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**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 05/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

J C Flowers Asset Reconstructions Pvt. Ltd.

[CIN: U74999MH2015PTC264081]

...Financial Creditor/Applicant

V/s

M/s Tulip Hotels Private Limited

[CIN: U55101MH1997PTC110750]

...Corporate Debtor/Respondent

Order Dated: 16.05.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. JP Sen, Ld. Sr Advocate
a/w Mr. Nausher Kohli
i/b Sukanya Bhaumik

For the Respondent : Ms. Anju Jain

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.5/MB-IV/2020 filed by Yes Bank Limited {CIN: L65190MH2003PLC143249}, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Tulip Hotels Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP). The debt, claimed in default, was subsequently assigned to M/s J C Flowers Asset Reconstructions Pvt. Ltd. acting in its capacity as Trustee of JCF YES Trust 2022-23/3, and assignee filed a substitution application in IA No. 798/2023, which was allowed vide order dated 06.03.2023. A copy of amended petition was served upon the corporate debtor.

1.1. An Interlocutory Application No. IA-362/2023 was filed by Corporate Debtor challenging the assignment of debt in favour M/s J C Flowers Asset Reconstructions Pvt. Ltd. and the same was dismissed by this Bench vide order dated 23.03.2023.

1.2. This application is filed by Mr. Rahul Dodeja, Authorised Signatory of the Financial Creditor vide its Power of Attorney, claiming a total default of Rs. 900,00,00,000/- (Rupees nine hundred crore only).

1.3. The computation chart showing the total amount in default due to the Financial Creditor by the Corporate Debtor is stated as follows:

| Particulars | Date of default (corresponds to the date of invocation notice sent to the Corporate Debtor) | Amount (In Rupees) |
|-------------|---|-----------------------|
|-------------|---|-----------------------|

| | | |
|--|------------|-----------------|
| In its capacity as a guarantor to Borrower 1 i.e. Cox and kings limited | 20.11.2019 | 450,00,00,000/- |
| In its capacity as a guarantor to Borrower 1 i.e. Ezeego One Travel & Tours Limited. | 28.08.2019 | 450,00,00,000/- |
| Total Amount Outstanding | | 900,00,00,000/- |

2. The case of the Financial Creditor is as under:

2.1. The Financial Creditor states that the Corporate Debtor have defaulted payment under two Guarantees aggregating to Rs.900,00,00,000/- (Rupees Nine Hundred Crores only) in its capacity as a guarantor guaranteeing repayment of the loans disbursed by the Petitioner to Cox and Kings Limited (referred to as "Borrower 1") and Ezeego One Travel & Tours Limited (referred to as "Borrower 2").

2.2. The Corporate Debtor executed Deed of Guarantee dated April 26, 2019 in favour of the Petitioner and guaranteed to pay to the Petitioner all the monies in respect of the obligations incurred by the Borrower 1, not exceeding Rs 450,00,00,000/- (Rupees Four Hundred Fifty Crores only).

2.3. The Corporate Debtor executed Deed of Guarantee dated July 10, 2019 in favour of the Petitioner and guaranteed to pay to the Petitioner all the monies in respect of the obligations incurred by the Borrower 2, not exceeding Rs 450,00,00,000/- (Rupees Four Hundred Fifty Crores only).

2.4. Further, the Borrower 1 and Borrower 2 committed severe breach and default in repayment of financial debt which included principal amount, interest and other charges thereon.

- 2.5. The Petitioner vide Letter of Invocation of Guarantee dated November 20, 2019 invoked the Deed of Guarantee dated April 26, 2019 issued by the Corporate Debtor in favour of the Applicant and called upon the Corporate Debtor to pay to the Applicant a sum of Rs. 450,00,00,000/- (Rupees Four Hundred and Fifty Crores only) within one (1) day from the date of the said letter of Invocation.
- 2.6. Also, the Petitioner vide Letter of Invocation of Guarantee dated August 26, 2019 invoked the Deed of Corporate Guarantee dated July 10, 2019 issued by the Corporate Debtor in favour of the Applicant for Borrower 2 and called upon the Corporate Debtor to pay to the Applicant a sum of Rs. 450,00,00,000/- (Rupees Four Hundred and Fifty Crores only) within one (1) day from the date of the said letter of invocation.
- 2.7. The Corporate Debtor till date has failed to repay the guaranteed amount as mentioned in the Letter of Invocation of Guarantee dated August 26, 2019 and November 20, 2019. The inability of the Corporate Debtor to honor its outstanding liability of Rs. 900,00,00,000/- (Rupees Nine Hundred Crores only) has constrained the Petitioner to file the present petition.
3. The Corporate Debtor filed an affidavit in reply dated 27.11.2021 stating that :
- 3.1.1. The Corporate Debtor Submits that, Yes Bank Limited (YBL) claims that Tulip Hotels Private Limited (THPL) has given corporate guarantee in relation to the loan advanced by YBL to two borrowers, borrower No. (i) Cox and Kings Limited and borrower No. (ii) Ezeego One Travel & Tours Ltd.

3.2. THPL is not related to Cox and Kings Ltd or Ezeego One Travel & Tours Ltd.

3.3. THPL has not received any funds from Cox and Kings Ltd, since 31.03.2011 and has never been funded by Ezeego One Travel & Tours Ltd.

3.4. There are no investments of Cox and Kings Ltd. or Ezeego One Travel & Tours Ltd. in Tulip Hotels (P) Ltd. and there are no cross holdings of Tulip Hotels (P) Ltd. in any of the said borrowers.

3.5. Tulip Hotels (P) Ltd. is neither aware of any financial assistance been provided to either Cox and Kings Ltd. or Ezeego One Travel & Tours Ltd. nor it has sought any assistance from the Applicant viz. YBL.

3.5.1. The Corporate Debtor further submits that, the Petitioner/Financial Creditor did not produce the Originals of either the Guarantee Deeds or the Resolution based on which the Section 7 Application has been made. After perusal of that Deed of Guarantee it shows that the Deed of Guarantee nowhere specifies as to in relation to which loan facility extended to borrower No. 1, the Deed of Guarantee is purportedly executed. Further, perusal of the Deed of Guarantee shows that Deed of Guarantee does not mention the date of resolution of the Board of Directors of THPL, authorizing execution of Deed of Guarantee, as also authorizing somebody to execute the Deed of Guarantee. Deed of Guarantee does not appear to have been signed by anybody on behalf YBL. The Deed of Guarantee also bears the signature of one Sagar Deshpande who is not connected in any manner with THPL.

3.5.2. It is stated in the Deed of Guarantee that

"This Deed of Guarantee..... is purportedly executed at the date, month, year and place set out in the schedule I set out hereof by the person named in Schedule I hereof as guarantors".

3.5.3. After perusal of Schedule I, it shows that the Deed of Guarantee is alleged to have been purportedly executed in New Delhi by Tulip Hotels (P) Ltd., but it does not disclose the name of the person who has purportedly executed the Deed of Guarantee on behalf of Tulip Hotels (P) Ltd.

3.6. Further the Corporate Debtor submits that, the Section 7 Application has been filed for an alleged default of Rs. 900,00,00,000/, purportedly arising out of a Deed of Corporate Guarantee dated 26.04.2019 purportedly executed to secure the repayment obligations of Cox and Kings Limited and out of a Deed of Guarantee dated 10.07.2019 purportedly executed to secure the repayment obligations of Ezeego One Travel & Tours Ltd.

3.7. The Corporate Debtor has not received any notice invoking the said purported Corporate Guarantees and hence could have never received the Letter of Invocation of Guarantee dated 20.11.2019 and Letter of Invocation of Guarantee dated 26.08.2019.

3.8. The Corporate Debtor stated that the signatures appearing on Deed of Guarantee Pages does not belong to him and in order to take into consideration of the same, the Corporate Debtor commissioned a study by a forensic expert of the signatures appearing in Exhibit 23 of the Section 7

Application. Upon an examination of the signatures appearing in this document, the forensic expert opined,

"...The Questioned English Signatures marked by me as Exhs. QD-1 to QD- 5 purporting on the Questioned Documents when compared with the encircled Standard English Signatures marked me by as Exhs. SD-1 to SD-4 purporting on the Standard Documents show some dissimilarities. Also, the Questioned Signatures marked as Exhs. QD-1 to QD-5 on comparison with the Standard English Signatures marked as Exhs SD-1 to SD-4 do not provide the common identifying characteristics/features to lead a definite opinion as regards identity..."

3.8.1. As per the opinion of the forensic expert it leads to the conclusion that the signatures appearing in the Deed of Guarantee dated 10 July 2019, and the standard signatures of the Corporate Debtor are dissimilar.

3.9. It is further submitted that, the last Board Meeting of the Financial Year 2018-19 of the Respondent was held on 13th February 2019. The next Board Meeting was the first of the Financial Year 2019-20, and was held on 29th May 2019. What is pertinent to note about this Meeting is Item 2 of its Minutes, which is extracted hereinbelow for convenience;

"MINUTES OF THE PREVIOUS 4TH/2018-19 BOARD MEETING Minutes of the previous 4/2018-19 board meeting held on February 13, 2019 were read, confirmed and signed by the Chairman"

3.9.1. Evidently, it is apparent from a perusal of these minutes that no meeting whatsoever of the Respondent was held between 13.02.2019 and 29.05.2019. In these circumstances, a question of a Board Meeting having been convened on 26.03.2019 and a Resolution of the kind

appearing at Page 197 of the Section 7 Application having been does not arise.

3.10. The Corporate Debtor expeditiously filed a written complaint dated 28.02.2020 before the Senior Inspector, Marine Drive Police Station flagging the issue of fabrication of several of the documents annexed to the Section 7 Application CP (IB) 03/MB/C-II/2020 pertaining to Ezeego One Travel and Tours Ltd.

3.11. In these circumstances, it is apparent that the Petitioner's claim before the RPs of Cox & Kings Ltd. and of Ezeego One Travel & Tours Ltd. and before this Hon'ble Tribunal in the present Section 7 Application are identical. The claims of the Petitioner in those CIRPs have been admitted in their entirety, and are currently undergoing resolution, there is no liability that presently exists on the Respondent either at all, or, without prejudice, until it is established that the payment made to the Petitioner in the CIRPs of Cox & Kings Ltd. and Ezeego One Travel & Tours Ltd. is substantially less than its claims. Given that the entire claim has already been admitted in those CIRPs, the present Section 7 Application is nothing but an attempt to recover the same amount twice over.

4. The Financial Creditor has filed a written submission dated 11.04.2022 and 05.12.2022 stating that :

4.1. The daughter of Dr. Ajit Kerjkar, namely Urrshila Kerka is the promoter and shareholder of Ezeego One Travel & Tours Limited and has also filed an affidavit in reply in the company petition filed by this petitioner against Ezeego One Travel & Tours Limited. Ms. Urrshila Kerkar is also a POA

holder of Mr. Ajay Ajit Peter Kerkar and has filed the affidavit in reply in Cox & Kings.

4.2. No objection to the alleged authority of Mr. Rahul Dodeja to institute proceeding under Section 7 of the IBC on behalf of the Financial Creditor against the Borrower, in its capacity as the guarantor for Cox and Kings Limited was ever raised in the Affidavit of Reply filed by the Corporate Debtor. It is submitted that that Mr. Rahul Dodeja has been duly authorised vide Power of Attorney dated November 5, 2019 authorising Mr. Rahul Dodeja to act on behalf of the Financial Creditor to file proceedings under the Insolvency and Bankruptcy Code, 2016 against the guarantor for Cox and Kings Limited i.e. Tulip Hotels Private Limited (the Corporate Debtor).

4.3. In regard to contention of the Ld counsel for the Corporate Debtor that documents in relation to the certificates under the Bankers Books' Evidence Act, 1891 as well as record of default as available with any credit information the Financial Creditor has not been filed with the Section 7 petition, the Applicant submitted that the Corporate Debtor is not a direct borrower of the Financial Creditor but is a Corporate Guarantor for Cox & Kings Limited and Excego and hence the question of entries in a bankers' book or any record of default forming part of the Section 7 Petition does not arise.

4.4. Further, the allegations made by the Corporate Debtor with respect to the incomplete documents are fallacious in nature. The Financial Creditor has relied upon documents that have been executed by the Corporate Debtor. In any event, any allegations with respect to (i) incompletely executed documents

(ii) false documents are a matter of internal management of the Corporate Debtor and is an afterthought.

5. The Corporate Debtor filed an IA-892/2023 for taking additional document on record a letter dated 17.06.2019 written by IFCI Limited to the Yes Bank Limited informing it that the Property described as Acquaserene situated at South Paravoor, Taluk Kollam, District KoOllam, Kerala is already mortgaged in its favour, hence the charge on said property without obtaining prior permission of IFCI shall not be considered by IFCI. The same is taken on record and IA-892/2023 is allowed and disposed of accordingly.

