

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) - 1668/I&BP/MB/2018
Under Section 7 of the I&B Code,
2016

In the matter of

The Greater Bombay Co-
operative Bank Ltd.
89, GBCB House, Bhuleshwar,
Mumbai - 400002
.... Petitioner

Vs.

Parole Hotels Pvt. Ltd.
House No. 153/1 & 153/2, Zaor
Vaddo, Anjuna, Bardez, Goa
.... Respondent

Order delivered on: 04.12.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Anuja Bhansali, Advocate i/b Raval Shah &
Co.

For the Respondent: None Present.

Per: V. Nallasenapathy, Member (T)

ORDER

1. The Greater Bombay Co-operative Bank Ltd. (hereinafter called 'Petitioner Bank') has sought the Corporate Insolvency Resolution Process of Parole Hotels Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default on 05.12.2017 as a guarantor of Mortgage Loan granted by the Petitioner to M/s Matrubhoomi Inn Ltd. (hereinafter called 'Principal Debtor') to the extent of Rs. 11,10,26,112/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner had sanctioned a Mortgage loan to the Principal Debtor on 20.04.2016. In support of the loan the Petitioner enclosed the following documents:

- i. Loan Application by Principal Debtor dated 31.10.2015.
 - ii. Letter dated 20.04.2016 sanctioning a Mortgage Loan of Rs. 10,00,00,000/-
 - iii. Facility Agreement dated 20.04.2016.
 - iv. Demand Promissory Note dated 20.04.2016.
 - v. Undertaking by the Principal Debtor dated 20.04.2016.
3. Further the Petition reveals that the Corporate Debtor is a guarantor to the Mortgage Loan sanctioned to the Principal Debtor. The Petitioner enclosed the following documents executed by the Corporate Debtor as a Guarantor for the Principal Debtor:
- i. Guarantee Letter dated 20.04.2016.
 - ii. Indemnity Bond dated 20.04.2016.
 - iii. Declaration regarding Creation of Equitable Mortgage by the Corporate Debtor dated 20.04.2016 in favour of the Petitioner creating mortgage over the properties belonging to the Corporate Debtor.
4. The Petitioner has enclosed the Statement of Account which shows that the amount claimed in the Petition is in consonance with the Statement of Account.
5. The Petitioner has also enclosed the proceedings dated 17.03.2018 issued by the Recovery Officer, Co-operative Department, Mumbai to the Principal Debtor as well as to the Corporate Debtor wherein a sum of Rs. 10,99,08,345/- was demanded and the judgement debtors are offered an opportunity to sort out the matter amicably before the Recovery Officer/Bank Officials.
6. Even though the Corporate Debtor submitted an One Time Settlement (OTS) proposal for Rs. 9.2 crores, they are not serious about that and have not taken any step for considering the OTS proposal by the Petitioner as per the guidelines of Reserve Bank of India.
7. Section 5A of the Code provides as below:

"Corporate Guarantor as a Corporate Person who is the surety in a contract of Guarantee to a Corporate Debtor."

8. Section 5(7) of the Code provides as below:

"(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;"

9. Section 5(8) of the Code provides as below:

"(8) "financial debt" means a debt alongwith 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 nonrecourse basis;

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

(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-clauses (a) to (h) of this clause;"

10. In view of the above provisions, the Corporate Debtor is a Corporate Guarantor and the Petitioner is a Financial Creditor of the Corporate Debtor, who is entitled to file the Petition.

11. The Petitioner filed proof of service for serving Form 1 on the Corporate Debtor, which shows that the Corporate Debtor received the Form 1 on 26.05.2018. Subsequently, the Petitioner informed

the date of hearings to the Corporate Debtor, but the Corporate Debtor was absent for all hearings.

12. On the perusal of the Petition and on hearing the arguments of counsel for the Petitioner, this Bench is of the opinion that the Petitioner has proved the debt as well as default and the Petition deserves to be admitted.

13. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(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.

(II) 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.

- (III) 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.
- (IV) That the order of moratorium shall have effect from 04.12.2018 till the completion of the 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Vijay Pitambar Lulla, 201, Satchitanand Building, 12th Road, Khar West, Mumbai - 4000052, Email:- vijayplulla@rediffmail.com, having Registration No. IBBI/IPA-001/IP-P00323/2017-18/10593 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. Accordingly, this Petition is admitted.

15. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)