

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH

CP(IB)/19/7/HDB/2017



Date of Order: 13.03.2017

Between

Dr. B.V.S. Lakshmi
Wife of Mr. B. Sree Ramachandra Rao
Aged about 64 years
Residing at 151/2, G-2, Rohiwal Windsor Apartments,
Hill Fort Road, Adarsh Nagar,
Hyderabad.

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... Petitioner

And

M/s. Geometrix Laser Solutions Private Limited
Having registered office at Lever 7, Maximus
Tower, Building 2A, Raheja Mindspace,
Hyderabad - 500081

... Respondent

Counsels for the Petitioner :
Counsels for the Respondent :

Mr. K. Arun Kumar
Mr. KV Simhadri &
Ms. Suchithra

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The present Company Petition (which is herein after referred to as Company petition) bearing No. CP(IB)/19/7/HDB/2017 is filed by Dr.

BVS Lakshmi, a financial creditor, (hereinafter referred to as Petitioner/applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by interalia seeking directions to initiate Corporate Insolvency Resolution process, in the matter of GEOMETRIX LASER SOLUTIONS PRIVATE LIMITED, (which is herein after referred to as ‘ Company’) in accordance with the provisions of IBC, 2016; appoint Interim resolution professional , award cost etc.



2. The case was first listed on 22.02.2017, whereby Mrs. BVS Lakshmi was present, and Mr.A.V.Raghu Ram accepted notice on behalf of Respondent and at the request of both the parties, the case was posted to 28.02.2017. On 28.02.2017, Mr. K. Arun Kumar appeared on behalf of Petitioner but none appeared for the Respondents. Subsequently, on 01.03.2017, the learned counsel for the Petitioner submitted that due amount was not paid to the Petitioner till date, while the Learned Counsel for the Respondent denied the claim itself. The Bench directed the Learned Counsel for the Respondent to furnish any proof with regard to payment of claim in question, and adjourned the matter to 03.03.2017. Again on 03.03.2017, the Learned Counsel for the Respondent requested time, and finally on 08.03.2017 both the counsels argued and reserved for orders. Since the Tribunal cannot refuse time, when parties requested reasonable time to assist it, the case was adjourned on the above dates duly following principles of natural justice.

3. The brief facts of the case, as set out in Company petition along with material papers filed , are as follows:

a) M/s Geometrix Laser Solutions Private Limited , the Respondent Company, is a Company incorporated under the provisions of Companies Act, 1956 on 5th January, 2006 with the Registrar of Companies, A. P. Hyderabad presently having Authorised and paid up Capital of Rs.3, 90,00,000/-.



b) The petitioner contends that the Company is liable to make payment to the Petitioner a sum of Rs. 91,47,864/- (Rupees Ninety One Lakhs Forty Seven Thousand Eight Hundred Sixty Four only) together with Interest at rate of 18% per annum (calculated from the date of each disbursement until the date of re-payment) and legal costs incurred by the Petitioner on this behalf.

c) The Petitioner, in support of her claim, relied upon the Company's Annual Audited Financial Statements filed with the Registrar of Companies to establish her claim spread over the three years period from March 2014 to March 2016. The petitioner has furnished the following details of her claims, which she claims Acknowledged Debts:

(i) Debt owed as on 31/03/2014

The annual audited accounts of the Respondent Company for the year 2013-14 for the full set of audited financial statements discloses a sum of Rs. 38,74,767.00 (Rupees Thirty Eight Lakhs Seventy Four Thousand Seven hundred sixty seven) as being due to the Petitioner shown under the

heading Dr. B.V.S Lakshmi. The sub-ledger in the name of Dr B V S Lakshmi for the year 2013-14 shows the amount owed as Rs 41,04,391.00 (Rupees Forty one lakhs four thousand three hundred ninety one only). The Petitioner relies upon on the Sub-ledger (ignoring the error in the Unsecured Loans Schedule in the Balance Sheet) to establish her claim. So Petitioner claims Rs 41,04,391.00 (Rupees Forty One Lacs Four Thousand Three Hundred Ninety One only) as due as on 31/03/2014.



