

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

**IBA/01/KOB/2020**

(Under Section 7 of the IBC,2016)

Order delivered on 15.10.2020

Coram:

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

**Applicant/Financial Creditor**

Union Bank of India,  
239, Vidhan Bhavan Marg,  
Nariman Point, Mumbai-400 021  
Also at TC-38-438-2, Gouri Plaza,  
Near Chenthitta Junction,  
Chalai PO, Thiruvananthapuram-695036.

Versus

**Respondents/Corporate Debtor & 3 others**

1. M/s Green Gateway Leisure Ltd.  
1<sup>st</sup> Floor, New Corporate Building,  
Palayam, Thiruvananthapuram

**Add. Respondents impleaded vide order dated 24.2.20 in IA/46/KOB/2020**

2. M/s Air Travel Enterprises India Limited  
1<sup>st</sup> floor, New Corporation Building,  
Palayam, Trivandrum-695033.

3. Shri E.M. Najeeb Elias Muhammed  
6D, Kowdiar Manor,  
Jawahar Nagar, Trivandrum-695041.

4. Dr.Sahadulla M.I, 69, Rastannra, RPD Marg,  
Kuravakonam, Kowdiar,  
Trivandrum-695033.

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**Parties/Counsels Present (through Video Conferencing):**

For Applicant : M/s ASP Kurup & Sadchith P Kurup, Advocates  
For Respondents : Shri P.V.George Puthiyedom, Advocate (for R 1 to 3)  
Shri Sivasankar G, Advocate (for R4)

This application IBA/01/KOB/2020 has been filed by M/s. Union Bank Of India (hereinafter called as "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s. Green Gateway Leisure Ltd (hereinafter called as "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment of ₹ 32,39,45,078/- (Rupees Thirty Two Crores Thirty Nine Lakhs Forty Five Thousand and Seventy Eight Only), invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter called as "Rules").

**SUBMISSIONS OF FINANCIAL CREDITOR: -**

**2.** The applicant granted a term loan of ₹25,00,00,000/- (Rupees Twenty-Five Crores Only) on 12.06.2010 to the Corporate Debtor which were renewed and restructured/modified on the terms and conditions set out in the Sanction Letter dated 29.09.2012, 24.02.2014, 12.01.2015 and 01.07.2016. The applicant has produced the copy of Demand Promissory Notes executed by the Corporate Debtor on 02.07.2010, 29.09.2012, 24.02.2014, 12.01.2015 and 01.07.2016. A summary of immovable properties mortgaged in favour of the applicant along with other lenders of the Corporate Debtor is also produced by the applicant in 'written confirmation of title deed'. The applicant produced the statement of account for the loan account which shows that as

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on 30.11.2019a sum of ₹ 32,39,45,078/- (Rupees Thirty-Two Crores Thirty-Nine Lakhs Forty-Five Thousand and Seventy-Eight Only), is due from the Corporate Debtor. Since there was default in payment, the Applicant issued notice under Section 13(2) of the SARFAESI Act,2002 to the Corporate Debtor on 29.12.2017 informing them that the account was classified as Non-Performing Asset in accordance with the guidelines issued by Reserve Bank of India.

3. On 11.02.2020 the applicant/Financial Creditor filed an Interlocutory Application IA/46/KOB/2020 to permit the applicant to implead the guarantors of the Corporate Debtor as Respondents in this application. On 24.02.2020 this Tribunal allowed the application and ordered impleadment of the Corporate Guarantors M/s. Air Travel Enterprises India Ltd., 1st Floor, New Corporation Building, Palayam, Trivandrum 695 033, Sri. E.M Najeeb Ellias Mohammed, 6D, kowdiar Manor, JawaharNagar, Trivandrum 695 041, Dr. Sahadulla M.I, 69, Rastanura, RPD Marg, Kuravankonam,Kowdiar, Trivandrum 695 003, as Respondents 2 to 4. The applicant stated that M/s. Air Travel Enterprises India Ltd (R2) executed Corporate guarantee in favour of the Financial Creditor. Simultaneously personal guarantee was also executed with the same terms and conditions, for the repayment of the entire term loan and interest in the event of default.

4. The applicant has submitted the authorisation letter given by the Union Bank of India on 23.12.2019, in which the Regional Head authorised Ms. Kala Sivakumar, Chief Manager to file this application.

