

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT HYDEABAD**

CP(IB) No.96/7/HDB/2017

U/s 7 of IBC,2016 R/w 4 of the I & B
(Application to Adjudicating Authority) Rules, 2016

In the matter of :

M/s. Asset Advisory Services India Pvt Ltd.,
Registered office
At H. No. 3-6-478, 2nd Floor,
Anand Estates, Hyderabad
&Administrative Office
at Flat No. 402, 3-4-756/1
Sri Raghavendra Residency
Barkatpura,
Hyderabad- 500027 ...

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

.. Petitioner/Financial Creditor

Versus

M/s VSS Projects Pvt Ltd.,
having its registered office at Plot No. 74,
Street No.6, Uma Nagar, Begumpet,
Hyderabad TG 500016
Represented by its Managing Director
Sri. B. Phaniraju.

...Respondent/ Corporate Debtor

Date of order 08.09.2017

CORAM

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

Counsels / Parties present

For the Financial Creditor

Mr.SuryaSatish&M.Srikanth,
Advocates

For the Corporate Debtor

Mr. S.Agasthya Sharma
Advocate

Per: Rajeswara Rao Vittalana



ORDER

1. This Company petition bearing CP bearing CP (IB) No. 96/7/HDB/2017 is filed by M/s. Asset Advisory Services India Pvt Ltd. Financial Creditor, U/s 7 of IBC, 2016 R/w Rule 4 of the Insolvency and Bankruptcy(Application to Adjudicating Authority) Rules, 2016, by seeking to initiate Corporate Insolvency Resolution Process under IBC against VSS Projects Pvt. Ltd.
2. Brief facts, leading to the filing of present company petition, are as follows:

- 1) M/s Asset Advisory Services India Pvt Ltd., (CIN U93000A02008PTC059525) herein after called as Petitioner/Financial Creditor, is a private limited Company incorporated under the provisions of the Companies Act, 1956 and it is a “Financial Creditor” within the meaning of Sec 7 of the Code, which reads as “Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to”.
- 2) The Financial Creditor is engaged in the business of acting as financial advisors and consultants on all matters relating to assets, finance, investments, insurance, money markets, capital markets, fund arrangements etc., per its main object in the Memorandum of Association and Articles of Association.
- 3) M/s V.S.S. Projects Pvt Ltd., (herein after referred to as Respondent/Corporate Debtor) is a private limited Company incorporated under the provisions of the Companies Act, 1956, and it is a Corporate Debtor as defined in sub section (8) of Section 3 of the code which reads as “Corporate Debtor” means a corporate person



who owes a debt to any person". The Corporate Debtor is a having its registered office at Plot No. 74, Street No. 6, Umanagar, Begumpet, Hyderabad TG 500016 IN and is a "corporate person" within the meaning of Sub Section (7) of Section 3 of the code.

- 4) The Financial Creditor had made available to the Corporate Debtor a Short Term Loan of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only) for the repayment of OTS (One Time Settlement) amount outstanding with M/s. DHFL (Dewan Housing Finance Limited) from whom the Corporate Debtor had availed project finance. The Financial Creditor had disbursed the amount as follows:

Date	Bank	Pay Order No.	Favoring	Amount Rs.
31-03-2016	Oriental Bank of Commerce	479913	D.H.F.L.	2,50,00,000



- 5) The Corporate Debtor executed a Promissory Note and issued a duly signed receipt acknowledging the receipt of the amount of Rs. 2,50,00,000/- and promising to repay the same on or before 30.06.2016 together with interest @ 24% P.A. payable in advance monthly installments. To secure the repayment of the Loan amount together with the Interest thereon, the Corporate Debtor had submitted documents pertaining to 20 Unsold Units and other properties.
- 6) The Corporate Debtor had sent an email on 8/7/2016 confirming receipt of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only) and the deposit of Original Title Deeds and promised to repay the loan amount with Rs. 2/- simple interest and had requested to adjust the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) remitted on 28/6/2016 towards interest and had

reassured that the loan shall be closed by the end of July, 2016. However, it failed to honor its commitment of repayment of the amounts even after 30/06/2016.

