

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-05-2023 AT 10:30 AM**

CP(IB) No.483/7/HDB/2019
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Emgee Media Integrated Services Pvt Ltd

...Financial Creditor

VS

Vyjayanthi Televentures Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in Company Petition 483/2019 pronounced vide separate sheets, in the result, this Company Petition under Section 7 IBC is hereby dismissed. No costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

CP (IB) No. 483/7/HDB/2019

*Under Section 7(2) of the Insolvency & Bankruptcy Code, 2016 read with Rule
34 of NCLT Rules, 2016.*

In the matter of Vyjayanthi Televentures Private Limited

Emgee Media Integrated Services Private Limited,
#A-101, Sri Nilaya Apartment, Mayur Marg,
Begumpet, Hyderabad, Telangana – 500 016.

... Financial Creditor

Versus

M/s. Vyjayanthi Televentures Private Limited,
Flat No.104, Road No. 71, Nava Nirman Nagar,
Jubilee Hills, Hyderabad, Telangana – 500 053.

... Corporate Debtor

Date of Order: 22.05.2023

CORAM:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan singh, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE:-

For Financial Creditor: Shri. V. Venkata Rami Reddy, Advocate
For Corporate Debtor: Shri. Chandrasen Reddy, Senior Advocate for Ms. M.
Manjusha, Advocate

PER: BENCH

1. This Petition is filed by M/s. Emgee Media Integrated Services Private Limited, (hereinafter referred to as “Financial Creditor”) under Section 7(2) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. Vyjayanthi Televentures Private Limited, (hereinafter referred to as “Corporate Debtor”), alleging non-payment of Rs. 9,09,80,000/- (*Rupees Nine Crores Nine Lakhs Eighty Thousand Only*), including interest is said to be due and payable by Corporate Debtor to Financial Creditor as on 31.03.2016.
2. **The averments put forth by the Financial Creditor are:**
 - a. The Financial Creditor has rendered unsecured loan to the Corporate Debtor. As per the letter dated 09.06.2016, the said debt is of Rs. 9,09,80,000/- (*Rupees Nine Crores Nine Lakhs Eighty Thousand Only*).
 - b. It is submitted by the Financial Creditor that, Corporate Debtor has to pay a total amount of Rs. 9,09,80,000/- (*Rupees Nine Crores Nine Lakhs Eighty Thousand Only*) as per the confirmation of Balance of Account letter dated 09.06.2016 received from the Corporate Debtor.

- c. It is submitted that the Financial Creditor issued a demand notice through his counsel dated 22.05.2019 to the Corporate Debtor demanding repayment of unsecured loan of Rs. 9,09,80,000/- (Rupees Nine Crores Nine Lakhs Eighty Thousand Only). After that the counsel to the Corporate Debtor issued a reply notice dated 06.06.2019 which is not at all tenable since it is a financial debt.

3. The contentions put forth by the Corporate Debtor in its Counter are:

- a. Corporate Debtor denied the averments made by the Financial Creditor and submitted that the petition is liable to be dismissed.
- b. It is averred that the present application U/sec. 7 of IBC is not maintainable, as the applicant is neither Financial Creditor nor Operational Creditor not a creditor. More so, there is no such Unsecured loan much less an amount of Rs. 9,09,80,000/- payable by Corporate Debtor as alleged in the present application and the issuance of said Demand Notice dated 22.05.2018 is only after thought and to harass the Corporate Debtor.
- c. It is further averred that the Financial Creditor has already filed Company Petition No. 401/241/HDB/2018 U/s 59, 213 and 241 read with Section 242, 244 and other applicable provisions of the Companies Act, 2013 before this Hon'ble Tribunal, Hyderabad Bench against the present

Corporate Debtor, i.e., Ms. Vyjayanthi Televentures Private Limited and 7 others basing on false and baseless allegations seeking for the following main reliefs:

- (i) To declare that the Respondent Company ought to be investigated by an inspector as per section 210 of the Companies Act, 2013 and also declare the allotment made on 16.04.2012 as null and void and not binding on the first Respondent Company.
- (ii) Direct the 2nd and 3rd Respondent to deposit the amounts siphoned off from the 1st Respondent as identified in the investigation and examine the conduct of the 2nd and 3rd Respondents in accordance with Section 242 of the Companies Act, 2013.
- (iii) To direct the 2nd and 3rd Respondents be surcharges for all the amounts identified to be siphoned off by the 2nd and 3rd Respondents from the 1st Respondent Company by this Hon'ble Bench by conducting independent audit of the records of the 1st Respondent Company and also to declare the appointment of the 4th Respondent as director of the 1st Respondent Company is Null and Void and Form DIR-12 filed by the 1st Respondent company is not binding.

