

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))

C.P. (IB)No.13/BB/2024

U/s. 7 of the IBC, 2016

R/w Rule 4 of the IBBI (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Vistra ITCL (India) Limited,

Debenture Trustee for

M/s Mobisoft Telesolutions Private Limited &

BPEA India Credit Investments Trust II

The IL&FS Financial Centre, Plot No. C-22,

G Block, 7th Floor, Bandra Kurla Complex

Bandra (East), Mumbai – 400051

And having branch office at:

Al-Latheef, 2nd Floor, #2 Union Street,

Off Infantry Road,

Bangalore -560001

...Applicant/Financial Creditor

Versus

Siesta Hospitality Services Limited

S-621, 6th Floor, South Block, 47,

Dickenson Road,

Bangalore,

Karnataka -560042

...Respondent/Corporate Debtor

Order delivered on: 14.11.2024

CORAM:

1. Hon'ble Shri K. Biswal, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:


For the Applicant : Shri Abhijit Atur

For the Respondent : Ms. Athulya M.P, Shri Abhyankar Panth

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present application dt.6.10.2023 under Section 7 of the Insolvency & Bankruptcy Code, 2016 is filed by the Financial Creditor/Applicant on behalf of (i) M/s Mobisoft Telesolutions Private Limited and (ii) BEPA



India Credit Investment Trust II, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for default in payment of outstanding dues amounting to Rs.62,98,99,143/- to the financial creditors as on 12.09.2023 along with further interest.

2. The facts as mentioned in the petition are briefly stated as follows:

- a) The Financial Creditor (hereinafter referred to as “FC”) states that BPEA India Credit Investment Trust II subscribed to unlisted, secured, redeemable, non-convertible debentures issued by the Corporate Debtor (hereinafter referred to as “CD”) on a face value of INR 1,00,000/- totalling to an amount of Ra.50,00,00,000/-. Subsequently, a Demand Promissory Note was created along with a Letter of Continuity (March 01, 2018) by which repayment of the amount was secured under the Debenture Trust Deed to the FC. The said NCD’s were issued to BPEA in the following tranches:-

<u>Date</u>	<u>Number of NCDs issued</u>	<u>Amount in INR</u>
7.03.2018	4000	40,00,00,000
30.10.2018	400	4,00,00,000
31.12.2018	600	6,00,00,000
Total	5000	50,00,00,000

- b) The FC, was appointed as the Debenture Trustee under the Debenture Trust Deed (“DTD”) and the Debenture Trustee Agreement (“DTA”) both dt.01.03.2018 whereby the FC was allotted 5000 unlisted, secured, redeemable and non-convertible debenture with a face value of 1,00,000 aggregating to 50,00,00,000/-. Both DTD and DTA are collectively referred to as the “Agreements.”
- c) The CD requested the FC to amend the terms of the Agreements and restructure the payment there under. In pursuant to which discussions were held between the CD and FC by which the payment

terms were restructured and an In Principle Re-Schedulement Letter dt.05.02.2020 was executed between the CD and the FC as the debenture trustee. Pursuant to discussions, at the request of the CD, the parties agreed to further amend the terms of the Agreements vide an amendment dt.28.03.2021 which restructured the payment terms as below:

Redemption Instalment	Rs.61,11,111
Deferred payment instalment	Rs.30.48.356
Regular Interest	Rs.39,23,836
Total:	Rs.1.30.83.303


- d) As per the amended payment terms, the CD was required to pay instalments amounts but despite providing two restructuring to the CD for payment of outstanding dues under the Agreements the CD has failed to pay the same.
- e) After several notices calling upon the CD to pay the outstanding default amount, a part payment of Rs.15,00,000 was made on 15.07.2021. The CD informed the FC through an email dt.23.06.2021 that it has decided to sell the business and offered to buy back the Debentures held by the CD and pay the FC 56.81% of its principle amount due. The FC did not agree to the proposal of the CD and reminded the CD to make the payment vide email dt.14.07.2021.
- f) Due to the recurring default in the payment of outstanding default amount, the Debenture trustee inter alia initiated proceedings under Section 7 of the Code, 2016 in CP(IB) 71/2021. During the pendency of the said proceedings, due to the continued default of the CD, the entire loan facility was recalled. Therefore, the said petition before the Hon'ble NCLT was withdrawn on the ground of new developments