- 7) Further, the Corporate Debtor had issued cheques bearing nos. 786493, 786494, 786495, 786496 dated. 14.11.2016 all drawn on Andhra bank, MushirabadBranch, Hyderabad, in discharge of part of the debt. However, the same were dishonored when presented as per the instructions of the Corporate Debtor for the reasons "stop payment". The Financial Creditor, after following the due procedure as contemplated U/s. 138 of the N.I. Act, has filed a complaint on the file of the Hon'ble XII Addl. Chief Metropolitan Magistrate, Nampally Hyderabad and the same is pending.
- 8) The Petitioner stated that the Corporate Debtor had alienated 3 Flatsbearing Nos. 201, 203 and 712 illegally even though there is a charge in favor the Financial Creditor by virtue of an Equitable Mortgage by deposit of title deeds of the property. The Financial Creditor had initiated criminal proceedings for cheating and other offences against the Corporate Debtor for entering into such sale deed in utter violation of the understanding with the CCS, Hyderabad and the same was registered as Crime No. 259/2016.
- 9) In the above circumstances, in order to restrain the Corporate Debtor from illegally alienating the properties secured under the above arrangement, the Financial Creditor had approached the Hon'ble XIII Addl District and Sessions Judge, R.R. District, Hyderabad by filing CO.S.No. 1 of 2017, and also obtained status quo order in respect of schedule A to X



properties vide order dated 6th January, 2017 in IA No. 48 of 2017.

- 10) As on 30-04-2017, the amount in default works out to Rs. 2,95,00,000/- (Rupees Two Crore Ninety Five Lakhs Only Only).
- 11) It is stated that there is a "Financial Debt" in existence within the meaning of Sec. 8 (a) of the Code;M/s Asset Advisory Services Pvt Ltd., is a "Financial Creditor" within the meaning of Sec 7 of the Code;M/s V.S.S. Projects Pvt Ltd., is a "Corporate Debtor" within in the meaning of Sec. 8;The "Corporate Debtor" had committed default as per Sec 3, Sub-Section 12 of the Code for nonpayment of "financial debt".



3. The respondent /Corporate Debtor has filed a reply date 25th July, 2017. The following are their main contentions:

- 1) The petition is untenable and unsustainable, either in law or in facts. M/S VSS PROJECTS (PVT) LTD., is sought to be depicted as Corporate Debtor, by Financial Creditor, with ulterior motives to grab property of 20 Flats {Including three (3) Flats already sold} pertaining to Corporate Debtor. The present state of affairs is exclusively due to illegal conduct and functioning of Financial Creditor. As on date, Corporate Debtor is the absolute owner of 17 flats and 2 acres of land costing more than Rupees 10 crores. Each flat is costing around Rs. 40 lakhs as per latest market value Certificate.
- 2) By selling/ adjusting 6 flats, entire amount paid by Financial Creditor under OTS facility to DHFL can be re-paid. Claim of Financial Creditor in COS No. 1 of 2017 is sought to be adjusted with 6 Flats, as pleaded in written statement-cum-counter claim filed in COS 1 of 2017 pending adjudication, before Hon'ble XIII Addl. Judge, R.R District.

- 3) The Corporate Debtor is ready to execute six (6) sale deeds in favor of Financial Creditor OR alternatively sell 6 Flats out of 17 un-sold flats and re-pay the entire amount of Rs.2.5 crores paid to DHFL. But, Financial Creditor obtained Status-Quo orders, by misrepresenting to Hon'ble Court and also by suppressing material facts and documents. The said Status Quo orders are sought to be vacated and case stands posted to 28-7-2017.
- 4) Corporate Debtor is neither Bankrupt nor can be depicted or declared as an Insolvent, since Corporate Debtor and its MD are owning properties worth more than Rupees 10 crores and amount payable to Financial Creditor is only Rupees 2.5 crores.
- 5) Corporate Debtor filed Counter- claim for an amount of Rs. 1.02 Crores by paying court fee, against Financial Creditor, on account of loss sustained by it due to illegal conduct and functioning of Financial Creditor. Such functioning resulted in causing immense financial loss and also credibility of Corporate Debtor. Corporate Debtor reserved its right in COS No. 1 of 2017, to make further claims against Financial Creditor, owing to loss of its credibility due to paper publication, thus damaging prestige and reputation of Corporate Debtor. Further claim would be made subsequent to adjudication of criminal proceedings.
- 6) It is stated that Financial Creditor has volunteered to issue D.D for an amount of Rs. 2.5 Crores , in favor of Deewan Housing and Finance Corporation Limited (D.H.F.L) towards OTS Payable by Corporate Debtor to DHFL; after receiving: -



- i) 5 undated cheques of Rs. 50 lakhs each, from Corporate Debtor on 31/03/2016.
 - ii) Stamped receipt for Rs. 2.5 Crores from Corporate Debtor, on 30/03/2016.
 - iii) Demand promissory note for an amount of Rs.2.5 Crores, in favor of Financial Creditor on 31/03/2016, and with
 - iv) An express condition and understanding between parties herein that the amount of Rs.2.5 Crores shall be paid by Corporate Debtor to Financial Creditor, by selling some Flats out of 18 flats that were got released from mortgage with DHFL.
- 7) DHFL returned Original Documents of properties mortgaged with DHFL on 12/04/2016 and later, executed release deed on 27/04/2016 in favor of Corporate Debtor. After receiving original documents on 12/4/2016, same were handed over to Financial Creditor for verification on 12 /4/216 itself. Whereas, Financial Creditor did not return original documents on the pretext of busy schedule and lack of time to verify and sent email dated 25/4/2016 enclosing MOU for 20 flats with a request to execute MOU and create charge on 20 flats. Corporate Debtor did not agree to sign MOU, since the same would deprive Corporate Debtor to pay back OTS amount to Financial Creditor, apart from depriving Corporate Debtor to accommodate those persons, who helped M/S VSS PROJECTS (PVT) LTD., to complete its venture.
- 8) Later, on 09/05/2016, Financial Creditor handed over franked MOU and Agreement of Sale in respect of 20 flats to Corporate Debtor for execution in its favor.



Corporate Debtor refused to sign, since the same was contrary to initial agreement and understanding, at the inception of Contract on 30-3-2016. Corporate Debtor can never pay OTS amount to Financial Creditor if MOU and AOS are executed, without selling some of the 17 Flats; apart from inviting litigation from three flat owners, to whom the flats were sold in 2016.

- 9) Later, Financial Creditor sent emails on 07/07/2016 with request to execute documents mentioned therein by projecting false version.
- 10) It is stated that Financial Creditor has suppressed and concealed above facts and emails exchanged between parties till 08/07/2016, particularly, those relating to MOU, Agreement of Sale confirms the ulterior motives of Financial Creditor to grab all 20 Flats (though only 17 flats are unsold Flats) pertaining to Corporate Debtor.
- 11) It is stated that it is highly improbable for Corporate Debtor to arrange for an amount of Rs. 2Crores on 16/11/2016 within 1 week from date of demonetization on 8-11-2016 and issued four (4) cheques for Rs. 2 crores, when the Corporate Debtor could pay only 20 lakhs from April 2016 to November 2016 to Financial Creditor, by selling one flat, out of 18 Flats got released from DHFL, after OTS payment.
- 12) It is submitted that Tribunal may kindly take Judicial Notice/ Judicial cognizance of the impact of Demonetization and subsequent Notification by RBI on the Real Estate Sector/Industry; thus resulting in downward trend of Real Estate Market. Corporate Debtor is also one of the worst victims of: ---



- Demonetization impact, on 08/11/2016
- RBI Notification that no transactions beyond 2 Lakhs, &
- Finally, the illegal conduct/ Functioning coupled with avarice of Financial Creditor's Director whose conduct and functioning alone resulted in the present sad state of affairs and speculative litigation resorted to by Financial Creditor, with ulterior Motives.

13) It is stated that Since there is a dispute between parties herein and there are claims and rival claims pending adjudication before the competent civil court, it is not open for Financial Creditor to project M/S VSS PROJECTS (PVT) LTD., either as insolvent or bankrupt; more particularly, when the proposed Corporate Debtor is capable of paying OTS amount by selling some of the 17 flats and also ready to sell 6 flats in favor of Financial Creditor, as submitted above and also as pleaded in WS-cum-Counter Claim.



14) It is stated that the petitioner has initiated criminal case vide FIR No. 259 /2016 in CCS by fabricating false evidence, i.e. letter dated 1/11/2016, against Corporate Debtor, 3 flat owners who purchased 3 flats and also SBH that extended loan facility, apart from initiating proceedings U/S 138 NI Act and filing Commercial suit COS: 1/2017 before the commercial court; disentitled Financial Creditor for any relief from this Hon'ble Tribunal.

15) It is further alleged that the petitioner having not satisfied with the above, has filed the present petition with unclean hands by suppressing material facts and

documents. The above events confirm that Financial Creditor wants to indulge in speculative litigation and somehow secure some order of appointment of insolvency professional to ensure distress sale of 17 unsold Flats, so that the flats would not fetch the prevailing market value and can grab the entire property of Corporate Debtor to realize his ultimate goal of swallowing all the properties of Corporate Debtor costing around 10 crores for a mere debt of 2.5 crores.

- 16) It is stated that the functioning of Financial Creditor is detrimental to survival of Rule of Law and may not be entertained by this Honorable Tribunal in the interest of Justice.
- 17) It is stated that the petition is hopelessly premature to construe the Corporate Debtor either as insolvent or bankrupt and also to initiate above proceedings under Insolvency and Bankruptcy Code, 2016. The alleged default to repay even after the expiry request date of 31-07-2016 was due to frustration of contract by Financial Creditor and also failure to honor reciprocal promise by Financial Creditor, as agreed on 31/03/2016; apart from changing stand / version to charge 50 % interest instead of agreed 24%; while insisting to execute alleged MOU and AOS (which are concealed and suppressed before this Hon'ble Tribunal). The alleged default when 4 cheques dated 14/11/2016 got bounced on 18/11/2016 is also the ingenious creation and invention of Financial Creditor to dwell in speculative litigation before various forums with ulterior motives and evil intentions to grab 20 flats, though only 17 unsold flats are available for sale.



18) It is stated that version of Financial Creditor to the effect that “ There is a financial debt in existence within the meaning of section 8 (a) of the code” is untenable since Financial Creditor did not comply with the requirement of demand notice as envisaged in section 8 (1) as a consequence the Corporate Debtor could not respond as specified in section 8(2)(a) However, viewed from any angle, the approach of Financial Creditor before this Honorable Tribunal is premature apart from its failure to ensure compliance of section 8(1) of the code, since Financial Creditor is relying upon section 8(a) of the code. It is further contended that the Corporate Debtor has not committed any default as per section 3(12) of the code as is evident from the above submission. M/s VSS Projects pvt. Ltd is not a Corporate Debtor within the meaning of section 8. Even today, Corporate Debtor is prepared to deposit an amount of 2.5 crores before Competent civil court, where the case COS:1/2017 is pending, in the event of allowing Corporate Debtor to sell some of the 17 unsold flats; which could not be sold due to the Status Quo Order. The said I.A. is pending adjudication before the Hon’ble XIII Addl District Judge, R.R. District Court. The Corporate Debtor had also clearly pleaded about the mode of payment of principle loan and also the counter- claim against Financial Creditor by paying court fee and the same is pending adjudication in COS No.1 of 2017 before XIII Addl Judge, R.R. District.

19) It is stated that the prayer of Financial Creditor is not only devoid of any merits whatsoever but it is also riddled with several illegal acts of commission and omission by Financial Creditor to grab the properties of



Corporate Debtor by preventing him to sell the available 17 flats costing around 40 lakhs each and repay a meagre amount of Rs. 2.5 Crores.

- 20) He has relied upon the following decisions in support of his case:
- a) AIR 2012 SUPREME COURT 2513-Head Note-B: Suppression material fact- Petition against rejection of application for discharge-Fact that petition to quash charge sheet filed by petitioner was dismissed-Not disclosed-SLP liable to be dismissed on this ground. (Para-6).
 - b) AIR 2013 SC 3568-Ground raised by concealing fact that appellant and respondent had exchanged communication about area to be handed over-Appellant having approached court by concealing facts explanation given has to be held unsatisfactory-Prayer for condonation liable to be rejected.
 - c) 2016 (4) ALD – Page No. 291 Para-9)-Non Mention in Plaint about notices exchanged prior to suit-And unexplained conduct in making claim for larger extent in Plaint than that mentioned by Plaintiff in notice, in facts and circumstances of case, would disentitle Plaintiff to equitable relief of temporary injunction.
 - d) AIR 1992 DELHI- Civil P.C. O-39, Rules 1 & 2, S. 151 of CPC-Relief of Injunction-**Suppression of material Facts-Effect-----Suit liable to be dismissed without going into merits.** (Paras-9, 10, 11 & 12).
 - e) AIR 1994 SC 853-CPV Sec.2 (2)-Evidence Act S-44-Proceeding in Court- **Fraud by Litigant- Withholding vital document relevant to**



litigation-It is fraud on Court- Guilty party is liable to be thrown out at any stage (Para-8).

- f) AIR 2002 DELHI 151- CPC Order39, Rules 1 &2- Discretionary Relief of Injunction- Grant of- Any deliberate attempt on part of either party to suppress material fact would disentitle such party for granting such relief- Plaintiff withholding vital documents vital to litigation in order to gain advantage on other side- He would be guilty of playing fraud on court as well as on opposite party- Not entitled to discretionary relief o injunction. (Paras-12,13,14 & 15)

- 21) The Learned counsel , therefore, submit that ratio as decided in the above cases, are squarely applicable to the factual matrix of the instant case, wherein Corporate Debtor had deliberately withheld and suppressed material facts and documents, particularly e-mails. He, therefore, prayed that the petition is not only liable to be dismissed but it liable to be prosecuted for the offences of Cheating, Extortion, and Breach of trust and Fabrication of false evidence.

4. I have heard Shri T. Surya Satish, learned Counsel for the Petitioner, and Shri S. Agasthya Sharma, Learned Counsel for Respondent, and also perused the pleadings of both the parties along with material papers filed in their support.
5. Both the learned counsels for parties, at the time of hearing of the case, have further reiterated their contentions raised in their respective pleadings.



6. Shri T. Surya Satish, the Learned Counsel for the Petitioner has further submitted that it is not in dispute that the Financial Creditor had made available to the Corporate Debtor a short term loan of Rs. 2 50 crores for the repayment of OTS (One Time settlement) amount outstanding with M/s DHFL. Accordingly, the Corporate Debtor has also executed a Promissory Note and issued a duly signed receipt acknowledging the receipt of the said amount and promising to repay the same on or before 30.06.2016 together with interest @ 24% per annum, payable in advance monthly installments. He has further stated that the Respondent / Corporate Debtor has illegally alienated 3 flats bearing Nos. 201, 203 and 712 even though there is a charge created in its favour by the Corporate Debtor by way of equitable mortgage by deposit of title deeds of the property. So he had initiated criminal proceedings for cheating and other offences against the Corporate Debtor and case was registered under case No. 259/2016. He also filed civil suit bearing CO Sl.No. 1/2017 and obtained status quo order.



He has further submitted that the application is complete in all respects as law, and thus it is to be admitted, consequential moratorium has to be imposed and IRP to be appointed

7. Shri S. Agasthya Sarma, the Learned Counsel for the Respondent, on the other hand, submit that the Petitioner/Financial Creditor is resorting to multiple litigation by filing civil suits, and criminal cases and dragging the Respondent to various forums basing on false averments without making any bonafide claim. The intention of the Petitioner is to grab all 20 flats including 3 flats, which were sold to Respondents and FIR No.259/2016 was also registered for the amount payable to the financial creditor Rs.2.5 crores for which the Corporate Debtor has proposed several times to repay OTS amount by selling flats. The Respondent has

expressed its willingness to deposit an amount of Rs. 2.5 crores before civil court in case of CO.s No.1/2017 provided that it is permitted to sell 17 unsold flats. However, the respondent is unable to pay its said debt due to status quo passed in the said case. As the petitioner fails to co-operate with respondent to sell the flats in question, it has stopped payment of cheques issued to the petitioner. Since the petitioner fails to perform its duties to sell the flats in question, the respondent has not paid said amount but not due to inability to pay it. However, the Petitioner is not at interested to resolve dispute but it is interested to raise frivolous and malicious litigation before various courts with a malafide intension to tarnish the image of the Respondent.



8. After hearing of the parties and perusing the pleadings, the following issues arise for consideration by the Tribunal.
 1. Whether the present CP is maintainable since the Petitioner has already resorted proceedings for recovery of the debt in question;
 2. Whether the Petitioner fulfils the eligibility criteria to file the present CP;
 3. If so, what is the relief petitioner entitled for.

9. It is not in dispute that the Financial Creditor extended short loan of Rs. 2.5 crores to the Corporate Debtor, and in pursuant to that, a promissory note also was issued by the Corporate Debtor to repay on or before 30.06.2016 together with @ 24% p.a. payable in advance monthly installments. However, so far as mortgage of 20/17 flats in question, respondent is disputing the mortgage but only say they have furnished title deeds of those flats to petitioner for verification and to return back to them after verification. However, it is alleged the petitioner kept them illegally so as to prevent the respondent to deal with flats and to repay loan amount. The contention of petitioner that mere furnishing of title deeds amounts to duly

registered mortgage is not tenable and the same is hereby rejected. The petitioner has admitted that documents relating to 17 flats are stated to be with them. When the respondent is resorting to sell flats in question, the Petitioner has filed a civil suit bearing COS No. 1/2017 by questioning sale of flats contrary to agreements and thus, obtained status-quo order in respect of scheduled properties. So the respondent is unable to dispose of flats and pay the debt. It is to be mentioned here that the said short term loan was extended to the respondent basing on flats in question, which are earlier mortgaged with DHFL. Admittedly, the respondent has sold Flat No. 712,(which is not in alleged mortgage with petitioner)to K.SivaJyothi (Defendant No. 10 in suit) and an amount of Rs. 20 lakhs was paid to the petitioner to show the bonafide of the respondent to pay the debt. However, for the reasons best known to the petitioners, he is not willing/interested to resolve the issue in question and thus resorted multiple litigation by filing a case under NI Act on 15.12.2016, and also filed a FIR No. 259/2016 on 06.12.2016 and filing suit bearing CO.S.No. 01 of 2017 in January, 2017 before Civil Court. In addition, the petitioner also got issued a public notice in Telugu News paper dated 2nd December, 2016 by warning the public not to deal any transactions with properties of VSS Projects Ltd (respondent).

10. Insolvency Bankruptcy Code, 2016 is promulgated with the following objective(s)

- a) *“An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an*



Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

b) The main object of the IBC is to provide a remedy to the insolvent to save him from embarrassment, to save his assets from dismemberment and to provide an equitable distribution of the assets of the insolvent. The Hon'ble Supreme Court in the case of Paramjeet Singh Patheja v. ICDS Limited (2006 (11) SCALE 459, AIR 2007 SC 168: 2006 (4) Arb LR 202 (SC) held that The Presidency Towns Insolvency Act, 1909 is a statute weighed down with the grave consequence of 'civil death' for a person sought to be adjudged an insolvent and therefore, the Act has to be construed strictly. Strict interpretation, quite obviously, refers to interpretation strictly against the insolvent.



1. In the instant case, it is not the case of petitioner that the respondent become bankrupt/insolvent to repay the debt in question to the petitioner. As stated supra, the object of getting loan in question from the petitioner is to get released mortgaged flats from the previous DHFL by way of one time settlement of paying Rs. 2.50corers. The business involved is to sell flats in question, and to repay debts, and it is no body's case that the respondent became insolvent. The petitioner, not being satisfied with filing of above cases, has again resorted to invoke provisions of IBC to misuse it further. The petitioner is not interested to resolve the issue in question by extending co-operation as required in disposing of Flats in question, on the contrary, preventing the respondent from selling Flats in question and making baseless allegations against the respondent. Written statement-cum-counter claim filed by the Respondent in the said suit clearly shows as how the petitioner wanted to become a litigant rather than resolving the issue. The respondent have clearly stated that they are ready to execute sale deeds for six flats in favour of petitioner or its nominees since market value of each flat, as

on date, is about 40 lakhs, for balance amounts of Rs. 2,30 crores since Rs. 20 lakhs have already been paid.

12. The Petitioner has registered FIR No. 259/2016 on 6.12.2016 2016 under Sections 406, 420 of IPC read with 120(B) of IPC wherein the Petitioner has alleged criminal breach of trust and cheating, criminal misappropriation, dishonest intentions on the part of VSS Projects Limited (Respondents herein) and also selling flats mortgaged with the Petitioner. In fact, this issue arise out of the mortgaged loans etc, arising out of Company affairs. He has also initiated case under section 138 of NI Act before IX Additional Chief Metropolitan Magistrate, NampallyHyderabad, which is also pending. For one issue, the petitioner is resorting to several proceedings, that too without fulfilling its obligations under the agreements/understanding. The cheques in question were admittedly issued by the Respondents to the Petitioner, subject to certain conditions as mentioned above. However, without complying the obligation on the part of the Petitioner, it has invoked the provisions of NI Act, when the Petitioner admittedly knows that payments of all the cheques were stopped due to failure on the part of the Respondents. As stated supra, civil suit filed is also against same cause of action as raised herein.



13. The Respondent also filed a criminal complaint vide FIR No. 106/2017 on 10.4.2017 with PS Kachiguda under sections 384, 406, 420 IPC, 156(3) CrPC by making allegations against the Petitioner with regard to the cheques in question and also not returning the original title deeds /link documents received from DHFL which were furnished to the Petitioner for verification and also created false complaint basing on fabricated documents etc.

14. In order to adjudicate a proceedings initiated under the provisions of the IBC, it is necessary to read all relevant provisions of the Code together, in order to come to a conclusion whether debt / default/insolvency arise in this the case. In this regard Section 65 is also relevant to consider in the light of facts and circumstances of the case, as explained above. Section 65 (1) and (2) of IBC reads as under:-

“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 crores rupees.



65(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.”

The term fraudulent and malicious has been defined in the Black's Law Dictionary, 4th Edition to mean as follows:-

“Fraudulent: Based on fraud; proceeding from or characterized by fraud, tainted by fraud; done made, or effected with a purpose or design to carry out a fraud.

”Malicious: In la legal sense, any act done willfully and purposely to the prejudice and injury of another, which is unlawful, is, as against that person, “malicious”.

Steplien's History of the Criminal Law of England, reads aswhenever the words “fraud” or “intent to defraud” or “fraudulently” occur in the definition of a crime two elements at least are essential to the commission of the crime: namely, first, deceit or any intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy ...”

Section 25 of the Indian Penal Code defines the term “fraudulently” as follows:-

“A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise”.

15. By reading of the above provisions and the definitions of the words referred therein, it is necessary to refer the facts as available in the present case so as to see whether the said provisions is applicable to the present case or not. As per the above sections, a person, who initiates insolvency resolution process for any other purpose other than resolution of insolvency, the Adjudicating Authority can impose suitably penalty so as to prevent litigant from misusing provisions of IBC.



16. In the instant case, as stated detailed supra, it is not the case of the Petitioner that the Respondent is unable to pay debt or it is insolvent for the same. While demanding to pay the loan in question, the petitioner is filing cases as stated supra, to prevent the respondent to pay the debt, after selling flats in question and, it is also not accepting the registration of Flats in its favour or its nominee. Admittedly, each flat in question is worth Rs. 40 lakhs at market value and there is absolutely no difficulty for the Respondents to pay the amount. However, the Petitioner for the reason best known to him is not interested to get the money back but only interested to initiate malicious litigations by way of filing civil suit, criminal cases and also case under NI Act as mentioned above. There is no question of insolvency involved in this case as mentioned above and thus, there cannot be any resolution of insolvency process. The present petition is filed for purpose other than the resolution of insolvency as mentioned in Section 65. Therefore, the present proceedings

21 of 21

must be held to be a malicious one and it is liable to be dismissed with cost.

17. It is to relevant to mention here that as per Section 63 of IBC,2016, no civil court or authority has jurisdiction to entertain any suit or proceedings in respect of any matter on which NCLT or NCLAT has jurisdiction under this Code. Knowing very well that IBC came to force, and only single cause of action arise in the instant case, i.e. Payment of short term loan of Rs. 2.5 Crore, the petitioner has resorted to civil and criminal course of action as stated supra.

18. In view of the above facts and circumstances of the case, I am of the considered opinion that the instant Company petition is not maintainable and it is liable to be dismissed. Therefore, the Company petition bearing CP (IB) No.96/7/HDB/2017 is hereby dismissed with a cost of Rs. 1,00,000/- (Rupees One lakh Only) to be payable by the petitioner to respondent within a period 3 weeks from today.



Sd/-
Rajeswarā Rao Vittanala
Member (Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER...CP (IB) No. 96 / 7 / HDB / 2017
निर्णय का तारीख
DATE OF JUDGEMENT...08.09.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON...11.09.2017