

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
07-06-2024 AT 10:30 AM**

**CP (IB) No.1/7/HDB/2023  
AND  
IA(IBC) 40/2024 & IA(IBC) 1861/2023 in CP (IB) No.1/7/HDB/2023  
u/s. 7 of IBC, 2016**

**IN THE MATTER OF:**

M/s. Enact Technologies Pvt Ltd

**...Financial Creditor**

**AND**

Sreeven Infocom 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) 1861/2023**

Orders pronounced. In the result, **this application is allowed.** The 3<sup>rd</sup> respondent is directed to pay the penalty of Rs. 25 Lakhs to the Prime Minister Relief Fund within one month and file compliance. For compliance, call on 08.07.2024.

**IA(IBC) 40/2024**

In the light of the orders passed in IA No 1861/2023, no orders are required in this application. Accordingly, **this application is disposed of.**

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

**THE NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH - I, HYDERABAD**

**I.A. (IBC) No. 1861 of 2023**

**IN**

**CP (IB) No.1/7/HDB/2023**

Under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with Rule 11 of The National Company Law  
Tribunal Rules, 2016

**BETWEEN**

**Mphasis Limited**

Bagmane World Technology Centre,  
Mararthalli Outer Ring Road,  
Doddannakhundhi Village,  
Maha Devapurana, Bangalore-560048.

...APPLICANT

**Versus**

**1. Shri Krishna Mohanlal Gollamudi**

Resolution Professional.  
F 26, Raghava Ratna Towers,  
Chirag Ali Lane, Abids, Hyderabad-500001

...RESPONDENT NO.1

**2. Sreeven Infocom Limited**

Door No. 1-98/7/B/38, Plot No.102,  
Sri Laxmi Sai Dhamam,  
Patrika Nagar, Madhapur,

Hyderabad-500081

RESPONDENT NO.2/CORPORATE DEBTOR

**3. Enact Technologies Private Limited**

Plot No. 21, Sy. No.47/T,

Rao and Raju Colony,

Road No.2, Banjara Hills,

Hyderabad-500034

RESPONDENT NO.3/FINANCIAL CREDITOR

**Date of Order: 07.06.2024**

**Coram:**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**Parties/Counsels present:**

For Applicant : Mr.Vivek Reddy, Sr.Counsel along with Mr.Suman,  
Counsel

For Respondent No.1&2: Mr.Krishna Mohan Gollamudi, R.P

For Respondent No.3: Mr.Krishna Grandhi, Sr.Counsel along with Mr.Amir  
Bavani, Counsel

**PER BENCH**

**ORDER**

1. This is an Application filed by **Mphasis Limited** under Section 60(5) of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') against the Respondents herein seeking the following reliefs:

- a) To revoke this Tribunal's order dated 31.03.2023 admitting Corporate Debtor in CIRP;
  - b) Impose a penalty prescribed under Section 65 of IBC on 3<sup>rd</sup> Respondent/Financial Creditor.
2. The Corporate Debtor herein was admitted into Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') by this Tribunal vide order dated 31.03.2023 in C.P. (IB). No. 1/7/HDB/2023 on a Petition filed by the Respondent No.3/Financial Creditor under Section 7 of IBC. Subsequently, the Respondent No.1 was appointed as the Resolution Professional of the Corporate Debtor.
  3. The Applicant, through this Application submits that the said initiation of CIRP of the Corporate Debtor was with fraudulent and malicious intent so as to defeat the legitimate claims/dues of the creditors of the Corporate Debtor including the Applicant.

### **FACTS LEADING TO THE PRESENT APPLICATION**

4. It was submitted that 'National Institute of Electronics and Information Technology' (NIELIT) invited bids for providing managed data digitization services (hereinafter referred as 'Project') vide RFQ No.0009/2011, RFQ No.0005/2011 and RFQ No.0006/2011. It was submitted that the Applicant was having substantial experience in

providing the services required for the Project and that the Corporate Debtor with an intent to participate in this bid approached the Applicant so that the Corporate Debtor.

5. It was submitted that a Memorandum of Understanding (MOU) dated 03.11.2011 was entered into between the Corporate Debtor and the Applicant thereby enabling the Corporate Debtor to participate in the bid of NIELIT and the Applicant was to provide the services as required by the Corporate Debtor in furtherance of the requirements of the project. It was further submitted that as per the terms of the MOU, the Applicant was to bear the Tender Fee, Earnest Money Deposit, other costs of the bid, Performance Bank Guarantee (PBG) and also to provide equipment, manpower and technical support for the completion of the Project. It was submitted that in the bid, NIELIT selected the Corporate Debtor as the Managed Service Provider for the Project.
6. In lieu of the above-mentioned relationship between the Corporate Debtor and the Applicant, there took place certain transactions, agreements between the Applicant and the Corporate Debtor which were explained in detail by the Applicant, but the same were not extracted herein as this Tribunal finds it not relevant for the adjudication of the case at hand. It was submitted that while the Applicant was prosecuting a case against the Corporate Debtor before The Hon'ble High Court of Karnataka in respect

of an Arbitral Award which was in favour of the Applicant and against the Corporate Debtor, a Memorandum dated 20.07.2023 was filed by the Corporate Debtor stating that this Tribunal admitted the Corporate Debtor into CIRP and moratorium is under force.

### **CASE OF THE APPLICANT**

7. It was submitted that the Financial Creditor and the Corporate Debtor are related parties within the meaning of Section 2(76) of 'The Companies Act, 2013' (hereinafter referred as 'The Act') and that the Petition under Section 7 of IBC filed by the Financial Creditor is a collusive action and was done fraudulently to prevent the Applicant from recovering the lawful dues from the Corporate Debtor.
8. It was submitted that the Corporate Debtor was financially sound and the act of the Corporate Debtor in borrowing through an Inter-Corporate Loan dated 30.09.2021 from the Financial Creditor is a fictitious one done with a fraudulent and malicious intent to undermine the interests of the creditors of the Corporate Debtor.
9. It was submitted that the Financial Creditor holds 5.29% of the issued and paid-up share capital (7,50,000 shares) of the Corporate Debtor as per the last Audited Financial Statements of the Financial Creditor and the Corporate Debtor.

10. It was submitted that the Corporate Debtor and the Financial Creditor are related parties as both the Directors of the Financial Creditor are the relatives of the Suspended Director of the Corporate Debtor (the Directors of the Financial Creditor are wife and son of the suspended Director of the Corporate Debtor Mr. Satyanarayana Raju Kalidindi). It was further submitted that the Financial Creditor is controlled by Mr. Satyanarayana Raju (Suspended Director of Corporate Debtor) and that the ownership of the Financial Creditor lies with the family of Suspended Director of Corporate Debtor.

11. It was submitted that Mr. Satyanarayana Raju transferred his shareholding of 90% in the Financial Creditor to his wife during the Financial Year 2021-22 and that the purported transaction of Inter-Corporate Loan took place in this Financial Year on 30.09.2021. Through this statement, the Applicant puts forth the contention that Mr. Satyanarayana Raju could have been holding this 90% of shares in the Financial Creditor while the Inter-Corporate Loan transaction took place and that even if Mr. Satyanarayana Raju was not holding any shares on the date of this transaction, the control over the Financial Creditor was exercised by him through his wife and son, being the shareholders and Directors of the Financial Creditor, thereby enabling the transaction of the Inter-Corporate Loan between the Financial

Creditor and the Corporate Debtor resulting in a fraudulent initiation of CIRP of the Corporate Debtor.

12. It was submitted that the Financial Creditor is a small company under Section 2(50) of The Act with Rs.50,00,000/- (Rupees Fifty Lakhs Only) as the paid-up share capital and that the net worth of the Financial Creditor was in negative since the Financial Year 2019-20 and presented the following table:

<b>Financial Year</b>	<b>Turnover</b>	<b>Net Worth</b>
2016-17	Zero	Rs.1,38,427
2017-18	Zero	Rs.1,20,727
2018-19	Zero	Rs.95,127
2019-20	Rs.20,00,000	Negative Rs.69,21,201
2020-21	Zero	Negative Rs.69,65,687
2021-22	Zero	Negative Rs.66,44,969

13. It was further submitted that there was no mention of the Inter-Corporate Loan in the Audited Financial Statements of the Financial Creditor for the Financial Year ended on 31.03.2022 and this is a violation of Section 186(4) of The Act. That the report of the Board of Directors of Financial Creditor for the Financial Year ended on 31.03.2022 states under the head Loan, Guarantees and Investments that Financial Creditor has not made any investments. It was further submitted that there is no proof of the debit of the Inter-Corporate Loan in the Audited Financial Statement of the



Financial Creditor but there is a mention of credit in this regard in the Financial Statement of the Corporate Debtor.

14. It was submitted that Note 2 of the Financial Statement of the Corporate Debtor for the Financial Year ended on 31.03.2022 shows that Rs.9 out of Rs.10 for each share remains unpaid for the 14,00,000 subscribed and fully paid-up shares. That as per the Auditor Report of the Corporate Debtor for the Financial Year ended on 31.03.2020, the Corporate Debtor was classified as Non-Performing Asset by ICICI Bank and also that the Corporate Debtor defaulted in payment of statutory dues. That as per the Auditor Report, the Corporate Debtor reported a cash loss of Rs.32,69,119/- for the Financial Year ended in 2022.

15. It was submitted that the Inter-Corporate Loan amount exceeds the 60% paid-up share capital of the Financial Creditor and that there was no general meeting of the Financial Creditor in terms of Section 186(3) of The Act prior to 30.09.2021 (the date of Inter-Corporate Loan) approving the transaction by way of a special resolution.

16. It was submitted that the Corporate Debtor have not convened the Annual General Meeting since 30.09.2019 and no filed Annual Returns since 31.03.2019. That there were non-compliances in the Annual Return filed on 30.09.2019 as Non-filing of Board Resolutions for Adoption of Accounts and Form MBP-T, Acceptance of unsecured loans from others,

non-appointment of key managerial Personnel, Independent Directors, Audit Committee, Nomination Committee and pendency of allotment of share application money. It was submitted that the non-appointment of Independent Director and Audit Committee by the Corporate Debtor resulted in failure to review the Inter-Corporate Loan received by the Corporate Debtor.

### **Reply of Respondent No.1**

17. It was submitted by Respondent No.1 that though the Resolution Professional is privy to the dispute and the transaction between the Applicant and the Corporate Debtor, certain facts were necessary to bring to the notice of this Tribunal based on the records of the Corporate Debtor available with the Respondent No.1.

18. It was submitted that there was a One Time Settlement for an amount of Rs.5.50 crores made by the Corporate Debtor with ICICI Bank in respect of a loan. That this loan of ICICI Bank was cleared by the Corporate Debtor by raising funds from three Financial Creditors in the form of loans viz.,

- a. Inter-Corporate Loan Agreement dated 30.09.2021 with the Respondent No.3/Financial Creditor herein for an amount of Rs.1.85 crores.
- b. Inter-Corporate Loan Agreement dated 30.09.2021 with one Mr. Janakiram Prasad for an amount of Rs.1.60 crores (**Annexure I**).
- c. Inter-Corporate Loan dated 30.0.2021 with one Mr. Arigapudi Purna Kumar for an amount of Rs.1.50 crores (**Annexure II**).

19. It was further submitted that these amounts were directly remitted into the loan account of the Corporate Debtor maintained with the ICICI Bank (**Annexure III**). That the Corporate Debtor further made a payment of Rs.55 lakhs to ICICI Bank from its own sources and that a No Due Letter dated 27.06.2022 was issued by the ICICI Bank to the Corporate Debtor (**Annexure V**).

### **Reply of Respondent No.3**

20. It was submitted that the present Application was misconceived and devoid of any merits and is liable to be dismissed. It was further submitted that the Applicant does not have a locus standi to bring the present Application as the Applicant is not even a creditor of the Corporate Debtor as on the date of filing the present Application. It was submitted that the present Application is in the form of an Appeal of the order of this Tribunal admitting the Corporate Debtor into CIRP and is liable to be dismissed.

21. It was submitted that the Respondent No.3/Financial Creditor is not a related party to the Corporate Debtor under The Act. That even if the Respondent No.3 is a related party, the same would not prevent the Respondent No.3 from bringing a Petition under Section 7 of IBC seeking initiation of CIRP of the Corporate Debtor.
22. It was submitted that the ICICI Bank declared the loan account of Corporate Debtor as Non-Performing Asset (NPA) during the year 2020-21 and the Bank was about to enforce the security offered by the personal guarantors of Corporate Debtor. That in lieu of the same, the Corporate Debtor approached the Respondent No.3 for an amount of Rs.1.85 crores to clear the dues of ICICI Bank. That in furtherance of the same, the Inter-Corporate Loan Agreement dated 30.09.2021 was entered into between the Corporate Debtor and Respondent No.3.
23. It was submitted that the Respondent No.3 disbursed an amount of Rs.1,85,00,000/- to the Corporate Debtor as per the Inter-Corporate Loan Agreement dated 30.09.2021 in the following manner (**Annexure 1**):
- a. Rs.40,00,000/- through Demand Draft No. 500355 on 24.09.2021
  - b. Rs.60,00,000/- through Demand Draft No. 504355 on 29.09.2021
  - c. Rs.50,00,000/- through RTGS vide UTR No. 000832 on 30.09.2021
  - d. Rs.20,00,000/- through RTGS vide UTR No. 000833 on 30.09.2021
  - e. Rs.15,00,000/- through RTGS vide UTR No. 000834 on 30.09.2021
24. It was submitted that there was an Extraordinary General Meeting (EGM) conducted on 01.08.2021 and a special resolution was passed by the

Respondent No.3 approving the Inter-Corporate Loan (**Annexure 2**) and in furtherance of the same, the transaction of Inter-Corporate Loan Dated 30.09.2021 took place with the Corporate Debtor. That the relevant form MGT-14 was not filed with the Registrar of Companies (RoC) inadvertently and the same was filed with the RoC on 22.01.2024 (**Annexure 3**) with a penalty (**Annexure 4**).

25. It was submitted that on the date of Inter-Corporate Loan Agreement i.e. on 30.09.2021 and on the date of passing a special resolution dated 01.08.2021, the Respondent No.3 and the Corporate Debtor did not have any common Directors and that the Director of the Corporate Debtor was not holding any shares in Respondent No.3. It was further submitted that as on 30.09.2021, the Director of Corporate Debtor Mr. Satyanarayana Raju is a minority shareholder and that not a primary beneficiary of the Inter-Corporate Loan Agreement. It was also submitted that the personnel of the Corporate Debtor are not accustomed to act in accordance with the advice of the personnel of the Respondent No.3.

26. Denying the allegation of the Applicant pertaining to the sound financial position of the Corporate Debtor, the Respondent No.3 submitted that as a Financial Creditor, the existence of debt and default on part of Corporate Debtor were effectively demonstrated in the Petition filed under Section 7 of IBC.

27. It was submitted that the Audited Financial Statements of the Respondent No.3 for the year ended on 31.03.2022 (**Annexure 5**) reflect the disbursal of short-term loans and advances to the tune of Rs.2,06,00,000/- and that this amount includes the loan amount of Rs.1,85,00,000/- advanced to the Corporate Debtor under the Inter-Corporate Loan Agreement. It was further submitted that these issues fall under the purview of RoC and not relevant to the present proceedings.

**Rejoinder of the Applicant to the Reply of Respondent No.1**

28. It was submitted by the Applicant that after ICICIC Bank gave no dues certificate dated 27.06.2022, the Respondent No.3/Financial Creditor filed the Petition under Section 7 of IBC before this Tribunal seeking CIRP of the Corporate Debtor. It was submitted that the Inter-Corporate Loan was given to the Corporate Debtor by the Personal Guarantors of the Corporate Debtor and that thereby these personal guarantors became the Financial Creditors of the Corporate Debtor.

29. It was submitted that Mrs. K. Sunitha (Director of Respondent No.3/Financial Creditor), who is a personal guarantor of Corporate Debtor could have directly paid the amount to ICICI Bank in the capacity of Personal Guarantor to the loan owed by the Corporate Debtor. But that instead, she opted to use the Corporate Personality of Respondent

No.3/Financial Creditor to transfer the amounts to the Corporate Debtor under the Inter-Corporate Loan and thereby to initiate CIRP of Corporate Debtor and also to protect the personal assets of the guarantors of the Corporate Debtor. It was submitted that all the three inter-corporate loans were provided by the personal guarantors of the Corporate Debtor with a fraudulent intent to put the Corporate Debtor into CIRP and to ensure that the properties of the personal guarantors were released from guarantees.

**Rejoinder of the Applicant to the Reply of Respondent No.3**

30. Reiterating the contentions put forth in the Application, the contentions put forth in the Rejoinder to Reply of Respondent No.1 and denying the averments of Respondent No.3, it was submitted by the Applicant that the Applicant has the locus standi to bring the present Application and that the Applicant is a creditor of the Corporate Debtor.

31. It was submitted that Section 186(4) of The Act requires the Company to disclose the full particulars of the Inter-Corporate Loan in the Financial Statements to its members and that a mere reference to short-term loans and advances in the Balance sheet of Respondent No.3 would not amount to full disclosure of the Inter-Corporate Loan when the very existence of the same is denied by the Financial Creditors. Denying the authenticity of Form

MGT-14 dated 22.01.2024 of the Respondent No.3, it was submitted that the same was hastily filed by Respondent No.3.

32. It was submitted that from a perusal of the Annual Return of Respondent No.3 for the Financial Year 2021-22, the following facts are revealed:

- There is only one general meeting held on 28.10.2021 after the impugned date of the Inter-Corporate Loan Agreement;
- Two Board Meetings on 04.09.2021 and 05.03.2022
- No Board Meeting or Special Resolution on 01.08.2021 as stated by Respondent no.3.

33. It was submitted that only after filing the present Application, the Respondent No.3 passed the impugned special resolution and that the same is contradictory to the disclosures made by Respondent No.3 in the Annual Returns. It was further submitted that vide the Board Resolution dated 01.08.2021, Respondent No.3 authorized one Mr. Hemanth Varma, the Director of Respondent No.3 to sign the Inter-Corporate Loan Agreement whereas the Inter-Corporate Loan Agreement was signed by one Mr. D.R.K. Raju, DGM of Respondent No.3. Through this, the Applicant tries to establish that the said Board Resolution dated 01.08.2021 is fabricated and concocted.

34. The Respondent No.3 vide I.A. No.640/2024 dated 28.03.2024, filed the Board Resolution dated 04.09.2021 wherein Mr. DRK Raju was authorised



by Respondent No.3 to act on behalf of Respondent No.3 with respect to the Inter-Corporate Loan with the Corporate Debtor. Both the parties filed written submissions reiterating the contentions put forth by them and also relied on the rulings of various Judicial Authorities in respect of the contentions raised.

35. In the light of the contest put forth by both the parties herein, the points that emerges for the consideration of this Tribunal are:

**(i). Whether the Applicant herein has no *locus standi*, to file the present Application under Section 65 of IB Code?**

**(ii). Whether the proceeding's in CP (IB) No.1/7/HDB/2023 initiated by the 3<sup>rd</sup> respondent against the Corporate Debtor are fraudulent or with malicious intent for purposes other than the insolvency resolution of the Corporate Debtor? *If so*, whether the admission order dated 31.03.2023 against the Corporate Debtor can be revoked and penalty be imposed on the 3<sup>rd</sup> respondent?**

36. We have heard Mr. Vivek Reddy the Ld. Senior Counsel for the Applicant and Mr. Krishna Grandhi Ld. Senior Counsel for the 3<sup>rd</sup> Respondent. Perused the record and the written submissions.

POINT.1.

Whether the Applicant herein has no *locus standi*, to file the present Application?

### ***The gist of the Submissions***

37. Mr. Vivek Reddy Ld. Sr. Counsel, for petitioner, at the outset, submitted that Section 65 IBC, does not say who can file an application under Section

65 of IB Code, as such the same can be triggered by any person who is “*affected*” by the order, admitting the Corporate Debtor in to CIRP.

Learned counsel further submitted that until the Corporate Debtor herein, has filed a memo before Hon’ble High Court of Karnataka, where the Appeal filed under section 37 of the Arbitration and Conciliation Act, 1996, by the applicant is pending, whereby the order of admission of the corporate debtor into CIRP was informed the applicant was unaware of the proceedings or the CIRP order in this company petition.

38.Ld. Sr. Counsel submits that, consequent to the filing of the said Memo, the proceedings before Hon’ble High Court, have come to a standstill because of the order of moratorium ordered against Corporate Debtor under section 14 of IB Code. Ld. Sr. Counsel submits that initiating of proceedings under Section 7 of IBC by the 3<sup>rd</sup> Respondent against the 2<sup>nd</sup> Respondent is fraudulent and for the purposes other than insolvency resolution of the corporate debtor and the applicant is the affected party of this collusive initiation. Hence, the applicant is fully entitled to maintain the prayer to terminate admission order dated 31.03.2023.

39.Mr. Krishna Grandhi, the Ld. Senior Counsel submits that the Applicant herein does not have the locus, to file the present Application before this

Tribunal, as the Arbitral Award which passed in favour of the Applicant has been set aside by the Ld. City Civil and Sessions Judge, Bangalore and the Appeal, preferred by the applicant against the said order, is pending before Hon'ble High Court of Karnataka, without any order of stay. According to the Ld. Sr. Counsel, the Applicant therefore is not a creditor as on the date of filing the present Petition, and in fact has not filed any claim before the Resolution Professional so as to consider as a creditor of the Corporate Debtor and hence, the applicant has no *locus* to bring the present application under Section 65 of IBC.

### ***Our analysis & Findings***

40. A bare perusal of section 65 of IB Code, which is as below,

**65.** (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

<sup>1</sup>[(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]

discloses that, Section 65 IBC, is silent on who can/should file the application under the said provision. So much so, any person who is affected/aggrieved by the fraudulent initiation of the CIRP can trigger the process under section 65 IBC, before this Tribunal. Moreover, the locus of a person to file a case is decided basing on the provisions under which the case was brought and also the reliefs sought in the case. The Applicant herein filed the present Application under Section 60(5) and sought relief under Section 65 of IBC. Section 60(5) is considered to be a residuary provision under IBC which takes under its sweeps all types of cases of the Corporate Debtor, provided the same arise out of the CIRP or Liquidation of the Corporate Debtor.

41. The applicant specifically pleaded the initiation of the proceeding under section 7 IBC by the 3<sup>rd</sup> respondent against the 2<sup>nd</sup> respondent is fraudulent and malicious and for purpose other than insolvency resolution of the corporate debtor. That apart, the Appeal filed by the applicant before High Court, Karnataka, challenging the order of setting aside the Award passed by the City Civil Court, has affected/stalled the hearing of the said Appeal by High Court on account of “moratorium” imposed under section 14 IBC by this Tribunal, while admitting the Petition filed under Section 7 of IBC.

Therefore, under these circumstances, we are of the firm view that the *locus* of the Applicant is un questionable.

The point is decided accordingly.

#### POINT (2)

Whether the proceeding's in CP (IB) No.1/7/HDB/2023, initiated by the 3<sup>rd</sup> respondent against the Corporate Debtor are fraudulent or with malicious intent for purposes other than the insolvency resolution of the Corporate Debtor? *If so*, the admission order dated 31.03.2023 against the Corporate Debtor can be revoked and *penalty* be imposed on the 3<sup>rd</sup> respondent?

42. The Ld. Senior Counsel for the Applicant submitted that the Petition under Section 7 of IBC was filed by the 3<sup>rd</sup> Respondent on the strength of an Inter-Corporate Loan Agreement dated 30.09.2021 for an amount of Rs.1.85 crores. It was further submitted that 3<sup>rd</sup> Respondent / financial creditor is a related party to the Corporate Debtor as the wife and son of the suspended Director of Corporate Debtor/Mr. K. Satyanarayana Raju are the Directors and shareholders of the 3<sup>rd</sup> Respondent/Financial Creditor. According to the Ld. Senior Counsel the suspended Director of Corporate Debtor himself was holding 90% of shareholding and was a MD/ Director of the 3<sup>rd</sup> Respondent /Financial Creditor till the Financial Year 2021-22 and as a part of strategy to start collusive petition under section 7 against the corporate

debtor, transferred these shares from his name to his wife/Mrs. K. Sunitha, who subsequently became the shareholder and director of 3<sup>rd</sup> Respondent.

43. Ld. Senior Counsel further submitted that Mrs. K. Sunitha, along with two other persons, stood as the Personal Guarantor to the facilities granted to the Corporate Debtor by ICICI Bank. That, as part of One-Time Settlement, the Corporate Debtor was to pay an amount of Rs.5.5 crores to ICICI Bank and that as a strategy, Mrs. Sunitha, through Respondent No.3 advanced an amount of Rs.1.85 crores to Corporate Debtor and the other two guarantors also advanced an amount of Rs. 1.6 crores and Rs.1.5 crores by way of Inter-Corporate Loans to corporate debtor to make the payment to ICICI Bank under OTS. The Ld. Senior Counsel further submitted that Mrs. K. Sunitha first advanced an amount of Rs.1.85 crores to Respondent No.3 and subsequently, Respondent No.3/ financial creditor disbursed the Inter-Corporate loans to the Corporate Debtor and on the basis of this Inter corporate loan , the Petition under Section 7 was filed against the Corporate Debtor and consequently the other two guarantors and financial creditor/ respondent no 3 who were guarantors to the corporate debtor and in that capacity were liable to pay jointly and severally the debt owed by corporate debtor now became financial creditors and part of COC to complete CIRP process of corporate debtor . The Ld. Senior Counsel further submitted

that thus a web of transactions was created by the family members of suspended director/ Mr. K. Satyanarayana Raju and his wife to file this collusive section -7 petition in a fraudulent manner with purposes other than resolution of the corporate debtor with intention to avoid legitimate claim of the applicant. The Ld. Senior Counsel submitted that from these facts, it is clear that both Respondent No.3 and the Corporate Debtor are the companies belonging to same family and are related parties.

44. The Ld. Senior Counsel further contended that this Inter-Corporate Loan is a non-enforceable debt as it is violative of various sections of Companies Act, 2013 and Ld. Senior Counsel submitted details of these violations as under:

- i. **Section 180(1)(c) of Companies Act, 2013:** Ld Counsel submits that this section restricts powers of the Board for any borrowing by the Company exceeding the aggregate of its paid-up capital, free reserves and securities premium and requires consent of members by way of a special resolution as per Section 180(1)(c) of the Companies Act. 2013. That Respondent No.3 did not obtain the consent of the shareholders for the loan obtained from Mrs. K. Sunitha for an amount of Rs.1.85 crores.
- ii. **Section 186(3) of The Companies Act, 2013, Loans and Investment by Company:** That the impugned Inter-

Corporate Loan of Rs.1.85 crores is 300 percent of the paid-up share capital, free reserves and securities premium account of the financial creditor but no approval of the shareholders of Respondent No.3 by way of a special resolution in a general meeting in accordance with Section 186(3) of Companies Act, 2013 was obtained by the financial creditor. Ld Counsel submits that, Section 186 (2) of the Companies Act, 2013, clearly restricts that no company shall directly or indirectly give any loan to any person or other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account.

- iii. **Section 186(5) of The Companies Act, 2013:** That Respondent No.3 did not obtain the consent of Directors in the meeting of the Board for entering into impugned Inter-Corporate Loan Agreement dated 30.09.2021 and the same is a violation of Section 186(5) of the Companies Act, 2013.
- iv. **Section 186(4) of The Companies Act, 2013:** That, as per Section 186(4), Respondent No.3 was to disclose in the Financial Statement the full particulars of Inter-Corporate Loan given and the purpose of the same, but that the Respondent No.3 did not disclose the same and violated Section 186(4) of The Act.
- v. **Section 134(3)(g) of the Companies Act, 2013 :** That the Report addressed by the Board of Respondent No.3 to its members which were annexed to the Audited Financial



Statement for the Financial Year ended on 31.03.2022 did not present the true picture, as under the head of loans, guarantees and investments, it was stated that the Company (Respondent No.3) has not made any investment, given any guarantee and securities during the year under review, therefore, no need to comply provisions of Section 186 of Companies Act. 2013. Thus, this report is violative of Section 134(3)(g) of the Companies Act. 2013 as it did not disclose the impugned transaction of inter corporate loans attracting section 186 of the companies act, 2013. Section 134(3)(g) of the Companies Act. 2013 states that report by the Board Directors shall include particulars of loans, guarantees or investments under section 186.

- vi. **Section 134(3)(h) of Companies Act. 2013:** That, the above said report addressed by the Board of Directors Respondent No.3 to its members is also violative of Section 134(3)(h) of Companies Act. 2013 because under the head “related party transactions” it is stated that the Company has not made any material related party transactions.

45. Ld. Senior Counsel further contended that the Board Resolution and special resolution dated 01.08.2021 filed by respondent no 3 in his counter, speaks of Inter Corporate Deposit but whereas the transaction was an Inter Corporate Loan and therefore, this impugned board resolution has no validity as far as granting of Inter Corporate Loan is concerned as Inter Corporate deposits are not covered by Section 186 of The Act.

46. Ld. Senior Counsel further contended that the Inter-Corporate Loan on behalf of Respondent No.3 was also not executed through proper authorization and thus is not a valid transaction. It was further submitted that vide the Board Resolution dated 01.08.2021, Respondent No.3 authorized one Mr. Hemanth Varma, the Director of Respondent No.3 to sign the Inter-Corporate Loan Agreement whereas the Inter-Corporate Loan Agreement was signed by one Mr. D.R.K. Raju, DGM of Respondent No.3. Ld. Counsel further submitted that only after raising this contention, the Respondent No.3 produced a Board Resolution dated 04.09.2021 through I.A. No. 640/2024 dated 28.03.2024 at a belated stage showing that Mr. DRK Raju was authorized to execute the Inter Corporate Loan Agreement. It was submitted that this Board Resolution is clearly an afterthought of Respondent No.3.

47. The Ld. Senior Counsel further submitted that as per the Audited Financial Statements of Respondent No.3 for the Financial Year ended on 31.03.2022, the share capital was Rs.50 lakhs, and its reserves and surplus is in a negative balance of Rs.71.44 lakhs. That, the revenue from the operations for the years 2021-22 and 2020-21 was NIL and the profit for the Financial Years 2021-22 and 2020-21 were Rs.3.2 lakhs and NIL

respectively. Learned Counsel submitted that though the financial capacity of Respondent No.3 was so weak as explained above, even then an Inter Corporate Loan Agreement dated 30.09.2021 was entered into by Respondent No.3 with the Corporate Debtor granting a loan of Rs.1.85 crores to the Corporate Debtor knowing well that Corporate Debtor's account with ICICI bank has been classified as NPA and there are no chances of recovery of the Inter Corporate Loans.

48. The Ld. Senior Counsel further submitted that there was no separate account head or corresponding entries to substantiate the disbursement of Inter-Corporate Loan in the Balance Sheet of Respondent No.3 for the Financial Year ended on 31.03.2022. In support of this contention, learned Sr. Counsel placed reliance on the following rulings.

*UKG Steel Private Limited vs. Erotic Buildcon Private Limited, 2021 SCC Online NCLT 434*, wherein it was held that,

“ an Intercorporate Loan that is neither disclosed in the balance sheet nor resolved through a special resolution passed in the General Meeting of shareholders is ultra-vires of the Companies Act, 2013 and not a legally enforceable debt”

*Jammudwip Exports and Imports Limited vs. UP Bone Mills Private Limited, MANU/NC/2573/2022*, wherein it was held that,

“ a Petition under Section 7 of the Code was dismissed as the Company has granted a loan exceeding the limits specified under Section 186(2).

49. The Ld. Senior Counsel submitted that the 3<sup>rd</sup> Respondent , only after filing the present Application, fraudulently produced a special resolution dated 01.08.2021 and Board Resolution dated 01.08.2021 pertaining to the Inter-Corporate Loan Agreement dated 30.09.2021. That this Special Resolution and Board Resolution dated 01.08.2021 were not disclosed in the Annual Return of the Respondent No.3 for the Financial Year 2021-22 and that the same are concocted, fabricated and manufactured. Ld. Counsel contended that as per the Annual Return of Respondent No.3, the shareholders meeting was held on 28.10.2021 and Board Meetings were held on 04.09.2021 and 05.03.2022 during FY 2021-22 and that no Board meeting and/ or General Meeting of members is reported to be held by the Respondent No.3 on 01.08.2021 in relation to the Inter Corporate Loan Agreement and the approval of the same. Thus, it clearly proves that no board meeting or General Body Meeting of members was held on 01.08.2021 and Respondent no 3 has produced these documents fraudulently to validate the illegal transaction of Inter Corporate Loans.

50. The Ld. Senior Counsel for applicant further submitted that learned counsel for respondent no 3 has explained that the non-filing of special

resolution dated 01.08.2021 was rectified by filing Form MGT-14 with RoC on 22.01.2024 intimating the special resolution dated 01.08.2021 but as per Section 117(1) of The Companies Act, Form MGT-14 is to be filed within 30 days of passing the special resolution and that the same was filed in the present case after 3 years. Hence, the violation of Section 186 in this regard cannot be rectified by Respondent No.3.

51. It was further submitted by Ld. Senior Counsel, that all the above-mentioned acts reveal that the CIRP of the Corporate Debtor was initiated with fraudulent and malicious intent and also for the purposes other than the resolution of Corporate Debtor. In support of this contention, reliance was placed on *Venture Global Engineering vs Satyam Computer Services Limited, 2010 8 SCC 660* wherein it was observed as follows:

“But fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.”

52. However, the Ld. Senior Counsel for 3<sup>rd</sup> Respondent submitted that the Corporate Debtor and the 3<sup>rd</sup> Respondent are not related parties and that the suspended Director of Corporate Debtor i.e., Mr. K. Satyanarayana Raju is not a shareholder nor a Director of Respondent No.3 at the time of Inter-

Corporate Loan Agreement dated 30.09.2021 which formed the basis for Section 7 Petition filed by Respondent No.3 against Corporate Debtor.

53.The Ld. Senior Counsel further submitted that the present proceedings pertain to IBC and the parties cannot be termed as related parties under the provisions of The Companies Act. That the Corporate Debtor and Respondent No.3 are not related parties as per Section 5(24) of IBC and Mr. K. Satyanarayana Raju do not exercise any control over Respondent No.3. It was further submitted that even, there is no bar on the related party to seek initiation of CIRP under IBC.

54. With respect to the Inter Corporate Loans, it was submitted by the Ld. Senior Counsel that the loans were advanced through legitimate banking channels. That the loans received by the Corporate Debtor from Respondent No.3 and others were utilised to clear the outstanding dues under the One Time Settlement with the ICICI Bank and that there is no collusive or fraudulent or malicious intent on behalf of Respondent No.3 in carrying out the Inter Corporate Loan transaction. In support of this contention, reliance was placed on Para 39 of *Mrs. Renuka Devi Rangaswamy vs M/s. Regen Powertech Pvt Ltd, Comp (AT)(CH)(Ins) No.357/2022*, Hon'ble NCLAT, Chennai Bench.

“39. Be that as it may, in the light of detailed upshot, this ‘Tribunal’, on going through the ‘impugned order’ in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai) dated 01.07.2022, keeping in mind the facts and circumstances of the case and the stand taken by the respective parties, comes to a ‘Resultant Conclusion’ that the ‘Transfer of Assets’ among the ‘Group Companies’ ex-facie is not a ‘Fraudulent Trading’, as per Section 66 (1) of the Insolvency & Bankruptcy Code, 2016. Moreover, because of the fact that all ‘Transactions’ between the Companies as well as the ‘Asset’ details were maintained in a ‘Transparent Manner’ on an ‘SAP System’ (including the ‘Fixed Assets Register’) and further the ‘Transactions’ of the ‘Corporate Debtor’ and the ‘1st Respondent’ were ‘Audited’, every year, the ‘Plea’ of ‘Fraudulent Trading’ as projected by the ‘Appellant’ / ‘Applicant’ is not proved, to the subjective satisfaction of this ‘Tribunal’, in a ‘convincing manner’. Apart from that, mere ‘Averments’ / ‘Allegations’ made in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, before the Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai) are not good enough to exhibit that the ‘business’ of the ‘Corporate Debtor’ was carried out by the ‘Respondents’ either with a ‘mala-fide intent’ for achieving a ‘Fraudulent Purpose’ or with a ‘dishonest intent’ to ‘Defraud’ the ‘Creditors’.”

55. The Ld. Senior Counsel further submitted that the alleged acts of non-compliance of the provisions of The Act cannot per se be deemed to be

fraudulent and that the same cannot form the subject matter of adjudication in an application seeking reliefs under Section 65 of IBC. That the violations of the provisions of The Act have different consequences as provided in The Companies Act, 2013 and the same cannot be impugned in the proceedings under Section 65 of IBC. In support of this contention, reliance was placed on Para 10 of *Kalpesh Ramniklal Shah vs Mundara Estate Developers Ltd & Anr., CA (AT) (Ins) 71/2023* dated 14.07.2023, Hon'ble NCLAT, Principal Bench.

“10. The submission of the Appellant regarding key managerial personnel of Financial Creditor, holding majority shareholding in the Corporate Debtor and is a ‘related party’ and exercises substantial control in the Corporate Debtor is vehemently denied by the Respondent submitting that no transaction was entered between the Corporate Debtor and the related party. The control by the Financial Creditor is also denied by the Respondent. It is submitted that had Financial Creditor really been in control of the Corporate Debtor, situation of non-payment of loan would not have arisen. The Corporate Debtor is under control of Girish Shah, who has 25% shareholding in the Corporate Debtor and who is a Guarantor as well as Pledgor under the Loan Agreement. With regard to control through M/s. Kava Impex Pvt. Ltd., it has been submitted that more than Rs.15 crores out of Rs.24 crores has been transferred to M/s. Mundara Estate Developers Ltd. even before M/s. Kava Impex Pvt. Ltd. became a partner therein. Further the submission of learned



Counsel for the Appellant that loan transaction was in violation of Section 295 of the Companies Act, 1956, does not help the Appellant to deny the loan transaction and the disbursement of the amount. Even if, the allegation of violation of Section 295 of the Companies Act, 1956 may be there, that does not in any manner inhibit filing of Section 7 Application and take appropriate proceedings under the IBC. The purpose and object of the IBC is entirely different. The violation of provisions of Companies Act, 1956, for example Section 295 has different consequences, which consequences in law can take effect and remedial measures can be taken under Section 295, when the ingredients of Section 295 are proved, but that itself cannot be a ground to reject Section 7 Application filed by the Financial Creditor, where debt and default is proved.”

56. The Ld. Senior Counsel further contended that in compliance of Section 186(3) of The Act, there was a special resolution passed in the Extraordinary General Meeting of Respondent No.3 held on 01.08.2021 with respect to the Inter Corporate Loan Agreement with the Corporate Debtor and that the same was inadvertently not filed with the Registrar of Companies (RoC) and was not mentioned in the Annual Report of 3<sup>rd</sup> Respondent.

In **BSFC Distributors Pvt Ltd vs Pilot Mines and Minerals Pvt Ltd**, CP(IB) No. 237(PB)/2022 dated 28.02.2023, the NCLT Principal Bench directed the Financial Creditor therein to show the compliance of Section 186(3)

of The Companies Act and that the Financial Creditor filed Form MGT-14 on 19.09.2022 and the Ld. NCLT accepted the belated filing of Form MGT-14 and admitted the Petition under Section 7 of IBC.

57.The Ld. Senior Counsel submitted that the reference to the Inter-Corporate Loan as Inter-Corporate Deposit does not affect the validity or legality of the said transaction. That the nomenclature of a document/transaction is irrelevant to the underlying transaction and that the Inter Corporate Loan is to be treated as a loan or a financial debt and not as a deposit.

58.The Ld. Senior Counsel submitted that as per the Resolution dated 01.08.2021 passed by Respondent No.3, Mr. Hemant Varma was authorised to do all acts as mentioned in the resolution in respect of the Inter-Corporate Loan Agreement with the Corporate Debtor and the Board of Respondent No.3 passed another Resolution dated 04.09.2021 authorising Mr. DRK Raju to execute the Inter Corporate Loan Agreement on behalf of Respondent No.3. That both Mr. Hemant Varma and Mr. DRK Raju were validly authorised by the Board of Respondent No.3 to give effect to the Inter Corporate Loan Agreement.

59. The Ld. Senior Counsel further submitted that the Applicant herein cannot dictate terms pertaining to the repayment of loan by the Corporate Debtor

to ICICI Bank and that it is the sole prerogative of the parties involved. That the Board of Respondent No.3 consented to accept an interest free loan of Rs.1.85 crores from Mrs. K. Sunitha but that the same was not materialized. That the amounts disbursed by Respondent No.3 to Corporate Debtor were not the amounts received by Respondent No.3 but that they were solely gathered by Respondent No.3.

***Our analysis and findings.***

60. Indisputably, the Inter-Corporate Loan Agreement dated 30.09.2021 between the Corporate Debtor and the 3<sup>rd</sup> Respondent is the basis for initiation of proceedings under Section 7 of IBC . In the reply filed by the 3<sup>rd</sup> Respondent it is stated that the Loan Account of Corporate Debtor was declared as NPA by ICICI Bank and to clear the said dues the 3<sup>rd</sup> Respondent advanced Rs.1.85 crores to the Corporate Debtor. This Tribunal finds it surprising as to how a Company could advance loan comprising of about 300% of its own paid-up share capital to another Company whose loan account was already declared as NPA. In our view, no financial creditor/ Company having a prudent Board and prudent shareholders, will approve such a transaction. Further, it is unbelievable, that how giving Inter Corporate Loan of Rs1.85 Crores to a company whose accounts were in NPA, can be a *bona fide*, transaction for a Company which

is having a negative net worth and whose revenue from operations for the years 2021-22 and 2020-21 is NIL and which has earned meagre profit of Rs.3.2 lakhs and NIL for the Financial Years 2021-22 and 2020-21 respectively.

61. Even if we accept the contention of 3<sup>rd</sup> respondent that valid Board Meeting and Extraordinary General Meeting of 3<sup>rd</sup> Respondent held on 01.08.2021, approved this transaction of Inter Corporate Loan, in spite of the fact that the Annual Returns of the Company filed with ROC do not show any such details, the only irresistible conclusion that any one can arrive at is that the transaction of Inter Corporate Loan has been entered is bereft of any *bona fides* and with *ulterior* motives. Thus, we find that the decision of lending the subject Inter Corporate Loan by the Board of financial creditor was with a clear and pre- decided fraudulent intention of initiating proceedings under Section 7 IBC against the Corporate Debtor because of the probability of ‘default’ by Corporate Debtor was staring hundred percent at the corporate debtor, even on the day of lending itself.

62. Moreover, we are also fully convinced that that impugned Inter-Corporate Loan is violative of the various Sections of the Companies Act, 2013 and the effect of some of them renders the said transaction as ‘non-enforceable

debt’. We do not accept, the contention of the Ld. Senior Counsel for 3<sup>rd</sup> respondent that the acts of ‘non-compliance’ of the provisions of the Act cannot *per se*, be deemed to be *fraudulent* and that the same cannot form the subject matter of adjudication in an application seeking reliefs under Section 65 of IBC. In this context, while it may be said that, the violations of the provisions of the Companies Act, may have different consequences as provided in the Companies Act, 2013 but at the same time if any violation or violations having the effect of ‘invalidating’ the debt transaction itself exists or pleaded, the same can certainly be dealt under Section 65 of IBC, notwithstanding the repercussion’s under the provisions of the Companies Act, 2013. In this regard, reliance can be placed on the ruling in, **Jammudwip Exports and Imports Limited vs. UP Bone Mills Private Limited**, MANU/NC/2573/2022, wherein it was held that,

“a Petition under Section 7 of the Code was dismissed as the Company has granted a loan exceeding the limits specified under Section 186(2)”.

In **UKG Steel Private Limited vs. Erotic Buildcon Private Limited**, 2021 SCC Online NCLT 434, it was held that.

“an Intercorporate Loan that is neither disclosed in the balance sheet nor resolved through a special resolution passed in the General Meeting of shareholders is ultra-vires of the Companies Act, 2013 and not a legally enforceable debt”.

63. In the present case also, the Inter Corporate loan is not disclosed in the balance sheet and as per Annual Report for the year 2021-22, no General Meeting of shareholders was held on impugned date i.e. on 01.08.2021. The contention of the 3<sup>rd</sup> respondent, that a revised MGT-14 form has been filed on 22.01.2024, with ROC, Telangana, intimating the 'special resolution' dated 01.08.2021, is unacceptable to as the revised MGT -14 as contended, has been filed during the pendency of this application, without taking any leave from this Tribunal, for filing the same with ROC.

The ruling in, *BSFC Distributors Pvt Ltd vs Pilot Mines and Minerals Pvt Ltd*, relied on, in our considered view, on facts is not applicable to the case on hand, as unlike in the case on hand there was no amendment of MGT 14 and it was a case of 'late filing', to comply with clarificatory order of NCLT Principal Bench.

Moreover, we have already held that the decision of lending the subject Inter Corporate Loan by the Board of financial creditor was with a clear and pre- decided fraudulent intention of initiating proceedings under Section 7 IBC against the Corporate Debtor because of the probability of 'default' by Corporate Debtor was staring hundred percent at the corporate debtor, even on the day of lending itself.

64. Therefore, we hold that case law, *UKG Steel Private Limited vs. Erotic Buildcon Private Limited*, 2021 SCC Online NCLT 434, squarely applies

to the present case and therefore we have no hesitation in holding that the subject 'Intercorporate Loan' which is neither disclosed in the balance sheet nor resolved through a special resolution passed in the General Meeting of shareholders, is *ultra-vires* of the Companies Act, 2013 besides not a legally enforceable debt.

65. It is strange that the pleas that we have discussed as above are the pleas which are expected to be raised normally by or on behalf of a corporate debtor in a petition filed under Section 7 IBC, by a financial creditor. The conspicuous absence of even a whisper of these valuable pleas in the pleadings of the parties herein, speaks volumes about the acts of 'collusion' between the parties, in invoking Section 7 IBC. We therefore, firmly hold that the present petition filed under section 7 IBC, by the financial creditor is a collusive petition filed, in collusion with the corporate debtor with a fraudulent intention and ulterior *motives* and not with the intention of resolution of corporate debtor.

66. Chief Justice Edward Coke of England, who about three centuries ago observed that, *fraud* avoids all judicial acts, ecclesiastical or temporal.

Hon'ble Supreme Court of India, in Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17, held that,

"What is also of relevance is that in order to protect the corporate debtor from being dragged into the corporate insolvency resolution process *mala fide*, the Code prescribes penalties".

In Phoenix Arc Private Limited V. Spade Financial Services Limited & Ors.,- AIR 2021 SC 776, it was held that,

“This is a landmark Judgement where Hon’ble SC has given an in-depth study about Collusive transactions and Related parties. The Supreme Court of India dismissed the appeal filed by AAA Landmark Private Land and Spade Financial Services Limited. The court emphasized that transactions characterized as collusive and sham do not qualify as "Financial Debt" under the Insolvency and Bankruptcy Code, 2016. The Supreme Court stated that such transactions, carried out with dishonest intent, negatively impact genuine creditors of the corporate debtor (CD). Therefore, the court held that no party should be permitted to gain unwarranted advantages from such transactions.

In Hytone Merchants Pvt Ltd V. Satabadi Investments Consultants Pvt. Ltd. - Company Appeal (AT) (Insolvency) No. 258 Of 2021, it was held that,

The NCLAT noted that, the Hon’ble SC in the case of *Swiss Ribbons Private Limited v. Union of India [(2019) 4 SCC 17]* had observed that, “*What is also of relevance is that in order to protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process mala fide, the Code prescribes penalties.*” The NCLAT observed that, therefore, it was clear that even if the Application filed under Section 7 of the IBC met all the requirements, then also the NCLT could exercise discretion, to prevent and protect the Respondent from being dragged into CIRP mala fide.

In SLB Welfare Association Vs. M/S PSA IMPEX Pvt Ltd, M/S Rudra Buildwell Constructions Pvt. Ltd - Company Appeal (AT) (Insolvency) No.642 Of 2022, it was held that,

The Appellate Tribunal held that the entire case of the Operational Creditor to supply materials, goods and services appears to be false and concocted only for the purpose of filing Section 9 Application and thus penalty is liable to be imposed on the Operational Creditor under Section 65 of the Code. The initiation of CIRP itself being vitiated in law, all subsequent orders passed in the proceedings have to be automatically set aside.

In Amit Katyal v. Meera Ahuja, 2020 SCC Online748, Hon’ble NCLAT, it was held that,



“No penalty can be saddled either under Section 65(1) or (2) of the Code without recording an opinion that a *prima facie* case is established to suggest that a person ‘fraudulently’ or with malicious intent for the purpose other than the resolution of Insolvency or Liquidation or with an intent to defraud any person has filed the Application”.

67. Thus, formation of “*prima facie*” *opinion*, by the Adjudicating Authority on the basis of the record produced before Adjudicating Authority, as to whether or not the Financial Creditor/Corporate Applicant or the Operational Creditor has triggered corporate insolvency resolution process, “*fraudulently*” or “*with malicious intent*”, for the purpose other than the resolution of the insolvency or liquidation or that voluntary liquidation proceedings has been filed with the intent to *defraud* any person is, *sine qua non*, for imposition of penalty under Section 65 of I&B Code.
68. In our discussion, supra, we have categorically held that the present petition filed under section 7 IBC, by the financial creditor is a collusive petition filed, in collusion with the corporate debtor with a fraudulent intention and *ulterior motives* and not with the intention of resolution of corporate debtor.

Hon’ble Supreme Court of India, in *S.P Chengalvaraya Naidu vs Jagannath*, AIR 1994 P853, wherein, His Lordship, Hon’ble Justice Kuldeep Singh, categorically held that,

“The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that

a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation". (Emphasis is ours).

69. This ruling in our view is applicable to the case on hand with all its force, as one of the intentions of the 3<sup>rd</sup> respondent has been found to be to facilitate the 2<sup>nd</sup> respondent/corporate debtor is to take the 'un due advantage' of the order of 'moratorium' imposed by this Tribunal on admission of the company petition filed by the 3<sup>rd</sup> respondent against the 2<sup>nd</sup> respondent.

70. The Legislature, in our view, keeping the instances of this nature, has incorporated Section 65 of I&B Code, enabling the Adjudicating Authority to impose a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees on any person who initiates the insolvency resolution process or liquidation proceedings *fraudulently* or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be. Therefore, this matter being one of the 'classic' cases of fraudulent and malicious initiation of proceedings under section 7 IBC, in collusion with the Corporate Debtor, for *the purpose other than for the resolution of insolvency of the 2<sup>nd</sup> respondent/corporate debtor*. we are of the firm view that the 3<sup>rd</sup> respondent shall be directed to pay penalty, which we fix at Rs. 25,00,000.00

The point is answered accordingly.

71. Therefore, in view of our discussion on the points supra, and on careful consideration of the submissions made by the respective Ld. Sr. Counsels, on perusal of the record, written submission and the case law, we have no hesitation in holding that financial creditor has invoked the provisions of IBC against the corporate debtor with fraudulent, mala fide, intention and for the purpose other than the insolvency resolution of the 2<sup>nd</sup> respondent /corporate debtor.

72. Therefore, the petition deserves to be allowed. Accordingly, the same is allowed as below:

(i). The order dated 31.03.2023 in CP (IB) No.1/7/HDB/2023 directing initiation of CIRP against the 2<sup>nd</sup> respondent/corporate debtor, on the Petition filed under section 7 of IB Code, is here by recalled and is set aside. Hence, the in CP (IB) No.1/7/HDB/2023 stands dismissed.

(ii). Consequently, the moratorium imposed under section 14, of IBC, 2016 comes to an end and the appointment of resolution professional and all the actions taken by resolution professional consequent to his/ her appointment are brought to nullity.

(iii). The resolution professional is directed to hand over the management of the affairs of the corporate debtor to the suspended management.

(iv) The financial creditor is hereby directed to pay all CIRP costs, fees and expenses of resolution professional within a week and resolution professional to file memo of compliance in this regard to the Tribunal within a week from the date of this order.

(v). We impose penalty of Rs 25,00,000.00 (Rupees twenty five lakhs Only) on the 3<sup>rd</sup> respondent / financial creditor herein, and the same shall be deposited in Prime Minister Relief Fund, within a period of one month from the date of this order, and file compliance memo to this effect.

73. The application is allowed as above and disposed of.

SD

SD

Charan Singh  
Member Technical

Dr. Venkata Ramakrishna Badarinath Nandula  
Member Judicial

Anil/Pavani