



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

TP (IB) No. 1/MB/2022

In

CP(IB) No. 3256/ND/2019

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

J.C. FLOWERS ASSET RECONSTRUCTION PRIVATE LIMITED

[CIN: U74999MH2015PTC264081]

Registered Office: Unit No. 203-206, 2nd Floor

Wing A, Inspire BKC, Bandra (East)

Mumbai - 400051, Maharashtra.

...Financial Creditor

V/s

TULIP STAR HOTELS LIMITED

[CIN: L74899DL1987PLC029184]

Registered Office: Indira Palace Building

H Block, Middle Circle, Connaught Place

New Delhi-110001, Delhi.

...Corporate Debtor

Pronounced: 21.03.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Sr. Adv. J.P. Sen a/w, Adv. Abdul Kader Lokhandwala,
and Adv. Nidhi Chauhan i/b. Adv. Sukanya Bhaumik

Corporate Debtor: Adv. Rohan Rajadyeksha i/b Mr. Shiv Kumar Khera





ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This C.P. (IB) No. 3256/MB/2019 (Original Application) was filed on 02.12.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Yes Bank, the Original Lender, Financial Creditor (FC) through Mr. Arjun Verma, Senior Vice President of the FC, authorised *vide* Power of Attorney dated 29.08.2017, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Tulip Star Hotels Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs. 1028,68,87,326.65/- (One Thousand Twenty-Eight Crore Sixty-Eight Lakh Eighty-Seven Thousand Three Hundred Twenty-Six Rupees and Sixty-Five Paise) as on 22.10.2019, including the principal amount of Rs.945,96,52,551.22/- along with the amount of Rs.82,72,34,775.43/- as monthly interest. It is based on default in repayment of the various loans amounting to more than Rs.450,00,00,000/- sanctioned by the FC in favour of the principal borrowers i.e., Cox & Kings Limited and Ezeego One Travel & Tours Limited (Principal Borrowers), while the CD was the corporate guarantor of both the Principal Borrowers. It is submitted that the CIRP against Cox & Kings Limited (Principal Borrower No. 2) and Ezeego One Travel & Tours Limited (Principal Borrower No. 1) had already been





commenced *vide* order dated 22.10.2019 in CP(IB) No. 2640/MB/2019 and 09.03.2021 in CP(IB) No. 3/MB/2020, respectively.

1.3 The date of default is not specifically mentioned in Part-IV of the Original Application. However, to adjudicate the instant matter, 26.08.2019 can be considered as default date i.e., the date on which the Original Lender invoked the guarantee against the CD *vide* guarantee invocation letter dated 26.08.2019 for repayment of Rs.450,00,00,000/-. Since the CD defaulted in payment of its outstanding dues, the FC pray that CIRP may be initiated in respect of the CD under Section 7 of the IBC.

1.4 The Original Application was later transferred from NCLT Delhi to NCLT Mumbai *vide* order dated 06.05.2022 in TP(IBC) No. 79/PB/2021, filed by the Original Lender. Later, the said Company Petition was re-numbered as Transfer Petition bearing TP(IB) No. 1/MB/2022.

1.5 During the pendency of the Original Application, the Original Lender had assigned its debts of the CD in favour of J.C. Flowers Asset Reconstruction Company Private Limited (JC Flowers ARC) *vide* Assignment Agreement dated 16.12.2022. At the time of the assignment, J.C. Flowers ARC was the trustee of JCF YES Trust 2022-23/3 Trust. Pursuant to the Assignment Agreement, J.C. Flowers ARC had filed I.A. (IBC) No. 753/2023 before NCLT Mumbai for substituting the Original Lender as FC in the instant matter which was allowed *vide* order dated 15.06.2023 in the said IA.

2. CONTENTIONS OF FC

It is submitted that the Original Lender was a Banking Financial Company registered under the Companies Act, 1956, while the CD is a private company,





engaged in the hospitality industry. For business purposes, the Principal Borrowers sought cash credit facility and other loans from the FC, pursuant to which the FC sanctioned credit facilities to the tune of Rs.1015 Crore in favour of the principal borrowers with the CD standing as their corporate guarantor.

2.2 The following credit facilities were sanctioned in favour of Principal Borrowers

No. 1 & 2 through various documents such as:

- a) Term Loan and Factoring Facility *vide* Facility Letter dated 02.05.2017, for amount of Rs.650 Crore;
- b) Cash Credit *vide* Facility Letter dated 30.05.2017, for amount of Rs.100 Crore;
- c) Cash Credit *vide* Facility Letter dated 26.06.2018, for amount of Rs.350 Crore;
- d) Overdraft Facility *vide* Facility Letter dated 17.08.2018, for amount of Rs.15 Crore;
- e) Short Term Loan *vide* Facility Letter dated 27.08.2018, for Rs.350 Crore; and
- f) Cash Credit *vide* Facility Letter dated 11.03.2019, for amount of Rs.450 Crore.

2.3 To secure the aforesaid loans, the CD executed irrevocable and unconditional corporate guarantee *vide* Deed of Guarantee dated 10.07.2019 and 14.05.2019, in favour of the Original Lender. Later, upon default in repayment of the same, the Original Lender invoked the guarantee against the CD *vide* Guarantee Invocation letter dated 26.08.2019 (Principal Borrower No. 1) and 20.11.2019 (Principal Borrower No. 2) respectively. The proof of service of



letters to the CD was placed on record *vide* Original Lender's Additional Affidavit dated 14.01.2021.

2.4 The CD's board resolution dated 29.05.2019, clearly indicates the consent of the board of directors to offer corporate guarantee to the limited extent of Rs.450 Crore with respect to the credit facilities sanctioned in favour of the Principal Borrowers.

2.5 Since the CD failed to make any repayment of outstanding dues as the corporate guarantor to the Principal Borrowers, it amounts to default under the IBC and, therefore, the present Application against the CD is valid and maintainable.

3. CONTENTIONS OF CD

3.1 The Deed of Guarantee dated 14.05.2019, is defective as it does not provide any date regarding the board resolution passed by the CD's board to authorise the execution of the Deed. Hence, the said board resolution dated 29.05.2019, cannot be relied upon as it contemplates only the execution of future deeds of corporate guarantee. The CD submits that it never passed any resolution through its board to authorise any guarantee deed. In fact, the alleged Deed of Guarantee dated 10.07.2019 was not signed by the CD at all.

3.2 The Original Lender and the FC have failed to produce documents regarding disbursement of credit facilities in favour of the Principal Borrowers. The present Application is also defective on account of absence of proper authority while the corporate guarantees and the board resolution dated 29.05.2019 allegedly executed by the CD, were actually forged and fabricated. The employees of the Original Lender had committed the offence of criminal





conspiracy and forgery regarding such documents. The CD placed the affidavit dated 26.09.2023 of Mr. Ajit B. Kerkar, its Managing Directors to submit that the board never passed any such resolution.

3.3 The CD, by its Additional Reply dated 08.10.2023, submitted that its Chief Financial Officer (CFO), Mr. Shaunak A Paigankar had never signed the alleged corporate guarantees annexed as evident from his affidavit dated 26.09.2023. Also, the veracity of alleged board resolution dated 29.05.2019 cannot be examined as Mr. B. Dwarkanath, who signed the same died on 27.06.2021, as evident from his death certificate, which is placed on record by way of additional affidavit by the CD.

3.4 In the CD's Audited Annual report for the Financial Year 2018-2019, it is clearly recorded that no loan or guarantees or investment has been made in the said Financial Year in favour of the Original Lender or the FC herein.

3.5 The Ld. Counsel for the CD further submitted that the Deed of Assignment dated 16.12.2022, in favour of J.C. Flowers ARC is defective on account of inadequate stamp duty and thus, it cannot be considered as valid assignment of debt by the Original Lender.

3.6 It is further submitted that the FC has approached this Tribunal with mala fide intention to harass the CD for recovery purposes, which is contrary to the objectives of the IBC.

4. REJOINDER OF FC

4.1 The CD, through its reply, had already admitted that it is a corporate guarantor to the Principal Borrowers.





4.2 The allegations regarding fraud and forgery are nothing but an afterthought and they are completely outside the purview of the Section 7 of the IBC. Similar allegations regarding fraud were also relied upon by the Principal Borrowers in their CIRPs, which indicate that the CD has nothing new and substantial to refute its liabilities towards the FC.

4.3 The CD's contention regarding inadequate stamp duty on the corporate guarantees is false and it is submitted that the CD had authorised its CFO, Mr. Shaunak A Paigankar by board resolution dated 29.05.2019, to issue corporate guarantee in favour of the Original Lender regarding credit facilities sanctioned to the Principal Borrowers.

4.4 The CD was aware of the assignment of its pending dues in favour of the FC from the year 2021 onwards and had remained silent till the filing of its reply. Moreover, the Bench had already allowed the substitution of the Original Lender with the present FC in the instant matter *vide* order dated 15.06.2023 in IA(IBC) No. 753/2023. In view of the above, CIRP in respect of the CD is only to be initiated.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD.

5.2 The major issues to be decided in the matter are (i) whether there is a corporate guarantee executed between the CD and the Original Lender; (ii) whether the corporate guarantee was actually invoked; and (iii) whether the Application is defective on account of inadequately stamped guarantee





deed/deed of assignment and lack of proper authorisation to the Application.

Now, let us examine the defences raised by the CD one by one.

5.3 There is no dispute as to the sanctioning or disbursement of term loan facility in various forms by the Original Lender to the Principal Borrower No. 1. There is also no dispute as to the debt and default by the Principal Borrower. What is disputed in the matter is the execution of Deed of Guarantee and invocation of the same by the Original Lender. The copy of Deed of Guarantee dated 10.07.2019, indicates that the CD has executed the Deed with the Principal Borrower No. 1 i.e., Ezeego One Travel & Tours Limited. The copy of the Guarantee Deed (Annexure-N) shows that the CD's representative has signed the document as well as affixed its stamp on all the pages of the Deed of Guarantee including Schedule-I containing the names and description of the parties. Clause 12 of the Deed of Guarantee clearly states that the Deed shall continue to be valid until all monies guaranteed are paid to the Lender in full and to their satisfaction. Clause 16 categorically states that the Deed shall be enforceable against the guarantor. Further, Clause 20 states that to give effect to the deed, the beneficiary may act as though the guarantor were the principal debtor to the lender. Hence, we do not have any hesitation to hold that the CD has executed the Deed of Guarantee with the Original Lender. Issue (i) is, thus, decided in favour of the FC.

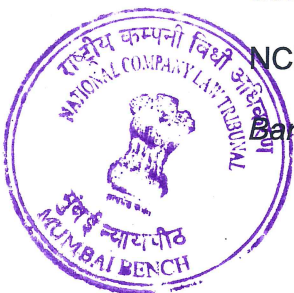
5.4 Now, the second question is whether guarantee was actually invoked in the matter. Clause 25 of the Deed of Guarantee declares that the deed shall be irrevocable and the obligations of the guarantor shall not be conditional on the receipt of any prior notice by the guarantor or by the borrower, and the demand





or notice by the beneficiary shall be sufficient notice or demand on the guarantor. It is on record that the notice of demand dated 20.11.2019, addressed to the CD, in paragraph 5 has categorically stated that the guarantee furnished by the CD was invoked. Although the postal track report of the notice was not produced by the Original Lender/FC, the postal receipt dated 22.11.2019 addressed to the CD has been produced by the Original Lender by way of additional affidavit dated 14.01.2021. The address of the CD shown on both the invocation notice and the postal receipt is the same. In the reply, although the CD has challenged the receipt of notice of invocation of guarantee dated 20.11.2019, the postal receipt produced by the FC clearly shows that a postal consignment was booked in the CD's name dated 22.11.2019. The CD has not filed any counter affidavit challenging the said postal receipt. The CD also does not have a case that it received some other consignment than the guarantee invocation notices on or after 22.11.2019. In view of the above, we are convinced that the postal receipt dated 22.11.2019, conclusively proves issuance of notice of invocation of guarantee on the CD and the receipt of the same by it. Issue (ii) is also held in favour of the FC.

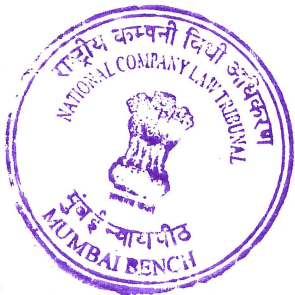
5.5 As regards insufficient stamp duty on the Deed of Guarantee, Deed of Assignment and other documents, we find that in a summary proceeding under the IBC, it is not for the Adjudicating Authority to determine sufficiency or otherwise of stamp duty in a document and it is for the civil courts and other authorities to determine the same. As held by the Principal Bench of Hon'ble NCLAT, New Delhi in *Koncentric Investments Ltd. Vs. Standard Chartered Bank*, London in CA (AT) (Insolvency) No. 911 of 2021, the issue of stamp





duty is irrelevant and uncalled for in a Section 7 application, especially when the "debt" and "default" are otherwise proved. Further, in *Ashique Ponnamparambath Member of Suspended Board of Directors Vs. The Federal Bank Limited*, [Company Appeal (AT)(CH)(Insolvency) No. 22 of 2021], the Hon'ble NCLAT, Chennai also held that when alleged debt and default are proved beyond doubt and the application filed under Section 7 is complete, CIRP is only to be initiated. This Bench has also decided in *DBS Bank India Limited Vs. Parakkott Investment India Private Limited.*, [CP (IB) No. 790/MB-VI/2020] that mere technical contention of deficiency or insufficiency of stamp duty relating to the execution of a deed, need not be looked into by the Adjudicating Authority in an application under Section 7 of the IBC, as the proceedings are summary in nature. Issue (iii) is found against the CD.

5.6 It has been time and again held by the Adjudicating Authorities as well as Hon'ble NCLAT that the moment debt and default have been established, an application under Section 7 of the IBC must be admitted unless it is incomplete. As regards the contention of the CD that there was no authorisation for filing of the present Application, we find that the Original Lender had already placed the power of attorney dated 29.08.2017 issued in favour of Mr. Arjun Verma, which grants sufficient authority to him to file the Application. Further, by statutory order No. S.O. 1091(E) dated 27.02.2019, issued in exercise of the powers conferred under Section 7(1) of the IBC, the Ministry of Corporate Affairs notified persons, who may initiate CIRP against corporate debtors, on behalf of the financial creditors, viz., guardians, executors, trustees, etc.,





including a person duly authorised by the Board of Directors of a Company.

Further, sub-section (1) of Section 7 of the IBC states as under:

“(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating Authority when a default has occurred.” (Emphasis Supplied).

A joint reading of Section 7(1) of the IBC and S.O 1091(E) dated 27.02.2019, abundantly makes it clear that the instant Application is one which has been filed by the FC itself and not by any other person on behalf of the FC. The FC itself has filed the Application through its authorised officer, being the Chief Manager. Hence, it is concluded that the Chief Manager has sufficient authority to file the Application for and on behalf of the FC. This Bench has taken similar view in *Edelweiss Asset Reconstruction Company Ltd. Vs. NCR Rail Infrastructure Ltd.*, [CP(IB) No. 1079/MB-VI/2022]. Hence, we hold that Mr. Verma, Senior Vice President was adequately authorised by the FC to file the Application. This issue is also found in favour of the FC.

5.7 The contentions of the CD regarding fraud and forgery are completely misplaced and found to be mere afterthought of the CD. Similar allegations were also raised by the Principal Borrowers in their respective proceedings before NCLT Mumbai but such contentions were rejected by the Tribunal which allowed the admission of the Principal Borrowers to CIRP *vide* order dated 22.10.2019 in CP(IB) No. 2640/MB/2019 and 09.03.2021 in CP(IB) No.





3/MB/2020. Since the IBC proceedings are summary in nature, the Hon'ble Tribunal does not have the jurisdiction to explore and investigate the criminal complaints lodged with law enforcing agencies such as Economic Offences Wing.

5.8 The FC has thus successfully demonstrated and proved the debt and default in this case. It is noted that the CD admits the said outstanding debt. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 7 of the IBC.

5.9 The FC has proposed the name of Mr. Gaurav Ashok Adukia, a registered Insolvency Professional having Registration Number-IBBI/IPA-002/IP-N00457/2017-2018/11293, as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has given its written consent and the same is placed on record. It is also certified in Form 2 that no disciplinary proceedings is pending against him.

ORDER

This Application bearing **T.P. (IB) No. 1/MB/2022 in CP(IB) No. 3256/ND/2019** under Section 7 of the IBC, filed by J.C. Flowers Asset Reconstruction Company Private Limited, the FC, for initiating CIRP in respect of Tulip Star Hotels Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

1. We prohibit-





- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Gaurav Ashok Adukia**, a registered Insolvency Professional having **Registration Number-IBBI/IPA-002/IP-N00457/2017-2018/11293** and **e-mail- gauravadukia@hotmail.com**,





having valid Authorisation for Assignment up to **30.06.2025** as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.





- X. The Registry is directed to communicate electronic version of this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//Tanmay Jain//

Certified True Copy
Copy Issued "free of cost"
On 25.03.2025

[Handwritten Signature]
25032025

Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

