

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA**

**CP(IB)/30/KOB/2021**

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

**Order delivered on: 31.12.2021**

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**  
**Hon'ble Mr. Anil Kumar. B, Member (Technical)**

State Bank of India,  
Stressed Assets Management Branch (SAMB),  
1112, Raja Plaza,  
Avinashi Road, Coimbatore- 641 037.  
Email: [sbi.16454@sbi.co.in](mailto:sbi.16454@sbi.co.in)  
Represented by its Assistant General Manager.

Registered Office:  
State Bank of India,  
Corporate Centre, State Bank Bhavan,  
Madam Cama Road, Nariman Point,  
Mumbai- 400 021.

... **Financial Creditor**

Versus

ITMA Hotels India Private Limited,  
ITMA Hotels, Ponnurunni North,  
Vytilla P.O., Kochi,  
Kerala- 682 019.  
Email: [josejomer1994@yahoo.com](mailto:josejomer1994@yahoo.com)

... **Corporate Debtor**

**Appearance (through video conferencing)**

For Financial Creditor  
For Corporate Debtor

...Shri.Vinod P.V., Advocate.  
... Smt. Liza Meghan Cyriac, Advocate.

**Per: Anil Kumar. B, Member (Technical)**

This CP(IB)/30/KOB/2021 has been filed on 06.09.2021 by the State Bank of India, Stressed Assets Management Branch (SAMB), 1112, Raja Plaza, Avinashi Road, Coimbatore- 641 037. (**Financial Creditor**) by invoking the provisions of Section 7(4) of the Insolvency and Bankruptcy Code (hereinafter called as **Code**) against M/s ITMA Hotels India Private Limited, ITMA Hotels, Ponnurunni North, Vytilla P.O., Kochi, Kerala 682 019. (**Corporate Debtor**) stating that there is a total amount of Rs. 102,77,00,000/- (Rupees One Hundred and Two Crore and Seventy-Seven Lakhs Only) due from the Corporate Debtor to Financial Creditor and that the date of default is 25.09.2019.

The brief facts of the case are as under: -

2. The State Bank of Travancore (SBT) and State Bank of Bikaner and Jaipur (SBBJ) granted term loan facilities of total Rs. 38 Core to the Corporate Debtor for construction of hotel vide sanction letters dated 20.09.2010 and 01.11.2010 respectively. A further Rs. 36 Core was sanctioned on 09.02.2012 by SBT and 09.08.2012 by SBBJ. The sanction was renewed further on 26.09.2013 by SBI and SBBJ and a facility agreement was entered on 03.07.2014 for a total term loan facility of Rs. 95.77 Crore and working capital facility of Rs.7 Crore. The loan amount was disbursed against sanction of each facility. SBT and SBBJ got merged with State Bank of India on 31.03.2017 and the account are now maintained at the State Bank of India.

3. It is stated that Corporate Debtor has defaulted in the repayment of credit facilities and the accounts of SBT became NPA on 05.10.2015 and SBBJ on 06.11.2015. The Financial Creditor has filed OA 443 of 2016 before the Debts Recovery Tribunal (DRT) on 27.06.2016 for recovery of the due amount of Rs.113.20 Crore. Subsequently the Corporate Debtor vide letter dated 26.02.2019 requested the Financial Creditor for compromise settlement, which was approved by the Applicant on 21.03.2019 by which the Corporate Debtor has agreed to settle the entire dues of Rs. 77 Crore and 100% cash margin for existing Bank Guarantee for Rs.5.03 crore in addition to Rs. 77 Crores, which was duly acknowledged by the Corporate Debtor on 28.03.2019. On the basis of the compromise settlement jointly agreed between the Corporate Debtor and Financial Creditor, the Debts Recovery Tribunal (DRT) passed a compromise settlement order on 20.09.2019 in OA No.443/2016, by which Corporate Debtor was directed to deposit Rs.12 Crores upfront, Rs.28 Crore on or before 31.03.2019 and balance Rs.37 Crore and cash margin to be paid on or before 25.09.2019. In the compromise, it is stated that if the payments are not effected within the stipulated time, the compromise offer would stand cancelled and Corporate Debtor shall be liable for the entire amount due as per the OA forthwith.
4. It is further stated that the Corporate Debtor has remitted Rs.12 Crore upfront as part and failed to make the balance payments within the stipulated time of 25.09.2019. The Corporate Debtor made a further payment of Rs.5 Crore and accordingly, a further extension was granted vide letter dated 27.12.2019. It is stated that the Corporate Debtor was required to make payment of Rs.10 Crore before 10.01.2020, Rs.20 Crore before

31.01.2020, Rs. 15 Crore before 28.02.2020 and balance Rs.15 Crore on or before 31.03.2020. Despite granting sufficient time, Corporate Debtor failed to make the balance payment in terms of compromise agreement. Hence, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7(4) of Insolvency and Bankruptcy Code, 2016.

**Submission by the Corporate Debtor**

7. The Corporate Debtor filed a counter stating that they have paid initial instalment, but due to COVID pandemic, it could not complete its obligations under the Joint Compromise Statement. The Corporate Debtor has expressed his willingness to proceed with the Compromise Memo and according to them there is no default on the side of the Corporate Debtor.

8. They have raised the issue of limitation, as the account of the Corporate Debtor in SBT and SBBJ were declared NPA on 05.10.2015 and 06.11.2015 respectively and this application has been filed on 06.09.2021, not within three years from that dates.

9. It is also stated that the Adjudicating Authority under the IBC is not a substitute forum for collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. It is also stated that this Tribunal is not a forum for recovery of debt. Time and again, the appellate forum as well as the Apex Court has reiterated that the provisions of the IBC could not be invoked for recovery of outstanding dues, but could only be invoked to initiate CIRP for just reasons. It is also stated that the Corporate Debtor has not acknowledged its liability to the

Consortium of banks now held by the Financial Creditor within a period of three years prior to the date of filing of the application under Section 7 of the Code.

10. It is also their contention that the application moved by the Corporate Debtor for One Time Settlement or Restructuring cannot be taken as an acknowledgment of Debt. If the proceedings before the Debts Recovery Tribunal under Section 19(1) of the Recovery of Debts due to Banks & Financial Institutions Act of 1993, OA 443/20116 could be taken as proof of acknowledgement to satisfy the requirements under Section 18 of the Limitation Act, then the acknowledgment is only towards the One Time Settlement Amount and not to the amount of Rs. 197 crore as cited by the Financial Creditor in the Section 7 Application. It is further stated that the Corporate Debtor is liable to pay only the balance amount as agreed in the compromise agreement.

11. It is stated that even after the compromise agreement and Final Order in OA, there are further records to show that the Corporate Debtor has made payments and thus there is no default leading to proceedings under Section 7 of IBC.

### **FINDINGS**

12. We have heard the learned counsel for the parties and perused the case records including documents appended with the case records. On perusal of the documents and hearing the arguments advanced by both the sides, this Bench finds it necessary to deal with each issue separately.

- i. *Whether the application is maintainable?*
- ii. *Whether this application will come in the purview of multiple proceedings with respect to the same debt?*
- iii. *Whether there is a Creditor-Debtor relationship between the Financial Creditor and Corporate Debtor herein and whether this Tribunal can initiate CIRP against the Corporate Debtor?*

13. **Point No (i):** We have gone through Part IV of the application; wherein it is clearly stated that the loan accounts of the Corporate Debtor in SBT became NPA on 05.10.2015 and SBBJ on 06.11.2015. The date of occurrence of default for the purpose of IBC is stated to be 25.09.2019. It is also seen from the records that the Corporate Debtor made a payment of Rs. 12 Crores on 27.03.2019 and Rs. 5 Crores on 31.12.2019.

Section 238A of the IBC, 2016 defines “limitation” which is as under:

**Section 238A: Limitation.**

**238A.** *The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be.*

14. To get further clarity on this issue, we have gone through the Article 137 of the Limitation Act, 1963 which reads as under:

PART II—OTHER APPLICATION

<i>137. Any other application for which no period of limitation is provided elsewhere in this Division.</i>	<i>Three years</i>	<i>When the right to apply accrues.</i>
---	--------------------	---

15. It is settled law as decided by the Hon'ble NCLAT in its order in ***Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd.*** (Company Appeal (AT) (Insolvency) No. 44 of 2017) that, those provisions of the IBC cannot be shackled by the Limitation Act. It is observed that: *“There is nothing on the record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the appellant also failed to lay hand on any of the provision of I&B Code to suggest that the Law of Limitation Act, 1963 is applicable. The I&B Code, 2016 is not an Act for recovery of money claim, it relates to the initiation of Corporate Insolvency Resolution Process. If there is a debt which includes interest and there is default of debt and having a continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.”*

16. We therefore, are not agreeable with the submissions made by the Corporate Debtor regarding limitation for filing this application. Hence the application is maintainable.

17. **Point No. (ii).** On perusal of the records, we found out that Section 7 of the Code propounds the manner in which Corporate Insolvency Resolution Process (CIRP) is to be initiated by the “financial creditor” against a “corporate person being the corporate debtor”.

18. The Hon'ble National Company Law Appellant Tribunal ("**NCLAT**") in various judgments has held that pendency of actions under the SARFAESI Act or actions under RDB Act does not create obstruction for filing an application under IBC on the ground that provisions under IBC shall have

overriding effect over any provisions inconsistent therewith contained in any other law for the time being in force.

