

**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

Sd/

Sd/

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

Sd/

Sd/

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.

Sd/-

Sd/-

- 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

Sd/

Sd/

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.

Sd/-

Sd/-

- 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*”.

Sd/-

Sd/-

- 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.

Sd/-

Sd/-

- 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.

Sd/-

Sd/-

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

Sd/

Sd/

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 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

Sd/-

Sd/-

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.

Sd/-

Sd/- Page 11 of 14

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.

Sd/-

Sd/-

- 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

Sd/-

Sd/-

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.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

IA (IBC)/277/2022
in
CP (IB)/76/7/AMR/2022

(Under section 7(5) of the Insolvency and Bankruptcy Code, 2016, read
with Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of M/s **MANGALAGIRI TEXTILE MILLS PRIVATE
LIMITED**

BETWEEN:

M/s Mangalagiri Textile Mills Private Limited

A Company incorporated under the Companies Act, 1956

With Corporate Identity No.U17110AP2006PTC049607

Having its Registered Office at China Kakani Village, Mangalagiri Mandal

Guntur, AP – 522 503, State of Andhra Pradesh

... Applicant/ Corporate Debtors

Versus

State Bank of India,

A banking organization constituted under the State Bank of India Act, 1955

Having its Corporate Centre at State Bank Bhavan

Madame Cama Road, Mumbai – 400 021

One branch inter alia called as Stressed Assets Management Branch,

At Kachiguda, Hyderabad, represented by its Asst. General Manager

...Respondent/ Financial Creditor

Date of Order: 25.07.2024

Coram:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

SHRI SANJAY PURI, MEMBER (TECHNICAL)

Sd/-

Sd/-

Parties/Counsels present:

For the Applicant : Mr. Lakshmi Narayana, Advocate &
Mr. Sricharan Telaprolu, Advocate

For the Respondents : Mr. V. V. S. N. Raju, Advocate

ORDER
(Per: Bench)

1. This Application filed by the Applicant, Dr. Nagasaina Rao, Managing Director and authorized signatory of M/s. Mangalagiri Textile Mills Private Limited, under Section 7(5) of the Insolvency and Bankruptcy Code 2016 r/w Rule 11 of National Company Law Tribunal Rules 2016 seeking to reject the Petition i.e., CP (IB)/76/7/AMR/2022 filed by the Respondent/Financial Creditor.
2. **Brief Facts and contentions of the applicant leading to the present Application are as follows:**

2.1. The Respondent/Financial Creditor has filed a company petition - CP(IB)/76/7/AMR/2022 on 31.05.2022, against the Applicant/Corporate Debtor, before this Tribunal under Section 7 of Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with a prayer to (i) To admit the company petition for initiating Corporate Insolvency Resolution Process (CIRP) for revival of the Corporate Debtor and (ii) direct initiation of Corporate Insolvency Resolution Process in respect of the Applicant/ Corporate Debtor by allowing instant company petition.

Sd/-

Sd/-

- 2.2. The applicant submitted that the Financial Creditor is a State within the meaning of Article 12 of the Constitution of India and that every officer of it shall act fairly and shall be honest and truthful in all their actions including in placing the facts and documents, furnishing the information in the application as required under Section 7 of the Insolvency and Bankruptcy Code, 2016 and further shall not omit any material fact and shall not resort to non-disclosure of dispute or repayment of the debt and shall be under obligation not to resort the act of “*Suppressio Veri and Suggestio Falsi*” and that Section 75 Insolvency and Bankruptcy Code, 2016, provides for a punishment for furnishing false information in the application including the omission of any material facts is a punishable.
- 2.3. It is averred by the applicant that the State Bank of India, represented by its Authorized Officer namely Mr. A. Sai Prasad, ‘Assistant General Manager’ of the Financial Creditor, is guilty of “**Suppressio Veri**” in that the fact of issuing a letter dated 20.10.2020, but failed to state in the facts of the case of the application. Further, in the said letter dated 20.10.2020, it is categorically stated that book outstanding (excluding national interest from the date of NPA) as on dated 31.03.2020 is of INR 13,81,67,787.76/- whereas in the main application, the Financial Creditor deliberately omitted to disclose this in narration of facts in the present main application. Contrary to this, at Para 7 of the main application it is stated that “It is submitted that as on dt.30.04.2022 an amount of INR 31,85,80,393.72/- is due and payable by the Corporate Debtor to the Financial Creditor” and the averment by the Financial Creditor in the main application that “an outstanding car loan amount

Sd/-

Sd/-

of INR 14,55,029.40/- as on 30.04.2022 is due and payable by the Corporate Debtor” is false.

2.4. It is further averred that the word “book outstanding” means a debt remaining undischarged or unpaid or an outstanding debt and that once the book outstanding amount as on dated 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 INR 13,81,67,787.76/- would be binding on the Financial Creditor & Corporate Debtor under the Principles of ‘Novation’ and that under the ‘principle of waiver’ the Financial Creditor deemed to have waived that portion of the balance amount after deducting the same from INR 31,85,80,393.72/-. Informing the Applicant/Corporate Debtor of the book outstanding amount at INR 13,81,67,787.76/- the Financial Creditor in the very same letter dated 20.10.2020, formulated a scheme for One Time Settlement for NPAs and AUCAs (SBI OTS 2020) and in that an OTS amount was calculated, arrived at INR 10,36,25,84.82/- and that a sum of INR 84,00,000/- (INR 52,00,000/- + INR 32,00,000/- = INR 84,00,000), was paid in consequent to the acceptance of the OTS, which was admitted by the Financial Creditor in its letter dated 29.12.2020. The applicant averred that these material facts are deliberately suppressed in the narration of facts in the main application by the Financial Creditor thereby the Financial Creditor is guilty of **“Suppressio Veri and Suggestio Falsi”**.

2.5. It is submitted that the Financial Creditor in its Letter SAMB/11/HYD/PSU/1294 dated 29.12.2020 at Para 2 of the said letter, informed the Applicant/Corporate Debtor that the Corporate

Sd/r

Sd/r

Debtor, failed to pay the balance amount of OTS as per the terms of sanction and further stated that the One Time Settlement sanctioned is cancelled and further advised to pay the entire bank dues with interest at contracted rate. Therefore the entire bank dues as indicated in their letter dated 20.10.2020 is of INR 13,81,67,787.76/- together with accrued interest thereon, duly giving credit to the payment of INR 84,00,000/- (Rupees Eighty Four Lakhs Only) which can never be of INR 31,85,80,393.72 as on dated 30.04.2022.

- 2.6. It is further averred that the balance amount under the OTS scheme in respect of the First Instalment amounted to INR 72,00,000/- and that there was a short delay resulting in the cancellation of the 'OTS' by the Financial Creditor through its letter dated 29.12.2020. Aggrieved by the letter dated 29.12.2020, a Representation dated 03.01.2021, addressed to the Chief General Manager, SBI, Mumbai, was submitted for enlargement of time for the payment of INR 72,00,000/- and for revival of OTS Scheme stating that the Chairman and Managing Director of the Corporate Debtor, is a Doctor, contracted the virus of 'Covid-19' due to interaction with patients and being a responsible Doctor, he had quarantined himself for (14) days from 24.12.2020 onwards. Another ground is that the Bank issued its Letter of acceptance on dated 24.11.2020, whereas the last date as per the OTS Scheme for receipt of application is dated 23.11.2020 and the last date of conveying is dated 30.11.2020. It is averred that the last date i.e. 30.11.2020 shall be the date for calculation of the last date for payment of first instalment which would be 30.12.2020. For consideration of the payment of INR 32,00,000/- towards the First Instalment, sufficient

Sd/-

Sd/-

time would be available till 31.12.2020 for the payment of the balance amount of INR 72,00,000/- which was not possible as the wrong date was taken into account by the Financial Creditor for the time for counting time for payment of First Instalment thus leading to the cancellation of the OTS Scheme.

2.7. The applicant filed a Writ petition [WP No.2512 of 2021] before the Hon'ble High Court of AP, Amaravati for the enlargement of time wherein in the Corporate Debtor sought a direction to the Financial Creditor to receive the balance amount of OTS amount as per the terms and conditions under letter dated 24.11.2020 issued by the Financial Creditor when the representation dated 03.01.2021 for the extension of time for the repayment under the OTS was rejected by the Financial Creditor through its letter dated 21.01.2021. The said writ petition is pending adjudication before the Hon'ble High Court of AP, at Amaravati

2.8. On 05.05.2022, the Division Bench of the Hon'ble High Court of AP in the presence of the counsel for the Financial Creditor, passed the following interim order in the WP No.2512 of 2021:-

"It is submitted by Sri S. Satyanarayana Moorthy, learned Counsel for the respondent bank, that till date no auction notice has been issued.

On the other hand, it is submitted by Sri M.S. Prasad, learned Senior Counsel representing the learned Counsel for the Applicants, that the respondents are likely to take coercive action against the applicants.

Post on 20.06.2022

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".

Sd/-

Sd/-

It is further averred that Interim Order dated 05.05.2022 was granted in favour of the applicant/corporate debtor and while the stay order was in force, the Financial Creditor suppressing this fact has filed an application before this Tribunal on 31.05.2022 which might arise conflict of jurisdiction between Hon'ble High Court and this Tribunal for the reasons both the judicial forms are called upon to examine the very same set of facts.

- 2.9. The applicant through an interlocutory application vide IA.No.1 of 2021, sought permission to pay a sum of INR 72,00,000/- to the credit of the SBI No. Lien Account No.35754767051 (IFSC Code No.SBIN0018359), pending disposal of the main WP No.2512 of 2021 and the said IA was resisted by the Financial Creditor and the said IA is pending adjudication till date.
- 2.10. The Applicant/Corporate Debtor's right to the possession of property namely a Textile Mill at China Kakani, which has a spindle capacity of 15,600 and provides large scale employment of more than 240 people and indirectly to all the members of their respective families, apart from providing indirect employment to various workers such as truck drivers, malaise, cleaners, food providers etc., to street vendors, cloth merchants and barbers, has a material bearing on the present proceedings before this Hon'ble Tribunal in as much as the very initiation of the proceedings namely CP (IB) No.76/7/AMR/2022 can resulting in the suspension of the right of the respondent/ Corporate Debtor, including the right to possession of its properties and the specific order of the Hon'ble Division Bench of the Hon'ble High Court of AP, on 05.05.2022 has a material bearing on the right of the

Sd/-

Sd/-

Financial Creditor to take any steps which tends to deprive the Corporate Debtor of its rights. It is strongly averred that Financial Creditor invoked the jurisdiction of this Hon'ble Tribunal without any need to do so and in that process, without disclosing the very material facts and specifically the material facts in the form of an order of the Hon'ble Division Bench of the Hon'ble High Court of AP, dated 05.05.2022 made in WP No.2512 of 2021

- 2.11. It is submitted that any order of the Hon'ble High Court that may be passed in WP No.2512 of 2021 will have a material effect on the present proceedings before this Hon'ble Tribunal in CP(IB)/76/7/AMR/2022 and even arising a conflicting of jurisdiction.
- 2.12. It is submitted that such deliberate suppression of the material fact by the Financial Creditor is fatal to these proceedings themselves, hence praying for the rejection of the main application.
- 2.13. It is averred that apart from making payments during the pendency of the OA before the Debt Recovery Tribunal (DRT), payment of the debt arrived at by the Financial Creditor was done from time to time under the OTS Schemes of the 2019 and 2020. Further averred that there is no default of debt and there is no non-payment of debt when whole or any part or instalment of the amount of the debt has become due as indicated, informed and admitted by the Financial Creditor from time to time. Consequently the main ingredient of default as defined under Section 3(12) of the Insolvency and Bankruptcy Code, 2016 is missing in the main application filed by the Financial Creditor. Hence, This Application.

Sd/-

Sd/-

3. Counter of the 1st Respondent/Financial Creditor:

- 3.1. By misinterpreting the Banking practice followed by banks in accordance with the RBI guidelines and concealing material facts, respondent contended that the applicant herein tried to mislead the Hon'ble Tribunal and made false and untenable allegation of "*Suppressio Veri and Suggestio Falsi*" against the authorized officer of the bank and that there is no merit in the contentions of the Applicant.
- 3.2. It is submitted that the banks are bound to follow the guidelines with regard to stressed assets, issued by the RBI from time to time, while dealing with the NPA accounts. Once an account is classified as NPA, the banks cannot debit the classified account for the accrued interest and cannot show it as income. This does not absolve the defaulter/borrower from paying the accrued interest from the amounts outstanding in the account as on the date of NPA. The borrower is liable to pay interest, charges, expenses, etc., in accordance with the terms of the loan documentation on the amounts outstanding. Non-booking of the accrued interest in an NPA account as income does not amount to waiver of such interest and the borrower is liable to pay the outstanding dues with interest, etc., as per the sanction terms. —
- 3.3. It is averred that the words "Book Outstanding" is misinterpreted thus attempting to mislead this Tribunal.
- 3.4. On the account of accruing interest on the outstanding balance, the outstanding dues change with the passage of time are not static.
- 3.5. If interest is not paid in a regular account, the accrued interest would be debited to the account and the principal amount includes the interest unpaid as per the banking practise unpaid interest merges with the

