

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP (IB) 03/MB/C-II/2020

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Yes Bank Limited

[CIN: L65190MH2003PLC143249]

Senapati Bapat Marg, Elphinstone(W),
Mumbai - 400013

...Financial Creditor/Applicant

Versus

Ezeego One Travel & Tours Limited

[CIN: U63040MH2006PLC158683]

1st Floor, Cecil Court, Lansdowne
Road, Colaba, Mumbai - 400039

...Corporate Debtor/Respondent

Order Delivered on 09.03.2021

Coram:

Hon'ble Member (Judicial)	:	Mr. H. P. Chaturvedi
Hon'ble Member (Technical)	:	Mr. Ravikumar Duraisamy

Appearances:

For the Financial Creditor	:	Mr. Ankit Lohia, Advocate.
For the Corporate Debtor	:	Mr. Shyam Kapadia a/w Mr. Dhruva Gandhi, Dharmesh Joshi I/b T. D. Joshi & Associates, Advocate.

ORDER

Per: Ravikumar Duraisamy, Member

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Yes Bank Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Ezeego One Travel & Tours Limited** ("the Corporate Debtor").
2. The Corporate Debtor is a Private company limited by shares and incorporated on 06.01.2006 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U63040MH2006PLC158683. Its registered office is at 1st Floor, Cecil Court, Lansdowne Road, Colaba, Mumbai - 400039. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by Financial Creditor by way of Application/Petition:

3. The Financial Creditor has filed the Petition under the IBC in respect of defaults committed by the Corporate Debtor (“**CD**”) under the following four financing agreements/ arrangements:

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No.	Facility	Amount Disbursed (In Indian Rupees)	Date of Disbursal	Amount in Default including interest as on August 28, 2019 (In Indian Rupees)	Date of Default
1.	Term Loan	450,00,00,000	May 16, 2017	460,60,91,611.64	April 02, 2019
2.	Short Term Loan	350,00,00,000	August 27, 2018	372,09,89,663.05	March 29, 2019
3.	Factoring Agreement	150,00,00,000	August 23, 2017	154,57,87,620.53	March 31, 2019
4.	Overdraft Facility	15,00,00,000	September 06, 2018	15,32,14,403.11	July 31, 2019
Total				1002,60,83,298.33	

4. In respect of the aforesaid loans/facilities, the Financial Creditor and CD have entered into several agreements, security documents and personal guarantees, which are annexed from Annexure – “6” to “29” and “31” to “39” of the Petition.
5. The CD has in its audited balance sheet for the financial year ended March 31, 2018 also acknowledged the loan/ financing provided by the Financial Creditor. The audited Balance Sheet of the CD as on March 31, 2018 shows that the long-term borrowings of the CD have increased from INR 10,00,00,000/- (Indian Rupees Ten Crores) on March 31, 2017 to INR 442,00,00,000/-

(Indian Rupees Four Hundred and Forty-Two Crores) on March 31, 2018. The increase in loans pertains to the amounts disbursed by the Financial Creditor. In fact, it is not even the case of the CD that the long-term borrowings reflected in their audited Balance Sheet are attributable to some other creditor. [*See Annexure – 4 at Pg. 30 read with Notes 4 and 6 at Pg. 32 of the Petition.*]. The Financial Creditor submits that the loans were received by the CD in 2017 and 2018. While receiving the loan of around INR 1000,00,00,000/- (Indian Rupees One Thousand Crore) in its bank accounts, at no point did the CD raise any grievance that the loans were obtained fraudulently and/or on the basis of forged signatures. Thereafter, the loans were also reflected by the CD in its Balance Sheet and charge documents were registered with the Ministry of Corporate Affairs.

6. The Financial Creditor has provided details of charge created by the CD in favour of the Financial Creditor (In Part V at Pg. 6 of the Petition). The charge is also registered by the CD with the RoC. The Master Data of the CD on the website of the Ministry of Corporate Affairs shows that three separate charges of INR 150,00,00,000/- (Indian Rupees One Hundred Fifty Crores), INR 500,00,00,000/- (Indian Rupees Five Hundred Crores), and INR 15,00,00,000/- (Indian Rupees Fifteen Crores) totalling to INR 665,00,00,000/- (Indian Rupees Six Hundred Sixty-Five Crores)

have been created. [*See Annexure – 1 at Pg. 24 of the Petition.*]. A reference has also been made to the Deed of Hypothecation dated September 06, 2018 [*See Annexure 26 at Pg. 702 of the Petition*], which the CD has sought to belatedly dispute before this Tribunal.

