

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-03-2024 AT 10:30 AM**

**Company Petition IB/107/2021
AND
IA (IBC) 1734/2023 in Company Petition IB/107/2021
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Vemuri Ravi Kumar

...Financial Creditor

AND

Bhriagu Infra 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

IA (IBC) 1734/2023

Orders pronounced. In the result, **this application is dismissed and disposed of.**

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

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

**IA (IB) 1734 OF 2023
IN
CP (IB) No. 107/7/HDB/2021**

Under Section 42 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF M/S. BHRIGU INFRA PRIVATE LIMITED

Between:

M/s. Sri Developers,
Plot No.42, 43,
1F, Sri Developers Shopping Complex,
Adjacent to Praneeth Pranav Blooms,
Bowrampet, Dundigal, Gandimaisamma,
Hyderabad.

... Appellant/Applicant

And

The Liquidator of Bhriugu Infra Private Limited,
Plot No.504, Mycon Acropolis Apartment,
Guttala Begumpet, Kakatiya Hills,
Madhapur, Hyderabad,
Telangana – 500081.

...Respondent/ Corporate Debtor

DATE OF ORDER: 28.03.2024

CORAM:-

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

PARTIES/COUNSELS APPEARANCE: -

For the Applicant : Mr. Kailash Nath P S S, Counsel

For the Respondent : Dr. Uma Shanker Gollapudi, Counsel

PER: BENCH

ORDER

1. This Application is filed by the Applicant Under Section 42 of the Insolvency and Bankruptcy Code, 2016, praying:

- i. To condone the delay of 98 days in filing the present appeal under section 42 of the Code;
- ii. To pass an order directing the Resolution Professional to admit the claim of Rs.15,99,42,986/- of the Appellant as a Financial Creditor;
- iii. Pass such other order or orders as this Hon'ble Adjudicating Authority deems fit and proper in the facts and circumstances of the case.

2. **Gist of the Application:**

2.1 It is averred that the Corporate Debtor/Respondent represented to the Appellant that certain landowners, who held various parcels of land admeasuring Ac.6-23.5 Gts in Sy.Nos. 104, 105 and 111 of Edulanagulapalli Village, Ramachandrapuram Mandal, Sangareddy District, Telangana, had authorised the Corporate Debtor to deal with the above properties for sale to prospective buyers.

- 2.2 It is stated that the Appellant who was interested in purchasing the above said property for its business purpose entered into an Agreement of Sale dated 30.11.2020 with the Corporate Debtor and the said land owners as Agreement Holders (represented by the Corporate Debtor), for the purchase of land admeasuring Ac.6-23.5 Gts in Sy.Nos. 104, 105 and 111 of Edulanagulapalli Village, Ramachandrapuram Mandal, Sanga Reddy District, Telangana and paid the advance sale consideration of Rs.8,95,00,000/- to the Corporate Debtor on various dates.
- 2.3 It is further stated that in terms of the said agreement, the Corporate Debtor had the responsibility of producing documents for verification and title diligence by the Financial Creditor, issuing public notices regarding the sale of the property and also to get the sale deeds executed from the land owners in favour of the Financial Creditor for transferring the said property, failing which, the Corporate Debtor had to refund the amounts paid under the Agreement of Sale, with interest @ 12% p.a.
- 2.4 Further, the Corporate Debtor was to compensate the Financial Creditor with an amount equal to 50% of the total amount received by the Corporate Debtor from the Financial Creditor, in addition to the refund of the amount received from the Financial Creditor, in the event the sale deed is not executed by the Corporate Debtor. In terms of the Agreement of Sale, as stated above, the Corporate Debtor was to produce certain documents to the Financial Creditor within a period of 15 days and get the sale deed executed in favour of the Financial

Creditor for transfer of the said property. However, the Corporate Debtor failed to do so even as per the extended timelines given by Financial Creditor on mutual understanding.

