

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA**

**IBA/13/KOB/2020**

*(Under Section 7 of the IBC read with Rule 4 of the IBC (AAA) Rules, 2016)*

Order delivered on: 30.03.2021

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**

In the matter of:

M/s Sri Ramani Resorts and Hotels Pvt.Ltd.  
Registered Office at  
8/42, Maharaja Surya Road, Alwarpet,  
Chennai-600018.

**...Applicant/Financial Creditor**

Versus

M/s Sree Bhadra Parks and Resorts Limited  
27/480(1), Museum Road,  
Chembukkavu,  
Thrissur, Kerala -680 020.

**.... Respondent/Corporate Debtor.**

**Parties present: (through Video Conferencing)**

For Financial Creditor      ... Mr. Aravind Pandian, Senior Advocate  
alongwith Ms. Jayanthi K. Shah, Advocate

For Corporate Debtor      ... Mr. P.V.George (Puthiyedam), Advocate

This is an application filed by **M/s. Sri Ramani Resorts and Hotels Pvt. Ltd.** (hereinafter called "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **M/s. Sree Bhadra Parks and Resorts Ltd.** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹4,25,32,016.405/-, invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code

(hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter called as "Rules").

2. For a brief background on this Application, it is stated by the Financial Creditor that financial creditor entered into a share purchase agreement with the Corporate Debtor on 21.11.2012 to purchase 100% shares of the Corporate Debtor for a total consideration of ₹33,08,00,000/-. Consequently, on the date of agreement, the financial creditor paid an advance of ₹1,00,00,000/- to the Corporate Debtor. The Corporate Debtor acknowledged the debt from time to time vide their letters dated 05.09.2014, 17.03.2015, 28.11.2018 and reply notice dated 31.01.2018 wherein the liability is not denied. Hence, a sum of ₹4,25,32,016.405/- (=4,25,32,016.40) along with interest @24% per annum stands due.

3. The above application has been admitted by this Tribunal vide order dated 25.8.2020 appointing Mr. Amier Hamsa Ali Abbas Rawther having Registration No. IBBI/IPA-001/IP-P01727/2019-2020/12620 as the Interim Resolution Professional.

4. On 28.08.2020, the Corporate Debtor filed an application under Rule 11 of the NCLT Rules to recall the order passed by this Tribunal on 25.8.2020 in IBA/13/KOB/2020 and permit them to settle the matter. Along with the application "Form FA" for withdrawal of Corporate Insolvency Resolution

IBA/13/KOB/2020

Process has been filed, duly signed by the applicant in IBA No.13/KOB/2020, stating that on 26.8.2020 a settlement agreement has been arrived at for a total sum of ₹2,25,00,000/- (*Rupees two crores twenty-five lakhs only*) as full and final settlement of the entire claim between the Corporate Debtor and the Financial Creditor.

5, In view of the above, this Tribunal passed the following order on 24.09.2020.

*“In view of the settlement arrived between the parties by filing Form FA before this Tribunal and that the IRP stated that he has received his fees, the IBA/13/KOB/2020 stands disposed of. However, the applicant is at liberty to file fresh application, if the Corporate Debtor has not complied with the conditions stipulated in the settlement as mentioned in Form FA.”*

6. However, on 28.12.2020, the Applicant/Financial Creditor filed IA/02/KOB/2020 under Rule 11 of the NCLT Rules, 2016 stating that the Corporate Debtor did not come forward to make the payment as per the consent terms in the settlement which was due as on 30.11. 2020 and that they sought time to make payment for several times. But without making payments they proceeded to sell the assets of the Corporate Debtor, which is a clear case of fraud and cheating. After hearing both sides, this Tribunal on 28.01.2021 passed the following order: -

*“5. We have heard the learned Senior Counsel Shri. Aravind Pandian appearing for the applicant/financial creditor and the learned counsel for the respondent/Corporate Debtor Shri. P.V George (Puthiyedam). With respect to the contention of the respondent regarding the disqualification of the Director, the learned Senior counsel has stated that the Hon’ble Madras High Court vide judgment dated 15.12.2020 in W.P.No.18641 of 2020 and W.M.P.Nos.23123, 23125, 23127 and 23129 of 2020 held as under:*

*“43. In the result, these appeals are allowed by setting aside the impugned order dated 27.1.2020. Consequently, the publication of the list of disqualified directors by the ROC and the deactivation of the DIN of the Appellants is hereby quashed. As a corollary to our conclusion on the deactivation of DIN, the DIN of the respective directors shall be reactivated within 30 days of the date of receipt of a copy of this order. Nonetheless, we make it clear that it is open to the ROC concerned to initiate action with regard to the disqualification subject to an enquiry to decide the question of attribution of default to specific directors by taking into account the observations and conclusions herein. No costs. Consequently, connected miscellaneous petitions are closed.”*

