S.No.108

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **11-04-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

Company Petition IB/153/2021
U/s 7 of IBC, 2016

IN THE MATTER OF:

Pridhvi Asset Reconstruction and Securitisation Company Ltd **...Financial Creditor**

Vs

Sri Pavana Keerthi Hotels India Pvt Ltd **...Corporate Debtor**

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders in CP(IB) No.153/7/HDB/2021 are pronounced as recorded vide separate sheets. In the result, the application is allowed. CIRP is ordered against the Corporate Debtor as per the terms metnioned in the order.

MEMBER (T) **MEMBER (J)**

Karim

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.153/7/ HDB/2021

Application under section 7 of I&B Code, 2016 read with Rule 4 of I & B (AAA) Rules, 2016.

In the matter between :

Pridhvi Asset Reconstruction &
Securitization Company Ltd.
A company incorporated under
Companies Act, 1956
And having its registered & corporate office at
Door No.1-55, 4th Floor,Wing I
Raja Praasadamu'
Masjid Banda Road
Kondapur, Hyderabad – 500084.
Rep. by its Power of Attorney
K.V. Ramakrishna Prasad.

.. **Petitioner**
Financial Creditor

VERSUS

M/s Sri Pavana Keerthi Hotels India Private Limited
A company incorporated under Companies Act, 1956
And having its registered office at
Plot No.207, Model Colony
SR Nagar, Hyderabad
And also at No.3-6-552, Level 5, 6, 7
Himayath Nagar, Hyderabad – 500029.
Rep. by its Director Mr. V. Anjaiah.

.. **Corporate Debtor**

Date of order : 11.04.2022

Coram:

HON'BLE SHRI VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

Parties / counsels present:

For the Petitioner : Shri VVSN Raju, Advocate

For the Respondent: Shri P. Pratap, Advocate.

PER BENCH

ORDER

The petitioner was incorporated under the Companies Act, 1956. It is the assignee of the debt portfolio of the respondent/ Corporate Debtor. The respondent incorporated under the Companies Act, 1956. It is in the business of hospitality and other related business.

2. The present application is filed by the financial creditor against Corporate Debtor/ M/s Sri Pavana Keerthi Hotels India Private Limited for default of financial debt of Rs.35,59,66,349/- (Rupees thirty five crores fifty nine lacs sixty six thousand three hundred and forty nine only) as on 31.05.2021. Hence, this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy

(Application to the Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

3. The averments made in the petition, briefly, are as under:

(i) The Corporate Debtor was granted Term Loan of Rs.19.28 crores by the erstwhile Andhra Bank, repayable in 94 instalments commencing from June 2015 lasting upto March 2023. The same was secured by personal guarantee of Directors and other six persons, who offered collateral securities for the said credit facilities.

(ii) The Corporate Debtor and the guarantors executed necessary loan documents and mortgaged various property as security for the Term Loan.

(iii) The Corporate Debtor failed to complete the project and could not repay the debt. The Corporate Debtor and the guarantors failed to service the interest and the instalments. Consequently, the account of the Corporate Debtor was classified as NPA and the Bank filed OA No.403 of 2017 before the DRT, Hyderabad-I. The DRT granted Recovery Certificate vide order dated

19.02.2019 (page 193-202 of the application) and the Recovery Officer, issued Demand Notice to the judgment debtors, but to no avail.

(iv) Andhra Bank has assigned debt portfolio of the Corporate Debtor in favour of the Financial Creditor vide registered Assignment Agreement dated 27.09.2017, by virtue of which the applicant/ Financial Creditor entered into the shoes of the Bank and thus, is entitled to recover the total dues and interest as decreed by the DRT.

4. The respondent/ Corporate Debtor has filed reply dated 02.11.2021 contending that:

(i) The applicant/ Financial Creditor has no privity of contract with the Corporate Debtor and thus, has no locus to file the present petition for initiating CIRP.

(ii) The present petition is barred by limitation. The account of the Corporate Debtor was classified as NPA on 31.10.2015 as per Part-IV of Form-I of the application. As such limitation of three years expired on 31.10.2018. Besides, the Corporate Debtor had never admitted/ acknowledged the debt during the said period.

(iii) On the point of limitation, the Corporate Debtor relied on decision of the Hon'ble Supreme Court in Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd.& anr. (CIVIL APPEAL NO. 4952 OF 2019) and contended that any application filed under section 7 of the I&BC beyond three years from the date of NPA is barred by limitation.

(iv) The Corporate Debtor relied on B.K. Educational Services Private Limited Vs. Parag Gupta and Associates, (2019) 11 SCC 633, wherein the Hon'ble Supreme Court held that,

> ".. .. *right to sue" accrues when a default occurs and if the default occurred over three years prior to the date of filing of the application, the application would be barred by Article 137 of Limitation Act.*"

(v) The Corporate Debtor further relied on decision of the Hon'ble NCLAT rendered in Company Appeal (AT) (Insolvency) No. 57 of 2020, in the matter of V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr., wherein it was held that:

> "*18. Therefore, we hold that a Judgment or a decree passed by a Court for recovery of money by Civil Court/ Debt Recovery Tribunal cannot shift forward the date of default for the purpose of computing the period for filing an application under Section 7 of the 'I&B Code'.*"

In view of the above issuance of decree by DRT and issuance of Recovery Certificate by Recovery Officer cannot carry forward the limitation, which had expired on 31.10.2018. Thus, the petitioner is time-barred.

(vi) The Corporate Debtor has not produced any document to show that the Corporate Debtor has acknowledged debt within the period of three years from the date of NPA.

(vii) The Financial Creditor has voluntarily waived its right to invoke section 7 of the I&B Code, 2016, when the applicant chose to prefer OA No.403 of 2017 before the DRT, obtained decree for recovery of Rs.32.10 crores, and got Recovery Officer appointed, who issued Demand Notice dated 22.07.2020. Said proceedings before DRT are pending as on date. Thus, the petition is not maintainable.

5. The applicant has filed rejoinder dated 20.12.2021, which is briefly stated thus,

(i) On the point of limitation, the applicant relied on decision of the Hon'ble Supreme Court in Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & another, Civil Appeal No.1650 of 2020, wherein it was held that:

> *" .. .. an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."*

(ii) As regards acknowledgment of debt by the Corporate Debtor the Financial Creditor submitted that the respondent issued letter dated 16.01.2020 (pages 42-44 of the application) for settlement of dues by acknowledging the debt due from the respondent. In this regard the Financial Creditor relied on decision of the Hon'ble Apex Court in Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & another in Civil Appeal No.323 of 2021, which extends the period of limitation depending upon an acknowledgement of debt made in writing and signed by the Corporate Debtor.

(iii) Besides, the Corporate Debtor had acknowledged the debt to Financial Creditor continuously their balance sheet, more particularly, balance sheets of 31.03.2019 and 31.03.2020 (pages 246-282 of the application).

(iv) Erstwhile Andhra Bank has assigned debt portfolio of the Corporate Debtor in favour of the Financial Creditor vide its

Assignment Agreement dated 27.09.2017. The Financial Creditor has entered into the shoes of the Andhra Bank and is entitled to recover the dues.

6. In view of the above discussion the following points arise for our consideration:

1. Whether the documentary evidence furnished with application shows that a financial debt is due and payable by the corporate debtor and has not yet been paid?
2. Whether the financial debt claimed as due and payable and has not yet been paid, is barred by limitation?

7. We have heard Shri. VVSN Raju the learned counsel for the Financial Creditor, Shri. Dammalapati Srinivas, Ld. Sr. Advocate for Shri P. Pratap Advocate for the Corporate Debtor, perused the pleadings, written submissions and the case law.

Point.1.

Whether the documentary evidence furnished with application shows that the financial debt is due and payable by the corporate debtor and has not yet been paid?

Learned Counsel for the Financial Creditor submitted that Applicant/Financial Creditor is the assignee of the debt portfolio of the respondent/ Corporate Debtor under the deed of assignment dated 27.09.2017 and that the Corporate Debtor was granted Term Loan of

Rs.19.28 crores by the erstwhile Andhra Bank, repayable in 94 instalments commencing from June 2015 lasting up to March 2023. According to the learned counsel, the Corporate Debtor failed to complete the project, besides failed to service the interest as well as the instalments. Hence the Financial Creditor approached the Debt Recovery Tribunal, Hyderabad and obtained an order for recovery of Rs.32.10 crores against the Corporate Debtor and the guarantors. Thereafter, the Recovery Officer, DRT, Hyderabad had issued a Demand Notice dated 22.07.2020 to the corporate debtor demanding payment, in vain.

8. It is found from the pleadings and the submissions made on behalf of the Corporate Debtor that the Corporate Debtor has not disputed availing of credit facilities besides suffering a recovery certificate from DRT, Hyderabad, as afore stated. Moreover, a perusal of the undisputed letter dated 16.01.2020 (page 42 of the application) addressed by the Corporate Debtor to the Chief Executive Officer of the Financial Creditor, wherein, the Corporate Debtor has stated as follows:

> "… .. *We also would like to inform you that we are working on settling the dues of our company with you and we shall approach you with a concrete proposal at the earliest.*"

clinchingly establishes existence of a financial debt due and payable by the corporate debtor in favour of the applicant herein. Since it is not the case of the corporate debtor that it has discharged the said debt, the default in repayment of the financial debt also stands established unequivocally.

The Point is answered accordingly.

Point No 2.

> Whether the financial debt claimed as due and payable and has not yet been paid is barred by limitation?

Needless to say that the burden is on the applicant to show that the debt claimed as due and payable by the Corporate Debtor is not barred by limitation, whether or not the plea of limitation is raised by the opposite party. The learned counsel for the applicant while strongly refuting the plea of the Corporate Debtor that the subject claim is barred by limitation, inter alia, placed reliance on the order in OA No.403 of 2017, whereunder DRT, Hyderabad-I allowed the recovery of claim of the outstanding dues from the Corporate Debtor and the guarantors, besides the Recovery Certificate dated 09.07.2018 issued by the DRT, and contended that the debt, which is due and defaulted by the Corporate Debtor is not barred by limitation.

9. The learned counsel also placed reliance on the ruling in Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & another, Civil Appeal No.1650 of 2020 (supra), wherein the Hon'ble Supreme Court of India held that,

> "135. .. .. *The judgment and order/ decree of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC.*"

10. However, refuting the said contention, the learned counsel for the Corporate Debtor would contend that the account of the Corporate Debtor has been classified as NPA on 31.10.2015 and therefore, limitation begins to run from 31.10.2015 and the same has expired on 30.10.2018. Hence the present application since filed on 24.10.2021 is hopelessly barred by limitation.

11. The learned senior counsel also relied on decision in B.K. Educational Services Private Limited Vs. Parag Gupta and Associates, (2019) 11 SCC 633 (supra) and also relied on ruling in the Hon'ble NCLAT rendered in Company Appeal (AT) (Insolvency) No. 57 of 2020, in the matter of V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Another (supra). Thus, contending the learned senior

counsel prayed this Tribunal to dismiss the application as the debt itself is barred by limitation.

12. It may be stated herein that that insofar as the starting point of limitation for the purpose of filing an application under section 7 of the I&B Code, 2016, in the matters where Financial Creditor has claimed the debt on the basis of a Recovery Certificate issued by DRT, is no longer *res integra*, inasmuch as Hon'ble Supreme Court of India, in Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & another, Civil Appeal No.1650 of 2020 (supra) has categorically held that,

> "135. .. .. *The judgment and order/decree of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC."*

> "*143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."*

13. In the case on hand, DRT, Hyderabad had allowed OA No.403 of 2017 filed by the applicant against the Corporate Debtor and the guarantors, vide its order dated 19.02.2019 and pursuant thereto a

Recovery Certificate also has been issued on 09.07.2019. Therefore, in terms of the ruling supra, a fresh cause of action and fresh period of limitation of three years has accrued effective from 09.07.2019/ 22.07.2020, in favour of the Financial Creditor. The present application having been filed on 24.06.2021 is therefore, well within the period of limitation of three years prescribed under Article 137 of Limitation Acaat.

14. That apart, it is pertinent to mention herein that it is not the defence of the Corporate Debtor in OA No.403 of 2017 before the DRT, Hyderabad that the claim as made in the OA was barred by limitation. So much so when the present application having been filed well within three years from the date of the Order/ Recovery Certificate issued by the DRT, it is highly preposterous to contend that the claim is barred by limitation.

15. We, therefore, hold that the claim as made is not barred by limitation. Point No.2 is answered accordingly.

16. Hence, for the reasons stated above, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) Corporate Debtor, M/s M/s Sri Pavana Keerthi Hotels India Private Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State

Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of moratorium shall have effect from this date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri Gunturu Raghu Babu**, having Registration No. IBBI/IPA-002/IP-N00025/2016-2017/10053, e-mail : raghu@ezresolve.in having address at : 402B, 4th Floor, Technopolis, Chikoti Gardens, Begumpet, Hyderabad, West Marredpally, Telangana ,500016, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. His AFA is valid upto 23.11.2022.

(i) Form-2 having filed by the proposed IRP at page 283 of the application, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The petitioner is directed to communicate this order to the proposed IRP.

17. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

18. Accordingly, this Petition is admitted.

11/04/2022

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

karim