(ii) Debt owed as at 31/03/2015

The annual audited accounts of the Respondent Company for the year 2014-15 discloses a sum of Rs. 89,85,792.00 (Rupees Eighty Nine Lakhs Eighty Five Thousand Seven Hundred Ninety Two) as being due to the Petitioner herein under the heading Dr. B.V.S Lakshmi. The Sub-ledger in the name of Dr. B V S Lakshmi for the year 2014-15 shows the amount owed as Rs 75,03,462.00 (Rupees Seventy Five Lakhs Three Thousand Four Hundred Sixty Two only) represents what is owed by the Company to Dr B V S Lakshmi group, comprising four persons. To that extent, the Petitioner relies on the sub-ledger (ignoring the error in the Unsecured Loans Schedule in the Balance Sheet) to establish her claim. Therefore the acknowledged debt of the Petitioner stands at Rs 75,03,462.00 (Rupees Seventy Five Lakhs three thousand four hundred Sixty Two only) as on 31/03/2015.

(iii) Debt Owed as at 31/03/2016

Similarly, the annual audited accounts of the Respondent Company for the year 2015-16 discloses a sum of Rs 79,36,737/- (Rupees Seventy nine Lakhs Thirty Six Thousand Seven hundred thirty seven only) as being due

to the petitioner herein under the heading Unsecured Loans from Director. This is patently incorrect, as Dr BVS Lakshmi is NOT a Director of the Company. Further, if we proceed from the acknowledged debt of Dr B V S Lakshmi as on 31/03/2015 standing at Rs 75,03,462.00 (Rupees Seventy Five Lakhs Three Thousand Four Hundred Sixty Two only).

- d) The petitioner contends that during the year 2015-16, no repayments were made out of the said Rs. 75,03,462.00 to the Petitioner. Whereas, the Petitioner advances the following sums on the following dates to the Respondent Company:

23/10/2015	Rs 12,50,000.00 (by cheque)
23/10/2015	Rs 2,50,000.00 (by cash)
21/12/2015	Rs 1,00,000.00 (by cheque)
<u>Sub-total</u>	Rs 16,00,000.00

Further, the Petitioner also claimed the following expenses:

30/10/2015	Rs 22,934.00 (as Travel & Conveyance)
04/11/2015	Rs 15,468.00 (as expenses incurred on behalf of the Respondent Company)
31/12/2015	Rs 6,000.00 (as paid to Mr Prem Prasad, an employee on Co .behalf)
<u>Sub-total</u>	<u>Rs 44,402.00</u>
Grand total	Rs 16,44,402.00 (advances + expenses)

Consequently, the amounts owed to Petitioner as on 31/03/2016 ought to stand at:

Carried over from 31/03/2015

Rs 75,03,462.00



Added during 2015-16	Rs 16,44,402.00
Less any repayments during 2015-16	Rs Nil
Owed to Petitioner as on 31/03/2016 is	Rs 91,47,864.00

- e) The Petitioner, therefore, contends that while the Audited Financial Statement of the Company as on 31/03/2015 correctly reflect the amounts owed on the Petitioner, the Audited Financial Statements as on 31.03.2016, are mischievously and wrongly conceived as Rs 79,36,737.11. The difference of Rs 12,11,127.00 remains un-explainable.
- f) The petitioner contends that several other related transactions were incorrectly and mischievously shown as loans given/ re-paid against several names, including those of Ms Kalyana Hyma and Dr B V S Lakshmi. None of these disclosures are genuine. All of these are fabricated statements in order to show that the Petitioner was paid all her dues. So the petitioner wants the Company put to strict proof of establishment of re-payments of loans to her during the FY 2015-16.
- g) As the Company did not pay the dues as mentioned above, she got issued a statutory notice dated 7th September, 2016 to the Respondent Company, under Section 434 of the Companies Act, 1956 corresponding to Section 271(2) of the Companies Act, 2013 demanding it to repay the entire amount of Rs 91, 47,864.00 with Interest 18% per annum failing which, it was warned that appropriate proceedings for winding up would be initiated.
- h) In pursuant to the above legal notice, the Respondent Company got issued a reply dated 26th September, 2016 through their counsels Sri. AV Raghuram that the Accounts of petitioner as on 31.05.2015 was history and,



it has been repaid and or adjusted as desired by the Petitioner, and the Petitioner ceased to be a creditor of the Company and thus denied any dues to the Petitioner much less interest.

- i) Since the petitioner could not get any repayment of her dues, even after the said legal notice, the Petitioner has approached the Hon'ble High Court for the State of Telangana and AP by filing Company Petition bearing C.P. No. 408 of 2016, under section 433(e) & (f) R/w Sections 434(1)(a) & 439 of the companies Act, 1956 by seeking the following reliefs:



- a) That M/s. Geometrix Laser Solutions Private Limited, the Respondent herein, may be wound up by this Hon'ble court under the provisions of Sections 434, 435 & 436 the Companies Act, 1956.
- b) The Official Liquidator High Court, Hyderabad or some other fit and proper person be appointed as liquidator of the Respondent with all powers under the provisions of the Companies Act. 1956.
- c) That, pending disposal of the main company petition, the official liquidator attached to this Hon'ble Court be pleased to appointed as Provisional Liquidator of the Respondent Company i.e. Geometrix Laser Solutions Private Limited.

However the above CP was withdrawn by the petitioner reserving her liberty to file a fresh petition before the Company Law Tribunal. Accordingly, the Hon'ble High court dismissed the Company petition as withdrawn by an order dated 13th December, 2016.

Subsequently, the present petition is filed by seeking the relief as stated supra.

4. The respondents have filed an Interim reply affidavit dated 28th day of February, 2017 by interalia contending as follows:

- a. All the allegations are denied as not correct and not tenable. The applicant has not come to the Hon'ble Tribunal with clean hands to claim the equitable relief of the corporate insolvency resolution process under the provisions of the insolvency and Bankruptcy Code, 2016 and the same is not maintainable either in law or on facts.
- b. It is contended that Respondent Company was incorporated on 5th January, 2006 with Promoter Directors, Mr. Pulipaka Kedarnath and Mrs. BVS Lakshmi (Petitioner herein). The main object of the Company is to carry on business as a laser job shop providing services to the industry in India and abroad contributing to advancement of Indian industry in science and technology.
- c. The Petitioner has suppressed several material facts of the issue. She has not stated/disclosed her status as Promoter Director. To conceal fact of Promoter Director, she has fabricated crucial and relevant documents wilfully and wantonly in Memorandum and Articles of Association, issued by Registrar of companies by changing her name as Promoter Director to that of her daughter's name i.e., B. Kalyana Hyma. This is utter false statement and the fact remains that she was the founder Director of the Respondent Company and memorandum



of association supports the same. She has submitted her resignation by letter dated 14.3.2007.

- d. The Petitioner has also suppressed the criminal complaint filed by Respondent Company's Managing Director, against the petitioner, before the Commissioner of Police, Hyderabad 27.08.2016, which was registered under FIR No. 202/2016, under Section 406,420,468, 471 of IPC. In the Complainant, it is alleged that the signature of another Founder Director, Mr. Pulipaka Kedarnath was forged, apart from other illegal activities, which are of serious in nature.
- e. The Petitioner failed to pay any supported documents to prove that she is a financial creditor, more particularly the Respondent Company constituting as a Debtor, to claim any legally enforceable debt against Respondent Company. It is stated that the Petitioner was well aware that Respondent Company itself is entitled to recover an amount of Rs.88,32,727.05/- from the Petitioner and her daughter, Mrs. B.Kalyana Hyma. It is also stated that the law also recognizes and permit the parties to set-off under Order VIII, Rule 6 of CPC. Apart from that, as stated above, there is a Criminal complaint pending against the Petitioner.
- f. It is further stated that the Petitioner was the Managing Director of M/s Supriya Granites Private Limited (currently under liquidation). The Punjab National Bank has filed OA. No.629/2002 before DRT, Visakhapatnam against M/s Supriya Granites Private Limited (D1),



BVS Lakshmi (D2/Petitioner herein) and Ors by seeking to pass an Order –cum-certificate against the Defendants therein directing them to pay a sum of Rs.1,80,11,735.50/- together with further interest of 12.25%. The said OA was partly allowed by an order dated 19.10.2007, by interalia directing D1 and D2 to pay the amount and disallow the relief against D3 to D8, and also permitted to sale the scheduled properties in that application.

Aggrieved by not allowing all the reliefs claimed in the original application and allowing only against D 1 & D 2 , the Punjab National Bank has filed Appeal No. 23 of 2014/899, 1480/67 before the Hon'ble DRAT, at Kolkata. After hearing the case, the appeal was allowed by setting aside the negative portion of DRT with regard to the claim against D3 to D8 by order dated 29.1.2015.



- g. In pursuant to the above proceedings, the Punjab National bank has addressed a letter dated 14.11.2016 to MD of Respondent Company by interalia stating that Supriya Granites Private Limited, Vijayawada, for which Smt. BVS Lakshmi, Managing Director (the petitioner herein) has availed the credit facilities for her company i.e. Cash Credit (Hyp) Rs.20 lakhs, Term Loan Rs.8.15 Lakhs, Bridge Loan Rs. 5 Lakhs, FLC Rs. 64 Lakhs, Bank Guarantee Rs. 10 Lakhs, Bill Purchase Rs. 8.50 Lakhs. The said limits were availed for the Company from erstwhile New Bank of India. Suryaraopet, Vijayawada during the year 1989. Subsequently, the said bank was merged with Punjab National Bank.

It is stated, that despite repeated legal notices, reminders, court summons, Dr BVS Lakshmi and her husband have not paid any amount in pursuant to the DRT order as mentioned above. Therefore, the Bank requested the Respondent Company to inform them the complete details of shareholdings/debentures held by the Petitioner and her husband in Respondent Company and also requested not to transfer any of their shareholdings, etc to any third party.

- h. The Respondent relied upon on judgements of Hon'ble Supreme Court's in IBH Health Vs. Info-Drive Systems (CA No. 8230/2010), wherein the Hon'ble Chief Justice Sri Kapadia made the following observations:



“The Company Court cannot be ‘maliciously’ used as a ‘debt collection agency’, and that an action may lie in appropriate Court in respect of the injury to reputation caused by maliciously and unreasonably commencing liquidation proceedings against a Company and later dismissed when a proper defence is made out on substantial grounds.: This Judgment may ensure that a winding-up petition is scrutinized more carefully before it is admitted.”

- i. The Respondent further submits that the Petition itself is not in proper format, and even the notice issued by the Counsel is not as postulated in the Insolvency and Bankruptcy Code, 2016 and its rules made there under, more particularly, NCLT Form-V and therefore, on this ground alone, the Petition is not maintainable in law.

j. It is also submitted that, Respondent Company is a running Company, and it has no liabilities or claims from any secured creditors including the Banks, and it is meeting all the expenses of salaries to its employees and staff and payment of revenue to the Government, if any orders are passed in the present case, it will affect the smooth functioning of the Company.

5. We have heard Sri K.Arun Kumar, the learned counsel for the petitioner, and Sri K.V.Simhadri, the learned counsel for the respondent, and have carefully considered various pleadings and along with material papers filed by the respective parties.



6. The Learned Counsel for the Petitioner, while retreating all the averments made in the Petition, and in the accompanying documents, including legal notice, has further submitted as follows:

(a) In pursuant to the legal notice, the Respondent Company has not only failed to repay the due in question but totally denied the claim itself in their legal notice in their reply dated 26.09.2016. On the contrary, they are making counter stating they have set off the dues in question, and the petitioner herself is due to them to the extent of Rs.33,07,136/-.

(b) The Learned Counsel further submits that the claim made in the Petition is a specified debt, and it cannot simply be disputed basing on untenable grounds. The dues in question still to be paid. The Criminal complaint made by the Respondents against the Petitioners is frivolous and they have given suitable replies to the queries.

(c) The Learned Counsel also relied upon the judgements of the Hon'ble Karnataka High Court, rendered in State Bank of India Vs Hegde and Golay Limited vide citation (1988) CompCas 581(Kar), ILR 1987 Karnataka 2496.



In this case, the main issue was the appointment of provisional liquidator u/s 433 of Companies Act, 1956. The Honble High court of Karnataka has considered various issues arise out of Winding up petitions. The Hon'ble High court has referred various decisions/judgements of various courts including National and international. One of the judgements referred in this case, which is some extant relevant to the present case is Madhusudhan Gordhanadas and Co. V. Madhu Wollen Industries P.Ltd. (MANU/SC/0033/1971, wherein it is interalia held ' Where the debt is un-disputed, the court will not act upon a defence that the Company has the ability to pay the debt but the Company chooses not to pay the particular debt ''

Another finding given in this case relates to maintaining a Civil Suit and Winding up proceedings and held it there is no bar for it. Limitation issue with reference to acknowledgement of debt in balance sheet and the relevance of facts stated on the date of filing petition/instituting a case would have any bearing on the subsequent change of facts and law on the issue etc.

As stated above, these issues have hardly had any bearing on the present case. As stated supra, the petitioner herself is the promotee

Director and naturally associated with several financial affairs of Respondent Company. There is no accepted/un-disputed debt in the instant case, and on the other hand, the petitioner herself is due to the Company.

d) Another judgement of Hon'ble High Court of Andhra Pradesh, rendered in Vikas Jalan Vs Nucon Industries Private Limited (1998(5)ALD402, 1998(3)AnWR686, [2001] 103CompCas343(AP)



This is a case filed under Section 433(c) of the Companies Act for winding up the Respondent Company on the ground of its inability to pay debt. The question considered in the case was whether debt in question was genuine and whether respondent Company has got a bonafide and probable defence to make on facts and law and when the set off plea was available to other parties. The Hon'ble High court, on examining the entire issue including evidence found that the debt in question was found to be bonafide.

In the instant case, facts are totally on different footing. As stated above, the petitioner is former founder Director of the Company and several financial transactions in the course of business of Company stated to be transacted and the petitioner has relied upon selective balance sheets of the Company to make her claim. The alleged debt could not be substantiated. It is not in dispute that the daughter of petitioner (Hyma) was also a director of Company. The petitioner has not raised that set off in question is legal or not. So the above case is not applicable to the present case.

7. Shri K.V.Simhadri, the Learned Counsel for the Respondent, while reiterating the contentions raised in the interim reply filed, has further contented that the Petitioner is not at all a financial creditor and no amount what so ever was due to the Petitioner; on the other hand, after setting off, the Petitioner herself is due to the Company. She was also given suitable reply. He has also filed several documents alleging illegal acts on the part of petitioner and resorted to manipulation of the records of the Company. And the Respondents have also filed a complaint with the Police regarding the illegal activities of the Petitioner. The petition is also is not maintainable, as the present cause of action arises prior to the IBC came into force.



8. The learned counsel further submit that Petitioner has not come to this Tribunal with clean hands as she has suppressed several material facts so as to create factious cause of action to file the present petition. The Petitioner has gone to the High Court seeking to wind up the Company in order to satisfy her selfish ends. However, for the reasons best known to the Petitioner, She has withdrawn the petition and subsequently filed the present petition. The Petitioner even did not state her status in the Respondent No.1 Company, and tried to show her daughter in the records of the Company by manipulating the records.

9. The Learned Counsel further states that the Petitioner herself along with her husband suffered an order passed by DRT as mentioned above and also avoiding to repay the amounts as ordered by the DRT. But she

is trying to malign the Respondent Company and filing frivolous complaints against the Company.

10. The Learned Counsel also relied up on the judgement of the Hon'ble Principal Bench rendered in Nikhil Mehta & Sons (HUF) & Others Vs AMR Infrastructures Limited.



This case was also instituted by a Financial Creditor. The Hon'ble Tribunal, after discussing entire law with regard to definition of 'Financial Creditor and Financial Debt, has inter alia held that merely some assured amount of return has been promised, and it stands beached, such a transaction would not acquire the status of a 'financial debt as the transaction does not have the consideration for the time value of money, which is a substantive ingredient to be satisfied fulfilling requirements of the expression 'Financial Debtor. Ultimately, the Hon'ble Principal Bench has dismissed the application as the applicant did not cover the definition of 'Financial Creditor' and 'Assured terms 'as required to invoke Section 7 of IBC.

Though the facts of above case are different from the present case, but the present petition was also filed invoking same Section 7 of IBC and thus interpretation of section is relevant for the present case.

11. The Hon'ble Supreme Court in Amalgamated Commercial Traders Private Limited Vs A.C.K. Krishnaswami (1965) 35 Company Cases 456 (SC), held as follows:

"It is well-settled that a winding up petition is not a legitimate means of seeking to enforce payment of the debt, which is bonafide disputed by

the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court”.

12. In the light of above discussion of the case, the following issues arise for consideration in the case:

- a) Whether the petitioner/applicant come under the definition of Section 7 of IBC as Financial Creditor so as to invoke insolvency proceedings against the Company;
- b) Whether the petitioner is bonafide in claiming the relief;
- c) If so, what is the relief, the petitioner is entitled for.



13. Firstly, we will deal with the scope of jurisdiction of Tribunal in dealing with initiation of Insolvency Proceedings under IBC, 2016.

14. It is more or less an accepted proposition of law that bankruptcy forums are forums of summary proceedings, and they cannot get into complex questions of dispute over a debt or a claim, as that will be the domain of civil courts. The Hon'ble Supreme Court of India in the case of IBA Health Private Limited Vs Infodrive Systems Sdn, Bhd., (2010) 10 SCC 553, held as follows:-

‘The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding up for discharge of that liability? In such a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and

genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bonafide dispute on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding up procedure.



15. As per section 7(5) of Insolvency and Bankruptcy Code, 2016, one of the ingredients to initiate insolvency resolution process is that a 'default' should have occurred. As per section 3(12) default means 'non-payment of debt' when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. Debt is also defined under section 3(11), it means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

16. In the light of above proposition of law and the definition of Financial Creditor, we will examine the facts of present case basing on the documents filed by the petitioner in her support ;

a) As stated supra, the petitioner put a total claim of Rs. 91, 47,864.00 as on 31.03.2016 covering a period of 3 years from March, 2014 to March 2016, owed from the Company. In support of the claim, the petitioner enclosed a copy of Schedules to Balance sheet (page No.33

to 35 Attachment 1-A) in which the name of Dr.B.V.Lakshmi was shown under Schedule-D un-secured loan as Rs. 38,74,767/- and closing balance to the credit of petitioner as Rs. 41,04,391/- as on 31.03.2014. Another attachment enclosed is Attachment 1-B, page No. 36-40. At page No. 36(notes to Accounts-Balance sheet, the name of petitioner was shown under un-secured loans for Rs. 8,985,793/ as on 31.03.2014 and in Group summary of un-secured Loans as 1April, to 31 March, 2015 (page 37) and that of Ledger Account (page 38) shown closing balance as Rs. 75,28,462/-



b) The petitioner has enclosed another attachment under IC as page Nos 39 and 40 in support of her claim in question. Page 39 relates to Notes Forming part of Balance at 31.03.2016 of the Company. In which, under 5(b) Loans and advances from related parties (unsecured) show as 'From Director Rs. 79,36,737/- and from Director relatives as Rs. 95,48,279/- as on 31.03.2016. Note 23 (page 40) gives related parties disclosures in which Niyaz Ahmed was shown as Managing Director: Kalayana Hyma(daughter of petitioner) was shown as Director and Dr B.V.Lakshmi and Nusrath Parveen were shown as relative of Director. Details of related party transaction during the year ended 31 March, 2016 and balances outstanding as at 31 March, 2016 given in Page No. 40 which shows Loan given/repaid shown as Rs. 27,84,452/ and 17,67,366/- respectively and balance outstanding (Loans) at the year end was shown for Kalyana Hyma Rs. 79,36,737/-, Dr. BVS Lakshmi Rs. 10,17,086/-.

