

In the National Company Law Tribunal
Mumbai Bench.

C.P. (IB)-3163/(MB)/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

Indiabulls Housing Finance Limited : Petitioner/ Financial Creditor

V/s

Mandakini Hospitality Private Limited : Respondent/ Corporate Debtor

Heard on: 16.01.2019

Order delivered on: 19.02.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. Gaurav Joshi, Sr. Counsel;
2. Mr. Chirag Kamdar, Counsel;
3. Mr. Nandu Grewal, Advocate;
4. Paidhi Saraf, Advocate;
5. Henna Goradia, i/b. Wadia Gandhi & Co.

For the Respondent(s) : 1. Mr. Nikhil Ratti Kapoor, Advocate, i/b. The
Law Point.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition was filed in Form No.1 on 21.08.2018 by M/s. Indiabulls Housing Finance Limited (IHFL in short) in the capacity of '**Financial Creditor**', u/s. 7 of The Insolvency & Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against M/s. Mandakini Hospitality Private Limited (MHPL in short, **Corporate Debtor**), Andheri (East), Mumbai to claim an outstanding Loan amount of **₹65 Crores granted vide Loan Agreement** dated 30.09.2013 read with Addendum Agreement dated 01.10.2013. The Loan amount was disbursed in full on 30.09.2013

1.1. The total amount claimed in default and due to the Financial Creditor by the Corporate Debtor as on 16.08.2018 is ₹100,44,10,233/- (Rupees One Hundred Crore Forty Four Lakh Ten Thousand Two Hundred and Thirty Three) along with pending TDS for ₹21,67,914/- , reproduced below:-

"Computation Table

Loan Account No.	S000237774
Applicable interest as per demand notice dated 16.12.2017	18.10%
Recall Amount (In Rupees)	89,48,09,547
Interest till 16.08.2018 (In Rupees)	10,96,00,686
No. of Days	247
Total Outstanding as on 16.08.2018 (In Rupees)	100,44,10,233
Pending TDS (In Rupees)	21,67,914

2. **Brief history of the case :-** The Financial Creditor (IHFL) sanctioned a Loan in favour of Mandakini Hospitality Private Limited (MHPL) on the terms and conditions stated in the loan agreement dated 30.09.2013. The total amount of loan granted was ₹65,00,00,000/- (Sixty Five Crores only) vide Sanction Letter dated on 27.09.2013 towards general corporate requirement of the Borrower for a period of 60 months.

3. Copy of Loan Agreement is placed on record. Subject to the terms and conditions of the Loan Agreement placed on record, the repayment of Loan was to be made in 12 quarterly instalments @ ₹5,41,66,667/- each, commencing from 01.01.2016 and ending on 01.10.2018.

4. The details of the Transaction on account of which the Debt fell due, as narrated in the Petition, is reproduced below:-

- "1. *Indiabulls Housing Finance Limited (IHFL) granted a loan in favour of Mandakini Hospitality Private Ltd.) on the terms and conditions stated in the Loan Agreement. The total amount of loan granted was ₹65,00,00,000/- (Rupees Sixty Five Crores Only).*

- 2. *Following Security documents were executed to secure the said Loan Facility:*
 - (a) *Mortgage Deed dated 30th October, 2013 executed by MHPL in favour of IHFL*
 - (b) *Demand Promissory Note dated 30th September 2013;*
 - (c) *Pledge / Charge Agreement dated 17.10.2013;*
 - (d) *Debenture Pledge Agreement dated 03.03.2015;*
 - (e) *Deed of Personal Guarantee dated 03.10.2013 executed by Mr. Vikas Kasliwal.*

5. Facts which are allegedly led to the default as stated by the Financial Creditor are as under :-

- "1. *MHPL was irregular and committed a breach in making payment towards the EMI with respect to aforesaid loan. In fact, no EMI was paid after 31.03.2016.*

- 2. *As a result of MHPL's breach, said Loan was declared as Non-Performing Assets by IHFL.*

3. IHFL issued a recall notice dated 24.10.2017 and a notice dated 16.12.2017 under Section 13(2) of SARFAESI Act to MHPL. MHPL responded to the legal notices vide their Advocates letter dated 14.02.2018. IHFL responded to the letter addressed by the Advocates of MHPL on 30.03.2018. MHPL has not made any payment nor provided any explanation for its default. Thus at the time of filing this application an amount of ₹100,44,10,233 (Rupees One Hundred Crore Forty Four Lakh Ten Thousand Two Hundred and Thirty Three) along with pending TDS for an amount of ₹21,67,914/- (Rupees Twenty One Lakh Sixty Seven Thousand Nine Hundred and Fourteen only) is due and payable to IHFL."

6. The Corporate Debtor had created a mortgage over Residential Premise.

Following is the details of the **mortgaged properties** :-

"Residential flat admeasuring 11,000 sq. ft. carpet area (including the Deck Area of 1,750 sq. ft. carpet area) on the 28 level together with stilt parking admeasuring 1,600 sq. ft. and a store room admeasuring 400 sq. ft. as delineated on the Floor Plans shown surrounded by Red Coloured Boundary Line and also shaded in blue and yellow colour on ownership basis in the building named "Palais Royale" located at CTS No. 288 (Part), 289 (Part). 1/1540 (Part), 2/1540 (Part), 3/1540 (Part) situated at G. K. Marg, Worli, Mumbai-400 018 in the registration District and Sub-District of Mumbai City."

7. The Financial Creditor (IHFL) has alleged that the Financial Debtor (MHPL) had committed breach of the terms and conditions of the Loan Agreement by *inter alia* defaulting the payment of equated monthly instalments due and payable to the Financial Creditor. Last payment made was on 31.03.2016 for an amount of ₹5,66,28,542/-. IHFL claimed that it did not receive the payments of the outstanding dues payable in accordance with the Loan Agreement.

8. Since the repayment of loan was allegedly defaulted by the Financial Debtor, the Financial Creditor invoked Clause 12.2 of the Loan Agreement and recalled the Loan Facility, relevant para reproduced below:-

"That in the event of default as provided in clause 12.1 of the Loan Agreement has occurred. In view of the default committed, IHFL hereby exercises its right under clause 12.2 and recalls the entire Loan Facility".

9. As the Loan repayment was defaulted by the Financial Debtor (MHPL), the Financial Creditor (IHFL) issued a Legal Notice on 24.10.2017 to the Corporate Debtor & 10 Others concerned, relevant para reproduced below:-

"13. In view of the recall of the Loan Facility you the Obligors are called upon to pay the entire outstanding amount of ₹86,48,07,073/-/- (Rupees Eighty Six Crores Forty Eight Lakhs Seven Thousand Seventy Three only) towards Outstanding Principal, Arrears (including accrued late charges) and interest

till 17.10.2017 which is due and payable by you along with future interest @ 18.10% per annum with effect from 18.10.2017 along with pending TDS for an amount of Rs.1,19,10,690/- (Rupees One Crore Nineteen Lakhs Ten Thousand Six Hundred Ninety Only) ("Outstanding Amount") till actual date of payment within 3 days from the date of receipt of this notice, failing which IHFL will take remedy under civil as well as criminal law to recover the loan amount."

10. Another Notice under Section 13(2) of the SARFAESI Act, 2002 was also issued by the Financial Creditor on 16.12.2017 on the Debtor & 10 Others in which it is stated that the Secured Creditor had disbursed a sum of ₹65 Crores. Also mentioned in this Notice that quote, *"..... as the interest and/or installment of principal has remained overdue for a period of more than 90 days, your account has been classified by the Secured Creditor as a Non-Performing Asset (NPA) on 30.09.2017, in accordance with the guidelines issued on the Assets Classification by the Regulatory Body."* Unquote.

11. The Legal Notice dated 16.12.2017 was replied by the Respondent Debtor on 14.02.2018 wherein pleaded that SARFAESI Proceedings have not been attended by the Petitioner properly, therefore, invoking a new jurisdiction of NCLT, is nothing but multiplicity of Court proceedings by the Petitioner. The Debtor Company was facing various Court proceedings and legal actions due to which it had become financially stressed Company. Learned Representative from the side of the Respondent Debtor is present, however, placed reliance on the communication already on record and nothing much is added during the course of hearing. The Financial Creditor contested the submissions of the Corporate Debtor in its reply dated 30.03.2018.

12. Heard the submissions of both the sides. Perused the contents of the Petition as well as the reply of the Respondent in the light of the annexed evidences.

13. It is pleaded by the Petitioner/ Creditor that the Corporate Debtor had defaulted to make repayments of the loan in accordance with the terms of the Loan Agreement.

14. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as "Financial Debt" as defined under section 5(8) of Insolvency & Bankruptcy Code, 2016. As a result, the Financial Creditor has filed this Application for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

15. Since this is a Petition of "Financial Creditor", therefore, the Insolvency Process shall commence as prescribed under Section 7 of I&BC, 2016.

16. The Petitioner / Financial Creditor has proposed the name of the IRP **Mr. Ravi Prakash Ganti**, Address: Flat No.2, Ashiana CHS, Plot No. 60-A, Sector 21, Kharghar, Navi Mumbai – 410210, Registration No. IBBI/IPA-002/IP-N00102/2017-18/10245. The proposed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

17. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

18. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

19. Accordingly, this **C.P.(IB)-3163/(MB)/2018** stood "Admitted".

20. The Corporate Insolvency Resolution Process is commenced from the date of this Order.

Sd/-
M.K. SHRAWAT
Member (Judicial)

Date : 19.02.2019

ug