taking place and the loan facility being recalled resulting in substantial change in the default amount under Part IV Form-1. This Tribunal also vested the petitioners in CP (IB) 71/2021 with the liberty to file fresh petition for the entire defaulted amount. The Hon'ble NCLT was pleased to permit the withdrawal of the Petition vide order dt.15.02.2023.

- g) Subsequent to the withdrawal of the Petition, BPEA has transferred part of the NCDs held by them to M/s Mobisoft Telesolutions Private Limited, the Financial Creditor herein, in terms of the Agreements. Accordingly, the rights of BPEA have been assigned in favour of the FC herein to the extent of the NCDs that have been transferred to it.
- h) It is stated that as per **Part IV Form 1** of the Petition, the amount in default is **Rs.62,98,99,143/-** and the date of default is **15.04.2021**.
- 3.** The Respondent/CD has filed its Objections vide diary no.00533 on 18.03.2024 and Written Submission vide diary dt.5546 on 25.09.2024 by *inter alia* contending as follows:

a) That the petition falls under 10A period and is debarred on account of the same. Given that the Respondent's business came to a standstill during the pandemic, the CD decided to sell a substantial part of its business on a "Slump Sale" basis under Section 2(42C) of the Income Tax Act, to reduce its debt and pay off the Debenture Holder and settle their liabilities of the Company the Petitioner /BPEA assisted the CD in identifying potential buyers for the slump sale and made introductions to the CD for "selling its debentures."

b) The CD received an offer from M/s Altruist Technologies Private Limited and Scholar Alley Private Limited for the Slump Sale of certain identified business, which culminated into signing of two Business Transfer Agreements on 2.08.2021 and 18.08.2021 respectively for a slump sale of identified business as defined in Section 2(42C) of the Income Tax 1961. As per the terms of these BTA read in conjunction with Section 2(42C) of the Income Tax Act 1961, the Buyers will take over both the assets and liabilities of



the respondent as on 31.07.2021 without assigning any individual values to the assets and liabilities. While the outstanding amount owed to BPEA was Rs.44,00,00,000, BPEA agreed to settle at Rs.36,00,00,000/- for which BPEA issued an NOC. In view of the above, on 26.10.2021, an Addendum to the Business Transfer Agreements was executed under which it was inter alia agreed that an amount of INR 36 crores would be paid to the Debenture Holder by Altruist.

- c) The Petitioner and Respondent executed a Second Amendment to the Debenture Trust Agreement on 20.10.2021 under which specifically provided that an escrow account will be opened for an amount of Rs.36 crores which will be directly paid to the Debenture Holders. It is also stated by the CD that the debenture holders on 28.12.2021 through the Petitioners effected an issuance of an “in-principal approval” for a proposed slump sale of the identified assets of the Respondent to the Buyers. The letter reinforced the intention of the parties to proceed with a new arrangement arising from the email dt.31.08.2021 and “second amendment” dt.20.10.2021 and provided respondent the necessary approvals to proceed with the transfer to the Buyers.
- d) The CD contends that since Altruist and Scholar Alley agreed to bear the obligations and liability to redeem the debentures issued to BPEA, in terms of Section 62 of the Indian Contract Act, 1872 which inter alia deals with the effect of novation, as Altruist and Scholar Alley substituted the Respondents, the CD’s liability stands extinguished.
- e) That the petitioners have also filed a suit before the Hon’ble High Court of Bombay which came to be withdrawn due to lack of jurisdiction by virtue of which a subsequent suit came to be filed before the Hon’ble Delhi High Court in C.S (COMM) No.850 of 2022 wherein the petitioner sought to challenge the BTA between Siesta, Altruist and Scholar Alley by arraying them as parties, and had sought for reliefs of declaration and permanent injunction as well