19. In this connection the decision of the Hon'ble NCLAT in **Rakesh Kumar Gupta v. Mahesh Bansal & Ors.**, (*Company Appeal (AT) (Insolvency) No. 1408 of 2019*) order dated on 20.02.2020, may be referred to.

20. Further on 26.02.2020, in the matter of **Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd.**, (*Company Appeal (AT) (Insolvency) No. 854 of 2019*) the question that arose before the Hon'ble NCLAT was whether subsequent to initiation of proceedings under the SARFAESI Act, a financial creditor can be precluded from filing an application under Section 7 of the Code. The Hon'ble NCLAT held that simply because the Financial Creditor had initiated a parallel proceeding against a Corporate Debtor under SARFAESI Act as well as under the Code, it cannot be called malicious. The Hon'ble NCLAT further opined that Section 238 of Code provides that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Therefore, this non-obstante clause of the Code will prevail over any other law for the time being in force. Hence, the contention regarding maintainability will not stand for scrutiny and is to be rejected.

21. **Point No. (iii)** From the records produced, we could find that there is a Creditor- Debtor relationship between the Financial Creditor and the Corporate Debtor, since the Corporate Debtor admitted that they received

money from the Financial Creditor through various documents produced before this Tribunal and the Corporate Debtor has no case that they have fully repaid the money received from the Financial Creditor.

22. As there is a default in the payment of the financial debt, which has been confirmed by them in the counter affidavit that the Financial Creditor paid the money to the Corporate Debtor, this Tribunal is of the view that, the present application filed by the Financial Creditor satisfies all the definitions of “Financial Creditor”, “Default” and “Financial Debt” and qualifies for filing an application under the Insolvency and Bankruptcy Code. By mentioning various technical snags the Corporate Debtor cannot wash its hands in repaying the amount borrowed, which is a financial debt owed by them. Hence, there is a Creditor-Debtor relationship with them.

23. The Corporate Debtor committed default in repayment of the loan amount to the Financial Creditor, and hence its Loan Account was declared as NPA. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of an application under Section 7(4) of the I&B Code.

24. Therefore, we are of the considered view that the application filed in the capacity as a ‘Financial Creditor’ for a ‘financial debt’ which is recoverable from the Corporate Debtor viz., **M/s ITMA Hotels India Private Limited** is a fit case for admission and initiation of CIRP against the Corporate Debtor. The documents produced on record prove the disbursement of various loan facilities by the Financial Creditor to the Corporate Debtor.

25. The Application under Sub-Section (4) of Section 7 of I&B Code, 2016 is complete in all respects. Accordingly, the application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted. Hence, the Application No. **CP(IB)/30/KOB/2021** is admitted and the following order has been passed: -

**ORDER**

- i. Having admitted the Application, the provisions of **moratorium** as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.
- ii. The Financial Creditor has suggested the name of **Shri. Kizhakkekara Kuriakose Jose**, an Insolvency Professional for appointment as Interim Resolution Professional (IRP). Accordingly, this Tribunal appoints **Shri. Kizhakkekara Kuriakose Jose** having Registration No. **IBBI/IPA-001/IP-P00445/2017-2018/10788**, residing at **KK Jose & Associates, Yenvee Complex, Temple Road, Aluva, Kerala-683 101**, email id:- [kkjoseca@gmail.com](mailto:kkjoseca@gmail.com) whose name appears in the panel of IPs for appointment as Interim Resolution Professional for the period 01.07.2021 to 31.12.2021 for Kochi Bench, as the Interim Resolution Professional to carry out the functions as mentioned under IBC.
- iii. The fee payable to IRP or as the case may be to RP shall comply with such regulation/circular and direction as may be issued by

the IBBI and the IRP shall carry out his duties as contemplated by Section 15, 17, 18, 19, 20 and 21 of the IBC.

- iv. The Financial Creditor shall deposit an amount of Rs. 2,00,000/- (Rs. Two Lakhs Only) with the IRP to meet the initial expenses towards issue of public notice and inviting claims etc. These expenses are subject to approval by the Committee of Creditors (CoC).
- v. The supply of essential services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code, by the Adjudicating Authority.
- vi. That as prescribed under Section 13 of the Code on declaration of moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on receipt of this order, as per the provisions of the Code.
- vii. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the C.I.R.P. and the compliance of the directions of this Order within 30 days to this Bench. Liberty is granted to intimate even at an early date, if need be.
- viii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of Admission.
- ix. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP in terms of Section 17 of the IBC. The Directors/Officers and Managers of the Corporate Debtor 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 coercive steps will follow.

- x. The Registry is directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and e-mail within two days from the date of this Order.
- xi. A copy of this Order be also sent to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry of this Tribunal within seven days.

Dated this the 31<sup>st</sup> day of December, 2021

Sd/-

**(Anil Kumar. B)**  
**Member (Technical)**

Sd/-

**(Ashok Kumar Borah)**  
**Member (Judicial)**

Rajasree