c) So as per the above documents filed by the petitioner herself shows loan outstanding/ payable to her is only Rs. 10,17,086/-.

d) The legal notice dated 7th September, 2016 got issued by Counsel for the petitioner stated that the petitioner was shareholder and creditor of the Company and alleged several acts of oppression and mis-management on the part of Niyaz Ahmed and Kedarnath. And without giving any details of dues, has claimed for a total amount of Rs. 91, 47,864/- basing on Annual audited accounts.

16. The petitioner has filed Articles of Association of Respondent Company (page 20 of material papers) in which, it is falsely shown P.Kedarnath and B.Kalayana Hyma as First Directors of the Company. However, by perusal of the original Memorandum and Articles of Association of the Company evenly dated 03.01.2006 (page No. 15 to 31 of material papers) Page 19 and internal page 5 of Memorandum of Association & Articles of Association at page No. 31, internal page 12 of Articles, filed by the Respondent Company, clearly shows that the first directors are Pulipaka Kedarnath and B.V.S. Laxmi and not Hyma as claimed. However, for the reasons best known to the Petitioner, she has chosen to file concocted Articles of Association, which was downloaded from website, showing her daughter's name as First Director of the Company. In fact, that issue was also under investigation by the police as mentioned supra. It cannot be disputed that the petitioner was the first director of the Company as she had admittedly resigned as Director w.e.f. 01.04.2007 vide her letter dated 14th March, 2007.



17. The Respondent has also filed relevant folios of Ledger Account of Dr. B.V.S.Lakshmi and Kalyana Hyma Recoverable Account (page No. 175 to 181) for period from 1st April 2016 to 27th February, 2017 by debiting various illegitimate payments made by the petitioner to her Account, and set off of the balance payable on Kalyana Hyma against the petitioner as per the provisions of order VIII Rule 6 of CPC.

18. The petitioner is still a shareholder holding 5, 57,946 shares of the Company constituting 14.31 %. She has transacted several financial transactions with it and she has also filed Winding up petition against the Company. The petitioner is fully well aware that a criminal case is pending and set off was also made with reference to her daughter's transactions, and she herself also filed a case making allegations/counter allegations against each other. All these things clearly show that the petitioner is resorting to legal proceedings conveniently one after the other. Moreover, the due claimed itself is in serious dispute and petitioner is aware of all those proceedings. Whether the Company is entitled for set off of dues of the petitioner with that of her daughter cannot be questioned in the present petition. The Tribunal cannot be misused to settle and determine the cases of disputed claims. In the instant case, as stated supra, there is no prima facie evidence to show that the petitioner has lent money to the Company with a promise to repay. When the respondent has filed adequate proof that there was no due to the petitioner and on the contrary, she is due to the Company, the Tribunal cannot enter into the disputed questions of fact, which can be resolved through process of recording evidence by a competent Civil Court. In a summary proceedings prescribed under IBC 2016, Tribunal



cannot entertain a litigation where basic issues like Financial Creditor, default etc are in dispute.

19. In view of the above facts and circumstances, we are of the considered view that the petitioner do not come under the definition of "Financial Creditor" and she failed to satisfy the Tribunal about requisite ingredients of section 7 of IBC 2016 to claim any relief. The petitioner miserably failed to make out even a prima facie case to entertain this petition and she has not come to the Tribunal with clean hands as ought to be in accordance with law. Therefore, the petitioner is not entitled for any relief as sought for.

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20. For the all reasons stated above, we are of the considered opinion that it is not a fit case to initiate Insolvency process as prayed for by the petitioner/applicant.

Hence, we hereby dismissed CP(IB)/19/7/HDB/2017 with no order as to costs.

We further observe that this order will not be precluded the petitioner from taking recourse to any remedy available under any other law.

Sd/-

RAVIKUMAR DURAISAMY
Member(T)

Sd/-

RAJESWARA RAO VITTANALA
Member (J)



V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68