as for recovery and damages of certain amount along with an interest which came to be withdrawn due to the debt being satisfied by the buyers. Since the debt was satisfied, the parties including the Petitioner agreed that the lis had been settled, by virtue of which the above suit came to be withdrawn by the Petitioner which came to be recorded vide order dt.24.08.2023 which stated that **“the suit stood withdrawn as the parties have been in inter-se settlement discussions pursuant to which a settlement has been arrived at between the parties. The conduct of the plaintiff/applicant in not even informing the Court about the inter-se settlement discussions, while consuming considerable judicial time in pressing I.A. No.110/2023 deserves to be deprecated. In the circumstances, while allowing the present application, the Court imposes costs Rs.5lakhs on the plaintiff (herein the Petitioner in the present case. At request of the learned senior counsel appearing for the applicant in I.A No.9437/2023, it is clarified that in view of the unconditional withdrawal of this suit by the plaintiff, this court has not gone into the merits of the contentions raised in the said I.A.”** That the petitioners after the adverse order have not come up with a compromise petition for substantiating the terms of the settlement which clearly goes on to show the pattern of the petitioners in wasting court’s judicial time by engaging in multiple rounds of litigation.

- f) That to initiate the CIRP under section 7 of the Code, the petitioners have failed to show the occurrence of debt and default as the settlement was reached by the parties in October 2021 and the petitioner confirmed the same by December 2021. Pursuant to the execution of the BTA with the buyers and receipt of monies thereon, the Respondent has repaid almost all of its creditors till date including:

25.1 INR 9.5 crores to Yes Bank and

25.2 INR 13.5 crores to Axis Bank

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- g) It is submitted that the CD has paid off their creditors, aggregating to an amount of about INR 33 crores. In fact, upon completion of certain minor procedural and administrative formalities the settlement amount as agreed to be received by the Petitioner and as agreed by the parties vide the second amendment dt.20.10.2021 and subsequent correspondences and discussions would be paid.
- h) It is submitted that on 24.07.2021, a similar Application under Section 7 of the Code, 2016 was filed by the Petitioner, against the CD before the NCLT Bangalore which was withdrawn on 15.02.2023.
- i) It is submitted that the Petitioner has produced before this Hon'ble Tribunal a Debenture Purchase Agreement dt.19.07.2023 which it is alleged to have been culmination of the settlement in CS (COMM) No.850/2022 wherein as per clause 1.1(B) it clearly states that an amount of INR 13,25,00,000 would be the consideration for transferring the Debentures to one Mobisoft Telesolutions Pvt. Ltd. It is pertinent to note that Mobisoft is a subsidiary of Altruist and Altruist, Scholar Alley and Mobisoft are parties to this Debenture Purchase Agreement along with BPEA.

4. The Petitioner/Financial Creditors have filed the rejoinder vide diary no.2303 dt.16.04.2024 as well as Synopsis of Submissions vide diary no.5295 dt.10.09.2024; which is summarized below:

- a) The Petitioners argue that as per the Debenture Trust Deed they are entitled to file the instant petition being a debenture trustee and the averment of the CD that the transfer of NCDs by BPEA to Mobisoft was not intimated to the CD is prima facie erroneous as the NCDs are freely transferable and transmissible instruments of debt. The same can be crystalized by the terms of the Debenture Trust Deed dt.01.03.2018 in Clause 7 of Schedule II.



