(2019) 07 NCLT CK 0036

In the National Company Law Tribunal

Case No : MA/518/2018, CP/540/IB/2018

S. Mukanchand Bothra (Deceased) And Others — APPELLANT

Vs

S. Rajendran — RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 3(33), 3(35), 5(8)(f), 7, 30(6), 31(1)
Companies Act, 2013 — Section 180
Registration Act, 1908 — Section 17, 49

Citation : (2019) 07 NCLT CK 0036

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J

Bench : Single Bench

Advocate : Gagan Bothra, Savitha Devi, R.V. Yajvra Devi

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under Adjudication Is Ma/518/2018 In Cp/540/(Ib)(Cb)/2018 Originally Filed By The Applicant Viz. Mr. S. Mukanchand Bothra, Against The

Rejection Of His Claim By The Resolution Professional (Rp). The Applicant Prayed As Under:

A) Set-Aside The Order Dated 17.09.2018 Passed By The Respondent

A)-L â??Set Aside The Order Dated 27.04.2019 Passed By The Resolution Professionalâ? [As Amended Vide Order Dated 21.05.2019

Passed By This Authority In M.A. No. 485 Of 2019]

B) Direct The Respondent To Admit The Claim Of The Applicant And Reconstitute The Committee Of Creditors.

C) Pass Any Other Order/Direction As This Hon'ble Tribunal May Deem Fir And

Proper In The Facts And Circumstances Of The Case.

2. At The Outset It Is Important To Note That The ApplicantS . Mukanchand Bothra (Deceased) After Filing The Application, Died On

18.04.2019. The Applicants 2 To 4 Are His Legal Heirs Who Have Been Impleaded As Applicants By This Tribunal Vide Its Order Dated

03.05.2019 Passed In M.A No. 441 Of 2019.

3. In Another Matter, The Corporate Debtor Had Availed Loan From One Mr. M. Gagan Bothra, In Repayment Of Which The Corporate Debtor

Had Defaulted. Consequently, Mr. M. Gagan Bothra Filed Cp/540/(Ib)/Cb/2018 Under Section 7 Of The I&B Code, 2016 Wherein, This Authority

Vide Its Order Dated 24.07.2018 Admitted The Application, Cir Process Was Initiated And One Mr. V. Venkata Siva Kumar Was Appointed As

Interim Resolution Professional, Subsequently Mr. Ebenezar Inbaraj Was Appointed As Interim Resolution Professional.

4. The Interim Resolution Professional Issued â??Public Announcementâ?? Calling For Submission Of The Claims By The Creditors With Respect

To The Debts Due From The Corporate Debtor. In Response To That, The Applicant (Deceased) Had Filed His Claim For A Sum Of Rs.

15,00,00,000/- In Form â??Câ?? As A â??Financial Creditorâ? On 29.08.2018 Before The Interim Resolution Professional Which Was Rejected

Vide Commination Dated 17.09.2018.

5. It Is Noted That The Resolution Professional Viz. Ebenezar Inbaraj Was Replaced By Mr. S. Rajendran By The Order Of This Authority, And He

Was Directed To Re-Consider The Claim Of The Applicant. The Newly Appointed Rp Has Also Rejected The Claim Of The Applicant By Letter Of

Rejection Dated 27.04.2019. The Reasons Stated By The Resolution Professional For Rejection Of The Claim Of The Applicant(S) Are As Follows:

â??There Are No Documentary Evidence For Having Paid The Amount Of Rs. 15 Crores To The Corporate Debtor. All Payments Are

Reportedly In Cash. The Financial Statements Of The Company Do Not Reflect The Borrowings. There Is No Duly Signed Loan Agreement

Or Contract. The Claimant Says He Has Been Paying Sums Despite No Repayment Coming Up And No Interest Payment Made By The

Borrower. Claimant Has Not Cared To Get Prior Authorization Or Approval From The Board Of Directors By Way Of A Resolution

Approving Such Huge Borrowings. There Definitely Appears Some Ground For Admitting This FinancialC reditor's Claim To The Extent

Of Rs. 83.50 Lakhs Which Has Been Mentioned In Several Places Of Various Documents Submitted To Rp.

However, There Is No Documentary Evidence For This Amount Having Been Brought Into The Accounts Of The Corporate Debtor. Mr,

Senthil Kumar In His Declaration Dated 19th Sept. 2018 Has Confirmed Repayment Of Rs. 19.48 Lacs Out Of The Borrowing Of Rs. 83.50

Lacs And Therefore, The Amount Payable To Mr. Mukanchand Bothra Stands At Rs. 64.03 Lacs Only Though It Is Stated By Him That The

Financial Creditor (Claimant) Also Has Admitted This Amount As The Dues Outstanding, As We Have Not Seen Any Such Document So Far,

We Are Unable To Rely On This Statement. Therefore, The Rp Is Unable To Admit The Claim Of Mr. Mukanchand Even To The Extent Of Rs.

83.50 Lakhs In The Absence Of Acceptable Evidence Of The Money Having Been Brought Into The Accounts Of The Corporate Debtor And

Borrowings Have Been Declared By Mr. Senthil Kumar To Be On His Personal Behalf.

Therefore, The Resolution Professional Hereby Determine The Claim Of Mr. Mukanchand Bothra, As Financial Creditor, After Having

Regard To All Records And Information Made Available, Clarifications Called For, After Having Give Him Opportunity To Present His Case

And Further Papers In Support Of His Claim, As â??Nilâ?. Even As â??Other Creditorâ? Also, His Claim, Is Not Admissible As There Is No

Evidence Of Money Being Drawn By The Corporate Debtor?â??

(Emphasis Supplied)

6. The Applicants Have Submitted That The Corporate Debtor Had Business Transaction With Them Since 2014 And Used To Borrow Money From

Them As And When Needed For The Business Purpose Of The Corporate Debtor And For Such Business Transactions, The Corporate Debtor

Executed Documents In Their Favour.

7. The Applicants Have Further Submitted That As On 02.08.2016 The Amount Due By The Corporate Debtor Came Up To Rs. 15,00,00,000/- The

Same Was Acknowledged, Admitted By The Managing Director And Director On Behalf Of The Corporate Debtor Vide Letter Dated 02.08.2016.

The Applicants Have Also Referred To A Sale Agreement Entered Into Between The Applicants And The Corporate Debtor Represented By Its

Managing Director And The Other Director, On 02.08.2016 With Respect To The Sale Of The Property I.E., Hotel Legend, Situated At No. 37,

North Boag Road, T. Nagar (Schedule Property), Wherein The Corporate Debtor Has Admitted, Acknowledged The Borrowing And Adjusted Rs.

15,00,00,000/- I.E. Total Liability Payable To The Applicants Till 02.08.2016 Towards The Said Sale Agreement And Fixed The Sale Price Of The

Schedule Property At Rs. 35,00,00,000/-

8. The Applicants Have Submitted That As Per The Sale Agreement 02.08.2016, The Corporate Debtor Had Availed A Loan Of Rs. 15,00,00,000/-

From Indian Overseas Bank, Which The Applicants Had Undertaken To Clear And Settle The Bank Up To The Sum Of Rs. 15,00,00,000/-, After

Such Deduction, There Will Be Balance Of Rs. 5,00,00,000/- That Will Be Payable By The Applicants To The Corporate Debtor. It Is Further

Submitted That The Above Said Rs. 5,00,00,000/- Is The Balance Of Sale Consideration Price Fixed As Per The Sale Value And The Same Was To

Be Paid By The Applicants To The Corporate Debtor On The Condition Provided That There Is No Other Existing Liability Payable By The

Corporate Debtor To Any Other Person Other Than The Bank Charge On The Schedule Property. If Any Liability Arises With Respect To The

Property/Corporate Debtor, The Applicants Had Undertaken To Clear The Same Out Of The Rs. 5,00,00,000/-. If The Outstanding Liabilities Exceed

Rs. 5,00,00,000/- Then The Corporate Debtor Had To Settle The Excessive Amount From His Own Funds. The Applicants Have Submitted That

Having Accepted All These Conditions, The Corporate Debtor Agreed, Undertook And Entered Into A Sale Agreement And Undertook To Complete

And Register The Sale On Or Before 29.05.2017, Since On That Day The Other Director Of The Corporate Debtor Was Arriving From Usa.

9. The Applicants Have Further Submitted That Since There Was No Proper Response From The Managing Director And The Other Director, The

Applicants Have Sent A Notice Dated 20.06.2017 To The Corporate Debtor Intimating Them About Handing Over The Said Matter To The Arbitral

Tribunal As Per The Agreement And The Matter Is Pending Before The Arbitral Tribunal For Adjudication.

10. The Applicants Have Referred To Clause (F) Of Sub-Section (8) Of Section 5 Of The Code And Submitted That Any Amount Raised Under

Any Other Transaction, Including Any Forward Sale Or Purchase Agreement Having Commercial Effect Of Borrowing Comes Under The Purview

Of A Financial Debt. The Applicants Have Alleged That The Respondent Failed To Note That The Corporate Debtor Borrowed Money For Interest

And As Per The Definition Of The Word â??Transactionâ? As Defined Under Section 3(33) Of The Code, It Includes An Agreement Or

Arrangement In Writing For The Transfer Of Assets, Or Funds, Goods Or Services, From Or To The Corporate Debtor; Section 3(34) Further

Defines The Word â??Transferâ?? Which Includes Sale, Purchase, Exchange, Mortgage, Pledge, Gift, Loan Or Any Other Form Of Transfer Of

Right, Title, Possession Or Lien. The Applicants Have Also Referred To Section 3(35) Of The Code, Which Defines â?T?ransfer Of Propertyâ??

As Transfer Of Any Property And Includes A Transfer Of Any Interest In The Property And Creation Of Any Charge Upon Such Property.

11. The Applicants Have Also Placed On Record A Letter Dated, 22.07.2016, Sent By The Corporate Debtor To The Bank Stating That The

Corporate Debtor Has Found An Investor Who Is Willing To Settle The Banks Dues.

12. The Applicants Have Also Referred To The Agenda Of 6th Coc Meeting, Wherein At Page No. 6, Para No. A-05, It Is Mentioned That The Rp

Was Of The View That The Audit Of The Accounts Of The Company Was Not Conducted Properly And Many Material Facts Were Not Disclosed

In The Auditor's Report. Rp Also Stated That The Accounts Of The Company Were Not Audited For The Financial Year Ended 3s1t March 2018.

The Provisional Accounts For The Period 1st April 2018 To 24th July 2018 Have Not Been Signed By Any Of The Directors Of The Company. Rp

Strongly Opined That The Accounts Needed To Be Urgently Compiled For 2017-18 And An Independent Auditor/Firm Should Be Appointed

Immediately For Auditing Of Accounts.

13. Counsel For The Resolution Professional Has Submitted That The Purported Sale Agreement, Relates To The Sale Of Substantial Asset Of

The Corporate Debtor. As Per The Section 180 Of The Companies Act, 2013, The Board Of Directors Has No Power To Enter Sale Of Whole Of

Undertaking Without The Authorization Through Special Resolution. Therefore, The Said Agreement IsV oid In Pursuance Of The Section 180 Of

Companies Act, 2013. The Counsel Has Further Submitted That As Per The Amended Registration Act, 1908, With Effect From 01.12.2012, The

Sale Agreements Are Compulsorily Registrable Documents And Hence The Said Sale Agreement Cannot Be Enforced Further In View Of Want Of

Registration Of The Same.

14. Counsel For The Resolution Professional Has Contended That There Is No Claim Of Interest And No Agreement For Interest Shown In The

Documents Therefore, The Applicant Is Not A Financial Creditor As There Is Absence Of Time Value Of Money. The Counsel Further Submitted

That The Forward Sale Transactions Are Not Related To The Real Estate Transactions And The Same Was Misinterpreted By The Applicant.

Explanation To Section 5(8)(F) Of Ib Code Categorically Provides Inclusion Of Purchase Agreement In Respect Of An Allottee Of Real Estate

Project As Defined In The Real Estate (Regulation And Development) Act, 2016. Applicant's Claim Of Sale Agreement Will Not Come Under The

Purview Of Real Estate (Regulation And Development) Act, 2016 As The Same (Agreement) Is Alleged To Have Purchased A Running Star Hotel.

15. Counsel For The Resolution Professional Has Contended That A Letter To The Bank Dated 22.07.2016 Which States That The Corporate Debtor

Has Found An Investor Who Is Willing To Settle The Bank Dues, Is Puerile And Self Serving, As The Said Document Does Not State That The

Investor Is The Applicant And The Claim Of The Applicant Based On The Said Document Creates Doubt Over The Very Sale Agreement As The

Name Of The Applicant Conspicuously Absent In The Said Letter To The Bank.

16. In Response To The Pendency Of Arbitration Proceedings, The Counsel For The Resolution Professional Has Submitted That As Per The

Arbitration And Conciliation Act, If The Award Is Not Made Within Specified Period Or Extended Period, The Mandate Of The Arbitrator Shall

Terminate Unless The Time Is Extended By The Court And The Claim Of The Applicant That The Arbitral Proceedings Are Pending, Is Against The

Law. It Is Further Submitted That Mandate Of The Arbitrator That Passed The Interim Order Is Already Terminated By Operation Of Law And

Thus Applicant Cannot Rely On The Same And There Is No Need For Challenging

The Said Order Now. Counsel For The Resolution Professional

Has Further Submitted That As Per The Cd's Directors, Applicant Converted The Blank Signed Stamp Paper And Blank Signed Documents, As Sale

Agreement And There Is No Contract For Sale Entered By The Cd. Therefore Cd's Directors Have Also Filed A Complaint O2n1 .07.2017 And

The Applicants Were Arrested Under The Crime Number 233 Of 2017, Which Is Under Investigation.

17. From The Pleadings Of The Parties The Only Issue That Arises For Consideration Is As Follows:

Whether The Claim Of The Applicants Based On An Unregistered Sale Agreement Dated 02.08.2016 And Claim Acknowledgement Letter

Dated 02.08.2016 Is Admissible As Evidence In The Absence Of Entry In The Books Of Account Of The Corporate Debtor?

18. The Factual Detail Is Already Recorded In The Preceding Paragraphs, Therefore, For The Sake Of Brevity The Detail Is Not Reiterated. The

Sale Agreement Dated 02.08.2016 Provides For Total Consideration Of The Schedule Property I.E., Hotel Legend, Situated At No. 37, North Boag

Road, T. Nagar, As Rs. 350000000 (35 Crores) Out Of Which Rs. 150000000 (15crores) Already Paid By The Applicant(S) Was Adjusted And Rs.

150000000 (15 Crores) Was Agreed To Be Paid To Indian Oversee Bank To Which The Schedule Property Was Given As Collateral Against Loan

Obtained By The Corporate Debtor And Balance Rs. 50000000 (Five Crores) Was To Be Paid At The Time Of Execution Of Absolute Sale Deed,

Provided There Are No Other Liabilities. An Amount Of Rs. 150000000 (15 Crores) Already Paid By The Applicants Has Been Admitted (Adjusted)

Under Para 4. Of The Agreement, Which Reads As Follows;

â??The Seller Since 2014 On Various Dates Has Received A Total Sum Of Rs. 15,00,00,000(Fifteen Crores) Till Date From The Purchaser,

The Receipt Of Which Sum The Seller Hereby Acknowledges And Admits And Both Parties Agree And Consent To Adjust The Said Sum Of

Rs. 15,00,00,000/- As Part Sum Towards This Agreement.â??

19. Besides The Above, An Amount Of Rs. 15,00,00,000/-(15 Crores) Already Paid By The Applicant(S), Has Been Admitted In â??Claim

Acknowledgment Letterâ?? Dated 02.08.2016, The Relevant Portion Of Which Is As Follows;

â??This Letter Is Given To You On Behalf Of M/S. Prc International Hotels Pvt. Ltd. In Confirmation With Regarding The Loan That Was

Borrowed By Us From You And Till Date The Outstanding Amount Owned By M/S. Prc International Hotels Pvt. Ltd. To You Is Rs.

15,00,00,000 (Fifteen Crore Only). All The Directors Are Aware Of The Borrowing That We Made For The Business And Development Of

M/S. Prc International Hotels Pvt. Ltd. From You And The Same Is Invested For The Business Of M/S. Prc International Hotels Put Ltd. Only

And We Admit And Acknowledge The Total Outstanding Due As On Date At Rs. 15,00,00,000 (Fifteen Crore Only)â??

20. On Examination, It Is Noted That The â??Agreementâ?? And â??Claim Acknowledgment Letterâ?? Contain The Signatures Of The Then

Managing Director Mr. Senthil Kumar And Director Mr. Kanaka Subbu Ganapathy Along With Seal Of The Corporate Debtor Viz.,P rc

International Hotels Private Limited. Now, In View Of The Above Noted Background This Authority Proceeds To Examine The Issue Framed

Above. The Sale Agreement Dated 02.08.2016 Pertains To Subject Immovable Property And Is Unregistered. In Order To Note The Effect Of An

Unregistered Document Pertaining To Immoveable Property, Which Is Compulsorily Required To Be Registered Under Section 17 Of The

Registration Act, 1908 We Refer To The Provisions Of The Section 49 The Registration Act, Which Provide As Follows:â?

â??The Registration Act, 1908

49. Effect Of Non-Registration Of Documents Required To Be Registered. No Document Required By Section 17 [Or By Any Provision Of

The Transfer Of Property Act, 1882 (4 Of 1882)], To Be Registered Shallâ?

(A) Affect Any Immovable Property Comprised Therein, Or

(B) Confer Any Power To Adopt, Or

(C) Be Received As Evidence Of Any Transaction Affecting Such Property Or Conferring Such Power, Unless It Has Been Registered:

[Provided That An Unregistered Document Affecting Immovable Property And Required By This Act Or The Transfer Of Property Act, 1882

(4 Of 1882), To Be Registered May Be Received As Evidence Of A Contract In A Suit For Specific Performance Under Chapter Ii Of The

Specific Relief Act, 1877 (3 Of 1877) Or As Evidence Of Any Collateral

Transaction Not Required To Be Effected By Registered Instrument.]

21. On Plain Reading Of The Proviso To The Section Noted Above, It Becomes Clear That An Unregistered Document Pertaining To Immoveable

Property, Which Is Compulsorily Required To Be Registered Under Section 17 Of The Registration Act, May Be Received In Evidence Of A

Contract In A Suit For Specific Performance Under Chapter Ii Of The Specific Relief Act, 1877 (3 Of 1877), OAr s Evidence Of Any Collateral

Transaction Not Required To Be Effected By-Registered Instrument.

22. An Identical Issue As Framed Above, Has Come Up For Consideration Before The Hon'ble High Court Of Madras In The Matter ONf.

Muthukumar V. M. Karupapiah In C.R.P.(Md) No. 231 Of 2018 (Pd) And C.P.M.(Md) No. 942 Of 2018, Wherein A Suit Was Filed Only For

Recovery Of Money Paid Under Unregistered Sale Agreement. In The Said Case The Issue Under Consideration In The Revision Petition Filed

Before The Madras High Court Was That Unregistered Sale Agreement Is Not Sufficiently Stamped And Is Compulsorily Required Registration,

Therefore, The Same Is Inadmissible In Evidence. The Hon'ble High Court Of Madrasa Has Held That As Per Article 5(J) Of The Schedule I Of

The Indian Stamp Act, The Stamp Duty For The Sale Agreement Is Rs. 20/- And Unregistered Sale Agreement Was Written On Rs. 20/- Stamp

Paper, Which Was Held To Be Sufficiently Stamped. While Noting The Effect Of An Unregistered Sale Agreement The Hon'ble High Court Has

Referred To The Provisions Of Section 49 Of The Registration Act And Held As Under:

â??From The Above Provision, It Is Clear That An Unregistered Document May Be Received As An Evidence To The Contract In A Suit For

Specific Performance Or As The Evidence Of Any Collateral Transaction Not Required To Be Effected By Registered Instrument. Therefore,

An Unregistered Sale Deed Of An Immovable Property Of The Value Of Rs. 100/- And More Could Be Admitted In Evidence As Evidence Of

A Contract In A Suit For Specific Performance Of The Contract. Such An Unregistered Sale Deed Can Also Be Admitted In Evidence As An

Evidence Of Any Collateral Transaction Not Required To Be Effected By Registered Document. When An Unregistered Sale Deed Is

Tendered In Evidence, Not As Evidence Of A Completed Sale, But As Proof Of An

Oral Agreement Of Sale, The Deed Can Be Received As

Evidence Making An Endorsement That It Is Received Only As Evidence Of An Oral Agreement Of Sale Under The Provision OSef ction

49 Of The Registration Act. Hence,T he Document Sought To Be Marked By The RevisionP etitioner/1st Defendant Can Be Admitted In

Evidence For Collateral Transaction Under Section 49 Of The Registration Actâ?¦â??

(Emphasis Is Supplied)

23. There Are Catena Of Judgements On The Issue Framed Hereinabove And The Opinion That Has Been Formed By The Hon'ble High Court Of

Madras In The Above Noted Case Is A Well Settled Proposition Of Law. In The Case On Hand The Sale Agreement Dated 02.08.2016 Is Written

On The Non-Judicial Stamp Paper Of Rs. 100/- Which As Per Article 5(J) Of Schedule I Of The Indian Stamp Act, 1899 Is Held To Be Sufficiently

Stamped And Even If The Same Is Unregistered, It Is Admissible In Evidence For Collateral Purpose I.E. For Proving The Payment Of Rs.

15,00,00,000 (15 Crores) By The Applicant/Financial Creditor To The Corporate Debtor. This Fact Is Also Corroborated By The â?C?laim

Acknowledgement Letterâ?? Dated 02.08.2016. Moreover, This Authority Has Also Noted That A Communication Dated 22.07.2016 Was Sent By

The Managing Director To Indian Overseas Bank, Which Goes To State That The Managing Director Has Identified An Investor, Who Is Willing To

Pay Bank Dues And Immediately Thereafter On 02.08.2016 The Sale Agreement Was Executed Between The Applicant/Finical Creditor And The

Corporate Debtor Represented By The Managing Director And Director. This Fact Seems To Have Co-Relation With The Purpose Of Execution Of

The Sale Agreement. The Purpose Of Sale Agreement Was The Payment Of Dues Of Indian Overseas Bank To The Tune Of Rs. 15,00,00,000/-

(15 Crores), Which Was Agreed To Be Paid By The Applicant As Mentioned Under Para 2 At Page 2 Of The Sale Agreement.

24. The Corporate Debtor Through The Suspended Directors I.E. Managing Director, Mr. Senthil Kumar And Director, Mr. Kanaka Subbu

Ganapathy, Have Tried To Negate The Claim Of The Applicants/Financial Creditors For An Amount Of Rs. 15,00,00,000/- On The Ground That

They Have Given Blank Stamp Papers And Green Sheets With Their Signatures

And The Seal Of The Corporate Debtor, Which Have Been

Misused By The Applicants/Financial Creditors. The Resolution Professional(S) While Rejecting The Said Claim Has Recorded The Same Reasons

And Added More Reasons Stating That The Payments Were Made By The Applicants In Cash And The Books Of Account Of The Corporate

Debtor Did Not Reflect The Receipt Of Such Payments And The Sale Agreement Is Not Supported By Any â??Board Resolutionâ??, Passed By

The Corporate Debtor.

25. From The Reasons Given By The Suspended Directors And The Resolution Professional(S), It Becomes Clear That The Signatures Of The

Above Mentioned Directors And The Seal Of The Corporate Debtor On The Sale Agreement And Claim Acknowledgement Letter Are Genuine,

Whereas The Recitals In The Said Documents Are Disputed. However, The Said Suspended Directors Or The Resolution Professional(S) Of The

Corporate Debtor Have Failed To Substantiate Their Reasoning With Any Documentary Evidence On The Basis Of Which The Claim Of The

Applicant/Financial Creditor Was Rejected. In Other Words Nothing Was Brought On Record To Establish The Fact Contrary To The Facts

Recorded In The Sale Agreement And The Claim Acknowledgement Letter. Thus, The Language Used In The Documents Itself Is Plain Which

Applies Accurately To The Existing Facts. Therefore, The Documentary Evidence I.E. The Sale Agreement Dated 02.08.2016 And The Claim

Acknowledgement Letter Dated 02.08.2016, With Regard To The Claim Of The Applicants/Financial Creditors For An Amount Of Rs. 15,00,00,000/-

(15 Crores) Is Admissible. It Is Also Noted That In Case The Managing Director And The Director Of The Corporate Debtor Were Forced To Sign

And Give The Blank Documents I.E., The Sale Agreement Dated 02.08.2016 And The Claim Acknowledgement Letter Dated 02.08.2016, As Is

Pleaded By Them, Then As To Why No Appropriate Remedial Measures Were Taken For Almost A Year By The Director Of The Corporate

Debtor Till 21.07.2017 I.E., The Date Of Filing The Complaint Against The Applicants. This Creates Serious Doubt About The Genuineness Of The

Plea Taken By The Suspended Directors Of The Corporate Debtors.

26. In Connection With The Plea Taken By The Resolution Professional That The Payments Made By The Applicants/Financial Creditors Have Not

Been Entered In The Books Of Accounts And There Is No Board Resolution Authorizing The Directors To Enter Into Sale Agreement, It Is

Worthwhile To Mention That In 6th Meeting Of The Coc Held On 11th March 2019 The Resolution Professional Has Submitted Notes On Status Of

Accounts And Audit Of The Company Before The Coc And Stated That The Audit Of The Accounts Of The Company Was Not Conducted

Properly And Many Material Facts Were Not Disclosed In The Auditor's Report, Which Establishes That The Directors Were Not Making

Compliance With The Provisions Of The Companies Act Properly. Therefore, The Failure Of The Directors To Maintain The Proper Record Of The

Corporate Debtor Cannot Be A Valid Ground To Reject The Claim Of The Applicants/Financial Creditors. Further, Minimum Two Directors Are

Required For A Private Company To Pass A Valid Resolution. In The Case On Hand The Fact That The Sale Agreement And The Claim

Acknowledgement Letter Signed By The Managing Director And The Director Having Affixed The Seal Of The Corporate Debtor Leaves No

Doubt, That They (Directors) Have Due Authority To Represent The Corporate Debtor As Mentioned In The Opening Para Of The Sale Agreement

Dated 02.08.2016. Therefore, The Suspended Directors And Resolution Professional(S) Cannot Take A Plea That They Have No Authority To

Execute The Said Documents. It Is Also Not Disputed That The Manager Director And Director Were Entrusted With The Affairs Of The

Company, They Must Be Held To Have Always Represented The Directing Mind And Will Of The Company, Thus The Sale Agreement Dated

02.08.2016 And The Claim Acknowledgement Letter Dated 02.08.2016 Are Held To Be Executed With The Consent Of The Company. Therefore,

The Corporate Debtor Is Estopped From Questioning The Act Of Its Directors Pertaining To The Execution Of The Said Documents Which Are

Evidencing That An Amount Of Rs. 15,00,00,000/- (15 Crores) Has Been Taken From The Applicants/Financial Creditors.