5. The Corporate Debtor filed their written submission and raised the following contentions:

a. The Corporate Debtor (R1) Company is promoted by the Directors and shareholders of Air Travel Enterprises India Ltd., the Respondent No.2, is a Public Limited Company having an impeccable track record of more than 40 years in the travel and tourism industry. The promoters of Air Travel Enterprises are also the promoter Directors of KIMS Healthcare Management Ltd., which owns and running hospitals at the major cities in Kerala.

b. The Respondent No.2 obtained leasehold rights over 55.33 acres of land from Bekal Resorts Development Corporation which is a Corporation wholly owned by the Government of Kerala. There is agriculture property also in the said leasehold land. The promoters of the 2nd respondent thereafter formed the Corporate Debtor company as a Special Purpose Vehicle (SPV) for implementation and operation of the project at Bekal which is one among the six projects being developed under Public - Private Partnership at Bekal. The said resort is proposed to be a top end five-star deluxe beach resort with 165 rooms, built in traditional Kerala architectural style and that adopts green practices to achieve a zero-carbon footprint. The theme of the resort is "true celebration of Kerala Heritage" with focus on Malabar. The resort and spa blends with 400 metres of beach frontage and 1-kilometre backwater frontage. The resort has different categories of rooms including Presidential, Premium, Senator, Superior and Spa Villas. In the second phase of development, it proposed to start a convention centre for 2000 Pax which is located outside the core resort area, with all state-of-the-art facilities. The resort has a total built up area of about 2,00,000 Sq. Feet. Almost 90% of the civil construction (92 rooms and all common facilities) is over and 30% of the interior work has

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also been completed. Compound wall has been constructed around the entire property, substantial land development work has been completed and about 3.5 kilometres length artificial canal has been constructed to provide boating facility within the resort itself.

c. The Corporate Debtor started construction of the resort during 2009-2010 by obtaining all mandatory approval and clearances from all the concerned authorities. IL & FS had estimated the cost of the project at Rs.108 crores, out of which Rs.65 crores will be loan and Rs.43 crores as Equity. Based on the estimate, Corporate Debtor had obtained financial assistance in the year 2010 i.e. Rs.20 crores from State Bank of India, Rs.25 crores from Union Bank of India and Rs.20 crores from State Bank of Travancore. The promoters had mobilized funds from investors including NRIs to promote tourism and hospitality business in Kerala and generate employment opportunities. As security for the loan, the Corporate Debtor mortgaged 55.33 Acres of leasehold land in Chittari and Keekan Village, Hosdurg Taluk, Kasaragod District in different survey numbers. As per the terms of loan agreement, the construction of the resort has to be completed and the repayment has to be started by September 2012 and the loan has to be repaid by September 2018.

d. While the work was in progress, as part of marketing strategy, the 1<sup>st</sup> Respondent company had invited internationally reputed operators for operation and management tie-up and an agreement has been executed on 14.12.2012 with Starwood Asia Pacific Hotels and Resorts Pvt Ltd., Singapore, for their "Westin" brand

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e. As per the negotiation with Starwood, several changes in design have been recommended by the interior designers of Starwood, which resulted in cost escalation. Accordingly, the total cost of the project was revised to Rs.151 crores. The 1<sup>st</sup> Respondent intimated the Bankers about the induction of Westin Brand and with their concurrence approached them for additional facility on 26.11.2012. In the joint lenderers meeting convened on 22.10.2013, the Bankers agreed to give additional facility and a consensus had been reached to fund Rs.8.8 crores each by the three Bankers totalling Rs.26.4 crores and the balance by equity.

f. During 2012, the Bankers have re-structured the loan with a condition that the loan repayment has to be started from 2014 and the loan account has to be closed by 2020.

g. Contrary to the decision on 22.10.2013, S.B.I. sanctioned Rs.8 crores on 28.5.2014 after a long lapse with additional terms and conditions which were not acceptable to the 1<sup>st</sup> Respondent. Hence the same was not availed. S.B.T. sanctioned a sum of Rs.8 crores on 09.02.2015 with existing conditions after a long lapse. Union Bank of India was not ready to sanction the additional loan, which was contrary to the agreement dated 22.10.2013. Hence the Corporate Debtor approached the Dhanlaxmi Bank for a financial assistance of Rs.16 crores, and that Bank disbursed financial assistance on 28.9.2015. Hence the total loan availed is Rs.89 crores.

h. During 2015, the Bankers re-structured the loan and directed the Corporate Debtor to complete the work by September 2015 and to start the repayment of loan by September 2016 and complete the repayment by September 2022.