- b) The objection of the CD that the terms of the Debenture Trust Deed was amended in October 21 during the pendency of CP(IB) 71/2021 (the first CIRP petition which was subsequently withdrawn) amounted to novation of the original debenture trust deed is denied as factually incorrect and frivolous as the same was never executed between the parties and the second amendment deed was merely a draft. The Petitioners argue that there existed only an In Principle Re-schedulement Letter dt.05.02.2020 and First Deed of Amendment to the Debenture Trust Deed dt.28.03.2021 vide which the instalment amount of Rs.1,30,83,303/- (which consisted of Redemption Instalment of Rs.61,11,111/-; Deferred Payment Instalment of Rs.30,48,356/- and Regular Interest of Rs.39,23,836) was due on 15.04.2021.
- c) That the contention of the CD that the petitioners reneged on the terms of the Debenture Trust Deed by only making Rs.50crores available instead of Rs.75 crores is denied as false. The money was disbursed in 3 tranches in accordance with Clause 5.3 of the Debenture Trust Deed, Conditions Precedent to the Issuance of each tranche of Series A Debentures and Series B Debentures in case of an occurrence of an Event of Default prior to the payment of Series A allotment Amounts or Series B Allotment Amounts, then the Debenture Holders **“shall not be required to make any payment of the remaining subscription amount towards the one or more tranches of the Series A Debenture or Series B Debentures, as applicable and the Issuer shall be required to redeem the Series A Debentures and the Series B Debentures along with the Secured Obligations, in the manner set out.”**
- d) The Petitioners aver that despite sufficient time availed by the CD, the payment of debt was still outstanding which led to the initiation of CIRP by the petitioner in CP (IB) 71/2021. The petition was later withdrawn with the liberty to file it fresh as during the pendency of the proceedings the CD continued to



default on subsequent payments which led to loan facility being recalled. The CD was given last and final opportunity to pay the entire amount vide demand notice dt.11.08.2023 for payment of Rs.62,26,84,384/- within period 10 days. The CD has failed to make the payment.

- e) With regards to the averment of the CD that the liability to repay the debt has been shifted with the execution of the Business Transfer Agreements dt.2.08.2021 and 18.08.2021 entered with Altruist and Scholar Alley (Buyers), the petitioners herein state that the BTA was executed only in relation to the Identified Business of the CD which is provided in Schedule 1 of the BTA read with Clause 5.5.2 and Schedule 5 of the BTA. That the scope of the Identified Business does not include the liability of the CD which it has towards the petitioners as they were not made party to the agreements entered by the CD with the buyers.
- f) That when the CD sought NOC from the petitioners for execution of the BTA by assuring that the sale proceeds from the BTA to the effect of Rs.36 crores will be directly credited to the Debenture Holders, the petitioners provided the In-Principle Approval dt.28.12.2021 which was conditional and subject to the receipt of Rs.36 crores towards partial redemption of debentures.
- g) Additionally, the draft settlement agreement/second deed of amendment circulated vide email dt.21.08.2021 of the CD was only a Working draft which was never signed. Thus, the same has no legal standing in the eyes of law. In fact the document in the title states that it is “*for discussions purposes only.*”
- h) Moreover, in the Contract Addendum of the BTA dt.26.10.2021, executed between the CD and the buyers, as per Clause 1.1(b) it was stated that,

“b) An Escrow account will be opened for the amount of Rs.360,000,000 immediately on signing of the addendum

which will be directly which will be directly paid to BPEA to Clear part of the outstanding liability of the Seller...”

- i) This was on the basis of the in-principle consent letter issued by the Petitioner. However, the CD instead of opening an Escrow Account for receipt of monies as per Clause 1.1(b), received the entire amount of Rs.36crores paid by the third parties in its personal account and utilized it for payment to the other creditors; and not the Debenture Holder/Trustee which is in contravention of the Contract Addendum. As per the Petitioners, the receipt of the above amount is established by the admission of the CD in its objections wherein it has stated that:

“Pursuant to the execution of the transfer agreement with the buyers and receipt of monies thereon, the Respondent, has repaid almost all its creditors till date including:

INR 9.5 Crores to Yes Bank and,

INR 13.5 crores to Axis Bank

Between September 2021 and January 2022, pursuant to the Business Transfer Agreements read in conjunction with Section 2(42C) of the Income Tax Act, 1961, the Respondent has paid off their other creditors, aggregating to an amount of about INR 33 crores.”

- j) Since, the CD has transferred the assets to the buyers in contravention with the Contract Addendum by not making a payment of Rs.36crores to the petitioners subject to which the assets of the CD could be sold, the sale of assets by the CD before payment to the petitioners is *void ab initio*. Further, the Assets proposed to be sold was charged to secure the debentures.
- k) That the petitioners moved to the Bombay High Court in suit bearing No.317/2022 and subsequently to the Delhi High Court in C.S.(COMM) 850/2022 challenging the BTA both of which were later withdrawn due to lack of jurisdiction and settlement



respectively. During the pendency of proceedings before the Hon'ble High Court of Delhi, a settlement was arrived at between the Debenture Holder/BPEA and the third-party purchasers Altruist, Scholar Alley and Mobisoft Telesolutions Pvt. Ltd. (Mobisoft), and accordingly, a Debenture Purchase Agreement (DPA) dated 19.07.2023 was executed between these parties. In Clause 5 of the DPA, it was agreed that instruction would be issued to the Debenture Trustee for withdrawal of the proceedings before the Hon'ble Delhi High Court and to initiate insolvency proceedings against the Corporate Debtor before this NCLT. Therefore, the proceedings before the Hon'ble Delhi High Court was withdrawn in accordance with Clause 5 of the DPA, and this Petition was filed. There was no settlement of the outstanding amounts owed by the Corporate Debtor in the above Agreement. Moreover, the Corporate Debtor has not paid any amount to the Debenture Holders and thus the liability of the Corporate Debtor is not discharged; and it was merely an assignment of debt. Therefore, the defense of the Corporate Debtor that due to the settlement the entire liability pertaining to these Debentures have been extinguished is not acceptable, and there was no settlement with the Corporate Debtor at all. Therefore, the debt and default was still in existence. Further, the record of default in Form-D issued by NeSL also shows that the default is "deemed to be authenticated".

5. Heard the Counsel for the Petitioners as well as the Counsel for the Respondents and perused the documents placed on record.


ANALYSIS

6. In the present case, the petitioners have come under section 7 of the Code against the CD in the capacity of a Debenture Trustee on behalf of the debenture holders namely *M/s Mobisoft Telesolutions Private Limited* and *BEPA India Credit Investment Trust II* for initiation of the CIRP against the Corporate Debtor this tribunal has to look into the existence of a valid debt and default in payment of the outstanding debt



on the part of the CD. The Petitioners had earlier sought before this Tribunal, for initiation of CIRP against in CP (IB) 71/2021 which was later withdrawn by the Petitioners. This Tribunal at the time of withdrawal of the petition vide order dt.15.02.2023 noted that, ***“the Petitioner submits...that certain developments have taken place, so that the entire loan has been recalled, and the amount of default and date mentioned in Form-1 has substantially changed. Accordingly it is stated that Form No.1 needs to be revised. Hence they seek to withdraw the instant Petition.”*** This Tribunal thus, allowed the withdrawal of the earlier company petition, and granted the petitioners a liberty to file the fresh petition against the CD.

7. Now, the petitioners have come before this tribunal against the CD for initiation of CIRP for defaulting the payment of entire loan amount. The CD has contested the admission of the present petition on the ground that the date of default falls under the 10A period and is debarred on account of the same. However, the CD has not substantiated the objection with a valid proof to show that the date of default is falling under the 10A period. On perusal of the instant petition, it is noticed that the date of default as mentioned in Part IV Form 1 is stated as 15.04.2021 which is affirmed by the NeSL Record of Default in Form-D. Therefore, this objection of the CD is rejected.
8. The CD has vehemently argued that its liability is waived off on the execution of the Business Transfer Agreement (2.08.2021, 18.08.2021) between the CD and one M/S Altruist Technologies Private Limited and Scholar Alley Private Limited (“Buyers”) resulting in the transfer of the entire business to the buyers. The CD has placed reliance on the NOC and In-Principle approval issued by the Petitioners in light of which the BTA was sanctioned and thus, claiming that the liability of the CD against the financial creditor is waived off. The CD has also relied on the execution of the Second Deed of Agreement dt.21.08.2021 to emphasise that the financial creditor had approved the BTA and waived off the liability of the CD.

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9. However, the petitioners have brought to the attention of this Tribunal, the relevant paragraphs of the agreement which clearly indicates that the BTA was executed only in relation to the Identified Business of the CD provided in Schedule 1 read with Clause 5.5.2 and Schedule 5. The scope of the Identified Business getting transferred does not include the liability of the CD which it had towards the petitioners. The impugned Debentures were not included in the BTA; and the Debenture Trustee/holders are not a party to the BTA. Moreover, on a perusal of the Addendum to the Business Transfer Agreement dt.26.10.2021 the following factual position comes to light:

“The Contract is amended as follow:

1.1 Schedule of Payment as mentioned in Clause 4 of Schedule 4 of the original agreement between First Party and Second and Third Party is amended as follows:

(b) An Escrow account will be opened for the amount of Rs.360,000,000 (INR Three Hundred Sixty Million) immediately on signing of the addendum which will be directly paid to BPEA to Clear part of the outstanding liability of the Seller. The Purchaser and Purchaser 2 also has the option of remitting the money into the already existing Escrow Account of the Seller with BPEA maintained with HDFC Bank, after including the Purchaser as a party to the escrow account. This payment will be released to the BPEA on completion of any of the following conditions stated as below:

i) Siesta will complete full novation of skill development business (i.e., DDU, OSD and OTD) before 31st December 2021 being the revised long stop date, or such extended date as mutually decided by both parties

ii) Siesta will complete 90% novation of all CMR and Hotel business as mentioned on the Annexure 1 then even without Novation of Skill Business BPEA will be paid the amount.



- 10.** The Corporate Debtor in its written submission has admitted that in view of the abovementioned Addendum to BTA dated 26.10.2021, an amount of Rs.36 crore was to be paid to the Debenture Holder/Trustee, for which a separate escrow account was to be prepared in which the money was to be received. However, it has been categorically admitted by the Corporate Debtor in the pleadings, including the objections that the amounts so received was paid to some other creditors including Rs.9.5 crore to Yes Bank, and Rs.13.5 crore to Axis Bank. Therefore, the terms of the Addendum dated 26.10.2021 was not adhered to by the Corporate Debtor. It has categorically mentioned in this Addendum that this amount of Rs.36 crore was directly to be paid to BPEA towards part liability of the Corporate Debtor towards the Debenture Holders/Trustee. However, it was not so done and documents furnished filed vide diary no.4426 dated 26.07.2024, the Corporate Debtor has itself produced the correspondences between the BPEA and Altruist. As per e-mail dated 06.01.2022 written by the BPEA to the Corporate Debtor, it was pointed out that contrary to the earlier Agreements, the amount received as considerations from Altruist as part of the BTA was utilized to pay off other creditors instead of the Debenture Holders/Trustee. It is further specified that the assets proposed to be transferred as per BTA was subjected were charged to secured creditors, and the secured interest will be released only after receipt of the amount of Rs.36 crore. Therefore, it is established that the Corporate Debtor has failed to pay the impugned amount of Rs.36 crore to the Debenture Holders/Trustee in accordance with Addendum to BTA dated 26.10.2021; which was the primary condition for the BTA through the slump sale of a part of assets.
- 11.** The Corporate Debtor has clearly admitted at paras 29 & 30 of its Statement of Objections filed vide diary no.533 dated 18.03.2024 that they have paid off other creditors amounting to Rs.33 crore on receipt of the amount pursuant to the Business Transfer Agreement, whereas the payment of Rs.36 crore was to be made to the Petitioner herein. In principle consent for entering into BTA contains this specific condition and was also agreed to by the Corporate Debtor, which was clearly



violated by it. In violation of this Agreement, the entire receivable amount to the extent of Rs.36 crore was misappropriated at least to the tune of Rs.33 crore by the Corporate Debtor, by paying off to the other outstanding creditors, whereas, the same was to be paid to the Debenture Holders/Trustee.

- 12.** The Corporate Debtor has tried to rely upon the Withdrawal Application filed before the Hon'ble High Court of Delhi dated 24.08.2023. However, it is noticed from this decision that it was withdrawn by the Petitioner pursuant to the settlement discussions between the parties and it was categorically mentioned by the Hon'ble High Court that the Court has not gone into the merits of the contentions raised in the I.A.
- 13.** The withdrawal of the Petition before the Hon'ble High Court is on account of contemplation of the settlement proposal arising out of the Business Transfer Agreement and the specific Clause in the Agreement due to the Addendum dt.26.10.2021. As discussed above, the conditionalities associated including the upfront payment of Rs.36crores towards the debt of the Applicant Financial Creditor; for proceeding with the BTA was categorically incorporated. It was stipulated that payment of Rs.36 crore will be made in the separate escrow account by the purchaser of the business and which will be utilized to pay off this amount to the Petitioner/Debenture Holders/Trustee. It is contended that the withdrawal of the petition before the Hon'ble Delhi High Court has not resulted in the discharge of the debt and consequential default. It is noticed that the proceedings before the Hon'ble High Court of Delhi was a Civil Suit for challenging the BTA and also for recovery of the debt. On the other hand, these proceeding is under Section 7 of the IBC, 2016 and it is not a recovery proceeding. Moreover, in the Business Transfer Agreement the Debenture Holders/Trustee was not a party, but the conditions were to be fulfilled. Further, a perusal of the basic condition of the Debenture Purchase Agreement (DPA) dt.19.07.2023 shows that the following conditions were specifically incorporated:

“5 COVENANTS

5.1 The Buyer and the Seller agree to co-operate and issue the necessary instructions to Vistra in accordance with the DTD, to:

5.1.1. Make the requisite applicants/fillings for withdrawal of the civil suit, namely, Vistra ITCL (India) Limited v. Altruist Technologies & Ors., C.S.(Comm) No.850 of 2022, pending adjudication before the Hon'ble High Court of Delhi ("DHC Suit"), within 5 (five) days from the Closing Date.

5.1.2. Make the requisite application/filings under the Insolvency and Bankruptcy Code, 2016 against Siesta."

14. Therefore, the withdrawal of the civil suit and subsequent filing of the Section 7 petition under the IBC was a primary condition of the DPA which has been acted upon by the Petitioner. Thus, it is observed that the "settlement" based on which the civil dispute was withdrawn was not with respect to the settlement arrived at between the CD and the petitioner, thus the debt still remains outstanding. In fact, clause 5 of the Agreement dt.19.07.2023, itself allows the parties to file the insolvency application before this Tribunal against the CD.

15. In view of the foregoing reasons, we are of the considered view that the instant Petition is liable to be admitted. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being Rs. 62,98,99,143 /- (Rupees Sixty Crores, Ninety Eight Lakhs, Ninety Nine Thousand One Forty Three Rupees), the **Petition is admitted** in respect of the Corporate Debtor i.e. **M/s. Siesta Hospitality Services Ltd.** under Section 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

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 off 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 Securitization 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 the possession of the corporate debtor*
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- f) The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.*
- g) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be*

16. The Financial Creditor in Part-III of Form-1 has proposed **Mr. Abhijith C**, a qualified insolvency professional as Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent of the said IRP in Form-2 dated 15.10.2023 is placed on record, wherein, the IRP *inter alia* affirmed that he is eligible to be appointed as IRP in the case of Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.



- 17.** In view of the above, the Bench hereby appoints **Mr. Abhijith C**, bearing Regn. No. IBBI/IPA-002/IP-N01246/2022-2023/14234 residing at 1st Floor, South End F Cross, Jaynagar 9th Block Bangalore -560069 KA, IN having Mobile: 9986700338, Email: acs.abhijith@gmail.com **as an IRP of the Corporate Debtor**. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. The IRP is also directed to file a copy of valid AFA within seven days from the date of receipt of copy of this Order.
- 18.** The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 19.** The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 20.** A copy of the order shall be communicated to both the Parties. Ld. Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

S/d

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

S/d

K.BISWAL
MEMBER (JUDICIAL)