It is further averred, from the above submissions it is clearly evident that the Financial Creditor and its sister concern are trying to harass Corporate Debtor by initiating multiple IBC proceedings against it. It is only to create pressure upon the Corporate Debtor, the Financial Creditor is using pressure tactics.

- d. It is further averred that the Corporate Debtor specifically denied the same in the reply/objections filed in the above referred Company Petition No. 401/241/HDB/2018 stating that as per books of accounts of M/s. Vyjayanthi Televentures Private Limited for the Financial Creditor group. Out of the above amount of Rs. 4.05 Crores is towards circuitous by M/s. Visual Media Pvt. Ltd., to the extent of Rs. 5.00 Crores and thereafter an amount of Rs. 4.75 Crores was given to M/s Engine Infrastructure Holdings India Private Limited (Sister Concern of the Financial Creditor) and later the amount Rs. 4.05 Crores was routed to M/s Vyjayanthi Televentures Private Limited. The loan account of M/s. Visual Media Pvt. Ltd., was closed by the promoters of M/s Vyjayanthi Televentures Private Limited from their private sources and no amount is payable on this account to the Financial Creditor. That the Financial Creditor has filed the present petition by suppressing the above acts and remaining amount of Rs. 4.95 crores is brought in by M/s. Emgee Media integrated Services

Pvt. Ltd., in his tenure of Management is acting Chairman. At that point of time there were about 300 employees working in M/s. Vyjayanthi Televentures Private Limited, who were also been kept in the know of this fact.

- e. It is further averred that the entire unsecured loan provided by the M/s Emgee Media were diverted to the Corporate Debtor and later used for their personal benefits is absolutely false. M/s Vyjayanthi Televentures Pvt. Ltd have issued an allotted 40,00,000 shares 16.04.2012 to other creditors and the above said allotment was done at the instance of Mr. Madala Srinivas the then Director of the M/s Emgee Infrastructure (India) Pvt. Ltd who suggested the Corporate Debtor that the unsecured loan due to the above said persons be converted into equity shares in order to written off the unsecured loans. The entire transaction was uploaded by the company secretary of the M/s Emgee Infrastructure (India) Pvt., Ltd namely M/s Mahesh & Associates at the instance of the Mr. Madala Srinivas. Further, Mr. Madala Srinivas refused to convert his part of unsecured loan into equity shares for the reasons best known to him at that point of time. While the corporate debtor is willing to allot equity shares by converting the unsecured loan for an amount of Rs. 5.00 Crores of the Financial Creditor to maintain the shareholdings of the 23% of the M/s Emgee Infrastructure (India) Pvt. Ltd in the Corporate Debtor

company. However subsequently the financial creditor, being the sister concern of M/s. Emgee Infrastructure Holdings (India) Pvt Ltd., has converted the amount of Rs. 5 Crores into 13,75,000/- equity shares of Rs. 10/- each at a premium of Rs. 30/- per share fully paid up on the Corporate Debtor company and the same is reflected in the balance sheet under Note No.5 Non current investment in Balance sheet year ending 2011-12 and from there every year till 2018-19. The said conversion is internal arrangement between the financial creditor and its sister concern, but nevertheless the same has been converted into equity shares of 13,75,000 for value of Rs. 5.00 Crores.

f. It is further averred that the Financial Creditor, the then founder Director, Mr. M. Srinivas has swindled crores of rupees from Corporate Debtor's company for his unlawful gains during his tenure in the company as key person in the operations of company by siphoning money paid by third parties towards marketing for which the Corporate Debtor is having substantial proof.

g. It is further averred that for the years 2011-12 and 2012-13 the operations of Corporate Debtor have gone to stand still. The company was running under losses consistently from the beginning and the banks have initiated proceedings under SARFAESI and all the assets of the Corporate Debtor,

including the assets and collateral securities were seized by the secured creditors and the losses were so huge that the promoters Mr. Aswini Dutt and Ms. Swapna sold their personal properties for making good the financial commitments and Corporate Debtor did not have any source left to even pay salaries, which resulted that the staff were left the company, which ultimately lead the company in constructive lock and key of the secured creditors. Thereafter the secured lenders have also advertised in the newspapers about the proceedings initiated under SARFAESI and consequential proceedings and in these circumstances that the company could not file returns due to authorities and as such the legal compliance were delayed. All these things are within the knowledge of Mr. Srinivas and he was actively involved in the affairs of the company and also in all financial matters, including that all the negotiations with the bankers. It is also a fact that one of the sister concerns of the Financial Creditor i.e., M/s Emgee Infrastructure Holdings (India) Pvt. Ltd, was a shareholder and there in, the promoters of the said M/s Emgee Infrastructure Holdings (India) Pvt. Ltd, being a principal officer was also involved in the day to affairs of Corporate Debtor, which as per law is noticeable.

- h. It is averred that a facility agreement dated 16.12.2015 was executed between the Corporate Debtor and M/s Vyjayanthi Entertainment and Properties Pvt. Ltd., and M/s United Port Services Ltd., where under the

Corporate Debtor has borrowed an amount of Rs. 23 Crores toward loan at the rate of interest 24% per annum to clear of the debt due to UCO Bank which was later assigned to M/s JM Financial Asset Reconstruction Company Ltd, Mumbai, the wife of the Mr. Ashiwini Dutt and one Sravanthi Chalasani who is the daughter of Mr. Ashwini Dutt. Out of the above said amount Rs. 19.90 Crores is accounted to the Corporate Debtor and the same was paid to M/s JM Financial Asset Reconstruction Company Ltd, Mumbai and got released the secured assets from M/s JM Financial mentioned in group II, III and IV properties belonging to third parties and the M/s Emgee Infrastructure (India) Pvt. Ltd and third parties. The balance of Rs. 3.10 Crores was transferred to M/s Vyjayanthi Entertainment and Properties Pvt. Ltd., to clear of the debts.

- i. It is further averred that the Corporate Debtor borrowed money from M/s. UCO Bank, Banjara Hills Branch, Hyderabad. That in order to secure such borrowings the properties belonging to promoters/ Directors/ shareholders were given as security by depositing their respective title deeds. Such security included property belonging to Mr.M.Srinivas. Upon the account of Corporate Debtor becoming NPA the secured Creditor viz., M/s. UCO Bank, Banjara Hills, Hyderabad assigned the debt under SARFAESI, Asset Reconstruction Company viz., M/s. JM Financials, Mumbai. Subsequently One Time Settlement was agreed upon between

Corporate Debtor and M/s. JM Finance, whereby the amount of Rs.19.90 Crores were required to be paid. Upon which all the properties that were pledged/ hypothecated would be released. The entire money for the closer of the dues to the M/s. JM Finance were arranged through the personal properties given by the Directors of the Corporate Debotr Company. Upon close of the M/s. UCO bank, Mr. M.Srinivas demanded that his property that was pledged to the bank be released to him directly. At which point the Corporate Debtor has filed suit for subrogation and obtained favorable orders whereby all the properties hereto secured by M/s,JM Financials would now vests with M/s.UCO Bank. Hence the claim of the Financial Creditor in the light of the above submissions makes evident that the alleged unsecured loan claimed by the Financial Creditor is untenable and unwarranted.

- j. The Corporate Debtor submits that the Financial Creditor has issued a Demand Notice dated 22.05.2019 and for which the Corporate Debtor has issued a reply notice dated 06.06.2019 denying all the material allegations. It is absolutely false to say that as on 31.03.2016 the debt is due as per the confirmation letter dated 09.06.2016. Therefore prayed to dismiss the Company Petition with exemplary costs.

4. Rejoinder filed by the financial creditor:

- a. It is averred that the Financial Creditor herein and denied all the averments and allegations contained in the Reply/objections filed by the Respondent/Corporate Debtor as false except those that are expressly and specifically admitted herein.
 - b. It is averred that the Corporate Debtor could not make any proper evidences to disprove the debt. The Corporate Debtor failed to submit the objection on the objective of the Petition except nailing with the false allegations questioning the contents of Demand Notice dated 22.05.2019. Para 3 of the reply/objections is no way related to the Financial Creditor.
 - c. It is averred that the Corporate Debtor have furnished para wise reply to para 1,2& 3 of the main Petition without any documentary evidence and the subject and language shows that the Corporate Debtor should pay the entire amount to the Financial Creditor. Therefore, the debt is legitimate, it is enforceable against the Corporate Debtor. The Corporate Debtor cannot deny the facts of records and receipts filed in various forms along with the main petition as part of the petition.
5. In the light of the contest as aforementioned the points that emerge for consideration by this Tribunal are:
- (1) Whether the debt claimed as due and payable by the respondent to the petitioner is barred by Limitation?

- (2) Whether a financial debt of a sum over rupees one crore claimed as due and payable to the petitioner by the respondent exists? If so, whether the petitioner has defaulted in re-payment of the same?
6. We have heard the Learned Counsel Shri V. Venkata Rami Reddy along with Shri Parmeshwar Reddy for the Financial Creditor and Learned Senior Counsel Shri Chandrasen Reddy, Senior Advocate for Ms. Manjusha, Advocate representing the Corporate Debtor. Perused the record and written submissions.

Point No.1

Whether the debt claimed as due and payable by the respondent to the petitioner is barred by Limitation?

7. At the outset it may be stated that whether or not the respondent raises the plea of limitation, it is imperative for the petitioner to establish that the claim made is not barred by limitation and the burden to prove the same lies on the petitioner to establish the same. This legal position can be traced from Section 3 of Limitation Act, which is below:

“3. Bar of limitation. —

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act— (2) For the purposes of this Act—"
(a) a suit is instituted— (a) a suit is instituted—"

(i) in an ordinary case, when the plaint is presented to the proper officer;
(i) in an ordinary case, when the plaint is presented to the proper officer;"

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and"

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;"

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted— (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—"

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;"

(ii) in the case of a counter claim, on the date on which the counter claim is made in court; (ii) in the case of a counter claim, on the date on which the counter claim is made in court;"

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

8. Admittedly, the Petitioner's claim of existence of a financial debt of a sum over rupees one crore due and payable by the respondent, is based on the letter of confirmation of balance amount dated 09.06.2016 claimed to have been issued by the respondent. The Petitioner had specifically pleaded that under the above letter, the Respondent had categorically confirmed that a sum of Rs. 9,09,80,000/- was payable to the Petitioner by the Respondent as on 31.03.2016, which sum according to the Petitioner was lent as 'un-secured' loan to the Respondent.

9. The Respondent/ Corporate Debtor has denied the letter of confirmation of the outstanding amount dated 09.06.2016, by *contending* that the letter was given inadvertently. It is further contended that the Applicant has falsely alleged that the Corporate Debtor failed to repay an unsecured loan of Rs.9.09,80,000/- by the Respondent, as no such loan has been advanced. According to the respondent even if the purported letter of confirmation of debt is accepted as acknowledgement of debt by the respondent, the so called debt is barred by limitation, in as much as no payment either prior or post 9.06.2016 towards the repayment of the alleged unsecured loan has been made by the respondent, to the Applicant.
10. It is pertinent to note herein that even though the applicant failed in stating the date on which the alleged *unsecured loan* now quantified at Rs. 9.09,80,000/-, has been lent to the respondent the *date of default* of the said unsecured loan has been pleaded, stating that the “*date of default* is 31.03.2016 as per the letter of confirmation of debt dated 9.06.2016”. Therefore, according to the Ld. Counsel for the Applicant,, the period of limitation for filing the Petition under Section 7 of IB Code being 3 years from the date when the right to *sue accrues*, the present application having been filed on 10.06.2019 is not barred by limitation.

11. Having given our anxious consideration to the submissions made by the Ld. Counsels for both sides, since the Applicant is overwhelmingly relying on the Letter of Confirmation of Debt dated 09.06.2016 by contending that the Respondent has under the said letter acknowledged the debt in terms of Section 18 of Limitation Act, only upon establishing that the said acknowledgement even assuming the same to be an ‘acknowledgement of debt’ in terms of Section 18 of the Limitation Act, yet before expiry of the prescribed period of limitation for filing the present Petition, the Petitioner is entitled for extension of the period of Limitation afresh by 3 years from the date of acknowledgement of debt.
12. We therefore, usefully refer to Section 18 of the Limitation Act, which deals with the *effect of acknowledgment in writing*. which is as below:

Section 18 of the Limitation Act, 1963.

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.— For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

13. Thus, the *sine qua non*, for invoking section 18 of limitation Act, being, the acknowledgment of debt be made in writing **before** expiration of the prescribed period of limitation, it is imperative for the applicant to plead and prove that the respondent has acknowledged the debt before the expiration of the prescribed period of limitation, lest the claim is liable to be dismissed as barred by limitation.
14. Without doubt, there is no pleading in the company petition to the effect that the alleged **unsecured loan was alive** by the date of issuance of the letter dated 09.06.2016 by the respondent. In fact the company petition is *conspicuously* silent not only as to the date of lending the unsecured loan, its repayment terms if any, but also on **payment if any made three years prior or post to 31.03.2016 by the respondent towards the partial repayment of the above unsecured loan.**
15. Hon’ble Supreme Court of India, in Sampuran Singh And Ors vs Niranjana Kaur-(1999) 2 SCC 679, held that,

“ In his endeavor, learned counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgement by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revive which would only

start from that date of acknowledgement hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18, sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date”.

16. Hon’ble Principal Bench National Company Law Appellate Tribunal In Company Appeal (AT) (Insolvency) No.707/2021 on 23 December, 2022 in the matter between M/s. Edelweiss Asset Reconstruction Co. Ltd. vs Chemstar Organics India Ltd, held as below.

“Application barred by limitation. No documents produced from 3 years from Date of Default

- “1. The Appellant has admitted that the Date of Default is in May 2000. Therefore, prima facie the Application being filed on 23rd October 2019 i.e. 19 years 5 months after the Date of Default is barred by limitation;
2. The Applicant has failed to produce any acknowledgment of liability or prove any part payment within the prescribed period of limitation of 3 years as under Section 18 or 19 of the Limitation Act to save limitation under Article 137 of the Limitation Act.

Therefore, any such document purporting to be an acknowledgment of debt or liability would be irrelevant for the purposes of Section 18 of the Limitation Act, and thus would not revive limitation. (Sesh Nath Singh vs Baidyabati Sheraphuli Co- op. Bank Ltd. - (2021) 7 SCC 313 - Para 64) & (Laxmipat Surana v Union Bank of India 2021 8 SCC 481-Para 43)

3. Under Section 18 of the Limitation Act, a document must meet the following ingredients to qualify as an acknowledgment in writing to extent the period of imitation:
 - a. Acknowledgment must be made in writing;
 - b. Acknowledgment must be made by person against whom claim is made;
 - c. Acknowledgment must be made before expiration of limitation period;
4. Therefore, acknowledgment of liability, if any, has to be prior to the expiration of period of limitation (i.e., 3 years from date of default), and any document executed after three years from date of default would not revive limitation.
5. Hence, the Appellant having failed to produce any acknowledgment of liability/debt within the period of three Company Appeal (AT)(Ins) No.707/2021 years of date of default, the claim is barred by limitation.”

Therefore, in the light of our discussion as above we hold that the debt under the present company petition is barred by limitation”.

17. So much so, in the absence of any material evidencing that the unsecured loan as claimed by the company petition was alive by the date of purported execution of letter of confirmation of the balance amount dt. 09.06.2016, even if it is assumed that the respondent had executed the same, no reliance can be placed on the letter of confirmation of balance amount, consequently the present application which has been filed on 10.06.2019 is hopelessly barred by limitation.

Point is answered accordingly.

Point 2:

Whether a financial debt of a sum over rupees one crore claimed as due and payable to the petitioner by the respondent exist if so, whether the petitioner has defaulted in re-payment of the same?

18. As observed already barring the letter of confirmation of the balance amount dt. 09.06.2016, the applicant has not placed any record along with the application in support of its claim of existence of financial debt of a sum over rupees one crore due and payable by the respondent to the applicant. The petitioner neither *pleaded the quantum of the amount alleged to have advanced, the terms of repayment if any, and when the said un-secured loan was given nor filed any document* in support of this plea. The Respondent/ Corporate Debtor has denied the letter of confirmation of the outstanding amount dated 09.06.2016, by *contending* that the letter was given inadvertently. It is further contended that the Applicant has falsely alleged that the Corporate Debtor failed to repay unsecured loan of Rs.9.09,80,000/. Despite the same, the applicant has not filed its financial statements such as balance sheets and ledger account in proof of the subject transaction.
19. Moreover, the present application being one under Section 7 of IB Code, in terms of sub-section 3 of Section 7, which says that the financial creditor shall, along with the application furnish— (a) record of the

default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board, it is imperative for the applicant to establish existence of debt.

20. The Petitioner failed in placing any record of the default recorded with the information utility or such other record or evidence of default as may be specified. Hence it is a fit case, to invoke sub-section 5 (b) of Section 7 of IBC and order, rejection of the application.

The Point is answered accordingly.

21. Therefore, in the light of our findings on point 1 and 2, this application is not maintainable and same is liable to be rejected. According this Petition is hereby rejected, however without costs.

In the result this Petition is rejected, however without costs.

SD/-

(Charan Singh)
Member (Technical)

SD/-

(Dr.Venkata Ramakrishna Badarinath Nandula)
Member (Judicial)