

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
AT HYDERABD**

**CP No. IB/41/7/HDB/2017  
Under Section 7 of IBC**

In the matter of

CANARA BANK, Prime Corporate Branch, TSR Complex,  
2nd Floor, 1-7-1, S.P. Road, Secunderabad-500 003 rep. by  
Shri P.Koteswara Rao, Chief Manager.

.... Applicant/Financial Creditor

**Versus**

Deccan Chronicle Holdings Limited, 36,  
Sarojani Devi Road,  
Secunderabad-500 003  
Rep. by its Chairman &  
Managing Director.

... Respondent/Corporate Debtor

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

Order dated: 05.07.2017

**CORAM:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Counsels for the Financial Creditors**

Mr.Deepak Bhattacharjee,  
Senior Advocate with Mr.  
Dishit Bhattacharjee,  
Advocate

**Counsel for Financial Debtor**

Mr. Alok Dhir, Senior  
Advocate along with  
Milan Singh Negi, Shri  
A.S. Prashanth and Shri  
Amir Ali, Advocates



Per: Rajeswara Rao Vittanala, Member (J))

## ORDER

1. The Present Company petition bearing CP No. IB/41/7/HDB/2017 is filed by Canara Bank (hereinafter referred to as Financial Creditor) under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia, seeking the Tribunal to initiate Corporate Insolvency Resolution Process in the matter of M/s Deccan Chronicle Holdings Limited by appointing Interim Resolution Professional etc.

2. The brief facts and contentions raised by Mr. Deepak Bhattacharjee, the learned Senior counsel for the Financial Creditor are as follows:

- a) The petitioner is a Financial Creditor showing an outstanding debt to be liquidated by the Corporate debtor as Rs. 723,75,09,963/- as on 20.02.2017 . It is contended that petition is numbered by the office only after complying with all objections raised by it, and thus it is deemed to complete in all respects. As per rules, Interim Resolution Professional, who is free from any disciplinary proceedings, is to be nominated for consideration of this Tribunal. The default committed



by the Corporate debtor is also established through the following documentary evidence adduced by the Financial Creditor before this Tribunal.

- b) The balance sheet or the annual report of the Corporate debtor's Company for the year 2011-2012, which is at page No. 681-728 of Volume-III filed by the Financial Creditor. In the balance sheet, the Corporate debtor in page 715 has admitted to have availed the term loan and other financial limits from various creditors amounting to Rs. 445,34,66,021, which includes the loan availed from this Financial Creditor i.e Canara Bank.
- c) The demand notice issued under section 13(2) of the SARFAESI Act 2002 on 31.12.2012 at page No. 451 of Volume-II, wherein the demand was made for a sum of Rs.347,40,52,551.29 plus interest thereon. It is specifically mentioned in the demand notice that the account of the Corporate debtor was classified as Non-Performing Asset (NPA) on 08.09.2012.
- d) Possession notice was also published in all newspapers including Indian Express on 16.03.2013, wherein the total liability as per the demand notice amounting to Rs.347,40,52,551.29 is referred to . The possession notice was published in Indian Express and Saakshi



newspapers, which are filed at page No. 457 and 458 of Volume-II. Both the papers have wide circulation.

- e) Notice under Section 13(4) of the SARFAESI Act 2002 was separately sent to the Corporate debtor, which is filed at page No. 459 of Volume-II.
- f) The Statement of Account duly certified as true extract under Section 4 of the Bankers Book of Evidence Act showing the total outstanding liability is in consonance with the demand notice issued under SARFAESI Act 2002 and also the amount as claimed in the application. The Statement of Account duly certified under the Bankers Book of Evidence Act is filed at Page No. 464 to 466 and 475 to 495.
- g) It is contented that the above statements of account are in consonance with the present petition under section 7 of the code, which are filed at page No. 654 to 660 of Volume-III.
- h) The Corporate debtor (Applicant) has filed Civil Appeal No. 1230 of 215 (Arising out of SLP(Civil) No. 2230 of 214) questioning the order of the Hon'ble Madras High Court in respect of classifying the account as Non-Performing Asset and the Hon'ble Supreme Court not only dismissed the appeal confirming the order of the