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i. Due to inordinate delay in sanctioning the facility by Bankers, the agreed equity of Rs.20 crores brought in by the promoters had been used in servicing interest, which further resulted in cost escalation. Due to change in design and delay in sanctioning additional loan, the Corporate Debtor was forced to incur an actual finance cost of Rs.61.40 crores till May 2017 against the estimated interest during construction period of Rs.19.80 crores resulting in an increase of Rs.41.60 crores in interest alone. In this connection it is pertinent to note that the actual amount invested as on date is Rs.185 crores, out of which Rs.89 crores is loan and Rs.96 crores as promoter's contribution and the project incorporating "Westin Standard" will in all probability will be completed soon. The Corporate Debtor is in the process of handing over the 1<sup>st</sup> phase to "Westin" for management.

j. On the request of the 1<sup>st</sup> Respondent, a Joint lenders Forum (JLF) meeting was convened on 7.11.2016, which declared a corrective action plan as per R.B.I. guidelines. In the J.LF. meeting, the Banks decided to appoint M/s. Dun and Bradstreet (one of the most reputed agency approved by various financial institutions for conducting financial techno economic viability studies) for conducting Techno Economic Viability study of the project and converted Multiple Banking to consortium with S.B.T. as the lead Bank. Accordingly, Dun and Bradstreet submitted their report to S.B.T., the then lead Bank on 23.12.2016 with a revised project cost of Rs.231 crores and shifting the Date of Commencement of Commercial Operations (DCCO) to 30.9.2017. The additional fund required for the completion of project was estimated to be Rs.79 crores, out of which Rs.50 crores is the loan amount to be shared by the Banks. Based on the report, the lead Bank S.B.T. had

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sanctioned their share of Rs.15.70 crores on 29.3.2017. S.B.T. had circulated the sanction letter and the process note among the other members.

k. After the amalgamation of S.B.T. with S.B.I. on 1.4.2017, S.B.I. became the lead Bank. Thereafter, the officials of S.B.I. started putting forward lot of additional conditions including re-consideration of D&B report. In the meanwhile, the 6th JLF meeting was convened on 27.9.2017. In the said meeting, the Banks informed the Corporate Debtor that they will not provide additional funding as the account is N.P.A. The 1<sup>st</sup> Respondent had paid Rs.61.40 crores as interest and principal against a loan of Rs.89 crores.

l. In the above circumstances, the Authorized Officer of S.B.I. issued Annexure R11 demand notice dated 29.12.2017 under Section 13(2) of the SARFAESI Act demanding to pay a sum of Rs.96,04,97,895/- within 60 days. In Annexure-R11, it is stated that if the amount is not paid as demanded, the Authorized Officer will proceed against the 55.33 Acres of property of the Corporate Debtor. In Annexure-R11 it is also stated that the amount demanded is to be paid in lumpsum within 60 days of receipt of the notice.

m. Challenging the SARFAESI Act proceedings, the Corporate Debtor filed S.A. No.274/2018 before the Hon'ble Debts Recovery Tribunal No. 1, Ernakulam arraying the applicant herein as the 3<sup>rd</sup> Respondent and the same is pending consideration.

n. Thereafter the lenders including applicant herein filed O.A. No.417/2018 before the Hon'ble Debts Recovery Tribunal No. 1, Ernakulam, and the same is also pending consideration.

o. The Corporate Debtor submitted a One-Time Settlement proposal to the lead Bank State Bank of India.

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p. The Corporate Debtor further stated that there was a joint meeting of lenders on 22.8.2019 at S.B.1., SAM Branch, Ernakulam. The minutes of that meeting shows that, they have received the O.T.S. proposal, but they have informed that they rejected the same on the reason that there is no upfront payment. Thereafter State Bank of India issued a letter dated 29.8.2019 agreeing for One-Time Settlement. The Corporate Debtor issued acceptance letter dated 17.09.2019 to which the State Bank of India issued a letter dated 30.9.2019 confirming the O.T.S. thereafter the monetary dispute with State Bank of India was settled for a sum of Rs.38,14,49,303/-.

q. By the time, Union Bank of India/applicant herein gave an offer letter dated 10.10.2019 to settle the dispute for a sum of Rs.20 crores. On getting the letter dated 10.10.2019 there was a negotiation with respect to the amount and Union Bank of India agreed to settle the monetary dispute for a sum of Rs.17,05,00,000/- through letter dated 05.11.2019.

r. The Respondents 1 to 3 further submit that as per the letter dated 05.11.2019 they have paid substantial amount as part of One Time Settlement and the applicant accepted the same towards One Time Settlement amount. The 1<sup>st</sup> Respondent submitted that as per Annexure R11 notice under Section 13(2) SARFESI Act, the respondent was required to pay the demanded amount in lumpsum. But subsequently the applicant agreed to settle the matter for a sum of Rs.17,05,00,000/- vide letter dated 05.11.2019 being O.T.S, in instalments.

s. The Respondents 1 to 3 further submitted that in the meantime the Dhanlaxmi Bank filed IBA/41/KOB/2019 before this Tribunal and the claim was settled by the Respondent No.1 paying Rs.3.195 Crores as part payment

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of settlement amount. Hence, IBA/41/KOB/2019 was closed as withdrawn on 06.01.2020.

t. The Respondents 1 to 3 further submitted that the applicant filed the above application suppressing material facts with malafide intention.

u. The respondents 1 to 3 further submitted that as per Annexure R11, the details of liability as on 28.12.2017 is as under: -

|                     |                   |
|---------------------|-------------------|
| State Bank of India | ₹53,01,79,190.00  |
| Dhanlaxmi Bank      | ₹16,18,10,151.00  |
| Union Bank of India | ₹26,85,08,554.00  |
| Total               | ₹ 96,04,79,895.00 |

In Annexure-R11, it is demanded to pay the total sum of ₹ 96,04,79,895.00 in lumpsum within 60 days of the receipt of the said notice issued under Section 13(2) of the SARFAESI Act.

v. When the banks filed O.A. No.417/2018, the amount demanded by bank as on 2.7.2018 was as under: -

|                     |                  |
|---------------------|------------------|
| State Bank of India | 55,81,14,583.23  |
| Dhanlaxmi Bank      | 17,35,98,213.00  |
| Union Bank of India | 28,41,71,632.00  |
| Total               | 101,58,84,468.23 |

w. The respondents 1 to 3 further submitted, the details of settlement as under: -

|   |                   |
|---|-------------------|
| The State Bank of India settled the matter on 30.9.2019 | ₹ 38,14,49,303.00 |
| Dhanlaxmi Bank settled the matter on 13.12.2019         | ₹12,50,00,000.00  |

|   |                   |
|---|-------------------|
| Union Bank of India settled the matter on 5.11.2019 | ₹17,05,00,000.00  |
| Total   | ₹ 67,69,49,303.00 |

However, the amount shown due, in the present application is Rs.32,39,45,078/-.

x. The respondents 1 to 3 further submitted that all the banks settled their respective claims under One Time Settlement with the Corporate Debtor alone. The respondents 2 and 3 are not parties to the settlement. On the basis of the above O.T.S the respective banks also accepted part payment of the amount allowing the Corporate Debtor (R1) to pay the settled amount in instalments.

Section 62 of the Contract Act reads: -

**"62. Effect of novation, rescission, and alteration of contract.**

*- If the parties to a contract agrees to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*

Hence there is a novation of contract under Section 62 of Contract Act and the original contract need not be performed. So, the applicant dated 05.11.2019 has no right or authority to demand the amount demanded in Annexure-R11. The amount due as per Annexure-R25 is not due as on the date of filing the above case and due to moratorium declared due to Covid-19. Hence the applicant has no right to file the above case demanding the amount due as per original contract.

Section 135 of the Contract Act reads:

***"Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.--- A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to Sue, the principal debtor, discharges the surety, unless the surety assents to such contract."***

The applicant settled the matter with the 1<sup>st</sup> Respondent by Annexure- R25. Respondents 2 and 3 are not parties to the settlement. Hence the applicant has no right or authority to demand any amount from the respondents 2 and 3 as they are exonerated from the original contract.

y. In the decision reported in ***N.P. Gurudev vs. State Bank of Mysore and others, MANU/KA/0804/2011***, the Hon'ble High Court of Karnataka considering the various Judgments of other High Courts and Hon'ble Supreme Court of India held, "granting of instalments by the decree holder to the principal debtor amounts to giving of time to the principal debtor", that amounts to a novation of contract. It is further held that if the principal borrower and creditor bank compromise a dispute without the consent and knowledge of the guarantor, the guarantor is absolved from the liability.

