

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No.258/BB/2018  
U/s 7 of IBC, 2016  
R/w Rule 4 of I&B(AAA) Rules, 2016

**In the matter of:**

M/s.Rubfila International Limited  
NIDA, Menonpara Road,  
Kanjikode P O, Kerala  
Palakkad – 678 621

- Petitioner/Financial Creditor

**Versus**

M/s.Raveena Hotesl Private Limited  
No# 10, 2<sup>nd</sup> Floor, 8<sup>th</sup> Cross Road,  
Raveena Plaza, #281, 1<sup>st</sup> Main,  
AlurVenkaraRao, Main Road,  
III Cross Chamrajpet  
Bangalore – 560 018.

- Respondent/Corporate Debtor

**Date of Order: 26<sup>th</sup> September, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri Sanjay Nair a/w  
Ms.Jaithra.J.Narayan  
For the Respondent : None

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.258/BB/2018 is filed by M/s.Rubfila International Limited (**Petitioner/Financial Creditor**) U/s 7 of IBC, 2016, R/w Rule 4 of Insolvency and Bankruptcy (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of



**M/s.Raveena Hotels Pvt. Ltd (Respondent/Corporate Debtor)** on the ground that the Corporate Debtor committed a default in payment of Rs.50,00,000/- (Rupees Fifty Lakhs Only) with interest @18% p.a from the date of payment viz., 17.08.2015.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- 1) M/s.Rubfila International Limited, (Petitioner/ Financial Creditor) a Company was incorporated on 05<sup>th</sup> March, 1993 under the provisions of the Companies Act, 1956 and having its registered office NIDA, Menonpara Road, Kanjikode P O, Palakkad 678 621 in Kerala.
- 2) M/s.Raveena Hotels Private Limited (Respondent/ Corporate Debtor) was incorporated on 10.01.2007 under the provisions of the Companies Act, 1956 and having registered address at: No. # 10, 2nd Floor, 8th Cross Road, Raveena Plaza, #281, 1st Main. AlurVenkarRao, Main Road, III Cross, Chamrajpet, Bangalore – 560 018. Its Nominal share capital and the paid up share capital is Rs.25,00,000/-.
- 3) It is stated that M/s.Raveena Hotels Pvt. Ltd i.e., the Corporate Debtor while it was in need of financial assistance, approached Rubfila International Ltd., i.e. Financial Creditor for a loan amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) with a promise to pay the amount back within a period of 1(one) year at an 18% interest rate per annum. One year period commenced from the date of payment of the loan of the Corporate Debtor. Upon reaching an oral agreement with the Financial Debtor, the Financial Creditor issued a cheque dating 14.08.2014, bearing No. 476962 drawn on Punjab national Bank for Rs.50,00,000/- which was cleared from the Bank Account bearing No. 03892002100011441. After a year, on 17.08.2016, the repayment of the loan amount, along with 18% became due.
- 4) Following non-payment of the loan for more than a year, after it became due, the Financial Creditor sent a Demand Notice dated 20.11.2017 to

the Corporate debtor by demanding for repayment of the loan amount of Rs.50,00,000/- along with interest as agreed upon, which amounts to Rs.70,34,000/-. The Corporate Debtor vide letter dated 22.01.2018 replied to the Demand Notice dated 20.11.2017, by blatantly denying all claims made by the Financial Creditor and frivolously stating that the Corporate debtor never approached the Financial Creditor for any loan or any assistance whatsoever. The Corporate Debtor also stated that they had not entered into any agreement nor had they sent any letter requesting a loan. They also wrongly claim that the amount of Rs.50,00,000/- issued vide cheque bearing No.476962 was received from Boston Garments Pvt. Ltd., on 16.03.2018 and not by the Corporate Debtor.

- 5) It is stated that the Financial Creditor issued a reply to the letter dated 22.01.2018 substantiating their claims by providing their bank statements showing the amount of Rs.50,00,000/- debited from the Financial Creditor's account and credited into the Corporate Debtor's account. Following further in action on the part of the Corporate Debtor after proof of payment of the loan by the Financial Creditor to the Corporate Debtor, the Financial Creditor was forced to issue Legal Notice dated 20.06.2018 through their legal representatives to the Corporate Debtor requesting to return the borrowed amount of Rs.50,00,000/- along with interest at the rate of 18% p.a i.e., Rs.20,34,000/- amounting to Rs.70,34,000/-
- 3.** Heard Shri Sanjay Nair, along with Ms.Jaithra.J.Naryan, learned Counsel for Petitioner. None appears for the Respondents. We have carefully perused the pleadings of the party and extant provisions of the Code and law on the issue.
- 4.** The case was listed for admission on various dates viz. 11.12.2018, 12.12.2018, 21.03.2019, 12.04.2019, 29.04.2019, 27.05.2019, 14.06.2019, 27.06.2019, 17.07.2019, 23.07.2019, 02.08.2019, 20.08.2019, 04.09.2019,

11.09.2019 & 26.09.2019, and it was adjourned on these dates at the request of parties , on one ground, or the other.

5. Shri Sajay Nair, learned Counsel for Petitioner, while pointing out various averments made in the Petition and Summary, as briefly stated supra, has further submitted that the debt and default in question are not in dispute, and the instant Company Petition is filed in accordance with law, and he has also suggested a qualified Resolution Professional, namely, Mr.Kizhakkekara Kurakose Jose, with Regn.No. **IBBI/IPA-001/IP-P00445/2017-18/10788**, who has also filed written Consent in Form-2 dated 28.05.2018, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against him with the Board or ICSI. Therefore, he urged the Adjudicating Authority to admit the case by initiating CIR as prayed for.
6. Even though several opportunities are given to the Respondent, they have not availed it. Therefore, the Adjudicating Authority, in order to give one more opportunity, has ordered notice on 02.08.2019 to Ms K.S.Savitha, the Director of Respondent Company i.e. M/s.Raveena Hotels Private Limited and directed to be present on the next date of hearing i.e. 20.08.2019. However, neither the Director of Respondent Company is present nor filed any objection till date. Therefore, there is no other alternative for Adjudicating Authority except to proceed with the case as per merits.
7. So far as the law with regard to initiation of CIRP is concerned, Hon'ble NCLAT vide order dated 15<sup>th</sup> May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in M/s.Innoventive Industries Ltd Vs. ICICI Bank & Anr., has dealt the issue of admission of a case filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

*"55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for filing of an application by a financial creditor before*

*the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:*

- i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

*56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:*

*"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)."*

*57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.*

*58. The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."*

The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31<sup>st</sup> August, 2017. The Hon'ble Supreme Court has adverted to Section 7, at para 28, which reads as under:

*"28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form*



*and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

8. The above facts and circumstances supported by material documents in support of the Petition, has prima facie established that the Corporate Debtor is unable to pay the outstanding amount in question, and thus committed debt and default in question, which is deemed to be proved subject to for further examination of the claim in detail by IRP, who is going to be appointed in the case. The Petition is filed in accordance with law. The Petitioner has issued statutory Demand notice dated 20<sup>th</sup> November, 2017 by calling upon the Respondent to pay the outstanding amount in question however, the Respondent has simply denied without any substance and it

cannot be termed as pre-existing dispute and it is an afterthought. Therefore, the instant Company Petition is a fit case to initiate CIRP, imposing moratorium etc.

9. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 7(5)(a) and other extant provisions of the Code, C.P. (IB) No.258/BB/2018 is hereby admitted with the following consequential directions:

(1) We hereby appointed Mr.Kizhakkekara Kurakose Jose, with Regn.No. **IBBI/IPA-001/IP-P00445/2017-18/10788**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.Raveena Hotels Pvt. Ltd to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c. 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.

(3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.


(4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.

(5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.

(6) Post the case for report of the IRP on 28<sup>th</sup> October, 2019.

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

Raushan

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**