

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-969/(ND)/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s COSMIC INFRASOLUTIONS PVT. LTD.

Registered office at:
Ground Floor, Cabin No.2,
Khasra No.-265, Opposite Telephone Exchange,
Mundka, New Delhi- 110041

...Applicant/ Financial Creditor

Versus

M/s PRUDENTIAL HOTELS PRIVATE LIMITED

Registered office at:
No.5, E Block, Local Shopping Centre,
Masjid Moth, Greater Kailash-II,
New Delhi

...Respondent/ Corporate Debtor

Coram:

SH. P.S.N. PRASAD, Hon'ble Member (Judicial)

SH. HEMANT KUMAR SARANGI, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Harshal Kumar and Mr. Shivam Wadhwa, Advocates

Counsel for Respondent: Mr. Ashutosh Gupta and Mr. Gaurav Rana, Advocates



ORDER

Per P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 01.10.2021

1. This is an application filed by 'M/s Cosmic Infrsolution Pvt. Ltd.', through its Authorized Person Mr. Manoj Kumar, to initiate Corporate Insolvency Resolution Process ("CIRP") against 'M/s Prudential Hotels Pvt. Ltd.', under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent, in settling an amount of Rs. 3,87,67,780/- (Rupees Three crores Eighty Seven Lakhs Sixty Seven Thousand Seven Hundred Eight only) comprising of Rs. 2,95,00,000/- as the Principal Amount along with the Penal Interest amounting to Rs. 92,67,780/- @ 12% per month due from 01.01.2020 payable to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

a. The Applicant submitted that on 20.12.2016 the Respondent requested for granting of Loan of Rs.



3,00,00,000/- for its daily operation needs and requested the Loans to be disbursed and further agreed to pay the loan with interest rate mutually agreed between the applicant and the Respondent.

- b. That on 22.12.2016, the applicant, in response to the Letter dated 20.12.2016 from the Respondent, agreed to lend only Rs. 2,00,00,000/- during the last quarter of financial year 2016-2017, but not before the month of March, 2017. The Rate of interest was fixed of 12% per annum.
- c. The applicant further submitted that on 01.03.2017, Business Loan agreement was executed between the applicant and the Respondent wherein, the Respondent requested the Applicant to grant a loan of Rs. 2,95,00,000/- repayable with interest @12% per annum, payable at the time of maturity i.e., 31.12.2019. The applicant has also annexed the copy of Loan agreement dated 01.03.2017.
- d. It was submitted that the Loan was secured by the Respondent, by handing over postdated cheques for an amount of Rs.2,95,00,000/-. The Respondent agreed to pay



- the interest on the basis of amounts periodically released by the Applicant to the Respondent.
- e. That the amount of Rs.2,95,00,000/- (Rupees Two Crores Ninety Five Lakhs only) was transferred to Respondent vis RTGS and on 01.04.2018. That a Copy of bank statement, along with letter of confirmation dated 01.04.2018, is annexed with the application.
- f. The Applicant further submitted that the Respondent by letter vide letter dated 03.01.2020, informed of its inability to pay the amount of Rs.2,95,00,000/- (Rupees two crores and ninety-five lakhs only) with interest to the Applicant and requested the Applicant not to present the postdated cheque. Further, the Respondent assured that they would pay the outstanding loan amount with interest. A Copy of letter dated 03.01.2020 is also annexed with the application.
- g. The Applicant submitted that the Respondent has committed default in the repayment of loan of Rs.2,95.00,000/- (Rupees Two Crores Ninety Five Lakhs only) along with interest @ 12% per annum. The date of default in the repayment of the loan is 01.01.2020 as the



Respondent failed to repay the above-mentioned loan along with interest at the time of maturity i.e. 31.12.2019.

- h. It was further submitted by the Applicant that the Default falls within the definition of default in terms of Section 3(12) of the IBC, 2016 and the claim of the Applicant is not hit by the Insolvency and Bankruptcy Code Amendment Ordinance, 2020 dated 05.06.2020 issued by the Government of India.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- i. The Respondent submits that the demand of Rs.3,87,67,780/-(Rupees Three Crore Eighty Seven Lath Sixty Seven Thousand Seven Hundred Eighty Only) including principal and interest as mentioned in the application, are outrightly rejected and the said amount is not due and payable by the Respondent to the Applicant.



- ii. The respondent in its reply submitted that the Form-2 supporting the present application is not submitted with the proper disclosures as being mandatory compliance under the guidelines of 'Insolvency Bankruptcy Board of India'.
 - iii. Another contention raised by the Respondent in its reply is that the applicant did not comply with the requirements of Section 7 of the Code whereby, proof of default is required in the form of banker book evidence act. Respondent further submitted that neither any certificate from banker is filed nor any statement approved from the banker is filed along with the Application. It was further alleged that no requisition is filled with application suggesting that Applicant has ever tried to obtain from its banker.
3. That the Ld. Counsels for both the parties while appearing before the Tribunal on 02.03.2021 jointly submitted that their clients are in the process to settle the matter amicably outside the Tribunal. Whereas, on next date of Hearing on 30.03.2021



the Ld. Counsels submitted before the Tribunal that the Settlement talks between the parties have failed. It is pertinent to mention that on 28.07.2021, both the parties were directed to file two pages written submission by the Tribunal, whereas, both the parties have failed to file the same till date.

4. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 3,87,67,780/- (Rupees Three crores Eighty Seven Lakhs Sixty Seven Thousand Seven Hundred Eight only) comprising of Rs. 2,95,00,000/- as the Principal Amount along with the Penal Interest amounting to Rs. 92,67,780/- @ 12% per month.

5. The Corporate Debtor in his reply to the present petition has submitted that in the present application Form-2 is not submitted with the proper disclosures as being mandatory compliance under the guidelines of 'Insolvency Bankruptcy Board of India'. This contention of Corporate Debtor does not



deserve any merit consideration as the Financial Creditor has duly submitted the Form-2 under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 whereby, the Proposed Interim Resolution Professional communicated its written consent. However, it is pertinent to mention that in Part-III of Form-1 the Proposed Interim Resolution Professional is Mr. Anish Kumar Sanghi having Registration number IBBI/IPA-001/IP-P-01796/2019-2020/12786, whereas, the 'Authorisation for Assignment' for the above-mentioned Proposed IRP became invalid as it expired on 06.01.2021. therefore, the Applicant filed an Interlocutory Application before the Tribunal bearing IA/4052/2021 and proposed Mr. Rahul Jain, having Registration No. IBBI/IPA-001/IP-P02078/2020-2021/13219 to act as the IRP in the present matter.

6. In the light of the aforesaid facts, we find that the Corporate Debtor vide letter dated 20.12.2016 requested for grant of Loan and the Business Loan Agreement was duly executed between the parties on 01.03.2017 for an amount of Rs.



2,95,00,000/- repayable with 12% interest whereas, no documentary evidence has been produced by the Corporate Debtor to substantiate that the Loan amount was not defaulted. The documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.

7. It is pertinent to mention here that, the Code requires the Adjudicating Authority to only ascertain and record satisfaction in a summary adjudication, as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

8. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.



9. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

10. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Rahul Jain, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P02078/ 2020-21 / 13219, Address at: 27/33, Ground Floor, Gali No. 9, Pandav Road, Vishwas Nagar, Shahdara, North East Delhi, email - id ca.rahuljain.2005@gmail.com. Mr. Rahul Jain has agreed to accept the appointment as the interim resolution

professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Rahul Jain as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

11. Mr. Rahul Jain, having registration number IBBI / IPA-001/IP-P02078/2020-21/13219 with email – id ca.rahuljain.2005@gmail.com is appointed as the Interim Resolution Professional.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard



to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.



14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate

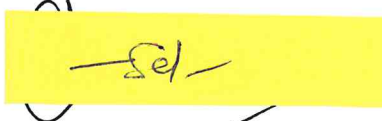


Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

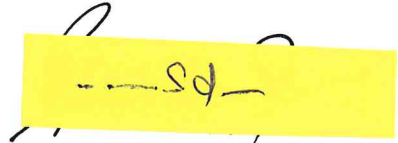
16. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible, but not later than seven days from today. The Registrar of



Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)



(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (T) Sh. Hemant Kumar Sarangi, is not holding the Court today.



Court Officer
01.10.2021