

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

IBA/13/KOB/2019

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

Order delivered on: 25.08.2020

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 Operational Creditor .. Mr. Aravind Pandian, Senior Advocate with
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. In the 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.

3. It is further stated that at the time of entering the aforesaid agreement the Corporate Debtor intimated that the properties and assets are encumbrance free. Later the financial creditor came to know that there are various encumbrances regarding the said property. Hence both parties entered into an addendum dated 21.11.2012 wherein the Corporate Debtor instructed the Financial Creditor to pay the part of the consideration to its other creditors. However, the other creditors ignored the settlement of the Corporate Debtor and refused to accept the payments from the Financial Creditor on behalf of the Corporate Debtor. Therefore, the agreement did not fructify and Corporate Debtor promised to payback the advance paid by Financial Creditor.

4. The Financial Creditor submitted that the unpaid financial debt became due in terms of the agreement dated 21.11.2012. 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

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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 as on date.

5. The Financial Creditor argued their case by relying on the judgment of the Hon'ble Supreme Court in the case of **Punjab National Bank v/s. J-Marks Exim India Pvt. Ltd. C.P.(IB)-2176/2019** in which it is held as follows:

“27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-15 and F.Y. 2015- 16 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also in its letter dated 23.02.2017 submitted a proposal for one time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.

28. Therefore, we hold that the petition filed by the Financial Creditor is within limitation.”

6. The Corporate Debtor filed its reply and raised the following contentions:

7. The main contention is that the above application is barred by limitation. To buttress this argument, the Corporate Debtor has submitted an order of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the case of **Gautham Sinha V. UV Asset Reconstruction & others. Company Appeal (AT) (Ins) No.1382 of 2019** in which it is held as follows:

“16. we find that default dated 31.12.2013 which was declared NPA on 30th march, 2014, was time barred for the purpose of filing of application under Section 7 of IBC on 31st October, 2018. The application thus should not have been admitted.”

8. It is further stated that when an agreement for sale is entered between two parties the same ought to be made in a stamp paper and when the subject matter is relating to 100% share and company including immovable properties the same is a compulsorily registerable document under Section 17(1) (A) of the Registration Act, 1908. Since the said agreement is entered without registering the same, it is an invalid document. Hence the document has no evidentiary value. Similarly, when an agreement is made between two companies, common seal of the company is mandatory in the appropriate place. When an agreement lacks the common seal of the company the said agreement is an invalid document. The Corporate Debtor further contended that the signatory of the application is not authorised and competent to verify and sign the application. Hence the application is not maintainable.

FINDINGS

9. I have heard Learned counsel for both the parties and perused the whole case records including documents and photocopies appended with the case records. The Applicant has filed the present Application for the alleged breach of Share Purchase Agreement dated 21.11.2012. Under the agreement the amount of Rs. 30,00,00,000/- was agreed to be paid by the

Financial Creditor to Corporate Debtor for acquiring the Company. On the above said date an addendum to the agreement was also executed wherein the Financial Creditor agreed to make payment to the creditors of the Corporate Debtor. On 27.11.2012 the Corporate Debtor issued a letter requesting to hand over an advance amount of ₹1,00,00,000 to Dr. J. J R Justin. Thereafter on 05.09.2014 and 17.03.2015 Financial Creditor issued letter agreeing to refund of the advance amount. On 28.11.2018 the Corporate Debtor issued another letter to the Financial Creditor stating as follows: -

“ Sub: Refund of advance Baywatch

Our telecom and various discussions regarding the subject matter. We are in verge of selling our property in order to settle our liabilities. As you are well aware that we are trying our level best to find a buyer and to refund your advance amount. Kindly bear with the delays in this regard and assure you the refund as soon as possible.”

10. Considering the above reply sent by the Corporate Debtor, it can be seen that the Corporate Debtor acknowledged the debt of the Financial Creditor lastly on 28.11.2018. Hence, the instant application filed under Section 7(4) of the I&B Code on 21.01.2020 is not barred by limitation.

11. Objection of the Corporate Debtor regarding the validity of Share Purchase Agreement due to non –registration is not under our jurisdiction. Hence, the Tribunal need not delve into that issue. Further, the objection of the Corporate Debtor regarding there being no common seal of the company

and hence the said agreement is invalid document, even assuming without a common seal of the company the Managing Directors agreed into an agreement, the Company is liable for the acts committed by its directors and is bound to honour the agreement entered by the Directors on behalf of the Company.

12. Deciding the validity of agreements entered between parties is not within the ambit of Insolvency and Bankruptcy Code, 2016. Scope of IBC is limited to see whether there is debt due to non-payment and if any default has occurred.

13. This Application is filed by the applicant for alleged breach of Share Purchase Agreement dated 21.11.2012. Corporate Debtor failed to honour the share purchase Agreement, and no payment was made.

14. Section 5(8) of the Code defines the Financial Debt as under:

“(5)(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting*

Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

2[Explanation. *-For the purposes of this sub-clause, -*

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);] Page 7 of 9

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause.

15. Since the present debt arises out of the Share Purchase agreement dated 21.11.2012, the said amount is a debt disbursed against the consideration for advance payment as per the agreement and hence is covered

under the definition of financial debt and Applicant will be treated as Financial Creditor. In the aforesaid background, Financial Creditor has suggested the name of **Mr Amier Hamsa Ali Abbas Rawther, IBBI/IPA-001/IP-P01727/2019-2020/12620, email id amierhamsa@gmail.com** for appointment as Interim Resolution Professional (IRP). He has filed a declaration in Form 2 affirming that he is a registered Insolvency Professional and no disciplinary proceedings are pending against him. The application on behalf of Financial Creditor is complete and no disciplinary proceeding is pending against the proposed IRP. There is default in the payment of the financial debt. Therefore, as per Section 7(5)(a) of the code, the present application filed U/S 7 of the I&B Code deserves to be admitted.

ORDER

16. Application on behalf of Financial Creditor/ Applicant filed U/S 7 of the I& B Code 2016 for initiation of Corporate Insolvency Resolution Process is **admitted**. That the order of moratorium u/s 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.
- (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.
- (vii) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the CIRP 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.
- (viii) That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (ix) That this Bench hereby appoints **Mr. Amier Hamsa Ali Abbas Rawther, R094, SBIOA Unity Enclave, Mambakkam P.O, Near**

Siva Temple, Chennai- 600127, having Registration No. IBBI/IPA-001/IP-P01727/2019-2020/12620, email id-amierhamsa@gmail.com as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

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

Dated the 25th day of August, 2020

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