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Sl. No.1

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)  
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.07.2024 AT 01:00 P.M.**

TC/CP. Nos.	CA/IA No.	Section /Rule	Name of Parties
CP(IB)/76/7/AMR/2022	CP Admitted	7 of IBC	State Bank of India Vs. Mangalagiri Textile Mills Private Limited
	IA(IBC)/277/2022	Sec.7(5) of IBC read with 11 of NCLT Rules	Mangalagiri Textiles Private Limited Vs. State Bank of India
	IA(IBC)/278/2022	11 of NCLT Rules	Mangalagiri Textiles Private Limited Vs. State Bank of India

**ORDER**

**Present:** Mr. V.V.S.N.Raju, Ld. Counsel for the FC.

Mr. T. Lakshmi Narayana, Ld. Counsel for the CD.

Orders pronounced. CP(IB)/76/7/AMR/2022 is admitted and recorded vide separate sheets.

**IA(IBC)/277/2022:**

**Present:** Mr. VVSN Raju, Ld. Counsel for the Applicant

Mr. T. Lakshmi Narayana, Ld. Counsel for the Respondent.

Orders pronounced. IA(IBC)/277/2022 is dismissed and recorded vide separate sheets.

**IA(IBC)/278/2022:**

**Present:** Mr. VVSN Raju, Ld. Counsel for the Applicant

Mr. T. Lakshmi Narayana, Ld. Counsel for the Respondent

Orders pronounced. IA(IBC)/278/2022 is dismissed as infructuous and recorded vide separate sheets.

Sd/-

**SANJAY PURI  
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL –  
AMARAVATI BENCH

CP(IB)/76/7/AMR/2022

[Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016  
Read with Rule 4 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016]

AND

In the matter of

MANGALGIRI TEXTILES MILLS PRIVATE LIMITED

**BETWEEN:**

State Bank of India,  
Stressed Assets Management Branch,  
Kachiguda, Hyderabad,  
Represented by Mr. A. Sai Prasad,  
Assistant General Manager.

... Financial Creditor

AND

MANGALGIRI TEXTILES MILLS PRIVATE LIMITED,  
(CIN: U17110AP2006PTC049607),  
China Kakani village Mangalagiri,  
Guntur-522503.

...Corporate Debtor

Date of Order: 25.07.2024

**Coram:**

SHIR RAJEEV BHARDWAJ – MEMBER (JUDICIAL)  
SHIR SANJAY PURI – MEMBER (TECHNICAL)

**Parties/Counsels Present:**

For the Applicant : Mr. VVSN Raju, Advocate  
For the Respondent: Mr. Lakshmi Narayana and Mr. Sri Charan, Advocate

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**ORDER**  
**(Per: Bench)**

1. This petition has been filed on 01.06.2023 by the Petitioner/State Bank of India i.e., the Financial Creditor (in short FC) against the Respondent/Mangalagiri Textiles Private Limited i.e., the Corporate Debtor (in short CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016(hereinafter referred to as "IBC, 2016") Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the CD, to appoint Interim Resolution Professional (hereinafter referred as "IRP") and declare the moratorium for making defaulted in payment of its outstanding dues Rs. 31,85,80,393.72/- (Rupees Thirty One Crore Eighty Five Lakhs Eighty Thousand Three Hundred And Ninety Three And Seventy Two Paise Only) as on 30.04.2022.
2. The facts which lead to filing of this petition are briefly as follows:
  - a) The Financial Creditor is a public sector Bank incorporated on 01.07.1995. The Corporate Debtor is a Private Limited company incorporated on 24.03.2006 being CIN: U17110AP2006PTC049607 registered in the state of Andhra Pradesh and is in the business of manufacturing, Processing, Producing, Washing, Dyeing, Ginning, Pressing, Spinning, Weaving, Crimping, texturizing etc., and other activities.
  - b) The CD approached the FC and requested for the credit facilities. The Financial Creditor sanctioned initially during the year 2009 both fund based and non-fund based limits to the CD for its business



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requirements. The limits include cash credit limit, term loan, Bank guarantee limit. Therefore, the limits were renewed and enhanced from time to time. The CD after executing necessary loan documentation and creating securities availed the said facilities.