Hon'ble Division Bench of Hon'ble Madras High Court but also imposed cost calculated at the rate of 1% of the total amount outstanding as on the date of notice of demand under Section 13(2) of the SARFAESI Act 2002 in each of the case. The Hon'ble Supreme Court, therefore, confirmed that the demand notice issued under Section 13(2) of the SARFAESI Act 2002 was legal and the amount has to be paid by the Corporate debtor in terms of the demand.



- i) It is stated that the Hon'ble High Court of Judicature at Hyderabad in WP No.14694/2014 vide its order dated 25.07.2014 categorically observed that the liability of the Corporate debtor to pay to the Financial Creditor is not in dispute and recording the same, the interim order initially granted was not extended.
- j) It is stated that the Hon'ble Debts Recovery Tribunal (DRT) in SA No. 27/2013 vide its order dated 26.09.2013 discussed about the entire loan transaction and dismissed the application. The recital in Para 3.1, 3.2, 3.3, 4.1, 4.2, 5, 6, 6.1, 6.2, 6.3, 6.6, 6.8, 6.17 and 6.19 overwhelmingly manifest that the default was committed in repayment of the loan by the Corporate Debtor herein.

k) It is stated that Corporate Debtor has filed CA Nos. 347 and 346 of 2013, by seeking sanction of Composite Scheme of Demerger and Arrangement between M/s Deccan Chronicle Holdings Limited and M/s Land Interactive Media Limited. In the said application which is filed before the Hon'ble High Court, (enclosed at Page No. 868) the Corporate debtor has admitted total liability with the Financial Creditor i.e. Canara Bank was Rs.334,35,32,645/- as on the date of filing of the application. The admission of debt is at page No. 868, 875 and 884 of the scheme annexed to the application. The company application and the scheme are filed at Page No. 802 to 875 of Volume-IV filed by the Financial Creditor.



l) It is further stated that Financial Creditor has filed OA No. 817/2012 before the Hon'ble Debts Recovery Tribunal at Hyderabad seeking issuance of Recovery Certificate for Rs. 347,40,52,551.29 together with interest at the rate of 19.50% with monthly rests from 01.12.2012 till realization. And the same is pending, and it shows event of default committed by the Corporate debtor.

m) It is stated that cheques issued towards repayment of the installment by the Corporate debtor were dishonoured forcing Financial Creditor to initiate appropriate proceedings under Section 138 read with Section 142 of N.I. Act. The following documents are filed to show that Corporate debtor is at fault:

- (a) Copy of the complaint in CC No. 29/2013 evidencing the default is at page No. 915 to 921 of Volume-IV
- (b) Copy of the complaint in CC No. 1759/2012 evidencing the default is at page No. 922 to 928 of Volume-IV
- (c) Copy of the complaint in CC No. 100/2013 evidencing the default is at page No. 929 to 935 of Volume-IV
- (d) Copy of the complaint in CC No. 1653/2012 evidencing the default is at page No. 936 to 942 of Volume-IV
- (e) Copy of the complaint in CC No. 315/2013 evidencing the default is at page No. 943 to 950 of Volume-IV.

n) It is further stated that Corporate debtor had also made a reference to BIFR, under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and in the reference made before the Board, the outstanding liability with the Canara Bank i.e. Financial Creditor was admitted. The reference Application is at page No. 951 to 967 of Volume-IV and the admission of Debt is at page No. 966 and 967 which forms part of the application for reference before the BIFR admitting the debt with the Financial Creditor.