Sd/-

Sd/-

principal amount. In an NPA account, no debits for interest are allowed as per the RBI guidelines. However, the borrower shall not be absolved from his liability from paying the accrued interest as per the Banking practise.

- 3.6. It is submitted that the OTS Scheme is a special scheme framed by the bank at its management level and uniformly applicable in all cases as per the terms and conditions embodied in the scheme. It is not open forever and the terms of the scheme cannot be changed in view of its special nature. The parties intending to avail and take the benefit under the scheme, should comply with the terms and conditions of the scheme and in case of failure, no benefit under the Scheme, would accrue to the defaulter, as it is needless to mention that in all OTS proposals, the bank sacrifices good amounts with a hope to get fast recovery, without litigations hurdles and other problems. As per the terms of OTS scheme dated 12.10.2020, if the OTS amount is not paid within the timelines, the OTS sanction will be rendered infructuous and OTS treated as failed.
- 3.7. Further submitted that on failure of the OTS, the original position with regard to the liability would be restored and the defaulter is liable to pay total dues with up to date interest, costs, etc., as per the loan documentation and that despite the failure to comply with the terms and conditions of the OTS, applicant is claiming benefit under the scheme with regard to the dues payable.
- 3.8. Further submitted that the amounts paid by the Applicant in the OTS would be properly accounted and the remaining amounts in the account would be due and payable immediately after such failure of the OTS.

Sd/-

Sd/-

- 3.9. It is submitted that the applicants admission that the payable dues of the applicant is above Rupees one crore itself would make them liable to pay without further proceedings and the Hon'ble DRT has also adjudicated the debt and also issued judgement and recovery certificate, which is to be executed for recovery of the dues.
- 3.10. It is submitted that there is no merit in the contention of the applicant that the workers of the Corporate Debtor would be affected as the Corporate Debtor closed its activities long back and the electricity department issued notice to the bank for payment of electricity dues, as payment of the same isn't done till date by the Corporate Debtor. Further submitted that the loan facilities were recalled and an OA was filed. The DRT issued recovery certificate and recovery proceedings have commenced. Further submitted that the promoters of the CD are entering into lease agreements and trying to create 3rd party interest without the consent of the bank and that the lease rentals are diverted without making payment to the bank.
- 3.11. It is submitted that it is an established law that action under IBC is not coercive step and the applicant, rather filing their contentions in the counter, with a malafied intention has filed this application along with a stay application before this Tribunal which is affecting the Bank's endeavour to resolve and revive the Corporate Debtor and prayed to dismiss this application with costs and to admit the main application.

Sd/-

Sd/-

4. The Applicant/Corporate Debtor has filed rejoinder, wherein denying all the allegations averred in the counter, reiterating some of the facts mentioned in the application and contended all the new issues averred by the Financial Creditor in their counter.

4.1. The SBI General Regulations as well as the Gazette Notification dated 02.05.1987 relied on are not filed and hence in the absence of any evidence in support of such claim, the reply may have to be rejected.

4.2. Without delivery of demand notice, the present CP (IB) No.76/7/AMR/2022 was presented by the Financial Creditor and this objection was specifically raised in Ground (ii) at Page No.15 of the Counter filed on behalf of the Corporate Debtor which remained unanswered in the Reply filed on behalf of the Financial Creditor. Further submitted that no notice in the CP was served on the Applicant and that by noticing the Notice published in the Daily News Paper, applicant entered appearance and filed the counter on 12.12.2022. Resorting to splitting of cause of action, the Financial Creditor issued the Demand Notice dated 19.01.2023 in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for personal Guarantors to Corporate Debtors), Rules, 2019, and served the same through registered post on dated 24.01.2023 which is much after the date of filing of the main CP, which itself is illegal and misconstruction of rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, read with Section 95(2) of the Insolvency Bankruptcy Code, 2016, in as much as this provisions under sub-section (2) of Section 95 is available to the Creditor the relation to the partnership

Sd/-

Sd/-

debt owed to him for initiating an insolvency resolution process against (a) any one or more partners of the firm; or (b) the firm. It is submitted that filing the counter on behalf of the Corporate Debtor and the IA. No.277 of 2022 dated 26.10.2022 and the reply filed on behalf of the Financial Creditor dated 07.01.2023 is a significant development, which needs to be taken note of by this Tribunal.

- 4.3. It is submitted that the main CP (IB)/76/7/AMR/2022 is solely based on the Order in OA No. 43 of 2018 dated 19.08.2019 before the DRT, Hyderabad, who has no jurisdiction to entertain the OA, in which the amount was shown for the recovery of INR 8,85,90,695.67 paisa, and pendent lite and future interest at 16.25% per annum with simple on the amount due from the date of filing of the original application till full and final realization of claim amount (*vide* Recovery Certificate). But the Financial Creditor in the present CP claimed the total outstanding at INR 31,85,80,393.72 as on 30.04.2022.
- 4.4. During the pendency of the OA.No.43 of 2018 on the file of the DRT, Hyderabad, a total sum of INR 5,87,00,000/- paid was not given credit by the DRT, Hyderabad, while passing the orders in OA.No.43 of 2018 dated 19.08.2019 and the Recovery Certificate dated 28.01.2020. Hence, making the debt shown in the order of the DRT as well as the Recovery Certificate is false under the principles of redemption and as a matter of right of the customer to reduce its burden and the applicant has disputed the debt amount.
- 4.5. It is submitted that the Financial Creditor is bound by the RBI Guidelines under the provisions of the Banking Regulations Act. Under the Circular No. RBI/2015-16/101 DBR No.BP.BC.2/21.04.048/2015-

Sd/-

Sd/-

16 dated 01.07.2015 of the Reserve Bank of India, once the account was declared as Non-Performing Assets (NPA), no interest can be accrued from the date of declaration of the debt as NPA, and that the financial Creditor is deliberately disobeying the RBI Guidelines.

- 4.6. It is strongly contended that the Agreement for conversion work dated 04.10.2021 is only a 'job work/ conversion work' and the same is being used to cause prejudice to this tribunal by the Financial Creditor that "the promoters of the CD are entering into lease agreements and trying to create 3rd party interest without the consent of the bank and that the lease rentals are diverted without making payment to the bank" without any evidence.
5. In the light of the contest as aforementioned, the points which emerge for our consideration are:
- I. "Whether any conflict of interest arises between the jurisdictions Hon'ble High Court and this Tribunal?"
 - II. "Whether any default has occurred in the repayment of debt due to the Respondent/Financial Creditor by the Applicant/Corporate Debtor?"
6. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
7. The CP(IBC)/76/7/AMR/2022 was filed by the Respondent/Financial Creditor in this Tribunal on 30.05.2022 for the Non-Payment of dues, under Section 7 of the Insolvency & Bankruptcy Code, 2016. The grievance of the Applicant/Corporate Debtor is that the respondent/Financial Creditor is guilty of "***Suppressio Veri and Suggestio Falsi***" i.e. suppression of truth and suggestion of a false statement about the proceedings before the Hon'ble High Court of Andhra Pradesh and the amount due which is payable by the

Sd/-

Sd/-

Applicant/Corporate Debtor to the Respondent/Financial Creditor. Hence the present application for rejection of CP(IBC)/76/7/AMR/2022 filed by the Respondent/Financial Creditor.

8. So much so, it is undisputed that the OTS Scheme was availed by the Applicant and the applicant has paid part amount of INR 84,00,000/- of the First Instalment under OTS. It is also undisputed that there was a delay in the payment of the remaining amount of INR 72,00,000/- of the First Instalment of the OTS due to which the OTS is cancelled.
9. In respect of the first point, the Writ Petition No. 2521 of 2021 was filed by the Applicant before the Hon'ble High Court of Andhra Pradesh, for the extension of OTS, which the bank has rejected and this Writ Petition has already been withdrawn as stated by the Ld. Counsel for the Respondent.
10. In the ruling of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors.* [Civil Appeal No. 7121 of 2022], rendered by the Hon'ble Supreme court, where it is stated that:

"Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. ... Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

From the above Judgment of the Hon'ble Supreme Court, it is clear that Section 7 application which is filed on a debt that has become due and payable, the said application cannot be rejected on any ground.

