S. No. 18

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
26-09-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC) 557/2021 in CP(IB) No. 661/7/HDB/2018
U/s 7 of IBC,2016

IN THE MATTER OF:
State Bank of India **…Financial Creditor**

Vs

Meena Jewellers Pvt Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 557/2021:-

Orders pronounced and recorded vide separate sheets. In the result the application is dismissed.

Sd/- Sd/-

MEMBER (T) **MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

IA (IBC)/557/2021
In CP (IB) No. 661/7/HDB/2018

IN THE MATTER OF M/s MEENA JEWELLERS PRIVATE LIMITED

Between:

M/s Subhanjali Chit Fund Private Limited,
R/o. 8-3-320/1/3/4, Sai Pariwar,
Sai Saradhi Nagar, Behind Saradhi Studio,
Yellareddyguda, Ameerpet,
Hyderabad- 500073, Telangana

… Applicant

And

Mr. Kambhammettu Sri Vamsi,
Liquidator of M/s Meena Jewellers & Diamonds
Private Limited, A85, Flat DX4,
Sri VarasiddiNivas, Level-2, Road No. 11, Film Nagar,
Jubilee Hills, Hyderabad-500033, Telangana

… Respondent/Liquidator

Date of Order: 26.09.2022

CORAM:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

PARTIES/COUNSELS PRESENT:

For the Applicant: Mr. P. Vikram, Advocate
For the Respondent/Liquidator: Mr. V V S N Raju, Advocate

PER BENCH

1. This Application is filed by the M/s Subhanjali Chit Fund Private Limited (*Hereinafter referred as Applicant*) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (*Hereinafter referred as IBC*) read with Rule 11 of NCLT Rules, 2016 seeking direction to the Liquidator (*Hereinafter referred as Respondent*) to admit the claim of Rs. 5,53,30,000/- which was duly rejected.

2. **The gist of the contentions put forth by the Applicant in its Application are:**

2.1. It is submitted that this Adjudicating Authority had vide its order dated 26.11.2019 admitted M/s Meena Jewellers Private Limited (*Hereinafter referred as Corporate Debtor)* into Corporate Insolvency Resolution Process (*Hereinafter referred as CIRP*) and thereafter on 26.04.2021 passed Liquidation Order and currently the Corporate Debtor is undergoing Liquidation process.

2.2. It is submitted that Mr. Umesh P. Jethwani, Managing Director of Corporate Debtor (*Hereinafter referred as MD of Corporate Debtor*) has entered into Chit Fund Agreement dated 18.04.2015 with Applicant where Applicant is subscriber vide ticket No. 31 in respect of the Chit Group No. MT 2G run by the Applicant.

2.3. It is submitted as per the above said agreement the total subscription is for Rs.50,00,000/- and same to be subscribed at Rs. 1,25,000/- per month and the total period of said chit is 40 months commencing from December 2014 till March, 2018. It is further submitted that the MD of Corporate Debtor participated in auction held on 16.08.2015 and was declared as successful bidder for an amount of Rs.30,00,000/-. The said amount of Rs.30,00,000/- was acknowledged and further a demand promissory note

was executed on 30.08.2015 in favour of the Applicant for an amount of Rs.38,75,000/. The MD of Corporate Debtor having availed the said bid amount has committed default from September, 2015.

2.4. It is submitted, in view of the defaults committed by the Corporate Debtor, the Applicant as per chit agreement dated 18.04.2015 has invoked Arbitration proceedings and filed Arb No. 210 of 2017 before Deputy Registrar of Chits/Arbitrator Erragadda, Hyderabad South against the Corporate Debtor and others under section 64 and 66 of the Chits Funds Act, 1982, for recovery of Rs.49,41,325/- together with interest @18% per annum till realization, together with costs and the said Arbitration case is pending Adjudication.

2.5. It is submitted that the MD of Corporate Debtor has entered into a Chit Fund Agreement dated 18.04.2015 where Applicant is subscriber vide ticket No. 32 in respect of the Chit Group No. MT 2G, run by the Applicant. As per the above said agreement the total subscription of the said amount is Rs.50,00,000/- to be subscribed at Rs.1,25,000/- per month and the total period of said chit is 40 months commencing from December, 2014 till March, 2018. It is further submitted that the MD of Corporate Debtor participated in auction held on 18.10.2015 and was declared as successful bidder for an amount of Rs.30,00,000/-. The said amount of Rs.30,00,000/- was acknowledged and further a demand promissory note was executed on 30.11.2015 in favour of the Applicant for an amount of Rs.38,75,000/-. The MD of Corporate Debtor having availed the said bid amount committed default from September, 2015.

2.6. It is submitted, in view of the default committed by the MD of the Corporate Debtor, the Applicant as per chit agreement dated 18.04.2015 has invoked Arbitration proceedings and filed Arb No.211 of 2017 before Deputy Registrar of Chits/Arbitrator Erragadda, Hyderabad South against

the Corporate Debtor and others under section 64 and 66 of the Chits Funds Act, 1982, for recovery of Rs.49,41,325/- together with interest @ 18% per annum till realization, together with costs and the said Arbitration case is pending Adjudication.

2.7. It is submitted that the MD of Corporate Debtor has entered into a Chit Fund Agreement dated 28.06.2014 where Applicant is subscriber vide ticket No.23 in respect of the Chit Group No.MT 9S run by the Applicant. As per the above said agreement the total subscription of the said amount is Rs. 1,00,00,000/- to be subscribed at Rs.2,50,000/- per month and the total period of said chit is 40 months commencing from June, 2014 till September, 2017. It is further submitted that the MD of Corporate Debtor participated in auction held on 30.06.2014 and was declared as successful bidder for an amount of Rs.60,00,000/-. The said amount of Rs.60,00,000/- was acknowledged and further a demand promissory note was executed on 30.07.2014 in favour of the Applicant for an amount of Rs.97,50,000/. The MD of Corporate Debtor having availed the said bid amount committed default from September 2015.

2.8. It is submitted, in view of the default committed by the Corporate Debtor, the Applicant as per the said chit agreement dated 28.06.2014 has invoked Arbitration proceedings and filed Arb No. 212 of 2017 before Deputy Registrar of Chits/Arbitrator Erragadda, Hyderabad South against the Corporate Debtor and others under section 64 and 66 of the Chits Funds Act, 1982, for recovery of Rs.79,69,450/- together with interest @18% per annum till realization, together with costs and the said Arbitration case is pending Adjudication.

2.9. It is submitted that the MD of Corporate Debtor's had entered into a Chit Fund Agreement dated 27.06.2014 where Applicant is subscriber vide ticket No.22 in respect of the Chit Group No.MT 9S, run by the Applicant.

As per the above said agreement the total subscription of the said amount is Rs. 1,00,00,000/- to be subscribed at Rs.2,50,000/- per month and the total period of said chit is 40 months commencing from June, 2014 till September, 2017. It is further submitted that the chit subscriber participated in auction held on 21.06.2015 and he was declared as successful bidder for an amount of Rs.60,00,000/- and has acknowledged the said amount of Rs.60,00,000/- and further a demand promissory note was executed on 30.11.2015 in favour of the Applicant for an amount of Rs.62,50,000/-. The MD of Corporate Debtor having availed the said bid amount has committed default from September, 2015.

2.10. It is submitted, in view of the abovementioned defaults committed by the Corporate Debtor, the Applicant as per chit agreement dated 27.06.2014 has invoked Arbitration proceedings and filed Arb No.213 of 2017 before Deputy Registrar of Chits/Arbitrator Erragadda, Hyderabad South against the Corporate Debtor and others under section 64 and 66 of the Chits Funds Act, 1982, for recovery of Rs.79,69,450/- together with interest @18% per annum till realization, together with costs and the said Arbitration case is pending Adjudication.

2.11. It is submitted that the Corporate Debtor's sister concern M/s Meena Jewels Exports has entered into a Chit Fund Agreement dated 27.06.2014, where Applicant is subscriber vide ticket No. 24 in respect of the Chit Group No. MT9S run by Applicant. As peer the said Agreement the total subscription of the said amount is Rs. 1,00,00,000/- to be subscribed at Rs.2,50,000/- per month and the total period of said chit is 40 months commencing from June, 2014 till September, 2017. It is further submitted that the Corporate Debtor's sister concern participated in auction held on 18.01.2015 and was declared as successful bidder for an amount of Rs.60,00,000/- and through its managing director has acknowledged the

said amount of Rs.60,00,000/- and further a demand promissory note was executed on 28.02.2015 in favour of the Applicant for an amount of Rs.77,50,000/- and thereafter he committed default from September 2015.

2.12. It is submitted that in view of the default committed by the Corporate Debtor, the Applicant as per chit agreement dated 27.04.2014 has invoked Arbitration proceedings and filed Arb No.214 of 2017 before Deputy Registrar of Chits/Arbitrator Erragadda, Hyderabad South against the Corporate Debtor and others under section 64 and 66 of the Chits Funds Act, 1982, for recovery of Rs.79,69,450/- together with interest @18% per annum till realization, together with costs and the said Arbitration case is pending Adjudication.

2.13. It is submitted that the above said details of agreement are summarized in the form of table, which is as follows:

Sr. No.	Chit Fund Agreement Dated	Ticket No.	Chit Series No.	Outstanding Amount	Interest @18% p.a	Total Amount including 18% interest
1	18.04.2015	31	MT 2G	Rs. 3875000	Rs. 39,52,500	Rs. 7827500
2	18.04.2015	32	MT 2G	Rs. 3875000	Rs. 39,52,500	Rs. 7827500
3	28.06.2014	23	MT 9S	Rs. 6250000	Rs. 63,75,000	Rs. 12625000
4	27.06.2014	22	MT 9S	Rs. 6250000	Rs. 63,75,000	Rs. 12625000
5	27.06.2014	24	MT 9S	Rs. 6250000	Rs. 63,75,000	Rs. 12625000
Total						Rs. 5,35,30,000

2.14. It is submitted that in all the above cases, the Corporate Debtor has acknowledged the debt and in discharge of its liability has issued cheques (Nos 663074 to 663083) in the name of the Corporate Debtor stating that the amounts received under afore chits are used for the development of the Corporate Debtor. On presentation of the cheques, the same were dishonoured and Applicant has filed criminal case under section 138 of the Negotiable Instruments Act, 1881 vide CC No.533/2018 and same are pending adjudication.

2.15. It is submitted that after liquidation order was passed, the Respondent has issued public notice inviting claims from stakeholders. Thereafter, the Applicant being an Operational Creditor has submitted its claim dated 21.05.2021 under Form-C of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (*Hereinafter referred as Liquidation Regulations*) to the Respondent. The Respondent has rejected the claim by his letter dated 05.07.2021.

2.16. It is submitted that the Respondent unduly and unjustly, without due consideration of the grounds upon which the claim so made, rejected the claims made by the Applicant through a letter dated 05.07.2021 stating that supporting documents are not submitted, chit fund agreements were not signed by the corporate debtor, there is no acknowledgement of debt and there is no proof of non-payment by corporate debtor attached to the claim. It is submitted that such a rejection is not only arbitrary but also contrary to the procedure laid down by the provisions of the IBC.

2.17. It is submitted that aggrieved by the rejection of the claim. Hence the present application is filed by the Applicant before this Adjudicating Authority praying to direct the Respondent to accept the Claim submitted by the Applicant in Form-C dated 21.05.2021.

3. **The gist of the contentions put forth by the Respondent in its Counter are:**

3.1. It is submitted that as part of the Liquidation Process the Respondent invited claims from the stakeholders in accordance with Section 35 (j) of the IBC and Regulation 12 Liquidation Regulations.

3.2. It is submitted further that the Applicant claiming to be an Operational Creditor has submitted a claim for an amount of INR 5,35,30,000 inclusive of interest vide Form-C dated 21.05.2021 before the Respondent for verification and admission of the same.

3.3. It is submitted that the claim so filed and documents so submitted have been examined by the Respondent with reference to records of the Corporate Debtor under Liquidation. After Examination it is observed that the claim is in respect of Chits allegedly bid by the Corporate Debtor is totally incorrect and false claim.

3.4. It is further submitted that the aforesaid chits are in the name of MD of Corporate Debtor and it further appears that he bid the chits and received the amount. The underlying Agreements for bidding the chits were also entered into between the Applicant and the MD of Corporate Debtor in his personal capacity.

3.5. It is submitted that the Chit bearing no. MT 9S-24 was in the name of M/s. Meena Jewels Exports, which is a sister concern of the Corporate Debtor under Liquidation. Since, the sister concern is a separate entity and the amount was allegedly received by it only. The Corporate Debtor under Liquidation is not liable in any manner to the Applicant. It is further submitted that the records of the Corporate Debtor under Liquidation do not reflect any such transaction and the amount was not at all received by the Corporate Debtor under Liquidation.

3.6. It is submitted that the promissory notes mentioned in the Application were allegedly executed in the years 2014 and 2015 and they were executed by various individuals in their individual capacity and such promissory notes have nothing to do with the Corporate Debtor under Liquidation. The alleged cheques were issued fraudulently in the name of the Corporate Debtor. It is submitted that mere issuance of cheques without any consideration does not make the Corporate Debtor under Liquidation liable to pay any amount to the Applicant. Moreover, the Demand Promissory notes even otherwise were time barred by the time the CIRP commenced on 26.11.2019 in respect of the Corporate Debtor under Liquidation. It is false to say that the funds were utilized for the

development of the Corporate Debtor under Liquidation. There is no whisper in the records of the Corporate Debtor about the funds and their utility. Therefore, it is submitted that all the contentions of the Applicant are false and liable to be rejected.

3.7. It is further submitted that upon thorough verification of Corporate Debtor's record is found that the Corporate Debtor did not receive any amount in respect of the said chits and the Corporate Debtor never acknowledged the liability. Therefore, the Corporate Debtor is not liable to pay any amount to the Applicant. The underlying Agreements were already filed by the Applicant before this Adjudicating Authority and the position is abundantly clear from the said documents. Hence, the Respondent came to the conclusion that the Liquidation estate of the Corporate Debtor could not be burdened for the claim made by the Applicant and therefore rightly rejected the claim.

3.8. It is submitted that in the Application that proceedings under Section 138 of the Negotiable Instruments Act, 1881 and also arbitration proceedings are pending. In view of the legal position settled the proceedings are liable to be kept in abeyance in so far as the Corporate Debtor under Liquidation is concerned. The Respondent would initiate appropriate steps in this regard.

3.9. It is submitted that the Respondent has rightfully rejected the claims of the Applicant as the same are not recorded as a contingent liability in the books of account of the Corporate Debtor. There are no records showing acknowledgement of the liability by the Corporate Debtor nor any other records or authorization thereof substantiating the claims.

3.10. It is submitted that the Respondent in his letter dated 05.07.2021, advised the Applicant in accordance with the Regulation 31(3) of the Liquidation Regulations that the Respondent may modify the list of stakeholders in case any new information is made available.

3.11. It is further submitted that Respondent prayed to Adjudicating Authority to dismiss the Application with exemplary costs.

4. In light of the pleadings as above the following point emerges for consideration by this Adjudicating Authority

5. **Whether the rejection of Claim by the Liquidator is sustainable?**

We have heard Shri. P. Vikram learned Counsel for the Applicant and Shri. V V S N Raju Learned Counsel for the Respondent and perused the record.

5.1. We have gone through the record. It is the case of Applicant herein that the Corporate Debtor has subscribed 5 chits as detailed in the para 2.1.3 above and the MD of the Corporate Debtor had participated in the Auction held for the chit amounts as described in the table and won the same and declared as successful bidder for all the 5 chits on the dates mentioned in the Chit Fund Agreement. However, after being declared as Successful Bidder and received the amounts the Corporate Debtor has failed to make further payments as regards to outstanding amounts due.

5.2. The Applicant herein has filed their claim for 5,35,30,000 under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking direction to Respondent to admit their claim as it was unduly rejected by the Respondent.

5.3. The Applicant has also submitted that the MD of the Corporate Debtor has issued cheques for repayment of outstanding amounts. However,

those cheques were dishonored. In light of the above Applicant herein has prayed for giving direction to Respondent for admitting their claim.

5.4. In the Counter filed by the Respondent it has brought to the notice of Tribunal that Respondent invited claims from the Stakeholders in accordance with Section 35J and Regulation 12 of Liquidation Regulations. Pursuant to this the Applicant herein has submitted claim as Rs. 5,35,30,000 including interest vide Form C dated 21.03.2021 submitted by Applicant. However, the Respondent after careful examination of the books of accounts of the Corporate Debtor had rejected the claims made by the Applicant herein on the following grounds.

5.5. As per the records of the Corporate Debtor, it was found out by the Respondent that the claims in respect of the chits allegedly bid by Company were totally incorrect and false claim.

5.6. The Respondent has brought to our notice that 4 chits namely MT 2G-31 and 32, MT 9S-23 and 22 are in the personal name of MD of Corporate Debtor and underlying agreement between the Applicant and MD of Corporate Debtor in his personal capacity. The Respondent further averred that as per the Corporate Debtor records it was also found that the Corporate Debtor did not receive any amounts in respect of the said chits and company never acknowledged its liability. Therefore, he contended that the Corporate Debtor is not liable to pay any amount to the applicant herein. In support of his contention the underlying agreements of the chits referred above were filed by the Applicant herein which amply proves that chits were in the personal name of MD of the Corporate Debtor.

5.7. As regards to Chit No. MT 9S-24, the Respondent submitted that it was in the name of M/s Meena Jewellers Exports which is a sister concern of the Corporate Debtor under liquidation. Since the sister concern is a separate entity and the amount was allegedly received by it, the Corporate Debtor which is under Liquidation is not liable in any manner to the Applicant herein.

5.8. The records of the Corporate Debtor did not reflect any such transaction and no amount was ever received or recorded by the Corporate Debtor in its books.

5.9. It is the case of the Respondent that promissory notes mentioned in the Application were executed in the year 2014, 2015 and were executed by various individuals in their individual capacity and therefore Respondent contended that the said promissory notes have nothing to do with Corporate Debtor and the Resolution Professional further contended that alleged cheques issued in the name of Corporate Debtor were fraud perpetrated in its name. Respondent further pointed out that mere issuance of Cheques without any consideration does not make Corporate Debtor liable to pay any amount to the Applicant herein.

5.10. It was also submitted that the Demand Promissory Note submitted were otherwise time barred even before the CIRP process commenced on 26.11.2019. He also contended that it is totally false to say that funds were utilized for development of Corporate Debtor. There is no whisper in the records of the Corporate Debtor about the receipt of funds nor their utility.

5.11. Therefore, for the reasons stated above, the Respondent submitted that Liquidation estate of the Corporate Debtor could not be burdened for the false claims made by the Applicant herein. It is also brought to our

knowledge that present Applicant herein has initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 and Arbitration proceedings which are pending.

5.12. The Respondent further contended that as per records of the Company these claims were neither recorded as contingent liabilities nor any acknowledgement of the liability was furnished by the Corporate Debtor. Therefore, in the light of the above submissions the Respondent prayed for dismissal of the Application with costs.

5.13. We have gone through the records before us as well as the submissions made by parties. We found that Demand Promissory Note as well as the Agreement entered into for the chits were not executed on behalf of the Corporate Debtor and also the purported bid amounts were never accounted for in the books of the Corporate Debtor. Further, the purported Demand Promissory Notes were also time barred.

5.14. In the absence of any concrete evidence that the Corporate Debtor has entered into the agreements being the successful bidder and the amounts received were utilized for the benefit of Corporate Debtor operations were never proved.

5.15. Further proceedings under the Negotiable Instruments Act, 1881 and Arbitration proceedings are pending which were initiated by the Applicant herein. In light of the above factual position, we are of the view that claim submitted by Applicant herein cannot be construed to belong to the Corporate Debtor which is under Liquidation now. The Applicant herein has failed to submit any proof to support his claim.

5.16. We therefore are of the view the claim submitted by the Applicant herein is not supported by the financial records of Corporate Debtor nor any evidence is produced before us to show that the Corporate Debtor benefitted from the said chit fund transaction. Accordingly, we conclude that the claim is not sustainable. In light of the above we dismiss the Application as not maintainable. Accordingly, IA No. 557 of 2021 is disposed.

Sd/- Sd/-

VEERA BRAHMA RAO AREKAPUDI **DR N.V. RAMAKRISHNA BADRINATH**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Rohit (LRA)