- 2.5 It is stated that as the Corporate Debtor could not get the necessary documents nor could get the sale deeds executed from the land owners in favour of the Financial Creditor, nor could handover the possession of the land to the Financial Creditor, the advance sale consideration of Rs.8,95,00,000/- paid by the Financial Creditor to the Corporate Debtor fell due, which has to be returned by the Financial Creditor together with interest @12% p.a., and a further compensation of 50% of the amount paid by the Financial Creditor to the Corporate Debtor.
- 2.6 It is stated that pursuant to a petition under Section 7 of the Code being admitted by this Hon'ble Tribunal vide order dated 09.03.2022 against the Corporate Debtor, the Interim Resolution Professional had issued a public notice calling for claims from the creditors of the Corporate Debtor. The Appellant accordingly made its claim in Form C along with the supporting documents, with the Interim Resolution Professional on 21.04.2022. The Resolution Professional acknowledged the same on 26.04.2022 and sought for additional information on 29.04.2022, which was provided by the Petitioner on 30.04.2022.
- 2.7 It is submitted that pursuant to the same, the Resolution Professional responded vide email dt.06.05.2022 that the claim of the Appellant has been admitted as "Other Creditor" i.e., "Creditors other than Financial

Creditors and Operational Creditors” and that the same has been intimated to this Hon'ble Tribunal vide a Memo. The Resolution Professional further informed that the claim has been admitted on a provisional basis and that the information and documents from Corporate Debtor is awaited for further verification.

- 2.8 It is submitted that aggrieved by the above classification by the Resolution Professional, the Appellant herein preferred an application under Section 60(5) of the Code before this Hon'ble Tribunal in IA 729/2022. This Hon'ble Tribunal was pleased to dispose of the interim application on 10.04.2023, giving liberty to the Appellant to approach the Liquidator and directing the Liquidator shall consider the claim of the Appellant as per law.
- 2.9 It is stated that pursuant to the public notice issued by the Liquidator of the Corporate Debtor, the Appellant herein filed a claim with the Liquidator in Form-D on 08.05.2023 for a sum of Rs.15,99,42,986/-. The same was acknowledged by the Liquidator on 12.05.2023.
- 2.10 It is stated that vide impugned email dated 02.06.2023, the Liquidator informed the appellant that its claim in would not be eligible to be a financial claim and that it qualifies to be an operational claim. The Liquidator further made unfounded and baseless allegations against the Appellant and rejected the claim of the Appellant and demand the Appellant to pay an amount of Rs.1,09,87,500/- to the Corporate

Debtor. Aggrieved by the order of the Liquidator in rejecting the claim of the Appellant, the present appeal is being filed.

2.11 It is stated that the Liquidator in the impugned email states that the Appellant originally entered into an agreement of sale with the Corporate Debtor for purchase of lands which are not owned by the Corporate Debtor, for a certain consideration. That the Appellant later entered into Sale Deeds with the original landowners for a consideration which is lower than the consideration agreed with the Corporate Debtor. The Liquidator says that the difference in the consideration agreed to be paid to the Corporate Debtor and the consideration paid to the landowners is payable by the Appellant to the Corporate Debtor, and after taking the sum already paid into account, the Appellant is still liable to pay a sum of Rs.1,09,87,500/- to the Corporate Debtor.

2.12 It is stated that the tone and tenor of the impugned communication is merely based on surmises and conjectures. The same is reproduced hereunder:

“Though not all the lands admeasuring 6 acres and 23.5 guntas were not registered in your name for reasons well known to you and the management of CD Company and to suspicious circumstances and pattern of the transactions that were undertaken between you. CD Company and the parties to the agreement of sale dated 30.11.2020, we are making request for detailed enquiry into the same by appropriate authorities.”

2.13 It is stated that the Liquidator on one hand, while stating that the Corporate Debtor does not own the lands, is demanding the difference in the sale consideration as an amount due from the Appellant to the Corporate Debtor. The Liquidator does not justify the same with any cogent reasoning or logic, and merely demands the above amount for no valid reason.

2.14 It is stated that in the Agreement of Sale dated 30.11.2020 between the Appellant and the Corporate Debtor, the original landowners viz., Hillrise Projects LLP, Verve Mobiles Pvt. Ltd., and Ramesh Kumar Agarwal, are arrayed as confirming parties. In terms of the Agreement of Sale, the Corporate Debtor was to sell an extent of Ac.6-23.5 Gts at Edulanagapalli Village, Ramachandrapuram Mandal, Sangareddy District, for a total consideration of Rs.56.65 Crores. Towards the same, the Appellant paid an advance sale consideration of a sum of Rs.8,95,00,000/- on various dates.