27. The Resolution Professional While Filing Reply To The Application Has Stated That As Per The Corporate Debtor's Directors, The

Applicants/Financial Creditors Have Converted The Blank Signed Paper And Blank Signed Documents As Sale Agreement And There Is No

Contract For Sale Entered By The Corporate Debtor And Directors Have Filed A Complaint Against The Applicants Under Crime No. 233 Of 2017

Which Is Under Investigation. In This Connection The Applicant Has Submitted That The Suspended Directors Whose Names Are Mentioned In The

Sale Agreement And Claim Acknowledgement Letter Referred To Herein Above, Are Habitual Of Making The Allegations That Blank Signed Stamp

Papers And Blank Signed Documents Were Given By Them. A Similar Plea Has Earlier Been Taken By The Suspended Director(S) In The Matter

Of Inderchand D. Kochar V. Puratchidasan (S. Ganapathy Puratchidasan), Reported In Air 2003 Mad 8, Wherein A Suit For A Decree And

Judgement For Rs. 43,79,775/- Together With Further Interest At 30% Per Annum On The Said Amount Till The Date Of Realization, Was Filed

Against The Defendant(S) (Herein Suspended Directors) By A Third Party (Plaintiff). In The Said Matter The Defendant(S) Have Taken The Plea,

â??â?¦ At The Time Of Entering Into The Agreement Of Sale, The Respondent (Plaintiff) Obtained From The First Defendant Signed

Blank, Pro-Notes, Cheques Leave, Blank Signed Stamp Papers, GreenB ond Papers, Etc., As A Condition Precedent For Advancing The

Loan And Now He (Plaintiff) Had Misused The Same To Lend Colour To His False Cas.eâ? The Hon'ble High Court Of Madras Has

Termed The Attitude Of The Defendants (Suspended Directors) As Abhorrent And Directed Them To Deposit Into The Court A Sum Of Rs. 20

Lakhs Within Six Weeks From The Date Of The Order, Failing Which An Advocate-Receiver Was To Be Appointed. From This, It Becomes

Clear That The Suspended Directors Are Habitual Of Taking Such Pleas After Availing Loan/Consideration For Properties And Execution Of Sale

Agreements/Issuance Of Claim Acknowledgements. In Short, The Suspended Directors Utterly Failed To Substantiate Their Pleas With Any Valid

Documentary Evidence And The Defence Taken By Them Is Undoubtedly Spurious, Illusory And A Mere Bluster.

28. In The Light Of The Above, The Exercise Under Taken By The Resolution Professionals To Reject The Claim Of The Applicants/Financial

Creditors Is Without Any Basis. Moreover, The Resolution Professional(S) Has No Adjudicatory Power For Deciding The Issue Pertaining To The

Claim Made. In This Connection Reliance Is Placed On The Judgement Passed By Hon'blSeu preme Court In Writ Petition (Civil) No. 99 Of

2018, Titled Swiss Ribbons Pvt. Ltd. V. Union Of India, Wherein, The Hon'ble Apex Court Has Held That The Resolution Professional Has No

Adjudicatory Power. The Resolution Professional Has To Vet And Verify Claims Made, And Ultimately, Determine The Amount Of Each Claim.

29. In The Light Of The Facts, Circumstances And The Legal Positions Noted Above, The Applicants Are Held Entitled To Their Claim To The

Tune Of Rs. 15,00,00,000/- (15 Crores) As Financial Debt. Therefore, The Letters Dated 17.09.2018, And 27.04.2019 Issued By The Resolution

Professional(S) Rejecting The Claim, Are Declared As Null And Void And Set Aside. Accordingly, The Claim Of The Applicants/Financial Creditors

To The Tune Of Rs. 15,00,00,000 (15 Crores) Stands Admitted.

30. This Authority Takes Judicial Notice That During The Pendency Of This Application, The Resolution Plan Came To Be Approved By The Coc,

Which Has Been Filed Before This Authority Under Section 30(6) Read With Section 31(1) Of The Ibc, 2016. In View Of This Order, The

Resolution Professional Is Directed As Follows:â?

A). To Treat The Applicants At Par With Other Unsecured Financial Creditors And Make The Appropriate Provision For Payment To Which

They Are Entitled, In Consultation With The Coc And The Resolution Applicant, And File The Supplementary Affidavit To That Effect Before

This Authority, Or

B). To Withdraw The Resolution Plan And Constitute The Coc Afresh To Get The Resolution Plan(S) Approved With Suitable Modifications,

As May Be Required.

31. In Terms Of The Above, The Application Ma/518/2018 Stands Disposed Of. There Is No Order As To Costs.

32. The Order Is Pronounced In Open Court.