***The Hon'ble High Court of Karnataka relying on the decision of Hon'ble Apex Court reported in Amrit Lal Govardhan Lalan vs. State Bank of Travancore and others MANU/SC/0001/1968.***

decided the meaning of "Promise to give time" as extension of time period at which debtor was originally obliged to pay the creditor.

**Submission of the Corporate Guarantor (R 4): -**

6. The loan which is the subject matter of the present application is availed by the respondents 1 to 3, from a consortium which consists of 2 other

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Banks in addition to the Applicant therein. Thus, an action to sue the respondents should have been made by the consortium and not by the Applicant alone or at least by disclosing the original transaction and the right and liability of each member of the consortium, by revealing the respective loan share and legal right to recover the same. Hence, there is a total suppression and misrepresentation of the facts by the applicant and the IBA itself is liable to be dismissed on that count.

7. It is further stated that 4<sup>th</sup> Respondent does not owe even a single rupee to the Applicant. He has not guaranteed for the debt as alleged, the authenticity and genuineness of documents relied upon by the Applicant to fasten liability on the 4<sup>th</sup> Respondent is already disputed by the 4<sup>th</sup> Respondent in a pending suit before the Hon'ble Debt Recovery Tribunal (DRT) in OA 417/2018. The Respondent filed an application as IA. No.1405/2019 before the DRT to issue a direction to the consortium, which filed the case, to produce the originals of the documents, which they are relying to fasten the liability against the 4<sup>th</sup> Respondent. The need of the production of the original documents was to send them for scientific examination to prove that the signatures appearing in those documents do not belong to the 4<sup>th</sup> Respondent.

**8.** However, in the written argument of the Financial Creditor/applicant, the contention of the 4<sup>th</sup> Respondent regarding his specific pleading of forgery is not addressed or refuted.

9. Section 7 of the Insolvency and Bankruptcy Code, 2016 is misinterpreted by the Applicant. Here the Applicant by consortium, who

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received application from R1 to R3, accepted Security and released the amount. So, the applicant can be the Consortium only. If there exist other financial creditors against the company the consortium can join together with those financial creditors without appearing as a single authority.

**10.** It is also stated that no reliefs sought against the 4th respondent in this IBA and the 4th respondent has only been impleaded which is not at all sufficient to get an order to recover money. So, the case against the 4<sup>th</sup> Respondent is only to be dismissed with costs.

**FINDINGS: -**

**11.** I have heard the Learned counsel for both the parties through video conferencing and perused the whole case records including documents and photocopies appended with the case records. The following are the observations of this Bench:

**12.** In the present application, the applicant filed an Interlocutory Application IA/46/KOB/2020 on 11.02.2020 to permit the applicant, to implead the guarantors of the Corporate Debtor as additional Respondents 2 to 4. On 24.02.2020 and this Tribunal allowed the application. Consequently, at this juncture the Tribunal points out two case laws in this regard. In ***Axis Bank Ltd. V Lotus Three Developments Ltd.&Ors. Company Appeal (AT) (Insolvency) No. 246 of 2018***, it is stated as under: -

*“Initiation of ‘corporate insolvency resolution process’ under Section 7 or 9 or 10 of the I&B Code is not an adversary litigation. It is not a recovery proceeding nor can be treated to be a suit or case pending for decision on merit. The Adjudicating Authority on the application*

*filed under Section 7 of the I&B Code is required to consider whether the application is complete or not and if not complete to reject the application. But before rejecting the application, if not complete, time is to be allowed to the applicant to remove the defects.*

*The Hon'ble Supreme Court in **"Innoventive Industries Ltd. Vs. ICICI Bank and Ors., - (2018) 1 SCC 407"** observed as follows:*

*28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicants to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has*

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*occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-Section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”*

*6. From the aforesaid decision, it is clear that the Adjudicating Authority is only to satisfy that the default has occurred and that the ‘Corporate Debtor’ is entitled to point out that the default has not been occurred in the sense that the debt is not due. No other person has a right to be heard at the stage of admission of the application under Section 7 and 9 of the I&B Code including the ‘shareholders’ or the ‘personal guarantor’ etc.”*

**In *State Bank of India V. Ramakrishnan & anr. CIVIL APPEAL NO. 3595 OF 2018*, it is stated as follows: -**

*27..... “We now come to the argument that the amendment of 2018, which makes it clear that Section 14(3), is now substituted to read that the provisions of sub-Section (1) of Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. The amended Section reads as follows:*

*“14. Moratorium. —*

*(3) The provisions of sub-Section (1) shall not apply to— (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator; (b) a surety in a contract of guarantee to a corporate debtor.”*

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13. At this juncture, this Tribunal is of the clear view that the Adjudicating Authority is only to satisfy that the default has occurred and that the 'Corporate Debtor' is entitled to point out that the default has not been occurred in the sense that the debt is not due. As no other person has a right to be heard at the stage of admission of the application under Section 7 and 9 of the I&B Code. This Tribunal does not consider the objection raised by the guarantors to arrive at a decision in this matter. To clear this confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it is clarified by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside the scope of moratorium as per Section 14(3) (b) of the Code.

14. Accordingly, the following points are considered to arrive at a decision in this application.

*(a) Whether the applicant granted financial assistance to the Corporate Debtor, the same was disbursed to the Corporate Debtor and there was a due from the Corporate Debtor to the Financial Creditor and that there was default in repayment of the said dues?*

*(b) Whether the nature of debt is a "Financial Debt" as defined under Section 5 (8) of the Code?*

**15.** It appears from the records that the Corporate Debtor nowhere denied the debt amount nor filed any documents to show that the claim is false, but in reply by way of counter the Corporate Debtor simply prayed to dismiss the application without showing any commendable and acceptable reasons. The contentions raised in the reply will not come in the way of the admission of

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the application in view of the categorical ruling of the Hon'ble Supreme Court in the case ***"Innoventive Industries Ltd. (Supra)***, that the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under Sub-Section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. The applicant produced the statement of account for the loan account which shows that as on 30.11.2019 a sum of ₹ 32,39,45,078/- (Rupees Thirty-Two Crores Thirty-Nine Lakhs Forty-Five Thousand and Seventy-Eight Only), is due from the Corporate Debtor. It has also been established that admittedly there is a "Default" as defined under Section 3 (12) of the Code on the part of the Corporate Debtor and the nature of debt is a 'financial debt' as defined under Section 5(8) of the Code.

16. The application on behalf of Financial Creditor is complete and there is default in the payment of the financial debt. Therefore, as per Section 7(5)(a) of the code, the present application filed U/S 7 of the I&B Code deserves to be admitted against the Corporate Debtor ('M/s. Green Gateway Leisure Ltd').

17. The Financial Creditor has suggested the name **Mr. Raju Palanikunnathil Kesavan, IBBI/IPA-001/IP-P00801/2017-2018/11356, email id rajupkin@gmail.com** for appointment as Interim Resolution Professional (IRP). He has filed a declaration in Form 2 affirming that he is a

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Registered Insolvency Professional and no disciplinary proceedings are pending against him.

## **ORDER**

18. Application on behalf of Financial Creditor filed under Section 7 of the I& B Code 2016 for initiation of Corporate Insolvency Resolution Process is **admitted** against Corporate Debtor, ('M/s. Green Gateway Leisure Ltd') prohibiting the following:

- I. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any Court of Law, Tribunal, Arbitration Panel or other authority;
- II. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- III. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- IV. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

19. Notwithstanding the above, during the period of moratorium, the following are also to be strictly followed: -

- V. 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.
- VI. 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.
- That the order of moratorium against the Corporate Debtor shall have effect from the date of pronouncement of this order till the completion of the CIRP 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, as the case may be.
  - That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
  - That this Bench hereby appoints **Mr. Raju Palanikunnathil Kesavan**, having Registration No. **IBBI/IPA-001/IP-P00801/2017-2018/11356**, email id- [rajupkin@gmail.com](mailto:rajupkin@gmail.com), residing at CGNRA-9(33/1183A), Kodamassery Lane, Chalikkavattom, Vennala P.O, Kochi, Ernakulam, Kerala-682028, as Interim Resolution Professional to carry out the functions as mentioned under the Code. The fee payable to IRP, or, as the case may be the RP, shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC.

IBA/01/KOB/2020

- The Registry is directed to communicate this order to Financial Creditor, Corporate Debtor and IRP through email and speed post. No Order as to costs.

Dated this the 15<sup>th</sup> day of October, 2020

Sd/-

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