- c) The Credit facilities are secured by personnel guarantee of directors and third party guarantors. They are also secured by hypothecation of current assets, plant and machinery, and mortgage of immovable properties.
- d) The CD failed to pay the instalments of principal and interest and thus on default in payment of dues CD classified as NPA. Hence the FC filed original Application before the Debt Recovery Tribunal in O.A.No.43 of 2018 for recovery of an amount Rs.24,56,54,182.09/-. After adjudicating the matter, DRT passed a judgement on 19.08.2019 in favour of FC and issued a recovery certificate on 28.01.2020 to recovery officer for recovery of the said amount as mentioned in the order from the CD and guarantors.
- e) In addition to the aforesaid loans, the company availed a car loan of Rs.15 Lakhs on 23.01.2020 to purchase a vehicle for the business need of the company. As the company failed to deposit the instalments, the loan account has become NPA and an amount of Rs. 14,55,029.40/- is outstanding as on 30.04.2022.
- f) Subsequently, the CD submitted various letters dated 23.11.2020, 03.01.2021, 21.12.2021, 31.01.2022, 09.03.2022 to settle the dues under one time settlement with Bank. However, the CD failed to settle the dues and neglected to pay the amounts.



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g) The cause of action arose for the company petition on 19.08.2019, 28.01.2020, 23.11.2020 and 21.12.2021 when the recovery certificate was issued by the DRT. Hence, the present petition.

3) The Corporate Debtor filed counter, inter alia, contending that the Financial Creditor cannot initiate CIRP against the Corporate Debtor on the ground of the principle of “**Suppressio Veri and Suggestio Falsi**” and submitted:-

a) The notice was never issued by the FC to the CD which is statutory and mandatory under the provisions of the IBC, 2016. In the absence of issue of such statutory notice and delivery of the demand notice by the Operational Creditor/Financial Creditor and the copy of an Invoice demanding the payment of the amount involved in the default to the Corporate Debtor in such form and manner as prescribed under the provisions of the IBC, 2016, the present application filed by the Financial Creditor, fails and liable to be dismissed.

b) The Word “book outstanding” as on dt.31.03.2020 is indicated as Rs.13,81,67,787.76/-. Therefore the statement that “as on dt.30-04-2022 an amount of Rs.31,85,80,393.72/- is indicated runs contrary to the amount indicated in the said letter dt.20.10.2020. The word “book outstanding” means a debt remaining un-discharged or unpaid or an outstanding debt. Therefore once the book outstanding amount as on dt.31.03.2020 is categorically indicated and informed and demanded by the financial creditor through its own letter dated 20.10.2020, the debt amount is arrived at Rs.13,81,67,787.76/- which is binding on the financial creditor and corporate debtor under the principle of ‘Novation’ and under the principle of ‘Waiver’ and thus the financial creditor is



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deemed to have waived that portion of the balance amount after deducting the same from Rs.31,85,80,393.72/-.

- c) Further pursuant to this letter dated 20.10.2020, the CD paid a sum of Rs.84,00,000/- on two occasions dated 23.11.2020 and 23.12.2020 and the balance amount under the OTS scheme in respect of first instalment would works out to Rs.72,00,000/-, for which there is a short delay, which resulted in cancellation of the 'OTS' by the financial creditor.
- d) An appeal No.39 of 2021 before the Debt Recovery Appellate Tribunal, Kolkata and proceedings in WP.No.2512 of 2021 before the Hon'ble High Court are pending for the enlargement of time, wherein the CD sought a direction to the FC to receive the balance amount of OTS amount as per the terms and conditions of letter dated 24-11-2020 issued by the FC. On 05.05.2022, the division Bench of the Hon'ble High Court, passed an interim order that "*In the meanwhile, if any auction is conducted, finalization shall be deferred and no coercive action in the direction of taking possession shall be taken till 30-06-2022.*" During the pendency of the writ petition, the FC filed the application before this Tribunal on 31.05.2022 and the said order is in force by letter and spirit.
- e) During the pendency of the Writ Petition No. 2512 of 2021, the Corporate Debtor, filed an interlocutory application vide IA.No.1 of 2021 seeking permission to pay a sum of Rs.72,00,000/- to the credit of the SBI in no Lien Account No.35754767051 (IFSC Code No.SBIN0018359), until the disposal of the said Writ Petition and the said IA is pending adjudication till date.



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4) The Financial Creditor filed rejoinder and denied all the allegations averred in the counter and further contending all the new issues averred by the CD in their counter.

a) The applicant submits that the amount that is due and payable to the applicant and default stated by the applicant in the main Company Petition is false. By misinterpreting the banking practice followed by banks in accordance with the RBI guidelines and concealing material facts, the respondent herein is trying to mislead this Tribunal and, in that process, made false and untenable allegations of “Suppressio Veri and Suggestio Falsi” against the Authorised Officer of the Bank.

b) The applicant submits that the application has been filed by the financial Creditor by disclosing all necessary facts it is aware of and as required under the provisions of the code. Therefore, the application is very much maintainable in law.

c) The applicant submits that the letter dated 20.10.2020 relating to one time settlement (OTS), 2020 scheme offer letter was given to the Corporate Debtor on 20.10.2020 and it was duly accepted by the Corporate Debtor. However, the Corporate Debtor failed to make payments as per the terms and conditions of the OTS. Therefore, the OTS offer has become infructuous and accordingly the OTS was treated as failed.

d) The applicant further submits that the respondents bringing in the concept of ‘Novation of Contract’ and ‘Principal of Waiver’ to cover up his failure to comply with the terms of the OTS. It shall be noted that part amount paid by the respondent under the OTS will be properly accounted. Therefore, there is no question of “Suppression Veri”.



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- e) In response to the writ petition filed by the respondent as per directions of the court, the applicant has not taken any steps in the direction of possessions. Further, it is submitted that it is an established law that action under IBC is not a coercive step. The writ petition nowhere speaks about any default and is filed seeking to issue a writ order or more particularly in the nature of 'Writ of Certiorari' for recalling a letter relating to the failed OTS proposal. The writ petition nowhere contemplated adjudication on default.
- f) In support of the above contentions the applicant has relied on the Supreme Court judgment in *SBI vs. Aravinda Electronics Pvt. Ltd. (Case No.6954 of 2022)*, decided on 04.11.2022, while setting-aside the verdict given in favour of the borrowers, it was held that the impugned judgment and order passed by the High Court in:



*“rescheduling the payment under the OTS scheme and granting extension of time would tantamount to rewriting the contract which is not permissible while exercising the power under article 226 of the constitution of India is unsustainable and the same deserves to be quashed and set-aside and is accordingly set-aside. Consequently, the original writ petition filed by the respondent-borrower stand dismissed,”*

This establishes that the writ petition filed by the respondent before the Hon'ble High Court also lacks merit.

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- g) It is submitted by the applicant that the application has been filed by the Financial Creditor under section-7 of the code. As per the said section or the rules of the code, the applicant herewith is not required to provide demand notice.
- h) In response to the contentions taken herein by the CD, these have been raised before the Hon'ble DRT and they were adjudicated. Further, it is submitted that in the instant proceedings, there is no scope for adjudication of the amounts that is due and payable by the CD. It is sufficient if the threshold limit is satisfied. According to the order of the Hon'ble DRT an amount of Rs.31,02,47,327.01/- with interest, costs etc., from the corporate Debtor is due and payable. The RP will look into the amounts while admitting the claims of the creditor.
- i) It is further submitted that all the allegations are repetitive and false. Hence, this petition.



- 5) Heard both sides and perused the records and written submissions of the FC.
- 6) From the pleadings and the arguments, the points that emerge for consideration of this Authority are as follows:
- I. Whether there is overlapping of jurisdiction of the Hon'ble High Court and this Authority.
  - II. Whether a notice is required to be given to the CD for initiation of CIRP under I&B Code, 2016 and if so, at what stage and for what purpose.
  - III. Whether the Corporate Debtor has committed default in repaying the debt due to the Financial Creditor.
  - IV. Final order.

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I. Whether there is overlapping of jurisdiction of the Hon'ble High Court and this Authority.

7. The learned counsel for the CD contended that in present case the CD filed Writ Petition before Hon'ble High Court of AP, at Amaravati, for enlargement of time, as Financial Creditor deliberately suppressed a material fact that upon payment of Rs.52,00,000/- on 23.11.2020 consequent to the acceptance of the OTS and further payment of Rs.32,00,000/- on 23.12.2020, the balance amount under the OTS scheme in respect of the first instalment would work out to Rs.72,00,000/-, for which there was a short delay. This was due to COVID-19 which resulted in cancellation of the 'OTS' by the Financial Creditor through its letter dated 29.12.2020. In the said letter FC admitted that CD has paid 84 Lakhs under OTS scheme. Aggrieved by the said letter, the CD submitted a representation dated 03.01.2021, addressed to the Chief General Manager, SBI, Mumbai for enlargement of time for the payment of Rs.72,00,000/- and for revival of OTS scheme. However, the letter for extension was rejected by the Financial Creditor. On 05.05.2022 Hon'ble High Court passed an interim order that *"In the meanwhile, if any auction is conducted, finalization shall be deferred and no coercive action in the direction of taking possession shall be taken till 30.06.2022.*

The present main application was filed before this Tribunal on 31.05.2022, on which date, the above said order was in force. Consequently, it is argued that the main application filed by the Financial



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Creditor is liable to be rejected to avoid conflict of jurisdiction between the Hon'ble High court and this Authority.

8. On the other hand, the Learned Counsel for the FC pointed out that the Hon'ble High Court in its order dated 05.05.2022 never spoke/observed about the CIRP proceedings. In fact, section 238 of IBC, 2016 overrides all other laws that are inconsistent or in conflict with the provision of IBC. The proceedings under IBC by any stretch of imagination cannot be considered as coercive and in fact, they are in the interest of the CD as well as the stakeholders. In support of the their contention, the FC has relied on Apex Court judgment in *Swiss Ribbon Private Limited v. Union of India (in writ petition (civil) no.99 of 2018)* and *Dena Bank (now Bank of Baroda) v. C. Shiva Kumar Reddy and Anr (In Civil Appeal No.1650 of 2020)*.



9. Hence, it is argued that the writ petition filed before the Hon'ble High Court and an application under section 7 of the IB Code, 2016 are two separate proceedings. While the writ before the Hon'ble High Court is with regard to failed OTS, the application under section-7 was filed by the FC for initiating the Corporate Insolvency Resolution Process against CD. Thus, the assumption of conflict of interest arising between Hon'ble High Court and Hon'ble Adjudicating Authority does not arise. In support of the above contention, FC relied on the Hon'ble Supreme Court Judgment *SBI vs. Aravinda Electronics pvt.ltd.(Case no.6954 of 2022)*, wherein the Hon'ble supreme Court on 04.11.2022, has set-aside the verdict given in favour of the borrower's holding that the impugned judgment and order passed by the High Court in "rescheduling the payment under the OTS scheme and granting extension of time would

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*tantamount to rewriting the contract which is not permissible while exercising the powers under Article 226 of the constitution of India is unsustainable and the same deserves to be quashed and set-aside and is accordingly set aside. Consequently, the original Writ Petition filed by the respondent-borrower stands dismissed."*

10. In the light of the above binding precedent, it is an established position in law that action under IBC is not a coercive step. As Writ petition filed before the Hon'ble High Court and application under section 7 filed before this tribunal are two different proceedings, thus, overlapping of jurisdiction between Hon'ble High Court and this Authority does not arise. Hence, in view of the above it can be held that the application is well within jurisdiction of this Authority.



**II. Whether a notice is required to be given to the CD for initiation of CIRP under I&B code, 2016 and if so, at what stage and for what purpose.**

11. Learned Counsel for the CD contended that no Notice was ever issued by the Financial Creditor to the Corporate Debtor which is a statutory and mandatory under the provisions of the Insolvency and Bankruptcy Code, 2016.
12. Learned counsel for the FC countered that the present Company Petition has been filed under section 7 of the code.
13. As per section 7 or the Rules of the code, the applicant is not required to provide a demand notice. The condition of providing demand notice is mandatory under section 9 of IBC and not under section 7 of IBC.

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**III. Whether the Corporate Debtor has committed default in repaying the debt due to the Financial Creditor.**

14. Except on the question of Jurisdiction and Demand Notice, there is absolutely no defence offered by the Corporate Debtor with regard to the amount of debt due to the Financial Creditor and the default committed by it. Debt and default have been proved by the financial creditor.

**IV. Final Order:**

15. In view of the findings in **I to III** above, the Petition is admitted. The Financial Creditor has suggested one Mr. Immaneni Eswara Rao as Insolvency Resolution Professional (IRP). The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.



**ORDER**

- i. Mr. Immaneni Eswara Rao (Registration No. **IBBI/IPA-001/IP-P01224/2018-2019/11943**); having office at 40-26-22, Mohiddin Street, Opp. BSNL Exchange, Labbipeta, MG Road, Vijayawada, Krishna, Andhra Pradesh-520010 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r/w Regulations made thereunder. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

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- ii. The IRP is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The order of 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 section 31(1) or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.
- v. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code. . Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vi. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakhs Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such



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amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional (IRP).
- ix. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.
- x. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.



Accordingly, CP (IB)/76/7/AMR/2022 stands admitted.

Sd/-

**SANJAY PURI**  
MEMBER (TECHNICAL)

Sd/-

**RAJEEV BHARDWAJ**  
MEMBER (JUDICIAL)

Reddy Pavani

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केस संख्या

CASE NUMBER CP (IB)/76/7/AMR/2022

निर्णय का तारीख

DATE OF JUDGEMENT 25.07.2024

प्रति नैपाल किया गया तारीख

COPY MADE READY ON 29.07.2024

N. K. Sharma  
29/07/2024

Deputy Registrar / Assistant Registrar /  
Court Officer

NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH