

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 24.11.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.45/7/AMR/2020	IA(IBC) 102/2021	7 Of IBC	Munagala Roja Harsha Vardhini Vs Vardhansmart Pvt Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP(IB) No.45/7/AMR/2020 and IA(IBC) 102/2021 are dismissed, vide separate common order.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

CP (IB) No.45/7/AMR/2020

**In the matter of a 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 M/s. VARDHANSMART PRIVATE LIMITED

Between:

Mrs.Munagala Roja Harsha Vardhini,
D/o.Jallipalli Satyanarayana,
Aged about 29 years, R/o.14-10-63,
Shivalayam Street, Morrispetta, Tenali,
Guntur, Andhra Pradesh - 522201.

... Financial Creditor

AND

M/s.Vardhansmart Private Limited,
CIN No.U51100AP2016PTC104563
Registered office at Plot No.G3,
Sai Apartment, Ground Floor,
Agnikulakshetraya Street,
Ganganamma Pet, Tenali,
Guntur, Andhra Pradesh - 522201.

... Corporate Debtor

AND

**IA (IBC)/102/2022
IN
CP (IB) No.45/7/AMR/2020**

**Interlocutory Application filed under Section 340 Read with
Section 195(3) of the Criminal Procedure Code, 1973**

AND

In the matter of M/s. VARDHANSMART PRIVATE LIMITED

Between:

Mrs.Munagala Roja Harsha Vardhini,
D/o.Jallipalli Satyanarayana,
Aged about 29 years, R/o.14-10-63,
Shivalayam Street, Morrispeta, Tenali,
Guntur, Andhra Pradesh - 522201.

...Applicant/ Financial Creditor

AND

M/s.Vardhansmart Private Limited,
CIN No. U51100AP2016PTC104563
Registered office at Plot No. G3,
Sai Apartment, Ground Floor,
Agnikulakshetraya Street,
Ganganamma Pet, Tenali,
Guntur, Andhra Pradesh - 522201.

... Respondent/Corporate Debtor

Pronouncement of order dated: 24.11.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

- For FC/Applicant : Mr.V.Venkata Rami Reddy,
along with Mr.M.Parameswara
Reddy, Advocates.
- For CD/Respondent : Mr.G.Dinesh Kumar, Advocate.

**COMMON ORDER IN CP (IB) No.45/7/AMR/2022 and
IA(IBC)/102/2022 in CP(IB) No.45/7/AMR/2022**

1. This petition is filed by Mrs.Munagala Roja Harsha Vardhini i.e., the Financial Creditor (in short FC) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s.Vardhansmart Private Limited i.e., the Corporate Debtor (in short CD) on the ground that the CD has committed default of the debt due to the FC. The total debt being Rs.31,79,616/-.
2. The facts which lead to filing of this Petition are briefly as follows:

The FC has given unsecured loan of Rs.20,00,000/- to the CD through RTGS with interest @ 24% per annum. The CD failed to pay the said loan. Hence, this Petition, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD.
3. The CD filed counter, questioning the maintainability of the Petition, on the ground that there is no Creditor and Debtor

relationship between the parties. It is further stated that the CD paid the amount to the FC through one Mr.K.Ajay Kumar who is an elder known to both the parties and who is doing business in the State of Andhra Pradesh. Due to the disputes between the FC and CD, the said Ajay Kumar interfered and pacified the dispute amicably. Originally, the FC is indebted to the said Ajay Kumar to a tune of Rs.40,00,000/- for which she stated that the amount due to her by the CD, will be recovered by the said Ajay Kumar. On that Ajay Kumar approached the CD and made all his efforts for recovery of the said amount. On that, Ajay Kumar, by using his influence in the matter, settled the matter and the CD paid Rs.25,00,000/- towards full and final settlement of the above. The FC agreed for the same and executed a receipt to that extent and further agreed to withdraw the Petition before this Tribunal. The CD paid the amount on 02.11.2020 and Mr.Ajay Kumar received the said amount in the presence of the FC and attesters. The FC further stated that he will withdraw the case whenever the lockdown is lifted. The FC, by suppressing the real facts, filed this Petition. On the above grounds, the CD seeks to dismiss the Petition.

4. A rejoinder is filed by the FC, contending that the oath in the counter itself is wrong since the attestation by the notary has taken place at Vijayawada on 29.12.2020 and the oath is shown as submitted at Hyderabad on 02.01.2021. The CD is liable for

punishment under the relevant provisions of the Court Rules and the NCLT Rules, 2016 for submitting false affidavit. There is an admission by the CD that he has availed unsecured loan of Rs.20,00,000/- from the FC. Hence the contention that there is no Creditor and Debtor relationship is false. The contention with regard to payment of Rs.25,00,000/- is false. The CD failed to submit the receipt if any issued by the FC. Though it is stated in the counter that the receipt is enclosed, no such receipt is enclosed. The integrity of the CD is totally doubtful. Hence in the above circumstances, the counter submitted by the CD has to be treated as invalid.

5. After the pleadings are completed, the CD filed an IA(IBC) No.1/2022 seeking permission to file an amended copy of the counter. The amendment sought for is as follows:

“4 (a) It is false that the applicant gave Rs.20 Lakhs to the Respondent. The applicant transferred an amount of Rs.20,00,000/- to the account of the Respondent Company, but, it is neither at the request of the respondent and it is shown by Sri.Narapu Reddy one of the Director of the Respondent Company as his part of share money. Thereafter, Sri Narapu Reddy illegally started another partnership firm M/s.RS Vardhans Mart and Sai Grand Bazar to run the similar business in which Mr.Narapu Reddy, Petitioner’s father-in-law Munagala Shyam Kumar also partners when there were disputes for mis appropriation of funds and stocks between the Respondent Company and M/s.RS Vardhans Mart the Respondent

Company herein filed a recovery suit O.S.No.07/2019 before the Hon'ble XI Additional District Judge, Tenali against R.S.Vardhan mart for the recovery of Rs.1,20,28,962.30/- and also submitted complaint to the S.P., Guntur. Smt.Roja Harsha Vardhini is partner in Sai Grand Bazar. Thereby the petitioner colluded and filed the present application with twisted facts at the behest of Mr.Avuthu Narapu Reddy and made a mischief before the Hon'ble Tribunal. Another suit O.S.No.12/2021 before XI Additional District Judge, Tenali against Munagala Syam Kumar, Munagala Roja Harsha Vardhini and 7 others filed for recovery of an amount of Rs.1,81,51,924/- which is also pending for adjudication.

(b) it is further submitted that the respondent company is a financially viable company and even after filing of the case also it closed the Bank loans which shows the creditworthiness of the respondent. The non-payment of the amount claimed by the applicant only it is not payable by the respondent company and it is not a debt owed by the Company and the applicant made a mischief before the Hon'ble Tribunal by twisting the fact of transfer of the amount which application is liable to be dismissed with costs to discourage such type of false applications before the Hon'ble Tribunal.”

IA(IBC)/1/2022 was allowed and amended copy of the counter is also filed.

6. Heard both the counsel and perused the written submissions filed by both the parties. According to the FC the amount given to the CD is an unsecured loan which carries interest @24% per annum. The Petitioner terms himself as a Financial Creditor,

hence, in the first place, he has the burden on him to prove that the debt is a Financial Debt. Under section 5 (8) of IBC, 2016 financial debt is defined as follows:

5(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
 - (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
 - (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*
7. The CD filed counter, stating that the CD paid the alleged amount to the FC through one Mr.K.Vijay Kumar, who is an elder to both the parties. Due to the disputes between the FC and CD, the said Ajay Kumar interfered in the matter. The FC is indebted to the said Ajay Kumar to a tune of Rs.40,00,000/- for which the FC stated that the amount due to her by the CD, will be recovered by the said Ajay Kumar. On that Ajay Kumar approached the CD and made all his efforts to recover the said amount and by using his influence the matter was settled and the CD paid Rs.25,00,000/- towards full and final settlement of the case. The FC agreed for the same and executed a receipt. Mr.Ajay Kumar received the said amount in the presence of the

FC and attesters. The FC further stated that he will withdraw the above case whenever the lockdown is lifted. Though it is mentioned in the counter that the photo stat copy of the receipt is filed, the same is not filed along with the counter. Later an amended counter is filed with totally different version from the one in the first counter. In the amended counter, the contention is that the FC gave Rs.20 Lakhs to the CD by way of transfer to the account of the CD. But it is not at the request of CD and it is shown by Mr.Narapu Reddy, one of the directors of the CD as his part of share money. Thereafter Mr.Narapu Reddy illegally started another partnership firm and various disputes for misappropriation of funds between the CD and M/s. R.S. Vardan Mart started by Mr.Narapu Reddy. The CD filed a recovery suit in O.S.No.7/2019. The FC herein is also a partner in Sai Grand Bazar. She colluded and filed the present Petition with twisted facts at the behest of Mr.Narapu Reddy. Another suit in O.S.No.12/2021 is filed before the XI Additional District Judge, Tenali against FC and others and the same is pending. It is true that totally contradictory pleas are taken by the CD. But the contention is that the advocate to whom they have given instructions with regard to the facts of the case, did not mention the facts as stated by them and are not reflected in the counter. Leaving aside the truth of the said submission for a while, it can be seen that the suit filed by the CD against Mr.Narapu Reddy

is prior to the filing of this Petition which is O.S.No.7/2019. A copy of the plaint in the said suit is also filed. Several allegations are made against Mr.Narapu Reddy with regard to the diversion of funds. Hence there seems to be a dispute between the CD and the said Mr.Narapu Reddy. It can be now seen that the document filed by the FC in evidence of transfer of Rs.20 Lakhs to the CD is the statement of account of the FC, which shows that the amount of Rs.20 Lakhs is transferred to the CD's account through RTGS and the same is admitted by the CD. But the contention of the FC is that she has given an unsecured loan to the CD, hence the said document does not stand as a proof of transfer of amount to the CD. A self-prepared copy of the interest calculation sheet is filed showing that an unsecured loan was given to the CD, but it does not have any basis. The ledger account of the CD, shows that on 07.09.2017 which is the alleged date of transfer of amount by the FC to the CD, an amount of Rs 20 lakhs was transferred from the FC and was adjusted to the balance of Mr.Narapu Reddy. It does not spell that it is an unsecured loan. The Counsel for the CD was however not in a position to answer the query properly which fell from the Bench as to how such contradictory pleas can be taken in the counters without any basis. The answer was that the counsel wrongly mentioned the facts. But the said explanation does not seem to be cogent. But

it can be seen that there is some substance and truth in the version projected by the CD. The amount transferred by the FC to the CD is not an unsecured loan. The Balance Sheet as on 31.03.2017 shows the name of the FC under the list of unsecured loans, though the column specifying the amount is blank. As to why the name of the FC had to be shown under the unsecured loan is not explained by the CD. But however, the burden remains on the FC to show that the amount given to the CD is an unsecured loan and that it falls within the definition of the financial debt. As already observed a suit was filed even prior to the filing of this Petition and another suit was filed subsequent to the filing of this Petition, which shows the FC also as a party. In the background of the facts, which do not lend any assistance to this Tribunal to arrive at a conclusion whether the amount given by the FC to the CD would qualify for a financial debt, no finding can be given whether that the FC is a financial creditor within the meaning of Section 5 (7) of IBC, 2016, which is reproduced hereunder:

5(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

8. There are several discrepancies in the transactions between the parties which can be understood only by subjecting the parties to

cross-examination, which can be done only in the suits, which are already pending before the Civil Courts. The Counsel for the CD submits that the CD is very much solvent, which can be evidenced from the letter issued by the Bank of India stating that a cash credit limit of Rs.90 Lakhs was fully paid on 25.11.2020 and there is only notional interest pending. Be that as it may, due to the reasons already mentioned, this Petition cannot be admitted. Hence, the CP(IB) No.4/7/AMR/2020 is dismissed.

IA(IBC)/102/2022:

The Applicant/FC has moved an application in IA(IBC)/102/2021 which was agreed by both sides to be disposed of along with main company petition. The prayer in the said application is to punish the Respondent/CD for making false statements before the NCLT, Amaravati Bench. The grounds on the basis of which the said prayer is made is that in the counter filed by the Respondent/CD which is dated 02.01.2021 the date of attestation is shown as 29.12.2020. The Managing Director of the Respondent has stated on oath in reply counter that he has temporarily come down to Hyderabad, Telangana but the advocate and notary who attested the document has attested it at Vijayawada and on a date previous to the filing of reply or counter. The stamp paper on which the counter is filed has been

dated 30.12.2020, which is clearly after the notary has attested on 29.12.2020.

A perusal of the counter, shows that under the verification the date mentioned is 02.01.2021 and the attestation done by the notary is on 29.12.2020. But it can be noted that at the end of the contents of the counter it is mentioned as “*Dated at Hyderabad on this __ day of December, 2020*”. Hence the date mentioned underneath the contents of the counter is December, 2020 whereas under the verification it is mentioned as 2nd Day of January, 2021. The counter filed by the Respondent is to the effect that the above discrepancies with regard to the dates is by oversight and mistake and he submitted his unconditional apology to the Tribunal for the mistakes that crept in submitting the contents of the counter filed before this Tribunal. It is stated that there was a mistake in mentioning the dates and place of attestation, which is not done with any intention or motive but out of ignorance and that there was a clerical mistake which is neither wilful nor wonton.

The explanation by the respondent can be accepted in the light of the above observed facts. Moreover, the petitioner is not clear in the prayer and does not specify the provision of law under which, punishment of the respondent is sought for. He only seeks the tribunal to punish him under the relevant rules. In the

light of the above, IA No.102/2021 in CP(IB)
No.45/7/AMR/2020 is dismissed.

**Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu