

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.505/2020 in  
C.P.(IB)No.66/BB/2017  
U/s.60 (5) (c) of the IBC, 2016  
R/w. Rule 11 of the NCLT Rules, 2016

**Between:**

Kakosi Limited

*Rep. by its Authorized Representative*

*Mr. Poornima Shenoy*

R/o. at Menandrou 4,  
Gala Towers 2<sup>nd</sup> Floor,  
1066 Nicosia, Cyprus.

-

Applicant

**And**

Lotus Shopping Centres Pvt. Ltd.

*Through the Liquidator*

*Mr. Sanjay Kumar Mishra*

R/o. at 16<sup>th</sup> Floor, Tower II,  
India Bulls Finance Centre,  
S.B.Marg, Elphinstone (W),  
Mumbai - 400 013

-

Respondent

**Order Pronounced on: 16<sup>th</sup> February, 2021**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference:**

For the Applicant : Shri P. P. Hegde

For the Respondent : Ms. Maneesha Kongovi



**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A.No.505/2020 in C.P.(IB)No.66/BB/2017 is filed by Kakosi Limited (Applicant), U/s.60 (5) (c) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016, by inter alia seeking to Quash the e-auction notice dated 18.11.2020 published by the Liquidator and direct the Liquidator to forthwith cease all actions relating to the sale of the assets of the Corporate Debtor under the said e-auction notice; to direct the Liquidator to form a stakeholder's consultation committee and place before this Committee the relevant information and documents in respect of the Liquidation process; to direct the liquidator to proceed with the liquidation process, etc
2. Brief facts of the case, which are relevant to the case in question, are as follows:
  - (1) Initially, C.P.(IB)No.66/BB/2017 filed by Axis Bank Limited (Petitioner/Financial Creditor), U/s.7 of the IBC, 2016, by inter alia seeking to initiate CIRP in respect of Lotus Shopping Centres Private Limited (Respondent/Corporate Debtor) was admitted by the Adjudicating Authority vide its Order dated 30.08.2019, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium etc. Subsequently, the Corporate Debtor was placed under liquidation process vide Order dated 18.06.2019.
  - (2) Kakosi Limited ('hereinafter referred as Applicant'), a Company formed and incorporated in Cyprus bearing Reg.No.HE278042, is an investor, which holds 49% shareholding in the Corporate Debtor and is also a Financial Creditor of the Corporate Debtor. Before the Liquidation Order was passed, the Corporate Debtor partially developed a large shopping mall in a premium



location in Mangalore with a built-up area of about 11.21 lakh square feet/103375.37 Sq. Mts ("Principal Asset"). However, because of the delay in releasing funds on the part of the Bank, the Corporate Debtor was unable to complete the project in the required timelines.

- (3) It is alleged that the Liquidator has failed to carry out his duty of protecting and maximising the liquidation estate of the Corporate Debtor and interest of all the Creditors/Stakeholders of the Corporate Debtor. Further, the Liquidator has failed to constitute a stakeholder's consultation committee as required by law and seek its advice on matters relating to sale of the assets of the Corporate Debtor. The Liquidator has indulged in wrongful and mala fide acts of undervaluing the Principal Asset of the Corporate Debtor, deliberately and repeatedly conducting sham /staged auctions only to bring down the value of the assets of the Corporate Debtor etc. During lockdown in the month of June, issued his first notice to auction the Principal Asset of the Corporate Debtor in a stand-alone manner and at a price which was less than half of the guideline value of this asset.
- (4) It is contended that the principal asset of the Corporate Debtor is located in a prime area of Mangalore, which is highly sought after and substantially valued. In the Invitation of Expression of Interest published by the Liquidator on 02.03.2020, the Liquidator has himself described the principal asset as follows:
- "the property being developed is situated near the Bikarnakatte flyover at Kulshekar in Mangalore and has substantially completed retail mall at the front and a three - star business hotel towards the rear. On completion, it will be the largest mall in Mangalore and second largest in Karnataka and amongst the top ten commercial shopping malls in India"*





- (5) After considering only the conservative guidelines value notified by the Government of Karnataka, in the said area of Mangalore is Rs.40,000/- per Sq. mtr., computed with the total built up area of the mall which is 103375.37 Sq. mts., amount of Rs.413,00,00,000/-. The guideline value is only the base value at which any immovable property can be sold and in practice the market value is always higher than the guideline value notified by the Government. The Liquidator in quick succession has held 4 sham/stage managed auctions successively on 30.06.2020, 09.09.2020, 28.09.2020 and 23.10.2020 even though till date not even a single bidder has come forward.
- (6) The Liquidator has again on 18.11.2020, issued a notice to e-auction the principal asset of the Corporate Debtor on 05.12.2020 at a reserve price of only Rs.152 Crores against the guide-line value of the principle asset of Rs.413 Crores. In these circumstances, it is necessary to restrain the Liquidator from going ahead with this auction and selling the principle asset of the Corporate Debtor and direct the Liquidator to institute a stakeholder's consultation committee which can advise the Liquidator on this matter. Further stated that the Bank is the largest Secured Creditor of the Corporate Debtor and wrongfully exerts pressure over the Liquidator. The Liquidator has therefore wrongfully accepted many of the invalid claims made by the Bank.
- (7) The Liquidator has taken no steps to pursue Civil Suit vide O.S.No.5553 of 2017 filed by the Corporate Debtor, before the Xth Additional City Civil & Sessions Judge, Bengaluru against the Bank and its officials. One of the Financial Creditor i.e., Lingamaneni Landmark Developments Private Limited by its





letter dated 20.10.2020, again drew the attention of the Liquidator to these issues and called upon the Liquidator to constitute a Stakeholders Consultative Committee, but the Liquidator has not taken any steps in this direction and has instead mechanically issued another notice to auction the Principal Asset of the Corporate Debtor.

3. The Respondent/ Liquidator has filed Statement of Objections dated 14.01.2021, by inter alia contending as follows:
- (1) The Application is executed by a person, who is not duly authorised under law and the Application deserves to be dismissed on this ground alone. The Application is signed by one Mrs. PoornimaShenoy and a Board Resolution dated 23.10.2017 is annexed to support her purported authorization. And the Board Resolution was purportedly passed almost 10(ten) months prior to the date of commencement of the CIRP. The Board Resolution explicitly authorises Mrs. Shenoy to represent the Applicant .She is therefore not authorized to file the above Application against the Liquidator.
  - (2) The Applicant is a Company based in the Republic of Cyprus. An apostilled copy of the Board Resolution requires to be produced before this Adjudicating Authority in order to authenticate that the Board Resolution has been passed in accordance with the laws of Cyprus. The Applicant has failed to demonstrate the validity of the Board Resolution under laws of Republic of Cyprus.
  - (3) The Board Resolution is itself signed by one Mr. MariosEliades whose authority is not known. The said Mr. MariosEliades does not appear to be the Director of the Applicant. The Board resolution is signed for the Applicant by Mr. MariosEliades for



the “*Director- M.E.Nominees Ltd.*” Whether M.E. Nominees Ltd. is or can act as a Director of the Applicant and whether it has duly authorized the said Mr. MariosEliades is not known. The Board Resolution is therefore itself not executed in a manner known in law.

- (4) M/s. Lingamaneni Landmarks Developers Pvt. Ltd., has earlier filed I.A.No.199/2020 which was disposed of by this Adjudicating Authority by an Order dated 17.8.2020, with a direction to the Liquidator to consider the Applicant’s letter and with a specific finding that “*the other reliefs as asked for are not meritorious and thus they are hereby rejected*”.
- (5) The Applicant is a related party of the Corporate Debtor and is a major shareholder of the Corporate Debtor holding 49% of the Class A Equity Shares; and 95.19% of the Class B Equity Shares of the Corporate Debtor. From the website of the Department for Promotion of Industry and Internal Trade, Government of India, it appears that one of the shareholders of the Corporate Debtor (namely Lotus Three Developments Limited) have made significant investments in Lingamaneni Landmarks Developers Pvt. Ltd. which is also a guarantor of the Corporate Debtor. Persons related to the Corporate Debtor and its promoters and shareholders are repeatedly filing frivolous Applications, seeking to disrupt the liquidation process.
- (6) The Applicant has sought to impose a procedure for the present liquidation of the Corporate Debtor which is not in consonance with the Liquidation Regulations as applicable to the Corporate Debtor. After conducting 6 auctions for the liquidation estate, the Applicant without raising any objection for the procedure adopted, has filed the present Application raising untenable grounds. On 26.08.2019, the IBBI issued circular



No.IBBI/LIQ/024/2019, clarifying that the Amendment was only applicable to liquidation processes which commenced on or after 25.07.2019. In the present liquidation proceedings, the provisions of the Amendment will not apply. Therefore, no requirement under law for the Liquidator to form a stakeholders' consultation committee.

- (7) The IBC and the Regulations there under prescribe the method of valuation and sale of assets of the Corporate Debtors. Under provisions of Code, the Liquidator is empowered to sell the immovable and movable property and actionable claims of a Company in the manner as specified in IBC. Regulation 32 of the Liquidation Regulations lists out various modes of sale which may be adopted by a liquidator, including, but not limited to the sale of an asset on a standalone basis. After having made an informed decision, and with a view to realize the assets of the Corporate Debtor in a time-bound manner for maximization of value for the stakeholders, the Liquidator has decided to proceed with the sale of assets of the Corporate Debtor on a standalone basis.
- (8) The Corporate Debtor was engaged in the construction of a shopping mall in Mangaluru. However, due to various reasons, construction of the shopping mall came to a grinding halt and a CIRP was commenced against the Corporate Debtor. The only asset of the Corporate Debtor (apart from minor amounts available as cash balance) is the partially constructed Lotus Shopping Mall, at Mangalore (*hereinafter, "the asset"*). Currently, the Corporate Debtor does not have any employees on its rolls. It had operations only in one location; the shopping mall is partially constructed and not operational. In these circumstances, the sale of the said asset, whether done as a





going concern basis or on a standalone basis will not affect the price or the valuation in any manner.

- (9) It is stated that the Applicant has been a part of and fully aware of the resolution process and settlement process including a proposal for a scheme U/s.230 of the Companies Act, 2013. Applicant is well aware of the valuation of the said asset and the reasons why the Liquidator is proceeding with sale on a standalone basis. The steps being taken by the Liquidator for sale on standalone basis are repeatedly reflected in the progress reports filed before this Adjudicating Authority. The Progress Reports of the Liquidator dated 11.10.2019, 14.01.2020, 14.07.2020, 15.10.2020, explicitly refers to the filing of the Asset Sale Process Memorandum (*hereinafter, "ASPM"*) and sale of the mall. The Applicant's letter dated 18.03.2020 is incorrect and has been aptly responded to by the Liquidator.
- (10) As is evident from the valuation reports, in a distressed sale, the considerations for valuation of an asset are not the guideline value, as is sought to be alleged by the Applicant. The concept of liquidation value of an asset is different from the concept of guideline value of an asset and the Applicant is attempting to cause confusion by equating the two. The Applicant is attempting to compare the guideline value of a fully constructed property with the liquidation value of an under-construction mall, which is implausible. The Liquidator is bound by the Liquidation Regulations to stipulate a reserve price calculated in accordance with the Regulations, and the Liquidator accordingly stipulated the reserve price. Both valuation reports do not differ widely in their assessment of the Principal Asset. The Liquidator relied on the reports received from two independent registered valuers, in full compliance with the IBC and the Regulations. The Liquidator



has no reason to suspect the valuation provided by the two valuers. It is trite that the valuation reports will not be interfered with unless there is a gross and apparent error.

- (11) The Secured Creditor by its letter dated 07.02.2020, received by the Liquidator on 10.02.2020, relinquished its security interest, enabling the Liquidator to form a liquidation estate in terms of Section 36 of the IBC and commence the process of selling the assets of the Corporate Debtor by way of an auction in accordance with the IBC and Liquidation Regulations. Thereafter, the Liquidator could proceed with the auction process/sale of the asset.
- (12) The Liquidator was proposing to conduct the first auction on 17.04.2020. On 21.3.2020, the Liquidator issued ASPM inviting bids for auction of the assets of the Corporate Debtor, proposing to sell the assets on a standalone basis. Unfortunately, due to nationwide lockdown imposed from 23.3.2020, the e-auction could not be conducted on 17.04.2020. Once the lockdown was relaxed, the Liquidator diligently recommenced the process of e-auction. The Liquidator is bound to maintain the timelines prescribed under Regulation 47 of the Liquidation Regulations as far as possible and cannot cease the auction process once commenced without cause.
- (13) The reserve price for the first e-auction scheduled to be conducted post lockdown on 30.06.2020, calculated in accordance with the Liquidation Regulations, was fixed at Rs.198,22,00,000/- and the Earnest Money Deposit was fixed at Rs.20,00,00,000/-. However, since the Liquidator did not receive Earnest Money Deposit from any prospective buyers, the e-auction could not take place. The process for auction of the said asset had commenced well before the lockdown and the revised



date for e-auction was merely a continuation of the process under the ASPM. There can be no mala fides attached to the Liquidator's actions.

- (14) The Liquidator has since June attempted to auction the asset in the following manner:

<i>Proposed e-auction date</i>	<i>Reserve price of the asset</i>	<i>Prospective buyers who made the earnest money deposit</i>
30.06.2020	INR 198.22 Crore (excluding any Taxes)	0
09.09.2020	INR 198.22 Crore (excluding any Taxes)	0
28.09.2020	INR 168.48 Crore (excluding any Taxes)	0
23.10.2020	INR 160 Crore (excluding any Taxes)	0
05.12.2020 (extended to 15.12.2020)	INR 152 Crore (excluding any Taxes)	0
15.12.2020	INR 152 Crore (excluding any Taxes)	0

- (15) Even at the reserve price of Rs.152,00,00,000/- the Liquidator has received no deposits for the said asset. The valuation of Rs.413,00,00,000/-, at approximately two times the reserve price as contended by the Applicant, is therefore demonstrably appears to be an exaggeration. In any event, the principles of calculation of the reserve price is stipulated in the Liquidation Regulations and the Liquidator is bound by the same. Since, even at this reserve price the e-auction could not be conducted due to lack of interested buyers, the Liquidator is bound to take next steps in accordance with the Liquidation Regulations.
- (16) The Applicant addressed a letter dated 18.03.2020 to the Liquidator whereby the Applicant had raised certain issues with the valuation of the asset and alleged partisan approach to claims of the Axis Bank. This letter has been duly replied by the Liquidator on 07.07.2020. A bare reading of the Liquidator's response demonstrates that the Liquidator has always followed the due procedure under IBC during the liquidation process,





including in matters related to valuation of the asset and acceptance of claims of the Axis Bank.

(17) It is reiterated that the Liquidator has consistently provided all the updates/information pertaining to the liquidation process to all the stakeholders through the website of the Corporate Debtor until date. The Liquidator has also duly responded to queries, if any, raised by the stakeholders. Furthermore, since the Corporate Debtor is non-operational/not functional, any deliberations with the stakeholders for issues regarding alleged operations of the Corporate Debtor is wholly unwarranted. As per the Liquidation Regulations and the IBC do not mandate for the Liquidator to form stakeholders' consultation committee.

4. Heard Shri P. P. Hegde, learned Counsel for the Applicant, and Ms. Maneesha Kongovi, learned Counsel for the Liquidator/Respondent, **through Video Conference**. We have carefully perused the pleadings of both the parties and extant provisions of the Code and Rules made there under.
5. As detailed supra, the Respondent has elaborately explained in conducting e-auction in question. We have perused the pleadings, which prima facie shows that the Liquidator has followed due process of law. Moreover, the Applicant is not justified to interfere in the process on un-tenable grounds. Even the proposed e-auction is being received very nominal response. It is not the case of Applicant that a prospective buyer, offering more prices is available, and the Liquidator is resorting to the impugned process contrary to rules. The Liquidator has adopted e-auction in question, after making all efforts before it. The allegations made by the Applicant are not borne out of record.



6. Though the action of Respondent in not constituting with SCC cannot be found fault with as per prevailing law, it would be just and proper to form SCC now in order to assist the Respondent in Liquidation process. It would also show transparency in the ensuing proceedings. However, such SCC cannot question the actions already taken by the Liquidator.
7. In the result, I.A.No.505/2020 in C.P.(IB)No.66/BB/2017 is hereby disposed of by directing the Liquidator to form a Stakeholder's Consultation Committee(SCC), as per law, within a period of four (4) weeks from the date of receipt of copy of this order. We hereby clarify that such SCC should assist/advise the Liquidator in discharging his statutory duties rather than to raise frivolous issues. Such SCC will have prospective in nature. No order as to costs.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

SS

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.20/2021 in  
C.P.(IB)No.66/BB/2017  
U/s.60 (5) (c) of the IBC, 2016  
R/w. Rule 11 of the NCLT Rules, 2016

**Between:**

Lingamaneni Landmarks  
Developers Private Limited  
R/o. at D.No.386/1,  
NH-5, Atmakuru Village,  
Mangalagiri Mandal, CRDA,  
Guntur,  
Andhra Pradesh – 522 503

- Applicant

**And**

Lotus Shopping Centres Pvt. Ltd.  
*Through the Liquidator*  
*Mr. Sanjay Kumar Mishra*  
R/o. at 16<sup>th</sup> Floor, Tower II,  
India Bulls Finance Centre,  
S.B.Marg, Elphinstone (W),  
Mumbai – 400 013

- Respondent

**Order Pronounced on: 16<sup>th</sup> February, 2021**

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference:**

For the Applicant : Shri A. Murali  
For the Respondent : Ms. ManeeshaKongovi





**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A.No.20/2021 in C.P.(IB)No.66/BB/2017 is filed by Lingamaneni Landmarks Developers Private Limited (Applicant), U/s.60 (5) (c) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016, by inter alia seeking to direct the Liquidator to classify and categorise the Applicant as a Secured Creditor and not as an Unsecured Creditor in the present Liquidation process; to direct the Liquidator to set aside the admission of the claim filed by the Financial Creditor in respect of Term Loan-II as the same is illegal and extortionate in nature; etc .
2. Brief facts of the case, which are relevant to the case in question, are as follows:
  - (1) Initially, C.P.(IB)No.66/BB/2017 filed by the Axis Bank Limited (Petitioner/Financial Creditor), U/s.7 of the IBC, 2016, by inter alia seeking to initiate CIRP in respect of Lotus Shopping Centres Private Limited (Respondent/Corporate Debtor), was admitted by the Adjudicating Authority vide its Order dated 30.08.2019, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium etc. Subsequently, the Corporate Debtor was placed under liquidation process vide Order dated 18.06.2019.
  - (2) Lingamaneni Landmarks Pvt. Ltd., (hereinafter referred as Applicant), is a Corporate Guarantor, Secured Creditor and one of the Corporate Guarantors for the Term Loan Facility of Rs.150,00,00,000/- sanctioned by the Financial Creditor vide sanction letter no.AXISB/BNG/CB-MC/GK/419/2012-13 dated 04.12.2012, on the terms and conditions contained therein. On discussions certain terms of the sanction letter were modified by



the Financial Creditor vide its Sanction Letters No. AXISB/BNG/CB-MC/465 dated 27.12.2012 and Sanction Letter No. AXISB/BNG/CCG-MC/568 dated 14.01.2015. Based on the sanction letter the Applicant agreed to stand as guarantor for the Corporate Debtor to the extent agreed by the parties.

- (3) The Corporate Debtor has filed a Suit before the Hon'ble City Civil Court, Bangalore challenging the claim amount of the Bank and providing details of the various illegal and unethical methods employed by the Bank to inflate its claim amount. It is stated that the Liquidator has failed to take any action and has in a mechanical manner accepted the inflated claim amount of the Bank. The Bank also appears to have pressurised the Corporate Debtor to enter into extortionate credit transactions with certain non-banking financial Companies. All these acts were committed by the Bank without taking the consent of guarantors including the present Applicant. These acts of the Bank have caused substantial damage and loss to not only the present Applicant but also to the other guarantor and stakeholders.
- (4) The Bank also invoked the Corporate Guarantee issued by the Applicant and initiated action under the SARFAESI Act for liquidation of the collateral security provided by the Applicant. Consequently, the Applicant was pressurised and tricked into paying an amount of Rs.43,37,00,000/-. Thereafter, issued a letter dated 17.02.2020, to the Applicant stating that the Applicant had discharged its duty as a Guarantor and that it was not liable for any further dues. The Applicant understands that the amounts paid by it to the Financial Creditor for the discharge of its obligations under the Guarantee issued in the context of the Term Loan-I, were appropriated by the Bank in full and final



satisfaction of the Term Loan-II. It is stated that, the guarantee issued by the Applicant was for Term Loan-I and it did not extend to Term Loan -II. As a matter of fact, Term Loan-II being an extortionate credit transaction, unethical and illegal in nature should not even be accepted and considered as a valid claim. The fact that the Applicant's Guarantee extended only to the Term Loan-I is duly acknowledged by the Bank itself in its SARFAESI notice dated 11.06.2019.

- (5) The Applicant on making payments to the Bank on the invocation of the Guarantee became a Secured Creditor of the Corporate Debtor and therefore addressed a letter on 28.02.2020 to the Liquidator requesting that the provisional claim filed by the Applicant on 16.07.2019 be accepted and its claim be given priority over the second Term Loan facility of Rs.55 Crores that was provided by the Bank to the Corporate Debtor. The Liquidator by wrongly interpreting the Deed of Guarantee, stated that the Applicant had waived its right of subrogation and therefore cannot be considered as Financial Creditor.
- (6) Pursuant to the order passed by the Adjudicating Authority on 17.8.2020, included the Applicant in the list of stakeholders and published a revised list of stakeholders on 14.09.2020. However, the Liquidator under the pressure and influence of the Bank has wrongly classified the Applicant in the revised list of stakeholders as an Unsecured Creditor even though the Applicant subsequent to discharging its obligation as a Guarantor to a secured debt stepped into the shoes of the Secured Creditor i.e., Bank. The Liquidator by placing the Applicant in the list of Unsecured Financial Creditor has caused immense damage to the interest of the Applicant as when the liquidation proceeds are distributed to the creditors the Applicant as a reason of not being recognised as





a Secured Creditor might not receive any amounts. The Liquidator in this respect addressed a letter to the Applicant stating that in accordance to the order dated 17.08.2020, the Applicant would be considered only as a Financial Creditor but could not be considered as a Secured Creditor as the Applicant had waived the right to acquire the security interest that the Bank held in the Corporate Debtor.

(7) Aggrieved by the decision of the Liquidator addressed a letter dated 21.10.2020 to the Liquidator, calling upon the Liquidator to rectify this error of placing the Applicant in the list of Unsecured Creditors and requesting him to classify the Applicant as a Secured Financial Creditor. In response to said letter, the **Liquidator vide his letter dated 7.11.2020, stated that the Applicant can only be considered as an Unsecured Financial Creditor and that if the Applicant had any issues regarding the interpretation/clause of the deed of guarantee then the same should be taken up against the Bank.**

(8) The Applicant, having satisfied its obligations under the aforesaid Deed of Guarantee, automatically steps into the shoes of the Bank and is entitled to be paid the amounts paid by it to the Bank, as a secured creditor from the sale of the assets of the Corporate Debtor.

3. Heard Shri A. Murali, learned Counsel for the Applicant and Ms. Maneesha Kongovi, learned Counsel for the Liquidator/Respondent, **through Video Conference**. We have carefully perused the pleadings of the party and extant provisions of the Code and Rules made there under.



4. Shri A. Murali, learned Counsel for the Applicant, while reiterating various contentions made in the Application and also filed written arguments, , has further interalia contended as follows:

- (1) A per Section 140 categorically states that the guarantor who has performed his obligation and discharged his liability is invested with all rights that are vested with creditor against the debtor. The words employed in this section are of such wide nature that this section alone encompasses the entire doctrine of right to subrogation. . He has also relied upon judgement of division Bench of the Madras High Court in *Parvatneni Bhushayya Vs. Potluri Suryanarayana and Ors.*<sup>1</sup>, Another judgement of Apex court in the case of *Bank of India and Ors. Vs. K. Mohandas and Ors.*<sup>2</sup>
- (2) The Bank has extended two separate credit facilities to the Corporate Debtor Specifically Term Loan – I and Term Loan – II. Though both these term loans are separate and have different terms they have been clubbed together in the List of stakeholders published by the Liquidator. **The Applicant has on multiple occasions sought that as the claim of the Applicant arises as part of the Term Loan – I, it should be placed higher in priority than the Term Loan – II extended by the Bank. The Deed of Guarantee specifically states that the Applicant shall stand as guarantee only for Term Loan-I. Bank has also confirmed the same by way of its letter 8.9.2015.** Therefore, on discharge of its obligation under the deed of guarantee the Applicant should be given the same priority that was first available to the Bank in respect of Term

---

<sup>1</sup>(AIR 1944 Mad 195)

<sup>2</sup>(2009) 5 SCC 313



Loan – I. The Applicant will be put to great harm and disadvantage if its claim is not considered as the next in the order of priority after the Term Loan – I. Further the Term Loan – II is an extortionate credit transaction as it was extended only to service Term Loan – I and is in violation of the terms set out in Term Loan – 1. For this reason, Term Loan – II should be rejected and not considered to be a proper claim.

(3) The Liquidator has accepted the inflated claim of the Bank even though the same is disputed. The Liquidator needs to be directed to reassess the claim of the Bank. As mechanically accepting an inflated claim will result in prejudice and great loss to all stakeholders involved in the liquidation.

5. Ms. Maneesha Kongovi, learned Counsel for the Liquidator, after arguing the case, has also filed written submission dated 12.02.2021, by inter alia contending as follows:

- (1) The Applicant is seeking to challenge the classification of it as **that of an Unsecured Financial Creditor. As per Section 42 of the IBC, 2016 any creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within 14 days of the receipt of such decision. The decision of the Liquidator was communicated to the Applicant vide email dated 14.09.2020. The Application has been filed on 15.01.2021 and is hence severely time barred.**
- (2) The Applicant has *inter alia* sought for setting aside of the claim of the **Financial Creditor i.e. Axis Bank and to re-verify the Bank's claim and limit the Bank's claim amount. On the basis of the Bank's claims, this Adjudicating Authority vide its order dated 30.08.2018, admitted the instant Petition. In the**





- Order dated 30.8.2018, this Adjudicating Authority has noted that Axis Bank under Term Loan (Facility 1) has loaned a principal amount of Rs.1,50,00,00,000/- to the Corporate Debtor and in 2017, Axis Bank under Short Term Loan (Facility 2) has loaned a principal amount of Rs.55,00,00,000/- to the Corporate
- (3) Further, the claims of Axis Bank were examined under law and accepted at the time of CIRP by the IRP. The Applicant did not file any Application before this Adjudicating Authority challenging the same. Thereafter, when liquidation of the Corporate Debtor commenced, the Liquidator admitted the claims of Axis Bank which reflected under the list of stakeholders filed before this Adjudicating Authority on 30.08.2019. List of creditors has been regularly filed by the Liquidator before this Adjudicating Authority with the last one having been filed on 14.09.2020. Now, after the passing of 2 years, to seek to question the claims, is not only time barred but also mala fide and motivated. The Applicant's desire to revisit the Bank's claims has arisen only once it has been treated as an unsecured financial creditor. The Liquidator cannot be deciding claims of creditors based on their inter se disputes.
- (4) The Applicant has no locus standi to make this Application under the IBC. The Liquidator in the capacity of the Resolution Professional during CIRP had duly obtained a detailed audit report dated 25.05.2019, which discloses no such extortionate claim as alleged by the Applicant. The Liquidator cannot act on the whims and personal motivations of individual creditors. . After duly considering the claim of the Applicant, the Liquidator had, by his letter dated 14.9. 2020, informed the Applicant that its claim towards Rs.43,37,00,000/- was being accepted and that the Applicant shall be treated as an unsecured creditor and will



be treated as per section 53(1)(d) of the IBC. The Liquidator had given a detailed explanation and reasoning in arriving at such conclusion.

- (5) On 23.06.2020, even prior to a decision by the Liquidator, the Applicant filed I.A. No. 199/2020 and *inter alia* sought for directions to the Liquidator to accept the claim of the Applicant and include the name of the Applicant in the list of the Financial Creditors of the Corporate Debtor. The Adjudicating Authority vide its order dated 17.08.2020, while rejecting other claims of the Applicant, directed the Liquidator to consider all the claims of the Applicant, in tangent with the letter of Axis Bank dated 17.02.2020 bearing No. AXISB/SAB/KC/2019-20/652. Thereafter, the Liquidator vide email dated 25.08.2020 requested the Applicant to submit its claim and additional documents, if any. The Applicant vide email dated 02.09.2020 submitted its claim along with documents.
- (6) In compliance with the order of this Adjudicating Authority dated 17.08.2020, the Liquidator perused all the claims of the Applicant, in tangent with the letter of Axis Bank. **The contention of the Applicant that the Liquidator has accepted the inflated claim of the Bank is unfounded. The claims of Axis Bank have been admitted by the Liquidator after due verification of the relevant sanction letters, facility agreement, security documents and ledger entries. Further, the Applicant is not the appropriate authority to categorise that certain claims of Axis Bank as fraudulent/inflated, particularly when such claims have been admitted by this Adjudicating Authority in accordance with law.**



6. As rightly pointed out by Ms. ManeeshaKongovi, the Learned Counsel for the Respondent, the Applicant is resorting to filing Applications one by one , on un-tenable grounds. In fact, while filing earlier IA No. 199 of 2020 , the Applicant should ask to treat it first as Secured Creditors and then consequential direction to include it in the list of Financial Creditors of Corporate Debtor. It is settled position of law that cause of action cannot be split and file separate cases for same cause of action. Moreover, the Applicant cannot seek any relief, which is against the interest of Axis Bank, without impleading it. It is true that interse disputes arise between the Applicant and Axis Bank cannot be decided in summary proceedings as contemplated under the provisions of Code. Though the Respondent prima facie appears to have passed the impugned order, after examining relevant documents, it would be just and proper for the Respondent to re-consider the issue again by taking into consideration of the contentions raised in the instant Application, and to pass a speaking order, after hearing version of Axis Bank on the issue.
7. In the result, I.A.No.20/2021 in C.P.(IB)No.66/BB/2017 is hereby disposed of by directing the Liquidator to re-consider the issue basing on the averments made in the instant Application, and also involving Axis Bank on the issue, and to pass a speaking order, within four (4) weeks from the date of receipt of a copy of this order and thereafter communicate the same to Applicant .No order as to costs.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**