2.15 It is stated that in terms of the Agreement of Sale, as the Corporate Debtor agreed to sell the extent of Ac.6-23.5 Gts at Edulanagapalli Village, Ramachandrapuram Mandal, Sangareddy District, it was to first purchase it from the original land owners and then transfer it in the name of the Appellant. The same was to be undertaken in terms of the timelines as agreed in the Agreement of Sale dated 30.11.2020, and subject to the Corporate Debtor producing the documents as required by the Appellant within a period of 15 days.

2.16 It is stated that as the Corporate Debtor failed to complete the transaction for the sale of the extent of Ac.6-23.5 Gts at Edulanagapalli Village, Ramachandrapuram Mandal, Sangareddy District, in the time frames as agreed in the Agreement of Sale. Having waited for more than a year, the Appellant approached the original landowners directly, negotiated with them and got the sale deeds executed in its favour by paying them valid sale consideration. Of the extent of Ac.263.5 Gts which the Appellant proposed to purchase, the Appellant could purchase only an extent of 56.5 guntas from the landowners directly. An extent of 9 guntas was purchased directly from the landowners and farmers and has no bearing on the agreement of sale dt.30.11.2020. The details of the same are as under:

S. No.	Extent of property (in guntas) and Sy.No.	Date of sale deed	Vendor
1.	6.5 in Sy.No.105/A1	498/2021 dt.04.12.2021	Rendlas Bhrigu Infra Developers Rep.by Hillrise Projects LLP
2.	8 in Sy.No.105/A1	497/2021 dt.04.12.2021	Rendlas Bhrigu Infra Developers Rep.by Hillrise Projects LLP
3.	10 in Sy.No.105/EE/2	384/2021 dt.29.10.2021	Rendlas Bhrigu Infra Developers Rep.by Hillrise Projects LLP
4.	32 in 104/A2	244/2021 dt.15.09.2021	M.Subbamma & Ors as Consenting Parties
5.	9 in 104/A1/1/1	454/2022 dt.21.06.2022	Thallapalli Balamani

2.17 It is stated that the Appellant had negotiated with the respective landowners and arrived at a commercially viable consideration. The original consideration as agreed with the Corporate Debtor was agreed at taking into account the huge extents of land which the Appellant could have commercially exploited. Further, the same included the margin of Corporate Debtor in the transaction. As such, the Liquidator cannot compare the transaction values under the agreement of sale dated 30.11.2020 and the transaction values in the respective sale deeds and arrive at a conclusion that the balance had to be payable to the Corporate Debtor.

2.18 It is further stated that the Liquidator cannot claim credit for the efforts of the Appellant. The Appellant had personally approached the landowners and got the sale deeds registered, and in some cases, such as purchase of 32 guntas in Sy No.104/A1, went to the extent of tracing the legal heirs of the predecessor landowner, to be impleaded as consenting parties. As such, the Appellant is liable to recover the sum of Rs.8.95 crores with penalty and interest from the Corporate Debtor in terms of the Agreement of Sale dated 30.11.2020.

2.19 It is further submitted that in terms of Sec.39 of the Code, the Liquidator can only verify the claims of the creditors, and in terms of Sec.40, he can either admit or reject the claims. The Liquidator as such does not have the power to direct the creditors to make payments, at the time of

verification of claims. Thus. the impugned communication of the Liquidator has to be set aside.

2.20 It is stated that in terms of Section 5(8)(1) of the Code, *financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.* Section 3(33) defines a “transaction” as an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the Corporate Debtor.

2.21 It is stated that in the instant case, the amount was advanced by the Appellant for the purpose of purchasing an immoveable property. Pursuant to the failure of the Corporate Debtor in fulfilling its terms under the Agreement of Sale, the amount became payable by the Corporate Debtor to the Appellant along with interest and penalty. Hence, the amount advanced by the Appellant is in the nature of a financial debt and as such, the claim has to be admitted.

2.22 It is stated that the Appellant received the rejection order of the Liquidator by email on 02.06.2023. The authorised signatory of the Appellant was travelling for business purposes. Further, the Appellant had to gather documents and other information for the purpose of filing the appeal. In the meantime, the Appellant was in the process of getting its books of accounts audited for the purpose of filing its income tax

returns for the FY 2022-23. As such the appeal could not be filed in time and there is a delay of 98 days in preferring the present appeal. The above delay is neither wilful nor wanton but only for the above reason. The Corporate Debtor is still in the process of liquidation and as such, no prejudice will be caused to Liquidator if the above delay is condoned.

3. The Counter filed by the Respondent/Liquidator, inter-alia stating that:

- 3.1 It is stated that the Applicant, Sri Developers, had filed an application before the Respondent/Liquidator of the Corporate Debtor, Bhriugu Infra Pvt. Ltd., in Form D on 08.05.2023 for a sum of Rs.15,99,42,986/- (Fifteen Crores Ninety Nine Lakhs Forty Two Thousand Nine Hundred and Eighty Six Rupees only), claiming to be a Class Financial Creditor.
- 3.2 It is stated that along with the claim, the main document submitted as proof of the Financial Debt was an Agreement of Sale (dated 30th November, 2020) purportedly entered into by and between the Corporate Debtor and the Applicant in the present application.
- 3.3 It is stated that the said document is in respect of 6 Acres 23.5 Guntas land situated at Edulanagulapally village, Ramachandrapuram Mandal, Sanga Reddy District, spread over part land in Survey numbers 104, 105 and 111. The Sale Consideration in the supposed transaction was Rs.56,65,25,000/- (Rupees Fifty Six Crores Sixty Five Lakhs Twenty

Five Thousand only) at the rate of Rs.8,60,00,000/- (Rupees Eight Crores Sixty Lakhs only) per acre.

3.4 It is stated that the following relevant and pertinent facts and submissions require a detailed and an in-depth consideration by the Hon'ble NCLT bench:

a) The said Agreement of Sale dated 30th November 2020 is unregistered. It is strange that a transaction involving a Sale of land for a huge amount of over 56 Crores was entered into through an Unregistered Agreement of Sale.

It is even more strange and shocking that the following payments from as early as 21.03.2020 thru 11.11.2020 have been made prior to 30.11.2020 (the date of the Agreement of Sale) towards this supposed transaction (see Page 26 of the IA 1734/2023):

Date	Bank	Chq.No./Online	Amount	Drawee
21.03.2020	Andhra Bank	001396	25,00,000	Bhriгу Infra Pvt.Ltd.
21.10.2020	Andhra Bank	RTGS 52020102200647766	40,00,000	Bhriгу Infra Pvt.Ltd.
22.10.2020	Andhra Bank	RTGS 52020102200638690	40,00,000	Bhriгу Infra Pvt.Ltd.
22.10.2020	Andhra Bank	RTGS 52020102200647807	20,00,000	Bhriгу Infra Pvt.Ltd.
11.11.2020	South Indian Bank	RTGS.SIBLR 52020111100285480	3,00,00,000	Bhriгу Infra Pvt.Ltd.
11.11.2020	South Indian Bank	RTGS.SIBLR 52020111100302584	25,00,000	Bhriгу Infra Pvt.Ltd.

The above table indicates that a whopping amount of Rs.4,50,00,000/- (Four Crores Fifty Lakhs only) was paid by the Applicant to the Corporate Debtor without any corresponding consideration whatsoever.

The said document, as submitted, by the Applicant is witnessed by only ONE PERSON, whose full identity and details are not mentioned thereat.

- b) There is no proof that the Corporate Debtor has any interest whatsoever in the said land by way of any Sale Deed, AOS (Agreement of Sale) or even an MOU (Memorandum of Understanding or otherwise.
- c) The Agreement Holders, mentioned in the said Agreement of Sale, are NOT signatories to it, nor have they executed any Agreement of Sale or other document in favour of Bhriгу Infra Pvt. Ltd. This raises serious questions with regard to the Legal sanctity and validity of the document as well as the status of Bhriгу Infra Pvt. Ltd., being a Vendor and called as such.
- d) Therefore, the question of the Corporate Debtor BINDING THEM to the said transaction does NOT arise.
- e) The first paragraph in Page 26 of the IA 1734/2023 containing the 4th Page of the Agreement of Sale (dated 30th November, 2020) is reproduced hereunder:

“The vendor, Bhriugu Infra Private Limited had informed the Vendee that it is being granted power by the agreement holder to deal with the schedule property for sale of the same to the prospective purchasers and basing up on the said undertaking by the Vendor the Vendee is entering this Agreement of Sale.”

The important point to be noted in the above is that the said undertaking, by the supposed Vendor, is only oral and there is no documentary evidence with regard to the same.

3.5 It is stated that the purpose of various payments having been made to the Corporate Debtor by Sri Developers, as claimed in the Application, cannot be ascertained or confirmed to be linked to this transaction owing to the following additional reasons:

- a) The Books of Accounts of the Corporate Debtor have not been handed over to the IRP or this Respondent.
- b) The latest audited Financial Statements available with this Respondent are for the FY 2018-2019. Provisional Financial Statements for FY 2019- 2020 were unauthenticated and unsigned documents.
- c) Complete Current Account bank statements of the Corporate Debtor are unavailable and have not been provided either by the Corporate Debtor or the RP.

3.6 It is stated that the Clause 6 of the said Agreement of Sale is reproduced as under:

“The Vendor Bhriugu Infra Private Limited undertakes the responsibility of getting sale deed executed from the land owners (1 to 3) infavor of the Vendee or its associates failing which the vendor, Bhriugu Infra Private Limited has to pay penalty equaling to 50% of the total amount

received by it in addition to the refund of the receipt amount from the vendee and its associates within 4 months from the date of this agreement”

The usage of the word “Vendor” in the above paragraph is highly misleading and loaded with a clear intent to misrepresent facts to this Hon’ble Court. It is amply evident from the above clause that there is only an undertaking to get the said land registered in the name of the Vendee (Applicant herein) by the land owners directly. This indicates that the claim made is only in respect of a transaction mediated by the Corporate Debtor, and not for the purpose of transferring any title of the land owned by the Corporate Debtor. Accordingly, the said transaction cannot be classified as a Financial Debt as defined under Section 5 (8) of IBC, 2016.

- 3.7 It is stated that again, the first paragraph in Page 3 of the said Agreement of Sale (Page 25 of IA 1734/2023) is reproduced as under, for the kind notice and consideration of this Hon’ble court:

“Whereas the Vendor is the absolute owner of 6 Acres and 23.5 Gunta in part of Sy.Nos. 104, 105 and 111 of Edulanagulapalli Village as details shown in below table. And that it had entered into an agreement of sale with the agreement holders.”

The above statement is highly misleading in nature in view of the facts and circumstances presented in this Counter/Reply. Lastly, the usage of the word “Vendor” is highly inappropriate and incorrect.

3.8 It is stated that the Respondent apprehends and suspects that the current Application is coloured, motivated and filed with a clear ulterior motive. A collusive intent on the part of the Applicant and the Corporate Debtor may also not be ruled out, the motive most probably being the hijacking of the Liquidation process by taking control over the Stakeholders Consultation Committee. It is humbly requested that, if the facts pointed out above are true after proper consideration, the Applicant and the Corporate Debtor be called in person before this Hon'ble court for appropriate examination.

4. The Counsel for the Respondent filed written submissions, inter-alia stating that:

4.1 It is stated that the following facts are being submitted with respect to the prayer for Condoning the delay of 98 days in filing the present appeal under Section 42 of the IBC Code. The following reasons have been put forward for belatedly filing the present appeal:

- a) The authorised signatory of the Appellant was traveling for business purposes.
- b) Further, the Appellant had to gather documents and other information for the purpose of filing the appeal.
- c) In the meantime, the Appellant was in the process of getting its books of accounts audited for the purpose of filing its income tax returns for the FY 2022-23.

Point numbers (a) and (c) above, could not, by any stretch of imagination, have prevented the Appellant from filing the present

Appeal in time within the statutory time limit. The Appellant had already filed the same appeal before both the IRP as well as the RP, earlier. In other words, the documents and papers required for filing the present Appeal, were already with the Appellant. Therefore, the reason cited in point number (b) above, does not hold any water.

4.2 It is stated that the following extracts from the ruling of the Hon'ble Supreme Court of India in Civil Appeal No. 5590/2021, are presented hereunder, wherein the Hon'ble Supreme Court had firmly and unequivocally declined to allow condonation of the delay in filing an Appeal before the Resolution Professional by a party in the matter. It is humbly stated that this would equally apply in respect of the condonation plea in the present application before the Hon'ble NCLT Hyderabad.

a) Point No. 19 in Page 11 of the above cited ruling:

“19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.”

b) Point No. 21 in Page 12 of the above cited ruling:

“21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”

c) Point 22 in Page 12 of the above cited ruling:

“22. We have thus come to the conclusion that the NCLAT'S impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

It is humbly submitted that the claims before the Liquidator in the present matter are on the same footing as those before the Resolution Professional referred to in the Supreme Court ruling.

4.3 The other points with regard to the present Application are as follows:

a) The claim of Rs.15,99,42,986/- (Rupees Fifteen Crores Ninety-Nine lakhs Forty-two thousand Nine hundred and Eight-six only) is based on an Agreement:

i. which is unregistered

ii. witnessed and signed only by one person whose identity is unknown.

iii. there is no second witness as a signatory

iv. signed on a Stamp Paper purchased 9 months prior to the date of Agreement.

b) This raises serious questions with regard to the legal sanctity and validity of the Agreement document itself as well as the status of Bhriгу Infra Pvt. Ltd. being a Vendor and called as such.

c) The three Agreement holders, mentioned in the above Agreement of Sale, have not executed any Agreement of Sale or any other document in favour of Bhriгу Infra Pvt. Ltd nor are they signatories in the present Agreement of Sale.

d) Therefore, the question of the Corporate Debtor (Bhriгу Infra Pvt. Ltd.) binding them to the said transaction does not arise.

e) In Page 3 of the said Agreement of Sale, the Corporate Debtor (Bhriгу Infra Pvt. Ltd.) represents itself as the absolute owner of the 6 Acres 23.5 Guntas.

Clause 6 of the said Agreement is "the Vendor Bhriгу Infra Private Limited undertakes the responsibility of getting sale deed executed from the land owners (1 to 3) infavor of the Vendee or its associates....". This indicates that the claim made is only in respect of a transaction mediated by the Corporate Debtor and not for the purpose of transferring any title of the land owned by it. Accordingly, the said transaction cannot be classified as a Financial Debt under Section 5 (8) of IBC, 2016.

4.4 Lastly, it is averred, that the present Application is a devious and malicious attempt to derail the Liquidation process and take charge of

the Stakeholders Consultation Committee, thus depriving the genuine Financial Creditors of their legitimate claims.

5. In the light of the contention as aforesaid the points that emerged for our consideration are:

Point 1 : “Whether the delay of 98 days in filing the present appeal under Section 42 of the Code can be condoned?”

Point 2: “Whether the claim of the Applicant can be treated as financial debt in terms of Section 5(8) of IBC, 2016?”

6. We have heard Learned Counsel Mr. Kailash Nath PSS for the Applicant/Appellant and Learned Counsel Dr.Uma Shanker Gollapudi for the Respondent. Perused the record and case laws.

POINT NO.1:

Whether the delay of 98 days in filing the present appeal under Section 42 of the Code can be condoned?

SUBMISSIONS:

7. The Learned Counsel for the Applicant submitted that the Appeal could not be filed in time as the authorised signatory of the Applicant was travelling for business purposes and some documents and other information was required for the purpose of filing the appeal. The Learned Counsel further submitted that the above delay is neither wilful nor wanton but only for the reasons as aforesaid and sought for

condonation of delay in filing the appeal. The Learned Counsel for the Respondent contended that the reasons for delay are not convincing reasons at all as the appellant has already filed the appeal before the IRP as well as the RP and the documents and papers required for filing the appeal were already with the Applicant. Therefore, the reasons cited by the Applicant for delay in filing the delay does not hold any water. The Learned Counsel also cited ruling of the Hon'ble Supreme Court of India in Civil Appeal No. 5590/2021, wherein he submitted that Hon'ble Supreme Court of India had firmly and unequivocally declined to allow condonation of the delay in filing the Appeal before the Resolution Professional in the said matter. Learned Counsel further submitted that the same ruling squarely applies to the present application and therefore the delay cannot be condoned.

OUR FINDINGS:

8. We agree with the contention of the Respondent that the Applicant was already having all the required documents. Hence, the reason cited for the delay on account of the non-availability of documents is not maintainable. The other reason for the delay that "*the authorised signatory of the Applicant*" was travelling can also not be termed as a bonafide reason as these are all routine types of work and cannot be an impediment in filing the appeal within the time period allowed by the statute. Further, we place our reliance on point no.19 of the ruling of the Hon'ble Supreme Court of India in Civil Appeal No.5590/2021 which is reproduced as under:

“19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.”

In the above backdrop we decide that delay of 98 days in filing the appeal cannot be condoned. Thus, point no.1 is decided accordingly.

POINT NO.2

Whether the claim of the Applicant can be treated as financial debt in terms of Section 5(8) of IBC, 2016?

SUBMISSIONS:

9. The Learned Counsel for the Applicant submitted that, according to the Corporate Debtor certain land owners have authorised it to deal with their properties for sale and on that basis the Applicant entered into an agreement of sale dated 30.11.2022 with the Corporate Debtor but the Corporate Debtor could not produce documents of the properties for verification and also the sale deed could not be executed from the land owners in favour of the Applicant. In view of the default in executing the above sale agreement the Corporate Debtor is required to pay to the

Applicant an advance sale consideration of Rs.8,95,00,000/- along with interest @ 12% per annum and further compensation of 50% of the amount paid by the Applicant to the Corporate Debtor. Learned Counsel for the Applicant further submitted that the Applicant filed its claim as financial claim with the Liquidator but Liquidator by its e-mail dated 02.06.2023 informed the applicant that its claim is not eligible to be a financial claim. The Applicant preferred this appeal aggrieved by the said order of the Liquidator in rejecting its claim.

10. Learned Counsel for the Respondent rebutted the argument of the Applicant and submitted that the agreement of sale on the basis of which this claim is filed is not registered. Further, the land in question does not belong to the Corporate Debtor and the land owners are not signatories to the said agreement. The Learned Counsel further submitted that there is no undertaking/agreement by the land owners with the Corporate Debtor which indicates that land owners have given any authority to the Corporate Debtor to deal with their land for sale to third parties. The Learned Counsel for the Respondent further contended that since books of account of the Corporate Debtor have not been handed over to the IRP or to the Respondent and complete current account bank statement of the Corporate Debtor is also not available, therefore, the Respondent is not able to ascertain or conform whether the payment made aforesaid are linked to these transactions or these payments are for other transactions. Further, the Learned counsel for the Respondent/Liquidator vehemently submitted that the claim made by the Applicant is only in respect of transaction mediated by the

Corporate Debtor and therefore cannot be classified as a financial debt as defined in Section 5(8) of IBC, 2016. The Learned Counsel for the Respondent finally submitted that it appears to be a collusive intent on the part of the Applicant and the Corporate Debtor and the motive was most probably to hijack the Liquidation process by becoming a financial creditor and taking control over the Stakeholders Consultation Committee (SCC).

OUR FINDINGS:

11. Before, we proceed to decide the point as above we feel it proper to refer Section 5(8) of IBC, 2016 which is as below:
“financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.”
12. We find that the Applicant is contending that the money given by it to the Corporate Debtor is covered under Section 5(8)(f) of IBC, 2016 which states that *“Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing”* will be treated as a financial debt.
13. If we carefully peruse the above definition we find that the first condition for treating any amount as financial debt is that it should have a commercial effect of a borrowing which is not present in this case as

the Corporate Debtor was acting as a mediator between the actual land owners and the buyers, and thus it can at the most be treated as a business transaction and thus making the claim eligible to be as a operational creditor but by no means it can be treated as a financial debt. Here , in the present case the land parcels in question belong to third parties , so how an agreement of applicant with corporate debtor be treated as a forward sale or purchase agreement, having the commercial effect of a borrowing when the land in question do not belong to the Corporate debtor.

14. Further, on perusal of the agreement dated 30.11.2020 on the basis of which the aforesaid claim is raised, we find that it is signed by Sri.Marpina Venkata Rao, Managing Director of Corporate Debtor but without any supporting board resolution of the Corporate Debtor authorizing him to act on behalf of corporate debtor. Keeping in view, the legal fact that the Company is a separate legal entity and Mr.Marpina Venkata Rao cannot bind it by signing any agreement if there is no board resolution authorizing him to sign on behalf of the Company. Thus, this agreement in the absence of any board resolution authorising Mr. Marpina Venkata Rao to sign on behalf of the Company is void-ab-initio as far as corporate debtor is concerned .
15. In view of the above, we decide that the claim of the Applicant cannot be treated as financial debt in terms of Section 5(8) of IBC, 2016. Thus, point no.2 decided accordingly.

16. In view of our findings in respect of point no.1 and in point no.2, we decide that the delay in filing the appeal cannot be condoned and also the Application is liable to be rejected on merit . Accordingly, this application is dismissed and disposed of with no costs.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher