

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
SPECIAL BENCH ( URGENT HEARINGS )**

**CORAM: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRIVEERA BRAHMA RAO AREKAPUDI- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 09.07. 2020 AT 11.00 A.M.

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 181 /2020 in CP (IB) No. 35/7/HDB/2020
NAME OF THE COMPANY	Brightcom Group Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Brightcom Group Ltd
UNDER SECTION	7 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature


**ORDER**

Matter is taken up through video conference.

Orders passed in IA No.181/2020, vide separate orders.

Main matter is listed for hearing on 28.07.2020.

  
Member(Technical)

  
Member(Judicial)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**IA No.181 OF 2020  
in  
C.P (IB) No. 35/7/HDB/2020**

Under section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

**In the matter between:**

Axis Bank Limited  
"Trishul", 3<sup>rd</sup> Floor  
Opposite Samartheswar Temple  
Law Garden, Ellis Bridge  
Ahmedabad - 380006.

**.. Applicant/  
Financial Creditor**

**AND**

Brightcom Group Limited  
Floor 5, Holiday Inn Express and Suits  
Road No.2, Nanakramguda  
Gachibowli  
Hyderabad - 500032, Telangana.

**.. Respondent/  
Corporate Debtor**

**Date of order:09.07.2020**

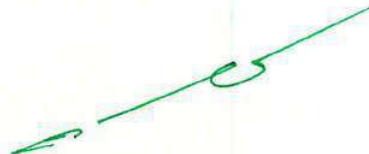
**Coram:**

**HON'BLE SHRI RATAKONDA MURALI, MEMBER (JUDICIAL)  
and  
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,  
MEMBER (TECHNICAL).**

**Parties / Counsels Present:**

**For the Applicant :** Mr. VVSN Raju. Advocate.  
**For the Respondent :** Mr. S. Nagesh Reddy, Advocate.

**Per: HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI, MEMBER  
(TECHNICAL).**



**Heard on:** 23.06.2020 and 30.06.2020.

**ORDER**

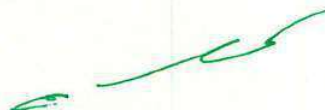
The present is the application filed by the Financial Creditor/ original petitioner in CP (IB) No.35/7/ HDB/ 2020, well within limitation, praying for necessary direction to the respondent/ Corporate Debtor to deposit the proceeds of issuance of equity shares into the account held with the applicant/ Financial Creditor, not to utilize the proceeds of issuance of equity shares for any purpose other than to repay the amounts due to the Financial Creditor, and to restrain the Corporate Debtor from alienating any of its assets, pending disposal of the application for admitting the Corporate Debtor to CIRP.

2. The applicant is the Financial Creditor of the respondent. It has its registered office at the address mentioned in the cause title. It has filed the captioned petition against the respondent. The respondent is the Corporate Debtor incorporated under the Companies Act, 1956, having its registered office as mentioned in the cause title.

**3. Averments made in IA No.181 of 2020.**

3.1 The applicant herein has filed the above Company Petition under section 7 of the I&B Code for admitting the Corporate Debtor to CIRP. The respondent/ Corporate Debtor has availed loans from the applicant/ Financial Creditor and an amount of **Rs.41,16,70,688.53** allegedly remains unpaid by the Corporate Debtor to the Financial Creditor as on 30.11.2019.

3.2 The respondent/ Corporate Debtor proposes to issue 3,14,00,000 equity shares of face value of Rs.2/- each at Rs.10/- per share, at a premium of Rs.8/- on a preferential basis to Muskaan Ltd. and others for raising an amount of Rs.31,40,00,000/-. Notice of Postal Ballot for the said proposal is at ANNEXURE 'I' to this application, the relevant portion of which is as under:



**“Objects of the issue:**

The funds will be used in reduction of the bank debt and to meet other financial obligations of the company at the standalone level. . . .”

3.3 It is submitted that the voting period for the same ended on 20.02.2020 and that the applicant has apprehension that the Corporate Debtor may divert funds received by said issuance of equity shares for the purpose other than repayment of dues to the Financial Creditor.

3.4 It is contended in para 5(vi) of the application that RBI has issued Circular dated 15.05.2004 (ANNEXURE-II), which was reiterated vide its letter dated 02.07.2015 (ANNEXURE-III), whereby Banks have been advised to ensure that they do not open current accounts for entities which enjoy fund based or non-fund based credit facilities from other banks without specifically obtaining No Objection Certificate (NOC) from the lending bank. The Corporate Debtor herein has Current Account with the Financial Creditor and that the applicant/ Financial Creditor has neither received any request for NOC nor any intimation with regard to issuance of equity shares on preferential basis. Such a conduct of the Corporate Debtor turned the applicant apprehensive that the Corporate Debtor may divert said funds for purpose other than repayment of dues to the applicant/ Financial Creditor.

3.5 It is contended in para 5(vii) of the application the applicant relies on a letter dated 06.10.2009 (ANNEXURE-IV) duly signed by the Corporate Debtor accepting the term that the respondent/ Corporate Debtor shall conduct its entire banking business with the Financial Creditor only.

3.6 It is contended in para 5(viii) of the application that the applicant has received various Garnishee Notices under section 226(3) of the Income Tax Act, 1961 from the Income Tax Department, including Notice dated 26.07.2016 (ANNEXURE-IV) for an amount of Rs.8,38,18,740/-, and Notice dated 23.08.2017 (ANNEXURE-V) for an amount of Rs.8,28,46,000/-.



3.7 It is contended in para 5(ix) of the application that the Tribunal is competent to grant interim relief under Rule 11 of the NCLT Rules, 2016, which reads as follows:

**“11. Inherent Powers:** *Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or prevent abuse of the process of the Tribunal.”*

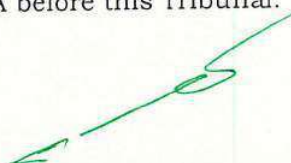
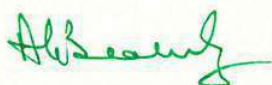
3.8 In para 5(x) of the application the applicant relied on decision of the Hon'ble NCLAT in the matter of **NUI PULP AND PAPER INDUSTRIES PVT LTD Vs. ROXCEL TRADING GMBH**, Company Appeal (AT) (Insolvency) No.664 of 2019, wherein it is provided that NCLT is competent to pass interim orders. It is held in the said decision as follows:

*“10. From the aforesaid provisions, it is clear that once an application under section 7 or 9 is filed by the Adjudicating Authority, it is not necessary for the Adjudicating Authority to await hearing of the parties for passing order of ‘Moratorium’ under section 14 of the ‘I&B Code’. To ensure that one or other party may not abuse the process of the Tribunal or for meeting the ends of justice, it is always open to the Tribunal to pass appropriate order.”*

3.9 The applicant, therefore, contends that if the respondent is allowed to continue with the said issuance of equity shares without interim order about utility of such funds, it would lead to great loss to the Financial Creditor. Hence the present application.

#### **4. REPLY DATED 02.03.2020 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.**

4.1 It is averred in para 3 of the Reply that the Financial Creditor has preferred OA No.3756 of 2017 before the Debt Recovery Tribunal-II, Hyderabad, during the pendency of which the present Company Petition is filed before this Tribunal. The Financial Creditor has filed IA No.831 of 2020 in said OA No.3756 of 2017 before Debt Recovery Tribunal-II, Hyderabad. Unable to get an order from the Debt Recovery Tribunal-II, Hyderabad and suppressing the fact of proceedings before Debt Recovery Tribunal, the applicant has filed the present IA before this Tribunal.




4.2 The Corporate Debtor proposed issuance of equity shares on preferential basis for raising investments. For the said purpose the Corporate Debtor has filed application with NSE and BSE seeking necessary approvals. The said application is pending.

4.3 In para 4 of the Reply the respondent has sought dismissal of IA No.181 of 2020 on the following grounds:

- The Company Petition filed by the applicant is not a money recovery proceeding, but it is for initiation of CIRP. In such a petition any restraint on alienation of assets cannot be claimed.
- The Financial Creditor has not filed any proof of evidence to show that the Corporate Debtor is trying to alienate its assets.
- Sale of assets has not been done by the Corporate Debtor after filing of the Company Petition.
- Mere proposal for issuance of equity shares on preferential basis for investment does not amount of alienation of assets.
- Approvals from NSE/ BSE is awaited and process of issuance of equity shares has not yet commenced. No funds are deposited. In such a scenario the relief claimed by the Financial Creditor is based on mere projections.
- The Financial Creditor is doing forum shopping suppressing the proceedings preferred by it before Debt Recovery Tribunal. Thereby doctrine res subjudice is applicable in the present case.
- The Financial Creditor has not produced any documentary proof that the Corporate Debtor is alienating its assets.

4.4 In para 6 of the Reply the Corporate Debtor denied unpaid dues of Rs.41,16,70,688.53 and submitted that after approval of OTS Proposal for Rs.22.5 crores, the Corporate Debtor had paid Rs.14 crores and only Rs.8.5 crores remained unpaid.



4.5 In para 7 of the Reply it is contended that the Corporate Debtor has filed application with NSE and BSE seeking approval for issuance of equity shares on preferential basis for bringing investments into the company, which is not detrimental to the interests of the Financial Creditor. The Corporate Debtor has no large creditor and the asset value of the Corporate Debtor in Balance Sheet of the Corporate Debtor is much more than the alleged claim of the Financial Creditor.

4.6 In paras 8 and 9 of the Reply the Corporate Debtor has relied on Rule 13(1) of the Companies (Share Capital and Debentures) Rules, 2014, which provides issuance of shares on preferential basis subject to compliance of section 42 of the Companies Act. Said section 42 provides that,

*“ .. .. monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than –*

*(a) For adjustment against allotment of securities; or*

*(b) For the repayment of monies where the company is unable to allot securities.”*

4.7 In para 10 of the Reply it is contended that neither the RBI Circular dated 02.07.2015 relied upon by the applicant/ Financial Creditor nor any other law mandated the respondent/ Corporate Debtor to obtain No Object Certification (NOC) for opening a Bank Account for receipt of moneys arising out of shares on preferential basis. The said Circular merely advises the banks to ensure that they do not open current accounts for entities which enjoy fund based or non-fund based credit facilities from other banks without obtaining NOC from the lending banks. Nevertheless, the Corporate Debtor does not have any credit facilities from other banks and hence the said Circular is not applicable to Corporate Debtor.

4.8 It is contended in para 12 of the Reply that the present petition is at pre-admission stage and pleadings have not been completed. At such a stage moratorium under section 14 of the I&B Code cannot be claimed by

