S.No.2

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-04-2023 AT **10:30 AM**

CP (IB) No. 259/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:
Indian Overseas Bank Asset
Recovery Management Branch **…Financial Creditor**

VS

Megafin Securities Limited **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders pronounced. Recorded vide separate sheets. In the result, the Petition is allowed and CIRP initiated against Corporate Debtor. Moratorium is granted and Ms. Mumenneni Vazra Lakshmi, Insolvency Professional is appointed as IRP.

SD/- SD/-

MEMBER (T) **MEMBER (J)**

Swapna

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH No.1, HYDERABAD

CP (IB) No.259/7/HDB/2022

U/s 7 of I&B Code, 2016 read with Rule 4 of I & B (AAA) Rules, 2016.

In the matter between:

Indian Overseas Bank
Asset Recovery Management Branch
1-8-522/27/2, 3, 4 3rd Floor
IoB Platinum Plaza
Opp Chandana Bros., Chikkadpally
Hyderabad-500020.

Regd. Office: 6th Floor
Annex Building, 763, Anna Salai
Chennai – 600002
Tamil Nadu
Rep by its chief Manager
Raushan Kumar.

.. Petitioner
Financial Creditor

VERSUS

M/s Megafin Securities Limited
Corporate Guarantor M/s Blossom Oils & Fats Ltd
Flat no.205, 6-3-665
Lumbini Enclave, Punjagutta
Hyderabad – 500082
Telangana

.. Respondent
Corporate Debtor

Date of order: 11th April 2023

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)
and
SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)

Parties / counsels present:

For petitioner : Shri Dishit Bhattacharjee, Advocate with Shri Prasoon Das, Advocate.

For respondent: Dr. S.V. Ramakrishna, Advocate with Ms. Oorvi Agarwal, Advocate.

ORDER

The petition is preferred by Chief Manager of Indian Overseas Bank, Asset Recovery Management Branch, Hyderabad having letter of authority dated 07.01.2022 (Annexure-1).

2. The respondent/ M/s Megafin Securities Limited is engaged in the business of processing and preservation of meat, fish, fruit vegetables, oils and fats. The respondent stood guarantor to one M/s Blossom & Fats Limited, which is under liquidation.

3. The averments made in the application are:

3.1 One M/s Blossom Oils & fats Limited (in liquidation) had availed credit facilities, such as, cash credits, working capital term loan, letter of credit, letter of guarantee and funded interest term loan under different loan documents.

3.2 To secure repayment of financial assistance of said M/s Blossom Oils & fats Limited, the Corporate Debtor stood as a Corporate Guarantor and executed Guarantee Agreement dated 05.10.2013 (ANNEXURE-12) securing repayment of M/s Blossom Oils & Fats Limited. Besides, the following documents have been executed for the purpose of above financial assistance:

(i) Credit Sanction Advice dated 11.11.2011, 02.04.2012, 26.03.2013, 05.10.2013 issued by IoB. ANNEXURE-4.
(ii) Guarantee for Cash Credit dated 14.11.2011. ANNEXURE-5
(iii) Confirmation letter evidencing creation of supplemental mortgage dated 14.11.2011. ANNEXURE-6
(iv) Letter of hypothecation dated 14.11.2011. ANNEXURE-7
(v) General Counter Guarantee dated 14.11.2011. ANNEXURE-8
(vi) Memorandum of deposit of title deeds dated 24.11.2011. ANNEXURE-9
(vii) Letter of hypothecation dated 05.10.2013. ANNEXURE-10.
(viii) Term Loan Agreement dated 29.06.2013. ANNEXURE-11
(ix) Guarantee for loans. Cash credits, etc. of M/s Megafin Securities Ltd and others dated 05.10.2013. ANNEXURE-12
(x) Term Loan Agreement dated 29.10.2013. ANNEXURE-13

3.3 Having availed said financial assistance, said M/s Blossom Oils & Fats Limited has defaulted on 01.01.2015. The Financial Creditor issued notices to the respondent herein as well as M/s Blossom Oils & Fats Limited, recalling the outstanding amounts. M/s Blossom Oils & Fats

Limited plunged into Non-Performing Asset (NPA) on 31.03.2015 and thereafter went under liquidation vide order dated 10.10.2017 of this Tribunal in CA No.168 of 2017 in CP (IB) No.23/10/HDB/2017 and Shri TSN Raja was appointed as Official Liquidator.

3.4 Since the outstanding amounts were paid neither by M/s Blossom Oils & Fats Limited nor the respondent, the Financial Creditor has approached the Debt Recovery Tribunal (DRT). The DRT passed decree and issued Recovery Certificate.

3.5 The DRT vide order dated 16.08.2019 in OA No.242 of 2016 (ANNEXURE-16) directed the respondent/ Corporate Debtor and the guarantors to pay the amounts, but in vain.

3.6 Hence, this Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, claiming a sum of **Rs.531,84,50,653/-** (Rupees five thirty one crore eighty four lakh fifty thousand six hundred and fifty three only) towards default from the date of decree ordered by DRT-I, Hyderabad in OA No.242 of 2016 on 16.08.2019. By the petition the Financial Creditor seeks admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

4. It may be noted that the Tribunal has issued notice to the respondent/ Corporate Debtor vide order dated 06.09.2022 returnable on 26.09.2022.

The Financial Creditor, vide Memo dated 21.09.2022, has filed proof of service of notice to the Corporate Debtor, enclosing therewith the original Speed Post envelop returned by the India Post with a remark, "**Left. Return(ed) to sender**". It was only when the Tribunal directed issuance of fresh notice on 26.09.2022, to the Corporate Debtor through Post and also by way of publication in daily newspaper and such newspaper publication having been effected, Dr. S.V. Ramakrishna, learned counsel appeared on 10.11.2022. Thereafter, having obtained one or two extensions counter was filed by the learned counsel for the Corporate Debtor.

5. The respondent filed PRELIMINARY COUNTER dated 21.12.2022 contending that**:**

(i) The Financial Creditor has shown the respondent/ company as Corporate Guarantor of M/s Blossom Oils & Fats Limited, but the petition is filed under section 7 of the I&B Code, 2016 read with Rule 4 of the I&B (AAA) Rules, 2016. Said provisions are not applicable to a Corporate Guarantor. As such the present petition is not maintainable.

(ii) The respondent submitted that applicable procedural safeguards must be strictly observed. This petition cannot be considered in absence of adherence to the provisions of law. If it is considered it would set a wrong precedent and would lead to disastrous consequences.

6. The petitioner/ Financial Creditor has filed Written Arguments dated 20.01.2023 contending that:

(i) Various credit facilities were obtained by M/s Blossom Oils & Fats Limited (in liquidation) from the petitioner/ Financial Creditor, to which the respondent herein stood Corporate Guarantor and executed Guarantee Agreement dated 05.10.2013 (ANNEXURE-12)

(ii) However, the principal borrower/ M/s Blossom Oils & Fats Limited committed default on 01.01.2015. The Financial Creditor issued notices to the principal borrower and the guarantors including the respondent herein. Unfortunately, the principal borrower plunged into liquation and Shri TSN Raj was appointed as Official Liquidator.

(iii) Neither the principal borrower nor the guarantor paid the outstanding dues, the Financial Creditor had filed OA No.242 2016 before the DRT, Hyderabad. The DRT vide order dated 16.08.2019 in OA No.242 of 2016 (ANNEXURE-16) directed the respondent/ Corporate Debtor and the guarantors to pay the amounts with interest at the rate of 14.95% per annum. Since the said directions were not complied with the Financial Creditor is constrained to file this petition under section 7 of the I&B Code, 2016.

(iv) It is submitted by the Financial Creditor that as per Guarantee Agreement dated 05.10.2013, the Corporate Debtor has agreed that the amount guaranteed shall be due and payable on demand after notice. When Demand Notices were issued to the Corporate Debtor from time to time, the Corporate Debtor had denied that the Corporate Debtor owed any debt to the Financial Creditor. It is further submitted by the Financial Creditor that any admission/ acknowledgement of debt by the principal borrower

shall be binding on the Corporate Debtor. The Financial Creditor reproduced Clauses 7, 9 and 11 of the Guarantee Agreement dated 05.10.2013 (ANNEXURE-12), which are as under:

> "*7. And I/ we further agree that the amount hereby guaranteed shall be due and payable to you on demand after notice requiring payment of the same shall have been delivered or sent through the post by registered letter addressed to me/ us at my/ our representative's last known place/ places of abode or business in Hyderabad."*
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> *"9. And it further agreed and declared that this guarantee shall be a continuing guarantee irrespective of any sum or sums which may be paid into the account of the principal at any time during the continuance of the guarantee and shall remain in force until cancelled by my/ our written authority, the amount then due to be subject to this guarantee and secured thereby."*
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> *"11. It is also agreed that any admission or acknowledgement in writing by the principal debtor of the amount of indebtedness of the principal debtor in relation to the subject matter of this guarantee or any judgement or award which may be obtained by you against the principal debtor shall be binding on me/ us and I/ we accept the correctness of any statement of account served on the principal debtor which is duly certified by any Manager or officer of the Bank, and shall be binding and conclusive as against me/ us also and I/ we further agree that in making an acknowledgment or making payment he shall be treated as my/ our duly authorised agent for purpose of Indian Limitation Act of 1963*."

(v) Since the Corporate Debtor could not be served with Demand Notice (Form-B), since the same was returned with endorsement 'No such addressee', the same was required to be published in Nava Telangana and Financial Express dated 03.08.2022. However, it could not elicit response.

(vi) It is submitted that the Corporate Debtor had also executed Letter of Authorisation and pledged 21,39,000 equity shares for Rs.10 each in favour of the Corporate Debtor.

(vii) On the point of liability of guarantor is co-extensive with that of the principal borrower and that the status of the guarantor metamorphoses into a debtor upon default, the Financial Creditor has relied on the following decisions:

- Laxmi Pat Surana Vs. Union Bank of India & another, (2021) 8 SCC 481 [Paras 19, 21, 22, 23, 24,25, 26, 27, 28. 29 and 30].

- K. Paramasiva Vs. Karur Vysya Bank Ltd & another, 2022 SCC Online SC 1163. Para 13 of the said judgment reads:

> "*13. Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor*."

7. The respondent/ Corporate Debtor has filed Written Arguments dated 23.01.2023 contending that:

(i) Narrating the chronology from 16.02.1995 to 16.08.2022, the Corporate Debtor contends that the present claim of the Financial Creditor is barred by limitation. The account of the main borrower became Non-Performing Asset (NPA) on 31.03.2015. Default had occurred 90 days prior to the said event. The present petition is filed seven years thereafter.

Thus, the present petition is hopelessly time-barred and hit by section 238A of the I&B Code, 2016.

Though technically it may appear to be in favour of the Financial Creditor, the present petition is not maintainable under the provisions of law. Even section 238A of the I&B Code, 2016 would not salvage the Financial Creditor. It is stated by the Corporate Debtor that entire capital has been invested in the borrower company which is under liquidation and there is nothing left with the Corporate Guarantor, which is a dead company now.

(ii) It is submitted by the Corporate Debtor that where consequences are serious of any action, applicable procedural safeguards must be strictly observed. Such observance is lacking in the present case. Action ought to have been taken "on occurrence of default' rather than three years later.

(iii) The Corporate Debtor laid emphasis on the phrase "*when a default has occurred*" occurring in section 7(1) of the I&B Code, 2016.

(iii) The Corporate Debtor has also relied on phrase "on the occurrence of a default" as occurring in section 8 of the I&B Code, 2016, besides similar expression occurring in sections 6, 7 and 10 of the I&B Code, 2016. By means of the above sections the Corporate Debtor contends that proceedings under I&B Code should be made at the earliest possible occasion, not after exhausting all other remedies availed to the Financial Creditor.

(iv) It is submitted by the Corporate Debtor that the intention of the Legislature in enacting section 238A of the I&B Code, 2016 is for claims to be made before the Resolution Professional or Liquidator and not for

initiating CIRP. Besides, Limitation Act, 1963 is meant for disputes, suits and claim before the authorities concerned for recovery purpose, not for initiation of CIRP under the I&B Code, 2016.

(v) Under the guise of 'resolution process' the Financial Creditor is tacitly trying to execute Recovery Certificate issued by the Recovery Officer, DRT, Hyderabad through this Adjudicating Authority invoking section 7 of the I&B Code, 2016. Having exhausted multiple ways to recover dues, such as, invoking provisions of RDDB Act, 1993, SARFAESI Act, 2002, filing complaints under PML Act, 2022, etc., now the Financial Creditor seeks to invoke section 7 of the I&B Code, 2016. It is serious case of misuse of law.

(vi) The respondent/ Corporate Debtor has relied on the recommendations of Insolvency Law Committee Report of March 2018. Hon'ble NCLAT in C. Shivakumar Reddy Vs. Dena Bank and others, 2019 SCC OnLine NCLAT 907 has discussed the same. Paras 28.02 and 28.3 of the said Report is reproduced hereunder:

> "*28.2 .. .. Though the Code is not a debt recovery law, the trigger being 'default in payment of debt' renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per section 30(4) of the Code.*

28.3 Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case to case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy."

(vii) An appeal was preferred before the Hon'ble Supreme Court by Dena Bank against the above order of the Hon'ble NCLAT. The Hon'ble Supreme Court, in the said appeal, viz. Dena Bank Vs. C. Shivakumar Reddy, 2021 SCC OnLine SC 543 has observed as under:

"*141. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.*"

The respondent/ Corporate Debtor alleges that the above observations of the Hon'ble Supreme Court are anti-thesis to the provisions of sections 7, 9 and 10 of the I&B Code, 2016. The respondent further submits that:

"*Supreme Court is supreme, but it is not infallible and its decisions may require reconsideration sometimes.*"

8. In the light of the contents afore stated the points that emerge for our consideration are;

(1) Whether the debt under the present application is barred by limitation?

(2) Whether there is a financial debt of a sum over rupees one crore is due and payable by the Respondent to the applicant? if so, whether the Respondent *defaulted* in repayment of the same?.

9. We have heard Shri Dishit Bhattacharjee, learned counsel for the Financial Creditor and Dr. S.V. Ramakrishna learned counsel for the Corporate Debtor. Perused the record and the written submissions.

Point (1):

Whether the debt under the present application is barred by limitation?

10. The present application which is directed against the Corporate Guarantor of the principle borrower M/s. Blossom Oils & Fats Limited, which has been liquidated, has been resisted by the respondent inter-alia, on two grounds. *Firstly,* on the plea of limitation and *nextly*, that the Respondent is not a Financial Creditor in terms of section 5 of IB Code.

11. Needless to say that whether or not the plea of limitation is raised by the opposite party, it is imperative for the Applicant to establish that the claim as made/right asserted is within the prescribed period of limitation and the *burden* to establish the same lies on the Applicant.

11.1 Indisputably the applicant had succeeded in obtaining an Order for recovery of a sum over Rs.271,16,89,081/- together with interest, against the principle borrower M/s. Blossom Oils & Fats Limited, as well as the Respondent/ Corporate Debtor, besides other guarantors in OA.No. 242 of 2016 dated 16.08.2019, on the file of Debt Recovery Tribunal, Hyderabad.

11.2 Admittedly the present application under section 7 of IBC has been instituted on the basis of the order of DRT dated 16.08.2019. Hon'ble Supreme Court of India in Dena Bank Vs. C. Shivkumar Reddy, 2021 SCC Online SC 543 :

> *"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."*

11.3 Therefore, in the case on hand a *fresh period of limitation of three years* commences from the date of issuance of Recovery Certificate by the DRT, Hyderabad, pursuant to its Order dated 16.08.2019. However, since the applicant has not filed the recovery certificate the three years period of limitation for filing the present application is to be reckoned from the date of the Order of DRT, i.e. 16.08.2019. Here it is pertinent so state that in terms of Section 4 of the Limitation Act for the purpose of calculating limitation the date on which the order has been passed shall be excluded.

Therefore if 3 years prescribed period of limitation is calculated from 17.08.2019, for the purpose of filing the present application the same ends by 16.08.2022. As per the e-filing record the present application has been filed on 16.08.2022, hence the debt under the present application is not barred by limitation.

Point is answered accordingly.

12. Point2.

Whether there is a financial debt of a sum over rupees one crore is due and payable by the Respondent to the applicant? If so, whether the Respondent *defaulted* in repayment of the same?

12.1 Adverting to the plea of the learned counsel for the Corporate Debtor, that the proceedings under Section 7 of IBC are not maintainable against the Corporate Guarantor, at the outset, we refer to the following clauses in the guarantee agreement the execution of which is not in dispute.

> *"7. And I/We further agree that the amount hereby guaranteed shall be due and payable to you on demand after notice requiring payment of the same shall have been delivered or sent through the post by registered letter addressed to me/ us at my/our representative's last known place / places of abode or business in Hyderabad."*
>
> *9. And it further agreed and declared that this guarantee shall be a continuing guarantee irrespective of any sum or sums which may be paid into the account of the principal at any time during the continuance of the guarantee and shall remain in force until cancelled by my/ our written authority, the amount then due to be subject to this guarantee and secured thereby."*
>
> *"11. It is also agreed that any admission or acknowledgement in writing by the debtor of the amount of indebtedness of the principal*

debtor In relation to the subject matter of this guarantee or any judgement or award which may be obtained by you against the principal debtor shall be binding on me/us and I We accept the correctness of any statement of account server on the principal debtor which is duly certified by any Manager or Officer of the Bank, and shall be binding and conclusive as against me/us also and I/We further agree that in making an acknowledgement or making payment he shall be treated as my/our duly authorized agent for purpose of Indian Limitation Act of 1963."

12.2 Thus, it is quite clear from the clauses above of the guarantee agreement the Corporate Guarantor had guaranteed the due repayment of the amount payable by the borrower, upon the default on the part of the borrower. Admittedly the Financial Creditor had issued a notice dated 25.11.2015 not only to the principle borrower but also to the Respondent/Corporate Debtor demanding payment of the outstanding dues by the borrower as well as the respondent/ corporate debtor. However, neither of them neither paid the amount nor disputed their liability. Hence the Applicant initiated proceedings before DRT, Hyderabad against the borrower, the Respondent/ Corporate Guarantor and others and succeeded in obtaining an order for Recovery of its outstanding dues. Indisputably, the Respondent failed in raising any plea as to the maintainability in the proceedings against it before DRT, Hyderabad, as such the respondent/corporate debtor is estopped under law from now contending that it is not liable for the amount due and payable by the Corporate Debtor to the applicant.

12.3 Here we profitably quote the ruling of Hon'ble Supreme Court of India, in Lakshmi Pat Surana Vs. Union Bank of India, 2021 (8) SCC Page 481 wherein Hon'ble Supreme Court has reiterated that;

"22. The term "financial creditor" has been defined in Section 5(7) read with expression "creditor" in Section 3(10) IBC to mean a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. This means that the applicant should be a person to whom a financial debt is owed. The expression "financial debt" has been defined in Section 5(8). Amongst other categories specified therein, it could be a debt along with interest, which is disbursed against the consideration for the time value of money and would include the amount of any liability in respect of any of the guarantee or indemnity for the items referred to in sub clauses (a) to (h) of the same clause. It is so provided in sub-clause (i) of Section 5(8) IBC to take within its ambit a liability in relation to a guarantee offered by the corporate person as a result of the default committed by the principal borrower. The expression "debt" has been defined separately in the Code in Section 3(11) to mean a liability or obligation in respect of "a claim which is due from any person and includes a financial debt and operational debt. The expression "claim" would certainly cover the right of the financial creditor to proceed against the corporate person being a guarantor due to the default committed by the principal borrower. The expression "claim" has been defined in Section 3(6), which means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. It also means right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment in respect of specified matters.

23. Indubitably a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in

Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

24. A priori, in the context of the provisions of the Code, if the guarantor is a corporate person [as defined in Section 3(7) IBC], it would come within the purview of the expression "corporate debtor", within the meaning of Section 3(8) IBC.

25. It may be useful to also advert to the generic provision contained in Section 3(37). It postulates that the words and expressions used and not defined in the Code, but defined in enactments referred to therein, shall have the meanings respectively assigned to them in those Acts. Drawing support from this provision, it must follow that the lender would be a financial creditor within the meaning of the Code. The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower bot being a corporate person, it would still be covered within the meaning of the expression "corporate debtor" in Section 3(8) IBC.

26. Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 IBC against the corporate person who had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 IBC despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.

27. To get over this position, much reliance was placed on Section 5(5-A) IBC, which defines the expression "corporate guarantor" to mean a corporate person, who is the surety in a contract of guarantee to a corporate debtor. This definition has been inserted by way of an amendment, which has come into force on 6-6-2018. This provision, as rightly urged by the respondents, is essentially in the context of a corporate debtor against whom CISR is to be

initiated in terms of the amended Section 60 IBC which amendment is introduced by the same Amendment Act of 2018. This change was to empower NCLT to deal with the insolvency resolution or liquidation processes of the corporate debtor and its corporate guarantor in the same Tribunal pertaining to same transaction, which has territorial jurisdiction over the place where the registered office of the corporate debtor is located. That does not mean that proceedings under Section 7 IBC cannot be initiated against a corporate person in respect of guarantee to the loan amount secured by person not being a corporate person, in case of default in payment of such a debt.

28. Accepting the aforementioned argument of the appellant would result in diluting or constricting the expression "corporate debtor" occurring in Section 7 IBC, which means a corporate person, who owes a debt to any person. The "debt" of a corporate person would mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. The expression "debt" in Section 3(11) is wide enough to include liability of a corporate person on account of guarantee given by it in relation to a loan account of any person including not being a corporate person in the event of default committed by the latter. It would still be a "financial debt" of the corporate person, arising from the guarantee given by it, within the meaning of Section 5(8) IBC.

29. Notably, the expression "corporate guarantee" is not defined in the Code. Whereas, expression "corporate guarantor" is defined in Section 5(5-A) IBC. If the legislature intended to excluded a corporate person offering guarantee in respect of a loan secured by a person not being a corporate person, from the expression "corporate debtor" occurring in Section 7, it would have so provided in the Code [at least when Section 5(5-A) came to be inserted defining expression "corporate guarantor"]. It was also open to the legislature to amend Section 7 IBC and replace the expression "corporate debtor" by a suitable expression. It could have even amended Section 3(8) to exclude liability arising from a guarantee given for the loan account of an entity not being a corporate person. Similarly, it could have also amended the expression "financial debt" in Section 5(8) IBC, "claim" in Section 3(6), "debt" in Section 3(11) and "default" in Section 3(12). There

is no indication to that effect in the contemporaneous legislative changes brought about.

30. The expression "corporate debtor" is defined in Section 3(8) which applies to the Code as a whole. Whereas, expression "corporate guarantor" in Section 5(5A), applies only to Part II IBC. Upon harmonious and purposive construction of the governing provisions, it is not possible to extricate the corporate person from the liability (of being a corporate debtor) arising on account of the guarantee given by it in respect of loan given to a person other than corporate person. The liability of the guarantor is coextensive with that of the principal borrower. The remedy under Section 7 is not for recovery of the amount, but is for reorganization an insolvency resolution of the corporate debtor who is not in a position to pay its debt and commits default in that regard. It is open to the corporate debtor to pay off the debt, which had become due and payable and is not paid by the principal borrower, to avid the rigours of Chapter II IBC in general and Section 7 in particular."

12.4 Thus, the above ruling provides a clear answer to all the pleas raised by the respondent/corporate debtor. We therefore, find no force whatsoever in the contentions put forth by the learned counsel for the Respondent that the present application is not maintainable against the Respondent/corporate debtor.

12.5 In so far as the contention that since the Corporate Debtor had been liquidated, the present application against the Corporate Guarantor is not maintainable, we do not find any force, in as much as the respondent Corporate Guarantor by virtue of the corporate guarantee it had executed owes a statutory duty to the lender to fully discharge the liability of the principle borrower and the lender has every right under law to realize the amount lend to the borrower/ Corporate Debtor until last pie, from either of them.

12.6 Therefore, in the light of our discussion as above, we are fully satisfied that the applicant had successfully established the existence of Financial Debt of a sum over rupees one crore due and payable by the Corporate Debtor herein to the applicant and that the Corporate Debtor has defaulted in the repayment of the same. Further we find that the application is in order. Hence, it is a fit case to admit the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP).

13. It is true that in an application filed under section 7 of the I&B Code, the Tribunal has to see whether debt and default exist. It is not in dispute that the Financial Creditor disbursed various types of loans from time to time and there is default. Other contentions raised by the learned counsel for the Corporate Debtor cannot be entertained since the Financial Creditor is able to establish the debt and default. Therefore, the petition is to be admitted against the Corporate Debtor. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.

14. It is noted that the claim amount is more than Rs.1 lac and the application was filed after Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs. Thus, the application is maintainable.

15. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) Corporate Debtor, M/s Megafin Securities Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of moratorium shall have effect from the date of this order 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.

(G) 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.

(H) That this Bench hereby appoints Ms. Mummaneni Vazra Laxmi, having Registration No.IBBI/IPA-001/IP-P00919/2017-2018/11526, whose contact details are:

e-mail ID: tolak[at]gmail[dot]com

Address: FLAT NO.107
V.V.VINTAGE RESIDENCY,
NEAR CAFÉ COFFEE DAY
SOMAJIGUDA,
HYDERABAD- 500082

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 12.08.2022, Certification of Registration dated 02.02.2018 issued by IBBI and Form-B dated

11.11.2021 issued by IBBI. Her Authorisation for Assignment is valid till 27.10.2023. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

16. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

17. Accordingly, this Petition is admitted.

Sd/-	Sd/-
CHARAN SINGH	DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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