6. Findings/Observations:

7. This Bench heard the Counsel(s) and perused the material available on record.

7.1. The Financial Creditor/Petitioner has granted/sanctioned the credit facility in favour of Principal Borrower(s) and said facilities were secured by Guarantee of the Corporate Debtor vide deed of guarantee(s) dated 26.04.2019 and 10.07.2019. The clause(s) contained in both the guarantee are identical. The clauses relevant to the liability of the guarantor are as follows:

(5) in the event of any default on the part of the borrower in payment/repayment of any of the monies in respect of the Obligations, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the agreement, the Guarantor(s) shall, upon demand, forthwith pay to the beneficiary/lender(s) without any demur or protest or reference to the borrower or anyone else and without the right of any set off and/or deductions and/or adjustments of any kind whatsoever, all the amounts payable by the borrower to the lender(s) under the Transaction documents. Any such demand made by the beneficiary/lender(s) on the guarantor(s) shall be final, conclusive and binding notwithstanding any difference or any dispute between the

lender(s) and/or beneficiary and/or the Borrower whether referred to arbitration or presented before any court, tribunal or any other authority. Any part enforcement of the guarantee shall not amount to discharge of the guarantor(s) from their liability to make the entire payment, if asked upon to do so.

(6) In the event of failure by the Guarantor(s) in making any such payment, the Guarantor(s) shall be liable to pay interest at the rate stipulated by the lender(s) on the defaulted amounts till receipt of the said amounts by the lender(s) to its satisfaction, without prejudice to and in addition to any other remedy that the beneficiary/lender(s) may have against the guarantor(s).

(7) The Guarantor(s) shall not be entitled to look into or consider any question or dispute which may arise between the beneficiary/lender(s) and the Borrower as to the repayment by the borrower to the lender(s) of any sum due and owing by the Borrower to the Lender(s).

(8) The Guarantor's liability hereunder shall be irrevocable, continuing and joint and several with that of the Borrower.

7.2. The above clauses make it abundantly clear that the Corporate Debtor is liable to the credit facilities availed by principal borrowers. The demand notice invoking the guarantee is stated to be served upon the registered office of the Corporate Debtor vide Registered Post/Speed Post and has placed copy of receipt issued by Indian Post in that relation. Hence, the contention of the Corporate Debtor that no such notice was received is without merits, in view of clause 29 of the deed providing for service of notice can be affected through registered post at address specified in schedule 1, which is saying as is stated in the notice invoking guarantee.

- 7.3. As regards the board meeting this bench feels that the irregularity in this respect pointed out by the Corporate Debtor is saved by Doctrine of Indoor Management and cannot prejudice the right of the applicant Financial Creditor. As regards forging of signature on the mortgage deed, this bench feels that the credit facilities enjoyed by the Principal Borrowers are secured by Corporate Guarantee also, in addition to the mortgage on the property of the Corporate Debtor. It is pertinent to note provision of section 80 of the Companies Act, 2013 providing that where any charge on the property or assets of a company or any of its undertakings is registered u/s 77, any persons acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. It is not in dispute that a charge in favour of applicant is registered with MCA in the present case. Accordingly, the liability of Corporate Debtor cannot be done away even if their irregularity in the execution of the mortgage deed or creation of mortgage without NOC from existing mortgagee i.e. IFCI pointed out by the Corporate Debtor is believed.
- 7.4. The Date of default (corresponds to the date of invocation notice sent to the Corporate Debtor) in its capacity as a guarantor to Borrower 1 i.e. Cox and Kings Limited is 20.11.2019 and in its capacity as a guarantor to Borrower 1 i.e. Ezeego One Travel & Tours Limited is 26.08.2019. It clearly shows that the Petition is filed within the period of limitation u/s 18 of the Limitation Act, i.e. three years. Hence, it is clearly seen that there is debt and default on the part of the Corporate Debtor.
- 7.5. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands

established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

8. The Financial Creditor has proposed the name of Mr. Gaurav Adukia, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00457/2017-2018/11293] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 05/NCLT/MB/C-IV/2020 filed by Yes Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Tulip Hotels Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- b) a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Gaurav Adukia, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00457/2017-2018/11293] is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions

issued in this regard. The IRP shall carry out functions as contemplated by sections 15,17,18,19,20 & 21 of the IBC.

- a) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- b) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- c) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)