- o) It is further contented that there is a non obstante clause in the Insolvency and Bankruptcy Code, 2016, which has an overriding affect over any other statute or statutes in force. Section 238 of the Insolvency and Bankruptcy Code, 2016 reads as follows: -

***238. Provisions of this Code to override other laws -***

***The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law***

Therefore, it is contended that Insolvency and Bankruptcy Code, 2016 is a special enactment which has come into force with effect from 01.12.2016 only. The Hon'ble Supreme Court in Allahabad Bank Vs. Canara Bank reported in (2000) 4 SCC 406 at Para No. 38 and 39 has laid down a clear ratio which states that the Companies Act is a general law and shall not prevail over the Recovery of Debts Due to Banks and Financial Institutes Act which is a special statute. A clear ratio was also laid down to state that when there are two special statutes, the latter will normally prevail over the former. Similarly, the ratio is laid down in Mardia Chemicals Limited and others Vs. Union of India and others reported in (2004) 4 SCC 311 by the Hon'ble Supreme Court at Para 42,





43 and 44 holding that the special law having non obstante clause shall override any other general law. In the instant case, it was held that the provisions of SARFAESI Act 2002 shall override the provisions of the Transfer of Property Act. The same ratio is applied in the instant case. In view of the non obstante clause i.e. Section 238 of the Code, 2016 shall prevail over the general law i.e. Companies Act 1956 and Companies Act 2013. The non obstante clause i.e. Section 238 of the Code, 2016 is also highlighted and appreciated in its true perspective by the Hon'ble National Company Appellate Law Tribunal in Company Appeal (AT) (Insolvency) No. 1 and 2 of 2017 in Para 70 and 71. In view of the clear ratio laid down by the Hon'ble Supreme Court and the Hon'ble National Company Law Appellate Tribunal as referred above, it cannot be said that two parallel proceedings i.e. under the Companies Act 2013 and Insolvency and Bankruptcy Code 2016 cannot be continued to subsist. The proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code 2016 is an independent proceedings and it has overriding affect over Section 434 and 391 of the Companies Act. The pendency of the winding up petition before the Hon'ble High Court or pendency of the scheme of arrangement before the Hon'ble Tribunal



under Section 391 of the Companies Act 1956 shall not take away the right of the Financial Creditor to initiate appropriate proceedings.

p) The Learned senior counsel further asserted that it is settled position of law that admission is an issue between a court and petitioner i.e. in the instant case; it is a matter between the Financial Creditor and the Tribunal. And the Corporate Debtor have no right to oppose the admission especially in the light of fulfilling all three ingredients for admission with regard to occurrence of default, application is complete in all respect and nomination of Competent IRP



q) Therefore, Shri Mr. Deepak Bhattacharjee, Learned Senior Counsel for the Financial Creditor, has strongly urged the Tribunal to admit and also pass consequential orders in terms of Sub Section 5 of Section 7 of the Insolvency and Bankruptcy Code 2016.

3) We have ordered notice on the respondents, duly following principles of natural justice, in view of a long history of the case to ascertain factual background of the case and admitting case would have wide ramifications on parties. Accordingly, the Respondent have filed their replies by raising several objections by disputing each and every averments made in the petition filed by Financial

Creditor to make admission as a final hearing. The Respondent has also filed CA No 105 of 2017 by seeking to dismiss the present petition as not maintainable for the grounds mentioned therein.

- 4) Since the case is filed under IBC, 2016, it is necessary to decide its admissibility basing on accepted fundamental principles for admission of a case. And it is not absolute necessary to undertake full-fledged enquiry of each issue raised in the case, and they will be decided at later date. In any case, considering the nature of business, public interest involved, we have undertaken such an exercise in order to minimize further litigation on the issue. Accordingly, the case was heard on various dates vis. 05.04.2017, 12.04.2017, 19.04.2017, 26.04.2017, 06.06.2017, 13.06.2017 and 19.06.2016. The case was adjourned on these dates at the request of one party or other, however with consensus of both the parties. The case was reserved for orders on 19.06.2017 and the parties have requested minimum 10 days to file their respective written arguments. Hence, we have accordingly granted time. Accordingly, parties have filed their written arguments.

- 5) Mr. Alok Dhir, Learned Senior Counsel for the Corporate Debtor, after arguing the case at length, has also filed his gist of arguments by way of written arguments dated 26<sup>th</sup> June, 2017. The following are his main arguments:





a. NCLT do not have jurisdiction to entertain this petition on the ground that there are winding up proceedings pending before the Hon'ble High court of Judicature at Hyderabad for the state of Telangana and A.P and also in view of Section 434 of the Companies Act, 2013 ('Act of 2013') read with Section 239(1) of IBC, read with Central Government Notification being GSR.1119(E) and order being SO.3676(E) dated 07.12.2016, read with Rule 10(2) of IB Rules., In support of his contention he relied upon the judgment passed by Hon'ble New Delhi Bench of NCLT in the matter of ***Nowfloats Technologies Pvt. Ltd. Vs. Getit Infoservices Pvt. Ltd. CA No. (I.B) 45(PB)/2017.***



- b. There is no default in existence in terms of Section 3(12) of IBC. In absence of any default in the first instance, no proceedings under IBC can be initiated. A default comes into being only when debts become due and payable. He relied upon orders of DRT, Visakhapatnam, as mentioned supra.
- c. There is a mismatch and discrepancies in the alleged amount of claim. The captioned Application was initially filed by the Financial Creditor on 21.02.2017, allegedly claiming an amount of Rs.793.75 crores as on 20.02.2017



(@Sl. No.2, Pg.4 of Vol-I), further on scrutiny of the said Application, certain objections were raised by the Registry on 22.03.2017 (@Pg.650, Vol-III). In pursuance of above objections, the FC after removing the said objections, re-filed the captioned Application on 27.03.2017 (@Pg.651, Vol-III). Interestingly, the amount claimed in the application as re-filed was reduced from Rs.793.75 Crores to 723,75,09,963/- (@Pg.657, VOL-III). In this regard , he relied upon order passed by the Hon'ble Appellate Tribunal in the matter of **Starlog Enterprises Ltd. Vs. ICICI Bank Ltd., Co.Appeal No.5 of 2017,**



- d. There is no record of default in terms of section 7(3) of IBC, 2016 Section 3(32) of IBC defines specified as *"specified" means specified by regulations made by the Board under this Code and the term "specify" shall be construed accordingly*". In the said background, no proceedings under IBC can be initiated by a Financial Creditor as on date, in absence of any record of default which can be placed on record under Section 7 of IBC. It is stated that the provisions of Section 7(3) (a) of IBC are mandatory in nature as the word used is *"shall"*.

e. The application in question is incomplete like certificate annexed @Pg.645-646 and 647 are unsigned and such unsigned certificates can by no stretch of imagination be construed as admissible documents, certificates are further not certified/ signed on bottom of each page in terms of the Bankers Book Evidence Act, 1891 etc.

f. When a petition under provisions of Section 391 of the Act of 1956, is pending before Hon'ble High Court, the present petition do not lie. He relied upon judgment passed by the Hon'ble Delhi High Court in the matter of **Sunil Gandhi & Anr. Vs. A.N. Buildwell Pvt. Ltd., CO.APPL.(M) 115/2016,**



g. The Hon'ble Supreme Court in SLP (C) No.5752 of 2014 has passed a status quo order on 28.02.2014(@Pg.55 of Affidavit dated 11.04.2017), wherein the Hon'ble Supreme Court has specifically directed that status quo with regard to subject properties of the CD shall be maintained in all respect. It is worthwhile to mention here that the said status quo order passed by the Hon'ble Supreme Court is operative till date. Hence, any order of admission of CIRP of the Corporate Debtor herein any order as to declaration of moratorium in terms of Section 14 of the IBC shall be in

teeth of order dated 28.02.2014 passed by the Hon'ble Supreme Court.

h. It is, therefore prayed that the captioned application may be rejected / dismissed on the above ground.

6. We have heard Mr. Deepak Bhattacharjee, Senior Counsel along with Mr. Dishit Bhattacharjee, Learned Counsel for Applicant /Financial Creditor & Mr. Alok Dhir, Learned Senior Counsel with Mr. Milan Singh Negi, Mr. A.S. Prashanth, and Mr Amir Ali, Learned Counsels for the Corporate Debtor and have carefully perused all pleadings along documents filed in their support by the respective parties.



There cannot be any dispute that it is prerogative right of a party, who has filed a case airing his grievance, to convince a court a prima facie case, and then it is discretionary power of such court either to admit and pass interlocutory orders or to admit without any interim order or to reject/dismiss such petition/application, which is/are not prima facie not maintainable. However, in the present case, as stated supra, as per the provisions of IBC, admission itself would have wide material/ legal consequences. Therefore, we have ordered notice to the respondent for the reasons stated above before exercising our discretionary power of admission and consequential orders.



8. There is a legal maxim called 'ubi jus ubi remedium' meaning where there is grievance, there is a remedy. Here, the applicant/Financial Creditor has substantial grievance against the Corporate Debtor and has thus initiated the present proceedings in accordance with law by submitting that efforts made by it could not succeed to recover public money extended to respondent except a getting a paltry remedy from DRT as mentioned supra. Here, there is no dispute that various amounts as loans in question were extended to the Corporate Debtor, and it is not case of Corporate Debtor that it has entirely paid principal amount or interest thereon. It is not in dispute that debt in question was already declared as NPA as early as on 2012. However, without paying any substantial amount of due in question, the Corporate Debtor relying on un-tenable grounds, which are purely clerical/technical grounds like mistakes/mismatch of calculation, wrong quoting of rule/provision of law for issuing certificates in question etc. as detailed supra are resisting admission of case .



9. It is not the case of Corporate Debtor that there is/are liquidation/winding up proceedings are underway to liquidate/wind up the Company and that the present Financial Creditor can join other group of Creditors. It is not in dispute that some petitions were filed by some of other Creditors against



Respondent for winding up/liquidation as the same are pending before the Honble High Court as they cannot be transferred to this Tribunal as per Govt of India guidelines/instructions as detailed by the Corporate Debtor supra. There is a lot of distinction between filing/pending of a winding up/liquidation and already started those proceedings like appointing Provisional Official Liquidator etc. So the judgments relied upon by the Learned Counsel for Corporate Debtor in this regard, as mentioned supra, would not be applicable to the facts and circumstances of this instant case. Simply, some of aggrieved parties of respondents have approached the Hon'ble High court would not deprive the remedy of approaching this Tribunal under IBC, 2016. Therefore, the issue in question has to be considered in the light of various provisions of IBC, which is a separate act meant for expeditious remedy for aggrieved parties. As stated supra, the financial Creditor has convinced this Tribunal that the present case is a fit case for admission under provisions of IBC, 2016. .



10. It is not in dispute that Learned DRT/Visakhapatnam has not absolved the respondent its liability to pay its debt to Financial Creditor, and it is only short respite to overcome instant distress being faced by the Respondent. Whether, the Corporate Debtor has complied or not with directions given by DRT is not much

relevant here as the Corporate Debtor was admittedly declared as defaulter by placing its debt as Non-Performing Asset, as stated supra and it is not in question before any judicial forum(s). On the other hand, the Corporate Debtor, as stated supra, is facing proceedings under Negotiable Instruments Act for dishonor of cheques issued by it to Financial Creditor. Apparently, the order of DRT is relating to a printing machine which was installed in the Company's Unit situated at Vijayawada, A.P. and not for the Company as a whole i.e. Deccan Chronicle Holdings Ltd.



It is to be mentioned here that Section 7(4) of IBC, which refers to existence of default from the records of Information utility or otherwise. It is extracted below for ready reference:

“ 7(4) The Adjudicating Authority shall, within fourteen days receipt of application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the Financial Creditor under sub-section (3) “

In instant case, as stated supra, we have ascertained the existence of default in question on the basis of other evidence furnished by the Financial Creditor herein and thus we are satisfied with the same by going through all documents. The case

law cited by the learned counsel for the respondent on the issue is hardly have any bearing on the issue.

12. We have perused all grounds/contentions raised by the Corporate Debtor in CA No. 105 of 2017 and also the reply filed by the Financial Creditor. For the reasons mentioned above, these grounds are not at all maintainable, and they are liable to be rejected and thus hereby rejected as devoid of any merits and hold that the petition is maintainable. And the objections raised by the respondents have no longer resintegra in view of long history of case as mentioned supra.

13. We are conscious of our jurisdiction vis a vis jurisdiction of Hon'ble High court(s) and Hon'ble Supreme Court of India in the issue. Our jurisdiction is below jurisdiction and powers of Hon'ble High courts and the Hon'ble Supreme court and thus our orders shall not interfere/interpret with any order(s) passed or would be passed by the Hon'ble High Court(s)/ Supreme Court of India in the instant case. We are only exercising our jurisdiction by virtue of powers conferred on us by Insolvency and Bankruptcy Code, 2016, Companies Act, 1956/2013.

14. As discussed above, we are in full agreement with learned Senior Counsel for Financial Creditor that he has made out a prima facie case, with regard to sanction of loans in question, Corporate





Debtor's default. Nominating IRP as per extant rules, application/petition is complete in all respects etc. We have carefully perused all documents filed in support of contentions of respective parties. We are fully convinced and satisfied that a default in question has occurred and the petition/application in question is complete in all respects and there are no disciplinary proceedings pending against proposed Interim Resolution professional as per declaration given by him. Hence, we are of considered view that the present case is fit case to admit. However, it does not mean that admission of case would deprive proper opportunity to the respondent to defend its case. A duly qualified Interim Resolution Professional, appointed by Tribunal is bound to afford full opportunity to Respondent by duly following principles of natural justice.



15. We have also observed that even though cheque bouncing cases were initiated by the applicant/ Financial Creditor during the year 2012-13, the Financial Creditor has subsequently extended loans for huge amount and the same was disbursed to the Corporate Debtor.
16. We are conscious of the fact that the Corporate Debtor is in the business of publishing newspapers, periodicals an important sector i.e print media, touching lives of lakhs of people and employing



thousands of people directly or indirectly. Considering above, we have granted sufficient opportunities for both the parties to establish their case.

17. The Corporate Debtor has also refuted certificate given by the Financial Creditor and argued that the certificate issued by the bank under Section 93 of RTI Act 2000 is not correct, therefore contended that the application is not complete and has to be rejected / not admitted. We feel that though Section mentioned in the certificate of the Financial Creditor is incorrect, however, the contents of the certificate are in accordance with the prescribed format. Therefore, we deem it fit as it is a clerical error / typographical error, and on that account, the petition cannot be rejected, considering the quantum of outstanding amount, the Financial Creditor being a public sector bank and amount is due over a long period of time. If adjudicating authority accepts all these kinds of clerical / technical errors which are not affecting in any way and start rejecting / not admitting the cases under IBC, the objects for promulgating IBC, 2016 would be defeated. As generally known, NPAs are gaining importance / attention at the highest level in the country and also the attention of Banking sector Regulator i.e. RBI.



18. In view of the above facts and circumstances of the case, we are of the considered view that Company petition deserved to be admitted. Hence, we hereby admitted the petition bearing CP No. (IB) 41/7/HDB/2017, by exercising the powers conferred upon this Tribunal under provisions of Insolvency and Bankruptcy Code, 2016 and ordered to communicate this order to the Financial Creditor and the Corporate Debtor; we direct to post the case on 11.07.2017 for consideration of appointment of Interim Resolution Professional under Section 16 and imposition of Moratorium and public announcements under Sections 13 & 14 of Insolvency and Bankruptcy Code (IBC) 2016, in compliance with Principles of Natural Justice.



*Sd/-*  
Ravikumar Duraisamy  
Member (Technical)

*Sd/-*  
Rajeswara Rao Vittanala  
Member (Judicial)

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

*V. Annapoorna*  
**V. ANNAPOORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD.