand the corporate debtor executed revival letters and also balance confirmation letters.

15. This is a petition under section 7 of the IB Code and the Tribunal to see whether the financial creditor is able to establish the debt due by the corporate debtor and also default. Here no dispute is raised with regard to the sanction of working capital limits to the tune of Rs.66 crores which was availed by the corporate debtor. There is also no material to show that the corporate debtor discharged the debt. On the other hand the corporate debtor renewed the loans by executing revival letters and also by executing balance confirmation letters. The corporate debtor, no doubt, filed several documents which relate to the



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an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from **26<sup>th</sup>November 2019** till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri Kondapalli Venkata Srinivas, Address: 3-4-756/1, Flat No.402, 4<sup>th</sup> Floor, Sai Raghavendra Residency, Barkatpura, Hyderabad – 500027.  
E-mail: [kvs@assetsadvisory.com](mailto:kvs@assetsadvisory.com)  
Registration No.IBBI/ IPA-001/ IP-P00520/ 2017-18/10945, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.



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26.11.19  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

*Ratakonda Murali*  
26.11.19  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

Karim

*Karim*  
**Dv. Regr/Asst. Regr/Court Officer/**  
**N. Law Company Law Tribunal, Hyderabad Bench**

प्रमाणित प्रति  
**CERTIFIED TRUE COPY**  
केस संख्या  
CASE NUMBER... *CP(IB) No. 665A/HOR/2018*  
निर्णय का तारीख  
DATE OF JUDGEMENT... *26/11/19*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON... *3/12/19*