

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

TA (AT) No. 218/2021

Company Appeal (AT) (Ins) No. 978/2020

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the Impugned Order dated 13/02/2020 passed in
C.P.(IB) No. 454/7/HDB/2018 by the ‘Adjudicating Authority’, National
Company Law Appellate Tribunal, Hyderabad Bench)**

In the matter of :

- 1. K. SAILENDRA, S/o. Subramanyam,**
Aged about 40 years, Occ: Business,
R/o Flat No. 505, Lake View Residency,
H. No. 1-8-309/1, Street No. 1, Patigadda Road,
Begumpet, Hyderabad – 500 003, T.S. **...Appellant No. 1**
- 2. V. AARTI NARAYANA D/o V. Suryanarayana,**
aged about 35 years, Occ: Employee,
R/o Flat No. 505, Lake View Residency,
H.No. 1-8-309/1, Street No. 1, Patigadda Road,
Begumpet, Hyderabad – 500 003, T.S. **....Appellant No. 2**
- 3. K. SUBRAMANYAM S/o Late K. Prasada Rao,**
Aged about 73 years, Occ: Retired,
R/o Flat Not. 306, Lake View Residency,
H.No. 1-8-309/1, Street No. 1, Patigadda Road,
Begumpet, Hyderabad – 500 003, T.S. **...Appellant No. 3**
- 4. V. LALITHA NARAYANA, W/o V. Suryanarayana,**
Aged about 64 years, Occ: Housewife,
R/o H. No. 1-2-593/54, Gagan Mahal, Domalguda,
Hyderabad – 500 029, T.S. **....Appellant No. 4**

5. N. PAVAN KUMAR, S/o Late N. Rangaiah,

Aged about 54 years, Occ: Business,
R/o H. No. 2-2-12/7, Flat No. 201,
Raghavendra Golden Heights, DD Colony,
Hyderabad – 500 013, T.S.

....Appellant No. 5

6. R. UMAMAHESHWARI, W/o R. Venkat Rao,

R/o B-45, Ved Vihar, AWHO Colony, Subhash Nagar,
Trinulgherry, Secunderabad, T.S.

...Appellant No. 6

7. MURALIDHAR RAO MADDIBOINA S/o Late M. Narayana,

Aged 56 years, Occ: Business,
R/o 16-1-31/2, Opposite 300/2, RT Saidabad,
Near Water Tank, Hyderabad.

...Appellant No. 7

Versus

1. AAYUSIDDHI LIFE SCIENCES PRIVATE LIMITED,

Represented by Interim Resolution Professional
Mr. Venkateswarlu Kari,
Flat No. 406, Everest Block (Block-C),
Aditya Enclave, Biside Mytri Vanam,
Opp. Saradhi Studios, 7-1-618, Ameerpet, Hyderabad – 500 038.
aayucirp@gmail.com;

...Respondent No. 1

2. VENKATESWARLU KARI,

Occ: Interim Resolution Professional of ICAI,
Flat No. 406, Everest Block (Block – C),
Aditya Enclave, Biside Mytri Vanam,
Opp. Saradhi Studios, 7-1-618,
Ameerpet, Hyderabad – 500 038
eMail ID: kariVenkateswarlu@gmail.com

...Respondent No. 2

3. GONDIMALLA MADHU MOHAN, S/o G. Ramaiah Setty,

Aged 55 years, Occ: Tax Consultant,
R/O H. No. 1-8-702/4, Flat No. 101 & 103,
Vijetha Maduram, Near Shankermutt,
Nallakunta, Hyderabad - 500 044.
eMail ID : gmadhuma@gmail.com

...Respondent No. 3

4. KOLANU JAYA REDDY, D/o Kallu Damodher Reddy

Aged 48 years, Occ.: Business,
R/o H. No. 16-11/20/7/0/1, Flat No. 401,
BMP Shruthi Apartments, Saleemnagar Colony,
Malakpet, Hyderabad – 500 044.
eMail ID : jayareddykallu@yahoo.com;

...Respondent No. 4

5. K. SUBBA REDDY, S/o Masi Reddy,

Aged 63 years, Occ. : Business,
R/o #2-2-20/20, Flat No. 303, DD Colony,
Baghamberpet, Hyderabad, T.S.
eMail ID : kothakotasubbareddyksr@gmail.com

...Respondent No. 5

6. PABBA AMARNATH, S/o P. Bramhanandam,

Aged 48 years, Occ.: Business,
R/o #3-5-6847, Narayanaguda, Hyderabad, T.S.
eMail ID: pabbamarnath@gmail.com

....Respondent No. 6

Present:

For Appellants	:	Mr. Srinivasaraju Chitrapu, Advocate
For Respondents	:	Mr. Vakiti Vineeth Reddy and Mr. Avinash Krishnan Ravi, Advocates For Ms. K Sandhya Rani, Advocates for R1 Mr. S Chidambaram PCS-R3, R4 Mr. Arpit Shukla, Advocate for R5, R6

J U D G M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Challenge in this Appeal is to the Impugned Order dated 13/02/2020 passed in C.P.(IB) No. 454/7/HDB/2018 by the National Company Law Appellate Tribunal, Hyderabad Bench, by which Order the ‘Adjudicating Authority’ has admitted the Application preferred by the Respondents / Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’) against M/s. Aayusiddhi Life Sciences Private Limited / the Appellant / the Corporate Debtor.

2. The ‘Adjudicating Authority’ while admitting the Application has observed as follows:

“9. It is the case of the Petitioners that they provided finances to the Corporate Debtor on the basis of the request received from the Managing Director of the Corporate Debtor vide letter dated 08.11.2011 for sustaining the operation of the Corporate Debtor, and that Funds to the tune of Rs. 5 Crores were sought for. These funds were having time value of money and interest @ 12% was to be paid by the Corporate Debtor. The funds were made available in various tranches by the petitioners either by way of discharge of liabilities of the Corporate Debtor or lending directly to the Corporate Debtor by way of cheques/bank transfer. The Petitioners have claimed that as on

31.03.2016, a total sum of Rs. 2,39,59,045/- is owed by the Corporate Debtor to the Petitioners.

10. The Corporate Debtor on the other hand have denied any liabilities to the Petitioners and have made claims based on Secretarial Due Diligence Report and Financial Due Diligence Report of 2015, that the Petitioners, who were part of the Board of Directors of the Corporate Debtor at relevant time have committed financial fraud and that they are not owed any money by the Corporate Debtor. They claimed that no shred of evidence has been filed by the Petitioners to establish the debt claimed.

11. The Petitioner's counsel filed a memo dated 22.08.2019, wherein it has been submitted that the Corporate Debtor have themselves admitted by way of publication of their Balance Sheet as on 31.03.2016 that total unsecured loan taken from related parties stands at Rs.3,86,42,365/- and that the break-up of the same clearly indicates that the Petitioners are owed a total sum of Rs.2,39,58,045/- by the Corporate Debtor. A copy of the ledger account "unsecured loans group summary for the period of 01.04.2015 to 31.03.2016" has also been filed by the Petitioner as evidence, which has not been disputed by the Corporate Debtor.

12. However, a petition under section 131 of the Companies Act, 2013 has been filed by the Corporate Debtor for revision of accounts, the maintainability of which is under challenge.

13. Considering the fact that Petitioners have been shown as unsecured related party creditors of the Corporate Debtor in its Balance Sheet, which has not been challenged by the Corporate Debtor, this Adjudicating Authority is of the view that the Petitioners are Financial Creditors of the Corporate Debtor to the extent of financial debts

admitted in the Book of Accounts of the Corporate Debtor. Accordingly, this Adjudicating Authority is inclined to admit the instant application filed under section 7 of the Code.”

3. The Learned Counsel for the Appellant submitted that the Corporate Debtor Company was incorporated as M/s V.K. Drugs Private Limited on 17/05/2006 and the fourth Respondent's sister, Mrs. K. Vijaya Reddy was the Managing Director. Respondents No. 3 & 4 are partners of a Tax Consultancy Firm, M/s. G. Madhu Mohan and Company and were the Managing Directors of the Corporate Debtor Company. It is stated that the Financial Statements of the Corporate Debtor for the Financial Years from 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 at one go on 28/03/2014 and on 29/03/2014. Thereafter, Mrs. K. Vijaya Reddy resigned and the first Appellant who was availing Tax Consultancy Services from third and fourth Respondents Firm was made to invest in the Corporate Debtor Company and named as a Managing Director. Respondent Nos. 3 & 4, later joined as Directors.

4. It is vehemently contended by the Learned Counsel for the first Appellant that the first Appellant in blind belief, has signed the balance sheets in one go and blindly believed Respondent Nos. 3 & 4 continued to manage the affairs of the Company. The Investigative Auditors Report dated 01/08/2018 given by M/s. NSVR and Associates (LLP) for the Financial Years 2012-2013, 2013-2014 and 2014-2015 reveal that Respondent Nos. 3 & 4 in collusion has misappropriated a sum of

Rs. 4,77,02,727/-. Subsequently, Respondent No. 3 to 6 conspired with each other and had initially filed a Section 7 Application, namely C.P.(IB) No. 81/7/HBD/2017 on 16/05/2017, which was contested by the Corporate Debtor but was subsequently withdrawn where the ‘Adjudicating Authority’ had made observations against the Respondents vide Order dated 08/08/2017. Thereafter, the same Respondents filed this second Section 7 Application on 06/08/2018 claiming an amount of Rs. 3,86,42,365/- to avoid any action to be taken against them for recovery of the misappropriated sums of Rs. 4,77,02,727/-. Respondent Nos. 3 to 6 relied upon the Financial Statements for the Financial Years, 2012-2013, 2013-2014, 2014-2015, 2015-2016 which reflects the fraudulent entries as explained in the Investigative Auditors Report dated 01/08/2018 which shows that the Claim is fraudulent and that the Respondents are liable to pay Rs. 4,77,02,727/- to the Corporate Debtor. It is further submitted that after completing the Pleadings on both sides, the Respondents submitted a Resolution dated 07/11/2011 and 08/11/2011 which was not part of the Registrar of Companies (“RoC”) records and do not establish any contractual relation of lending. Without considering Investigative Audit Report dated 01/08/2018 and pendency of C.A. 162/130/HDB/2019, filed for reopening of the Books of Accounts of the Corporate Debtor for the Financial Years 2012-2016 on the ground of fraud, the Section 7 Application was erroneously allowed on 13/02/2020, mainly on the ground that the balance sheets are valid acknowledgement

of Debt. The fact that they show liability due to the fraud played by the Respondents was not considered by the ‘Adjudicating Authority’ and also did not refer to the C.A. 162/130/HDB/2019 which was pending.

5. It is strenuously argued by the Learned Counsel for the Appellant that C.A. 162/130/HDB/2019 was filed for reopening of the very same Books of Accounts on which the Respondents had relied upon. It was only because the Respondents could not satisfy the ‘Adjudicating Authority’ that they were compelled to withdraw the Section 7 Application which was permitted by the ‘Adjudicating Authority’ with serious remarks vide Order dated 16/05/2017. It is an abuse of process to relitigate, in support of which submission the Learned Counsel for the Appellant placed reliance on the following Judgments:

- ***K.K. Modi v. K.N. Modi [(1998) 3 SCC 573]***
- ***IBA Health (India) Private Limited v. Info-Drive Systems SDN. BHD. [(2010) 10 SCC 553]***
- ***Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd. [(2021) 10 SCC 483]***
- ***Pawan Kumar v. Utsav Securities Pvt. Ltd. CA (AT) (Ins) No.251 of 2020, NCLAT, Principal Bench, New Delhi***

6. It is continuously argued by the Learned Counsel that there is no contract and hence no breach under Section 3 (6) (b) of the Code and there is no right to make a

Claim and therefore, there is no Debt with obligation to repay under Section 3 (11) of the Code and the Respondents, hence, are not Creditors under Section 3 (10) of the Code. The amount does not become due and payable and hence there is no Default under Section 3 (12) of the Code. There is no consideration received from the Respondent Nos. 3 to 6 and they are not Financial Creditors under Section 5 (7) of the Code as no amount was borrowed nor was any amount paid by Respondent Nos. 3 to 6 to the Corporate Debtors. The Claim is based only on the figures reflected in the balance sheets which was caused due to fraud played by Respondent Nos. 3 and 4 in collusion with the other Respondents. Acknowledgement of Debt should also be free from limitation and the Learned Counsel placed reliance on the Judgment in the matter of '*Jignesh Shah and another v. UoI and another*' reported in [(2019) 10 SCC 750] and in the matter of '*Reliance Asset Reconstruction Company Limited v. Hotel Pooja International Private Limited*' reported in [(2021) 7 SCC 352]. The Learned Counsel for the Appellant also placed reliance on the Judgment of the Hon'ble Supreme Court of High Court in the matter of '*S.P. Chengalvaraya Naidu v. Jagannath*' reported in [(1994) 1 SCC 1] in which it is held that the issues of fraud go to the root of the matter and that fraud vitiate every solemn act. In '*Asset Reconstruction Company (India) Limited v. Bishal Jaiswal*' reported in [(2021) 6 SCC 366], it is held that balance sheets should be read with Audit Reports and in this case, the 'Adjudicating Authority' has erred in not reading


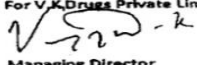

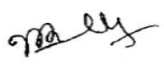

the same with the Investigative Audit Report, dated 01/08/2018 and keeping C.A. 162/130/HDB/2019 pending prior to the admission of the Section 7 Application.

7. The Learned Practicing Company Secretary appearing for the Respondents submitted that the Board Resolution was passed by the Company giving power to the Managing Director to borrow Rs. 5 Crores and immediately borrow Rs. 4 Crores from time to time depending on the needs of the Company. The balance sheets for the year 2014-2015 reveals that the following amounts are due :-

<i>Name</i>	<i>Amount</i>
<i>G.Madhusudhan Rao (R-3)</i>	<i>2,10,28,045</i>
<i>K.Jaya Reddy (R-4)</i>	<i>15,80,000</i>
<i>K. Subba Reddy (R-5)</i>	<i>3,00,000</i>
<i>K. Subba reddy HUF(R-5)</i>	<i>8,00,000</i>
<i>Amarnath Pabba(R-6)</i>	<i>2,50,000</i>

8. It is submitted that the balance sheets were duly authenticated by the Managing Director Mr. Sailendra and Ms. M. Hemalatha, Chartered Accountant. It is also contended that the Corporate Debtor has no dispute that as on 31/03/2016, an amount of Rs. 2,39,58,045/- was owed, an amount of Rs. 2,10,28,045/- is shown as outstanding against Mr. G. Madhu Mohan and even the other amounts as reflected in the aforementioned table are shown as outstanding. There is also a request for repayment by the aforementioned names by an email sent and also by Registered Post. It is submitted that a Petition under Section 131 has been closed as withdrawn and the

Petitioners themselves. The Learned Practicing Company Secretary appearing for the Respondents drew our attention to the letters dated 08/08/2016 from Mr. G. Madhu Mohan to the Board of Directors of the Corporate Debtor Company and also the letter dated 08/11/2011 in support of his case that the said amounts were taken as unsecured loans by the Company. The letter relied upon by the Respondents is detailed as hereunder:

 V.K. DRUGS PVT. LTD.	Survey No. 533 (Part), Behind Pharamaids (P) Ltd., Near Cozy Park, Kondamadugu Village, Bibi Nagar Mandal, Nalgonda Dist.
Date: 08.11.2011	
<p>From: K.Vijaya Reddy, Managing Director, V.K. Drugs Pvt. Ltd., Survey No. 533 (Part), Behind Pharamaids (P) Ltd., Near Cozy Park, Kondamadugu Village, Bibi Nagar Mandal, Nalgonda Dist.</p> <p>To Mr. G. Madhu Mohan, D.No. 1-8-702/4, Flat No. 103, Vijatha Madhuram Apartments, Nellakunta, Hyderabad - 500044.</p> <p>Sir,</p> <p>Subject: Requisition for funds Regarding</p> <p>Our company is in need of funds to sustain the operations.</p> <p>Kindly arrange to lend a sum of <u>Rs. 3 Crores</u> either directly or indirectly or through your associates. The payment may be made in several tranches and if required on our account be discharge company's creditors.</p> <p>We undertake to return the borrowals along with interest of 12% at the time of repayment.</p> <p>Thanking you,</p> <p>Yours faithfully,</p> <p>For V.K. Drugs Private Limited  Managing Director</p> <p> </p> <p></p>	

9. It is submitted that the Ledger Account on unsecured outstanding as on 31/03/2016 shows Rs. 2,39,58,045/- and therefore, the 'Adjudicating Authority' was right in taking into consideration this amount which was mentioned in the balance sheet of 31/03/2016. The total unsecured loan taken from related Parties in the balance sheet is at Rs. 3,86,42,365/- and the break-up of the same clearly indicates that the Petitioners owe a total sum of Rs. 2,39,58,045/- by the Corporate Debtor and therefore based on the ratio of the Hon'ble Supreme Court in the matter of '**Innovative Industries Ltd. Vs. ICICI Bank & Anr**' reported in [(2018) 1 SCC 407] at Para 27, the 'Adjudicating Authority' has rightly seen the date of Default and has admitted the Section 7 Application. It is further submitted that the IBC Proceedings are summary Proceedings and fraud and other interrogative remedies can be awarded only by a Civil Court. The Learned Practicing Company Secretary placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of '**M/s. Radha Exports (India) Pvt limited Vs. K.P. Jayaram & Anr**', in Civil Appeal No. 7474 of 2019 in which the Hon'ble Supreme Court in Para 39 held as under:-

"39....Disputes as to whether the signatures of the respondents are forged or whether records have been fabricated can be adjudicated upon evidence including forensic evidence in a regular suit and not in proceedings under Section 7 of the IBC. "

10. The Learned Practicing Company Secretary also placed reliance on the Judgment of this Tribunal in the matter of '*Indo Allusys Industries Limited v. SMW Metal Private Limited*' in *Company Appeal (AT) (Ins) No. 409/2019*, wherein paras 8 and 9, it was observed as follows:

"9. We also find that there was a pre-existing contested dispute and the Adjudicating Authority rightly held that it could not quantify the liability, which would be matter of trial. Appellant calculated dues keeping in view MoU contents of which Respondent disputed before Notice under Section 8 of IBC was sent.

10. We do not find any reason to interfere with the impugned order. There is no substance in the Appeal. The Appeal is dismissed. No order as to costs."

Evaluation :

11. It is the main case of the Appellant that C.A. 162/130/HDB/2019, filed under Section 130 of the Companies Act, 2013 seeking reopening of Accounts with the Order of the Tribunal, was kept pending and Section 7 was erroneously admitted only based on the Financial Statements of the Years 2012-2016, which the Appellant was challenging as 'fraudulent' in C.A. 162/130/HDB/2019. The brief history of the earlier Section 7 Application, i.e. C.P. (IB)81/7/HDB/2017 filed on 16/05/2017 and withdrawn on 08/08/2017 with some observations made by the 'Adjudicating Authority' is reproduced as hereunder:-

“

8. *During the hearing held on 15.06.2017, the Learned Counsel for the Petitioners submitted that Petitioners already complied with the requisite condition with regard to IBC. However, Bench was not satisfied with the compliance. The Learned Counsel for the Petitioners, therefore, requested some more time to submit the requisite documents/clarify the legal position regarding maintainability of the case. Petitioners were directed to take personal notice to the Corporate Debtor and submit proof of service before the next date of hearing and case was posted on 21.06.2017.*
9. *During the hearing held on 21.07.2017, the Learned Counsel for the Respondent took notice for the Respondent and requested one week time to file his reply. The Learned Counsel for the Petitioners was also directed to submit necessary documents on legal position as per Central Government Rules dated 07.12.2016, and case was posted/adjourned on various occasions as requested by the Counsels on 28.06.2017, 30.06.2017 and 04.07.2017.*
10. *During the hearing held on 04.07.2017, the Learned Counsel for the Corporate Debtor, Shri. Y. Suryanarayana, submitted that he was going to file reply on same day and on request of both the Counsels, matter was posted on 06.07.2017, and again on request of both the Counsels on 06.07.2017, case was posted on 24.07.2017.*
11. *During the hearing held on 24.07.2017, the Learned Counsel for the Petitioners wanted to file a Rejoinder and same was allowed and*

matter was posted on 28.07.2017, and again the matter was posted on 02.08.2017 and 04.08.2017.

12. During the hearing held on 04.08.2017, it was recorded that the objection raised by the Registry was not complied with and matter was posted on 08.08.2017.

13. During the hearing held on 08.08.2017, Shri Y. Suryanarayana, Learned Counsel for the Respondent disputed about the claim of the Petitioners and also issue of share certificates. Shri. A. Nagaraj Kumar, Learned Counsel for the Petitioners, after hearing all the contentions of the Respondent, decided to withdraw the present Company Petition bearing CP(IB)81/7/HDB/2017, requesting to file a fresh application after complying with all the defects and also sought liberty to file a fresh application.

14. Heard Shri A. Nagaraj Kumar, Learned Counsel for the Petitioners and Shri Y. Suryanarayana, Learned Counsel for the Respondent and perused all the documents submitted by the counsels filed in the above Company Petition bearing CP No. CP(IB)/81/7/HDB/2017.

15. In the above facts and circumstances of the case and as prayed by the Learned Counsel for the Petitioners, we permit the Petitioners to withdraw present Company Petition with a liberty to file afresh in accordance with the law. Accordingly the CP No. CP(IB)/81/7/HDB/2017 is disposed off as withdrawn.

16. No order as to costs.”

12. A brief perusal of the Pleadings in the earlier Application shows that the Corporate Debtor had raised the very same contention that the amount of Rs. 2,10,28,045/- which is alleged to be unsecured loan comprising of illegal payments, made to the third parties, whereby finished goods of the Company were sold in cash without recording the same in the Books of the Company; cash amounts so realised were deposited in the personal accounts of the Applicant / Creditors and brought back to the Company under the head, 'Unsecured Loans'. The 'Adjudicating Authority' not satisfied with respect to the submission of the required documents, there is a question of maintainability of the Petition and the Applicant / the Respondents herein did not comply with the objections raised by the Registry and sought to *withdraw the Petition* with a liberty to file afresh Petition in accordance with Law. It is significant to mention that this withdrawal of the earlier Section 7 Petition is dated 08/08/2017. Thereafter, the Respondents filed a Resolution dated 07/11/2011 which was not part of the records in the first round of litigation and was filed in this second round of litigation as a part of the 'Rejoinder'.

13. It is the main case of the Respondents that an amount of Rs. 4 Crores was lent to the Corporate Debtor Company based on a Resolution passed by the Board of Directors on 07/11/2011. Curiously, this document was neither filed before the RoC nor was it a part of the Section 7 Application filed earlier or even part of the present Application, but was only filed along with the 'Rejoinder'.

14. Be that as it may, the Appellant had filed C.A. 162/130/HDB/2019 under Section 130 of the Companies Act, 2013 seeking reopening of the Books of Accounts on the Order of the Tribunal. For better understanding of the case, the relevant portion of Section 30 of the Act is reproduced as hereunder:-

“130. (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

(2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.”

(Emphasis Supplied)

15. The reliefs sought in this C.A. 162/130/HDB/2019 was to direct the Company to reopen the Accounts for Financial Years 2012-2013, 2013-2014 and 2014-2015. In this Interim Application filed by the Suspended Director, the ‘discrepancies’ in the Financial Statements were referred together with the Investigative Audit Report conducted by an independent Chartered Accountant Firm, M/s. NSVR and Associates (LLP), which Report shows the acts of the Respondents to be fraudulent and states that there is falsification of the Books of Accounts. The Learned Counsel for the Appellant drew our attention to the claim made by Mr. G. Madhu Mohan, which has been shown as unsecured loan, which is detailed as hereunder:-

<i>Particulars</i>		<i>Amount in Rs.</i>
<i>Unsecured loans directly paid to Aayusiddhi</i>		<i>1,07,62,000</i>
<i>Repayment of outstanding dues to Aayusiddhi creditors</i>		<i>2,74,65,773</i>
		<i>3,82,27,773</i>
<i>Unsecured loan refunded by Aayusiddhi</i>	<i>58,99,728</i>	
<i>Equity shares allotted by Aayusiddhi</i>	<i>1,13,00,000</i>	<i>1,71,99,728</i>
<i>Amount claimed for payment of Aayusiddhi vendors and unsecured loans. (as per Aayusiddhi audited financial statements FY 2014-15 and FY 2015-16)</i>		<i>2,10,28,045</i>

16. It is the case of the Appellant that the payments are not related to the Company's expenditure and that they were credited to M/s. G. Madhu Mohan's loan account and that there were manipulations in the sale and purchase transactions which was reflected in detail in the Investigative Audit Report.

17. On a pointed query from the bench to the Learned Practicing Company Secretary for the Respondent, as to whether any Reply was filed to this C.A. 162/130/HDB/2019 before the 'Adjudicating Authority', the Learned Company Secretary submitted that a Reply was filed stating that the Company cannot reopen its Books of Accounts or recasts its Financial Statements unless there is an Order made by a Court of Competent Jurisdiction or the Tribunal, but in the instant case, there was no Order by the NCLT.

18. There is no denial that the Resolution dated 07/11/2011 and letter dated 08/11/2011 were subsequently filed in the second round of litigation as part of the 'Rejoinder' after the completion of the 'Pleadings'. At the time of admission of the Appeal, it is significant to mention that vide Order dated 17/11/2020, a three Member Bench of the Principal Bench, NCLAT has observed as follows:

"...Apart from other questions the issue raised in this appeal against admission of application under Section 7 of the I&B Code by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench in terms of the impugned order dated 13th February, 2020 is that the Investigation Audit Report clearly demonstrates that the claim is

fraudulent and fictitious documents have been relied upon.

Issue notice upon Respondents. Appellant to provide mobile Nos./e-mail address of the Respondents. Notice be issued through e-mail or any other available mode. Requisites along with process fee be filed within three days.

Prayer made in I.A. No. 2678 of 2020 for summoning of documents does not fall within the provisions of I&B Code and same is declined. I.A. No. 2678 of 2020 stands disposed of.

I.A. No. 2680 of 2020 seeking exemption from filing typed copies of the documents is disposed of with direction to the Appellant to file typed copies within two weeks. I.A. No. 2681 of 2020 seeking exemption from filing certified copy of the impugned order is disposed of with direction to the Appellant to file certified copy of the impugned order within two weeks.

I.A. No. 2676 of 2020 is disposed of with interim direction that any action taken during the Corporate Insolvency Resolution Process will be subject to outcome of this appeal.

List the matter 'for admission (after notice)' on 7th January, 2021."

(Emphasis Supplied)

19. It is clear that there was an interim direction given by the three Member Bench of the Principal Bench, NCLAT dated 17/11/2020 that any action taken during the CIRP would be subject to the outcome of this Appeal. This Order was not challenged and the interim direction stands as of today.

20. It is pertinent to mention that the ‘Adjudicating Authority’ has not given any finding on the said Application but has only noted in Para 12 as follows:

“12. However, a petition under section 131 of the Companies Act, 2013 has been filed by the Corporate Debtor for revision of accounts, the maintainability of which is under challenge.”

21. Having regard to the chequered history of the case, the Investigative Auditors Report which is dated 01/08/2018 and immediately a week thereafter the second Section 7 Application was filed before the ‘Adjudicating Authority’ and C.A. 162/130/HDB/2019 seeking reopening of the Books of Accounts under Section 130 of the Companies Act, 2013 was filed by the Appellant on 26/11/2018 and the Order of the ‘Admission’ under Section 7 of the Code was passed on 13/02/2020, which Impugned Order does not refer to adjudication of C.A. 162/130/HDB/2019, this Tribunal is of the considered view that the issues raised by the Appellant regarding ‘transactions’ and ‘entries in the Financial Books’ require Consideration. This Tribunal is of the considered view that the ‘Adjudicating Authority’ ought to have adjudicated C.A. 162/130/HDB/2019 which was kept pending from 26/11/2018 to 13/02/2020 before deciding the Section 7 Petition.

22. For all the foregoing reasons, this Appeal is allowed and the Impugned Order of the Adjudicating Authority is set aside and the matter is remanded to the ‘Adjudicating Authority’ to decide C.A. 162/130/HDB/2019 and then adjudicate the Section 7 Application, in accordance with Law. Needless to add, this Tribunal has

not delved deep into the merits of the matter and has also not given any finding / observation regarding 'Debt' and 'Default', but it is only being observed that the allegations raised by the Appellant are required to be examined. The 'Adjudicating Authority' shall decide the matter as expeditiously as practicable, uninfluenced by any observations made in this Judgment. Both sides are requested to appear before the 'Adjudicating Authority' on 16/10/2023.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

04/10/2023
SPR/TM