Sd/-

Sd/-

11. It is an admitted fact that the cancellation of the OTS is due to the delay in timely payment of the remaining due of INR 72,00,000/- of the First Instalment as per the timeline provided under such OTS.
12. It is an established law that the OTS proposal itself is an acknowledgment of Debt, and the Financial Creditor can initiate action under Section 7 on such acknowledgment on the failure of the OTS proposal, as held by the Hon'ble Supreme Court in *Dena Bank v C. Shivkumar Reddy and Anr.*, [(2021) 10 SCC 330].
13. It is clear that the said Writ Petition is regarding the revival of the failed OTS, and Application filed by the Respondent/ Financial Creditor before this Tribunal, is for the initiation of CIRP on the CD on the ground of debt which has become due and payable. Moreover, the said Writ Petition has already been withdrawn.

In the light of the aforesaid discussion, we find no reason as to why the Section 7 Application should not be adjudicated. Hence, this Application is dismissed.

Accordingly, the IA(IBC)/277/2022 in CP(IBC)/76/7/AMR/2022 is disposed of.



SANJAY PURI
Member (Technical)



RAJEEV BHARDWAJ
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

IA (IBC)/278/2022
in
CP (IB)/76/7/AMR/2022

(Under Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of **M/s MANGALAGIRI TEXTILE MILLS PRIVATE
LIMITED**

BETWEEN:

M/s Mangalagiri Textile Mills Private Limited

A Company incorporated under the Companies Act, 1956

With Corporate Identity No.U17110AP2006PTC049607

Having its Registered Office at China Kakani Village, Mangalagiri Mandal

Guntur, AP – 522 503, State of Andhra Pradesh

... Applicant/ Corporate Debtors

Versus

State Bank of India,

A banking organization constituted under the State Bank of India Act, 1955

Having its Corporate Centre at State Bank Bhavan

Madame Cama Road, Mumbai – 400 021

One branch inter alia called as Stressed Assets Management Branch,

At Kachiguda, Hyderabad, represented by its Asst. General Manager

...Respondent/ Financial Creditor

Date of Order: 25.07.2024

Coram:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

SHRI SANJAY PURI, MEMBER (TECHNICAL)

Sd/-

Sd/-

Parties/Counsels present:

For the Applicant : Mr. Lakshmi Narayana, Advocate &
Mr. Sricharan Telaprolu, Advocate

For the Respondents : Mr. V. V. S. N. Raju, Advocate

ORDER
(Per: Bench)

1. This Application filed by the Applicant, Dr. Nagasaina Rao, Managing Director and authorized signatory of M/s. Mangalagiri Textile Mills Private Limited, under Rule 11 of National Company Law Tribunal Rules 2016 seeking stay of further proceedings in CP(IBC)76/7/AMR/2022 filed by the Respondent/Financial Creditor till the disposal of another application [IA(IBC)/277/2022] filed by Applicant seeking rejection of the main Petition i.e., CP(IBC)76/7/AMR/2022 filed by the Respondent/Financial Creditor.
2. Most of the facts are repeated in the connected IA(IBC)/277/2022 except seeking to grant stay of further proceedings pending disposal of the said application or otherwise would suffer irreparable loss and damage. Hence, This Application.
3. The averments and the contentions of the Respondent/Financial Creditor in their counter is repeated in the connected IA(IBC)/277/2022 praying to dismiss this application with costs and admit the main Petition.
4. We have heard the Learned Counsels for both the parties and have also gone through the entire records.

Sd/-

Sd/-

5. The applicant has filed an Interlocutory Application IA(IBC)/277/2022 for the rejection of the main application in CP(IB)/76/7/AMR/2022 which has been dismissed and disposed of vide order dated 25.07.2024 and hence, the present application IA(IBC)/278/2022 becomes infructuous.

Accordingly, the IA(IBC)/278/2022 in CP(IBC)/76/7/AMR/2022 is disposed of.



SANJAY PURI
Member (Technical)



RAJEEV BHARDWAJ
Member (Judicial)