7. The Financial Creditor has also annexed the entries in a banker's book in accordance with the Bankers Book Evidence Act, 1891 at **Annexure – 49 Pg. 1195 to 1268** of the Petition. The statements show (i) the amounts disbursed by the Financial Creditor to the CD; and (ii) after having received loans/ financing from the Financial Creditor, the CD has also made payments towards interest/ EMI for some months. In other words, the CD admits to having received and appropriated the loans/ financing from the Financial Creditor. Further the CD has made part repayment of the loan along with interest.
8. The record of default from National E-Governance Services Limited (“NESL”) in respect of all the four aforesaid arrangements shows that the CD has defaulted in respect of each of the aforesaid facilities. The relevant pages of the record of default are attached to the Petition as under:

No.	Facility	Record of Default from NESL	Amount of Default shown by NESL
1.	Term Loan	Pg. 1323 to 1329	Pg. 1326 of Petition - INR 432,00,00,000/-

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2.	Overdraft Facility	Pg. 1330 to 1336	Pg. 1333 of Petition – INR 6,00,00,000/-
3.	Factoring Agreement	Pg. 1337 to 1350	Pg. 1340 of Petition – INR 9,30,68,473.79/- Pg. 1347 of Petition – INR 149,05,41,665/-
4.	Short Term Loan	Pg. 1351 to 1357	Pg. 1354 of Petition – INR 350,00,00,000/-

9. On default being committed by the CD, the Financial Creditor recalled its facilities and issued *inter alia* the following demand notices to the CD:

No.	Facility	Demand Notice date	O/s Amount Demanded (In Indian Rupees)	Annexure to the Petition
1.	Term Loan	July 17, 2019	467,83,18,484.71/- a/w further interest	Anx. 56 at Pg. 1298
2.	Short Term Loan	June 26, 2019	365,17,54,082/- a/w further interest	Anx. 50 at Pg. 1269
3.	Factoring Agreement	July 17, 2019	149,05,41,665/- a/w further interest	Anx. 55 at Pg. 1295
4.	Overdraft Facility	July 17, 2019		Anx. 56 at Pg. 1298

However, the CD neither replied to the demand notices, nor disputed its liability to repay the loans to the Financial Creditor.

Submissions made by Corporate Debtor by way of Affidavit in Reply:

10. In response to the Petition, the primary contention of the Respondent is that none of the four financing agreements purportedly executed between the parties is a genuine transaction. Instead, the documents produced as proof of the financing arrangement are themselves false, forged and fabricated.
11. It is respectfully submitted that in a summary proceeding under Section 7 of the Code, the burden that the Respondent is expected to discharge is to make out a prima facie case of such falsification or forgery. In case the Respondent is able to discharge this burden, then this Tribunal ought not to admit the Petition, and the Petitioner must then be relegated to pursue its remedies before a civil court that can adjudicate upon the issues pertaining to forgery and fabrication after a complete trial. In the interest of abundant caution, it is clarified that such a course of action does not render the Petitioner remedy less. It only ensures that both parties to the dispute have an opportunity to lead evidence and have their contentions tried fully, which may not always be possible in proceedings of a summary nature.

So much, can also be inferred from two decisions of the National Company Law Appellate Tribunal. In *Allahabad Bank v Poonam*

Resorts Limited (CA(AT) Ins Nos. 1303 & 1304 of 2019), the NCLAT observed:

“...Viewed thus, the impugned order cannot be supported. Application under Section 75 of the 'I&B Code' on behalf of the 'Corporate Debtors' cannot be permitted to frustrate the provisions of the 'I&B Code' when the matter is at the stage of admission. Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of 'Corporate Insolvency Resolution Process' unless in a given case forgery or falsification of documents is patent and prima facie established....” (emphasis supplied)

Similarly, in a subsequent decision of *Vimal Coal Pvt. Ltd. v Apna Paper Mills Pvt. Ltd. (CA (AT) Ins 538 of 2020)*, the NCLAT stated,

“Thus, even the Appellant is not claiming that Mr. Faruk Qureshi signed it. Who signed, nothing is clear. In the facts of the matter, the contention of the Corporate Debtor that the signature is not of Authorized Representative, cannot be simply brushed aside. From side of Operational Creditor, there is no Affidavit regarding how such endorsement was made. Annexure-A/4 does not inspire confidence.”

12. It is further submitted that the Respondent has more than adequately discharged the burden cast upon it. To begin with, for the Overdraft Facility the Petitioner has produced a Board Resolution dated 3rd September 2018 basis which it contends that the Respondent authorised the transaction. This document is purported to have been signed by one Ms. Manisha Amarapurkar, a director of the Respondent. The Respondent engaged the services of an independent handwriting expert to examine the signatures appearing at the bottom of these Board Resolution. On comparing the signature appearing in the Petition with the actual signature of Ms. Amarapurkar, the expert opined that the former belonged to a different author. Likewise, the Respondent also asked him to examine the signature of Ms. Amarapurkar and Ms. Neelu Singh appearing on the Facility Letter for the Short-term Loan Agreement. Once again, the expert arrived at the same conclusion.
13. Therefore, in the case of at least two of the four financing agreements purportedly executed between the parties, the Respondent has shown that the signatures appearing thereon are falsified. As a consequence, in the context of summary proceedings, it cannot be said the Petitioner has adequately proved that there was a debt transaction between the parties. More so, when in case of three of the four financing transactions, the Respondent has under oath stated that no board meeting was even

held on the dates on which a board resolution is alleged to have been passed authorising signatories to execute (i) Term Loan Agreement, (ii) the Factoring Facility Agreement and (iii) the Short-term Loan Agreement. In these circumstances, it is only just and proper that the contentions of the Petitioner be tested on the rigours of a trial, and not be accepted summarily.

14. Pertinently, the Respondent has engaged the services of a hand-writing expert to not only examine the signatures appearing on the financing documents, but also to do as regards the security documents alleged to have been executed alongside them. For convenience, the security documents for which the Respondent has conducted a forensic examination are tabulated as under:

ANNEXURE NO.	PURPORTED DESCRIPTION OF DOCUMENT	ALLEGED SIGNATORY
7	Deed of Pledge dt. 16th May 2017	Urrshila Kerkar
9	Non-Disposal Undertaking dt. 16th May 2017	Ajit Kerkar Peter
10	Non-Disposal Undertaking dt. 16th May 2017	Ajit Kerkar Peter
15	Deed of Guarantee dated 27th August 2018	Ajit Kerkar & Urshilla Kerkar Peter
20	Deed of Pledge dt. 17th April 2019	Urrshila Kerkar

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24	Deed of Personal Guarantee dt. 23rd August 2017	Urrshila Kerkar
25	Take or Pay Agreement dt. 24th August 2017	Ajit Peter Kerkar
27	Deed of Guarantee dt. 11th September 2018	Ajit Peter Kerkar
37	Deed of Guarantee by Tulip Hotels Pvt. Ltd. dt. 10th July 2019	A.S. Anatharaman

15. In case of all of the aforementioned security documents, the forensic examiner opined that the document had either been signed by a different author, or that there were striking dissimilarities between the signatures appearing on documents annexed to the Petition, and the actual signature of the person concerned.
16. The contention that the documents produced by the Petitioner to make out a case of financial debt are *ex facie* fabricated and falsified is buttressed by the fact that most of the documents are inadequately stamped as well. When considered with the falsified signatures, the deficit stamp duty unveils the conspiracy planned and executed by the Petitioner to siphon off large sums of money and, to then implicate the present Respondent for the same. Once

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again for convenience, the documents that are inadequately stamped have been tabulated as under,

ANNEXURE NO.	AMOUNT SECURED (IN RS.)	STAMP DUTY PAYABLE (IN RS.)	STAMP DUTY PAID (IN RS.)
6	500 Crores	10,00,000/-	100
7	500 Crores	10,00,000/-	100
11	500 Crores	10,00,000/-	10,00,000
13	500 Crores	10,00,000/-	100
19	350 Crores	10,00,000/-	100
20	350 Crores	10,00,000/-	Nil
22	350 Crores	10,00,000/-	100
23	350 Crores	10,00,000/-	100
26	60 Crores	10,00,000/-	100

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32	All 4 facilities	10,00,000/-	500
33	All 4 facilities	10,00,000/-	500
35	All 4 facilities	10,00,000/-	500

present proceedings are evident from the fact that it has already filed a detailed complaint in this regard with the Joint Commissioner of Police, Economic Offences Wing as far back as 20th March 2020. A copy of this complaint has been annexed hereto and marked as Exhibit to the Affidavit in Reply.

17. Moreover, it is also pertinent to note that even if these documents are not said to have been vitiated by fraud and/or forgery, they cannot in any case be considered as corroborative evidence of a financial debt on account of the deficiency in stamp duty paid. Lastly, the Respondent even submits that the bona fides of the contentions raised in the present proceedings are evident from the fact that it has already filed a detailed complaint in this regard with the Joint Commissioner of Police, Economic Offences Wing as far back as 20th March 2020.
18. In conclusion, it is humbly submitted that there is one more reason why the present Petition does not countenance admission. Without prejudice to what has been submitted hereinabove, even

if this Tribunal were to hold that the elements of Section 7 of the Code are otherwise satisfied, it readily follows from a bare perusal of what has been stated hereinabove that the Petitioner in the present case has been party to a larger scheme of fraud and conspiracy. Consequently, the Petitioner cannot now be allowed to use this Tribunal as a mechanism to enforce its own wrong, and to benefit from a scheme of fraud to which it was a party. As much has also been stated by the Bombay High Court in *IDBI Trusteeship Services Ltd v Hubtown Ltd. (2015 SCC Online Bom 3358)*, wherein the Court observed,

“Further the question of the Company not being allowed to plead its own wrong also does not arise in the facts of the present case. Through the present Petition, the Petitioner (who is admittedly acting at the instance of FMO/FMO’s nominees) is in effect seeking the assistance of this Court to enable/enforce recovery by FMO of its FDI amount and interest thereon (through Vinca), contrary to the provisions of the FEMA Regulations and FDI Policy embodied therein. As has been held by the Supreme Court in the case of Immami Appa Rao v G Ramalingamurthi (supra), the plaintiff who wants orders in his favour, is actually seeking the active assistance of the Court to achieve what the law prohibits/declares illegal, and this clearly and patently inconsistent with public interest. Moreover, as has been held by the Hon’ble Supreme Court in the above case, in such a case there

can be no question of estoppel and the paramount consideration of public interest requires the plea be allowed to be raised and tried.”

Submissions made by Financial creditor by way of Rejoinder:

19. The present Petition was filed on November 18, 2019. As a complete afterthought, the CD has in Paragraph No. 30 at Pg. 17 of its Affidavit in Reply stated that after it came to know about the present Petition being filed, it realized that some fraud has been committed. In other words, the CD now contends that it was oblivious to the fact that (i) it has received around INR 1000 Crores as loans in 2017 and 2018 in its bank accounts; (ii) several agreements and security documents have been executed, some of which are also registered with the Ministry of Corporate Affairs; (iii) the CD has filed audited balance sheets with the Ministry of Corporate Affairs acknowledging the loans availed from the Financial Creditor; and (iv) the CD was paying interest and EMI albeit for a few months.
20. The reliance by the CD on a criminal complaint dated March 20, 2020 [Ex. O at Pg. 272 of the Affidavit in Reply] filed by the deponent is also misplaced inasmuch as in Para 5 of the complaint, the deponent admits that the CD received the loans and funds from the Financial Creditor and thereafter, the funds have been siphoned by ‘key members of the senior management of Cox & Kings

Ltd.'. The same is attached hereto Para 5 at Pg. 279 of the Affidavit in Reply reads as under:

“5. I further say that this audit enquiry also revealed that large sums of monies had been illegally taken as loan facilities from Yes Bank Ltd. and thereafter the loan amounts disbursed by Yes Bank Ltd. in an unauthorised manner siphoned off from the Ezeego by key members of the senior management of Cox & Kings Ltd. (named here under in this complaint), without the knowledge and/or approval of the promoters and/or directors of Ezeego directly to the bank account of a company known as Redkite Capital Pvt. Ltd. ('Redkite'), and also by passing through the bank account of Cox and Kings Ltd. (CNK).....” (Emphasis supplied)

21. The CD is a company forming part of the Cox & Kings group and as per the CD's balance sheet, Cox & Kings is the majority shareholder of the CD. [See Annexure 4 at Pg. 30 @ 31 of the Petition]. In other words, the CD admits that monies disbursed by the Financial Creditor have also gone from the CD to its parent company i.e. Cox & Kings Ltd. The CD has attempted to renege from its liability due to some alleged fraud played by its own employees/ management. In this respect, the Financial Creditor relies upon paragraph nos. 46 and 50 of the judgement of the Hon'ble Bombay High Court dated July 15, 2013 in the matter of

Rajinder Kumar Malhotra v. Vidyut Metallica Pvt. Ltd. & Ors. in CLB Company Petition No. 13 Of 2012 wherein the Hon'ble Bombay High Court has held that third parties, such as banks cannot be made to suffer due to some internal disputes/ fraud committed in the company (CD). The Paras 46 and 50 of the decision read as under:

“46. The Applicant has questioned the bona fides of HDFC Bank Ltd. in advancing credit facilities on the basis of the guarantee and securities furnished by each of the guarantor Companies. The Applicant has also alleged that the HDFC Bank Ltd. has colluded with Respondent No.6 and the Directors of the guarantor Companies. As correctly submitted on behalf of the HDFC Bank, the said allegations are devoid of any merit. By virtue of the Articles of Association of each of the guarantor Companies, the management of the business of each of the guarantor Companies is vested in the Board of Directors who are entitled to exercise all such powers and do all such acts and things as each of the respective Companies were authorized to exercise or do under its Memorandum of Association or otherwise. The Memorandum of Association of each of the guarantor Companies in its objects incidental to the main object permitted the Company to become and/or act as sureties and/or guarantors for any purpose. In fact, the Directors of each of the guarantor Companies at their discretion are also empowered to borrow and secure repayment of

any sum or sums of money for the purpose of the Company and the borrowings could exceed the paid-up capital of the Company and its free reserves.

(....)

*The Bank granted credit under the facilities prior to 12th January 2013. Thus, any dispute between each of the guarantor Companies and its members were issues pertaining to the **indoor management of the Company and the Bank being a third party cannot and ought not to suffer for the same.** The doctrine of indoor management is thus squarely applicable to the facts and circumstances of the present case. In any case, the guarantor Companies are separate legal entities independent of its members. The Applicant being a shareholder has no locus and right to challenge the authorized and legal acts of the Board of Directors for and on behalf of the Company. The mutual fund units secured in favour of the Bank belong to the Companies and the Applicant has no right or interest therein. Therefore, in my view, the HDFC Bank Ltd. has acted bona fide, with due regard to the constitutional documents of the guarantor Company and without notice/knowledge of the order dated 9th February 2012.”*
(Emphasis supplied)

50. (...) It is only when the Bank addressed a demand notice dated 31st May 2013, seeking payment of its outstanding dues of

Rs. 38,78,02,503.18 together with further interest thereon at the rate of 12.60 per cent per annum along with penal interest at the rate of 2 per cent per annum from 29th May, 2013, till the date of full and final payment and/or realization, a copy of which notice was also marked to each of the guarantor Companies that in an attempt to resile from contractual obligations and a false case of the Directors of each of the guarantor Companies allegedly acting without authority and/or fraud being played on the shareholders of each of the guarantor Companies was made out, as and by way of an afterthought through letter dated 17th June, 2013, addressed by the Advocates for the Applicant to the Advocates for the HDFC Bank Ltd. Pertinently, the said letter was addressed after a gap of one year and three months since acquiring knowledge of the entire transaction involving the Bank, the principal borrower and each of the guarantor Companies, and only when the parties were put to notice that the Bank would take appropriate action for recovery of its outstanding dues. Thus, the Applicant is not entitled to any reliefs under equity in view of his own afore stated conduct. (...)

22. The falsity of the case of the CD is also evident from the following – the audited balance sheet of the CD for the financial year March 31, 2018 is signed by (i) Mr. Rishabh Jain, Chartered Accountant; (ii) Ms. Neelu Singh, Director of CD; and (iii) Mr. Anup Sen, Director of CD [See Annexure – 4 at Pg. 30 of the Petition]. Though, in Para 32 at Pg. 21 of the Affidavit in Reply, the CD has sought

to dispute only the signature of Ms. Neelu Singh, the CD does not dispute that the signature of Mr. Rishabh Jain (CA) and Mr. Anup Sen (Director) on the audited balance sheet of the CD, which has been filed with the Ministry of Corporate Affairs is genuine.

23. Without prejudice to the submission that the contentions raised by the CD are false, frivolous and stated to be dismissed, the Financial Creditor submits that the scope of enquiry under a section 7 Petition is limited only to ascertaining disbursement of loan and default committed by the CD. The Financial Creditor relies on paragraph no. 28 of the decision of the Hon'ble Supreme Court in the matter of *M/s. Innoventive Industries Limited v. ICICI Bank & Anr* in 2017 SCC Online SC 1025, which reads as under:

“28. (...) It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”

24. The Financial Creditor also relies on paragraph no. 17 (iii) of the order of this Hon'ble Tribunal in the matter of *Finquest Financial Solutions Private Limited v. Ballarpur Industries Limited* in C.P. (IB) – 2915/I&B/MB/2019 dated January 17, 2020, which reads as under:

“17(iii) The third contention made by the Corporate Debtor is that the said petition has been preferred for the purposes other than resolution of the Corporate Debtor. Here it is pertinent to note that the only things to be looked upon while considering an application under Section 7 of the IBC, 2016 are that there is a disbursement of the loan amount and that there is default on the part of the Corporate Debtor and has no concern with any ongoing dispute. The Corporate Debtor has relied upon the minutes of the Joint Lenders Meeting dated 17/05/2018 and 23/07/2018 and contended this petition is merely an arm-twisting method on the part of the Financial Creditor. Also, it can be made out from the past conduct of the Financial Creditor that they made efforts to restructure the debt of the Corporate Debtor and therefore, this cannot be used by them to shield themselves from their existence liability. In this present matter, this Bench has already established the existence of debt and the default on the part of the Corporate Debtor and therefore, this Bench is of the opinion that only because of this, the present petition has been preferred by the Financial Creditor against the Corporate Debtor.”

25. The contention of the CD that some of the security documents are insufficiently stamped is also misconceived inasmuch as (i) no such contention has been raised in respect of the financing agreements for the four loans/facilities; (ii) the factum of the loan, disbursement, liability and default is evidenced through multiple documents and records which form a part of the Petition; and (iii) the proceedings under section 7 of the Code is not a recovery proceeding and issues pertaining to alleged insufficient stamping are not the subject matter of these proceedings. The Financial Creditor relies upon the order dated December 15, 2017 of this Tribunal in the matter of *Standard Chartered Bank & Anr. v. Ruchi Soya Industries Limited in 2017 SCC Online NCLT 12689*, wherein this Tribunal has held as under (on page 36):

“33. (...) (...) Moreover, facility agreement alone is not the document to prove the case, there is surplus material to prove that debt and default are in existence whereby this argument is not sufficient enough to deny the claim Petitioner herein, henceforth, the argument of the corporate debtor is hereby dismissed.”

26. We have heard the arguments of Financial creditor and Corporate Debtor and perused the records.
27. Ld. Counsel Mr. Shyam Kapadia argued vehemently and denied the claims of the Financial Creditor. He mainly argued that the

loans were obtained by forging documents, signatures of the employees/Directors of the CD and the money sanctioned was transferred and siphoned off to the parent company of the CD i.e. Cox and Kings Limited. He also submitted that the key management of the CD has filed Police complaint under various Sections of Indian Penal Code against the employees who had allegedly forged the documents/signatures and based on which loans were obtained. Regarding the submissions of the Counsel that the Police complaint was filed and the report of the verification of the signatures by handwriting expert, we are of the considered view that the Police complaint filed under IPC before admission of the Petition is alien to IBC proceedings and the same is outside the purview of this Adjudicating Authority in the summary proceedings.

28. Upon perusal of the documents we are satisfied that FC has granted loan to CD in various forms viz (i) Term Loan facility, (ii) Factoring Agreement, (iii) Short-term Loan Agreement and (iv) Overdraft facility. The CD has failed to repay the same. As per Application an amount of Rs.1002,60,83,298.33/- (Rupees One Thousand Two Crores Sixty Lakhs Eighty-Three Thousand Two-Hundred Ninety-Eight and Thirty-Three Paise Only) is outstanding as on date 28.08.2019 and the same is also shown on the information utility portal NeSL.

29. With regard to the submissions that loans received from the FC was subsequently siphoned off from CD by Senior Management of Cox and Kings and further transferred to another company namely Redkite Capital Pvt. Ltd. is not an impediment to admit the Petition. Further the said issue is an indoor management of the CD and no need to make any opinion at this stage. Regarding insufficient stamp duty paid on security documents, we are of the view that it is not a concern of this Adjudicating Authority in the matter of *Standard Chartered Bank v Ruchi Soya Industries Limited (Supra)*, held as under:

“this Tribunal framed the question whether facility agreements have been inadequately stamped as stated by the Corporate Debtor, if so, whether this petition can be admitted basing on such inadequately stamped agreement. This Tribunal held that the facility agreement alone is not the document to prove this case, there is surplus material to prove that debt and default are in existence whereby, this argument is not sufficient enough to deny the claim of the petitioner herein.”

We have also considered the judgments cited by both the parties.

30. FC has provided details of charge created by CD in favour of FC further the charges are also registered in the record of RoC. Therefore, the submission of the CD i.e. loans obtained by false,

forged and fabricated documents do not merit/supporting its claim. Further CD also made some repayment towards interest/EMI for some months as part repayment of loan. It is also noted that the CD has not disputed its liability to repay loan to FC but filed criminal complaint as discussed supra. Though the loans were disbursed from 16.05.2017 to September 6, 2018 and in view default committed by the CD, the FC recalled its facilities vide demand notices dated 26.06.2019 and 17.07.2019. We have also noted that the Petition was filed by the FC on 18.11.2019 and the loan amounts were reflected in the balance sheet of the CD as on 31.03.2018 but the CD has filed the Police Complaint with Economic Offences Wing only on 20.03.2020. the entire events, facts do not support the case of the CD.

31. He further submitted that the CD was only a pass-through vehicle. However, when we have analysed the balance sheet of the CD, the Adjudicating Authority observed that all the money taken as loan was with the CD for quite some time, therefore CD cannot be said as vehicle, as argued by the Counsel for the CD. Since, the loan amount obtained from the FC is reflected in the balance sheet of the CD for the Year ended March 31, 2018 we are of the considered view that the Board of Directors of the CD is very well aware of the loan obtained from the FC and even shareholders are aware of the same, therefore, the contention of the Counsel for the CD is not acceptable and therefore, rejected.

32. The Financial Creditor has proposed the name of **Mr Gaurav Adukia**, Registration No. IBBI/IPA-002/IPN00457/2017-2018/11293, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
33. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
34. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 03/MB/C-II/2020** filed by **Yes Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP)

against **Ezeego One Travel & Tours Limited [CIN: U63040MH2006PLC158683]**, the Corporate Debtor, is **admitted.**

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 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.

- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr Gaurav Adukia**, Registration No. IBBI/IPA-002/IPN00457/2017-2018/11293, having address at Anand Bhavan, Jamnadas Adukia Road, Kandivali (W), Mumbai -

400067 [email: gauravadukia@hobnail.com], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP (IB) 03/MB/C-II/2020

Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

09.03.2021
SAM

Sd/-

H. P. CHATURVEDI
Member (Judicial)