*5. In view of the above decision, the contention regarding the disqualification of the directors will not stand. The question is only the date of removal of disqualification, which have no much relevance in this matter, as the question here is only whether the Corporate Debtor has complied with the conditions stipulated in the settlement agreement produced before this Tribunal. It is true that the IBA has been disposed of on the basis of settlement arrived between the parties stating that they have*

*settled the matter stating that on 26.8.2020 settlement has been arrived for a total sum of Rs. 2,25,00,000/- (Rupees two crores twenty-five lakhs only) as full and final settlement of the entire claim between the Corporate Debtor M/s. Sree Bhadra Parks and Resorts Limited on the terms mentioned in the settlement agreement. When a settlement has been arrived between the parties, it is duty bound by the Corporate Debtor to make good the payments proposed in that settlement. They cannot go back making various allegations including maintainability of the IBA after making default in the payment agreed to between the parties. The contention regarding the application is not maintainable as the order stipulates for filing a fresh application cannot be accepted because merely on technicalities the Corporate Debtor cannot wash away their hands from complying with the conditions stipulated in the final order passed by this Tribunal. Hence, the application IA/02/KOB/2021 is to be allowed.*

**6. In view of the aforesaid discussions, IA/02/KOB/2021 is allowed and IBA/13/KOB/2020 is restored to file. List the IBA/13/KOB/2020 for hearing on 17.2.2021.”**

7. After restoration of the matter into file, this Tribunal heard the arguments advanced by the learned senior counsel for the Financial Creditor and the learned counsel for the Corporate Debtor. At this point it may be noted that after considering all the contentions raised in the IBA by the Corporate Debtor, this Tribunal admitted the Application and ordered Corporate Insolvency Resolution Process.

8. During arguments the learned counsel for the Corporate Debtor raised the objection which he took while arguing IA/02/KOB/2021 regarding the disqualification of the Directors. Since the issue regarding the disqualification has

been settled vide the judgement of the Hon'ble High Court in WPC No. 18641 of 2020 and WMP Nos. 23123,23125,23127 and 23129 of 2020 and that the matter was once admitted, considering all contentions raised by the Corporate Debtor, in my opinion this contention has no legs to stand at present.

9. In this case the existence of debt is reasonably evidenced in the consent terms that were also made part of the order of this Tribunal dated 24.09.2020 as well as the averments made by the Corporate Debtor themselves regarding the amount of debt outstanding to the Financial Creditor, admitting the existence of a debt. The Applicant having proved the existence of a debt as well as existence of default, as elaborately discussed in the order dated 25.08.2020 admitting the Application, the only course to be adopted here is to admit this application and order Corporate Insolvency Resolution Process against the Corporate Debtor.

10. The I&B Code allows the Applicants to withdraw their Application under Sections 7, 9 and 10 of the Code at any time; a) one before the constitution of the CoC b) after constitution of the CoC but before the invitation of the EoI or c) after the invitation of the EoI in exceptional cases, on application made by the applicant. The present Application has been settled after admission before making the Public Announcement as per Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The I&B Code does not bar the Tribunal to Admit a matter which was settled after Admission.

**ORDER**

11. Application filed on behalf of Financial Creditor/ Applicant under Section 7 of the I& B Code, 2016 for initiation of Corporate Insolvency Resolution Process is **admitted**. That the order of moratorium under Section 14 shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be, prohibiting the following:

- (i) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

12. Notwithstanding the above, during the period of moratorium, the following are also to be strictly followed: -

- (v) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (vi) That the provisions of Sub-Section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13.. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

14. After restoration of the matter, the Applicant has not suggested the name of any Insolvency Professional to be appointed as the Interim Resolution Professional. Hence, this Bench decided to take a name from the panel of Insolvency Professional for the Kerala State for the period from 01.01.2021 to 30.06.2021.

15. That this Bench hereby appoints **Mr. K Parameswaran Nair**, having **Registration No. IBBI/IPA-001/IP-P01773/2019-2020/12702**, [Email id- **cakpnair@gmail.com**] office at **37/1736 E, KRIPASAGARAM, K MURALI ROAD, KADAVANTHRA, KOCHI-20 ERNAKULAM, KERALA -682020** as an Interim Resolution Professional to carry out the functions as mentioned



under the Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions, issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC.

16. The Applicant/Financial Creditor shall deposit an amount of ₹2,00,000/- [Rupees Two Lakhs] with the Interim Resolution Professional for initiation of the proceedings as directed by this Tribunal forthwith. This amount is subject to ratification by the CoC.

17. The Registry is directed to communicate this order to Financial Creditor, Corporate Debtor and Interim Resolution Professional through email and speed post immediately.

Dated this the 30<sup>th</sup> day of March,2021

Sd/-  
**(Ashok Kumar Borah)**  
**Member (Judicial)**