

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1397/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Canara Bank

[PAN: AAACC6106G]

...Financial Creditor/Petitioner

V/s

**Supreme Housing & Hospitality Private
Limited**

[CIN: U17120MH2007PTC169520]

...Corporate Debtor/Respondent

Order pronounced on : 23.11.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Prakash Shinde & Ms. Meghna
Arvind, Advocates

For the Respondent(s) : Mr. Malhar and Mr. Aniket Worlikar,
Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 1397/NCLT/MB/C-IV/2020 filed by erstwhile Syndicate Bank, now Canara Bank, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Supreme Housing and Hospitality Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Petition is filed by Mr. Pavan Kumar Singh, Chief Manager, authorized by the Financial Creditor vide Authorization Letter dated 28.05.2019. The Petition is filed claiming an amount of Rs.368,85,54,194.56 (Rupees Three Hundred and Sixty-Eight Crore, Eighty-Five Lakhs, Fifty-Four Thousand, One Hundred and Ninety-Four and Fifty-Six Paisa) as on 31.12.2019 inclusive of interest. The computation of claim amount annexed with the petition is replaced hereunder: -

CLAIM AMOUNT CALCULATION- M/S SUPREME HOUSING AND HOSPITALITY PVT. LTD. AS ON 31.12.2019 (Amt. in Rs)

Sr. No.	Account Number	Principal Balance	Interest	Unrealized Charges	Total
1	EB40SLB19280478	281,26,32,952.56	87,59,21,242.00	---	368,85,54,194.56

3. The date of Default is 28.07.2017. The petition is filed on 18.02.2020.
4. The case of the Financial Creditor is as under:
 - a) The Financial Creditor submits that the Corporate Debtor approached them for grant/sanction of Term Loan on 12.01.2014. The Financial Creditor considered the request of the Corporate Debtor and grant/sanction of Term Loan (LRD) of Rs. 390.00 Crores vide sanction letter dated 29.03.2014 (*Exhibit-E*) and the said amount

was disbursed to the Corporate Debtor on 16.05.2014, which reflects in Statement of Account.

- b) As per the terms of the Sanction Letter, the Term Loan was repayable in 108 monthly structured instalments as per receipt of lease rentals commencing from March, 2014 for an amount of Rs.5 Crores. Last instalment of INR 7.86 Crores.
- c) To secure the aforesaid credit facilities, the Corporate Debtor executed various loan and security documents in favour of the Financial Creditor.
- d) The Corporate Debtor availed and enjoyed the aforesaid Credit facility i.e. Term Loan (Lease Rental Discounting) of Rs.390 Crores but did not adhere to repay the outstanding dues as a result of which the account of the Corporate Debtor was classified as Non-Performing Asset on 29.09.2017.
- e) The Financial Creditor constrained to issue Demand Notice u/s 13 (2) of the SARFAESI Act, 2002 on 30.10.2017 thereby demanding for repayment of outstanding dues to the tune of Rs. 3,38,00,92,050.42 and also states that before taking any steps, they are giving a final opportunity to clear the default before 16.10.2018. Upon receipt of aforesaid Demand Notice, the Corporate Debtor replied to the same vide their letter dated 23.12.2017.
- f) Despite Demand Notice u/s 13 (2), the Corporate Debtor did not repay the dues. The Financial Creditor issued Recall Notice/Final Notice dated 09.01.2018 thereby recalling for the outstanding dues to the tune of Rs.365,47,98,126.03. Upon receipt of aforesaid recall notice, the Corporate Debtor did not repay the outstanding dues.

- g) The Financial Creditor has enclosed the Statement of Accounts for the aforesaid credit facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account. The Petitioner has also enclosed the CIBIL report, NESL report and Certificate under the Banker Book Evidence Act, 1891.

Reply by the Corporate Debtor

5. The Corporate Debtor filed affidavit in reply thereby denying all the contentions, statements and/or insinuation levelled in the Petition.
6. The Corporate Debtor stated that the Financial Creditor Canara Bank and/or (Syndicate Bank) has not sought any order from this Bench to substitute itself therefore the Canara Bank substitution as Petitioner is unlawful, unauthorized and ought not be countenanced by this Hon'ble Tribunal.
7. The Corporate Debtor submits that the Petition filed by the Financial Creditor is patently misconceived and fundamentally untenable. The Corporate Debtor raised certain objections with the petition: -
 - a. the Financial Creditor has approached this Hon'ble Tribunal by suppressing several material and relevant facts;
 - b. there is absolutely no outstanding debt due to the Financial Creditor as defined u/s 5(8) of the Code; and
 - c. the Financial Creditor has sought for relief u/s 7 of the Code by misleading this Hon'ble Tribunal and deliberately curtailed erstwhile proceedings between the parties initiated before the Hon'ble Bombay High Court.

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8. The Corporate Debtor had an outstanding against Lease Rental Discounting Facility (“SBI Facility”) by the State Bank of India for an aggregate amount of Rs.310 Crores, wherein the Corporate Debtor approached the Financial Creditor by their letter requesting for a loan wherein the proceeds were to be used for inter alia repayment of SBI facility.
 9. The account was irregular since 2017 where after due to certain reasons mainly sudden vacation of the Leased-out premises by tenant who overnight vacated the premises. Thus, there was a sudden decrease in the Cash Flow of the Corporate Debtor company. However, due to certain financial difficulties faced by the Respondent, on 15.02.2018, the Financial Creditor addressed a letter to the Corporate Debtor intimating that an aggregate Rs.327,00,56,074.78 remained outstanding as on 15.02.2018.
 10. After arranging for funds to repay the Financial Creditor, the Corporate Debtor addressed a letter to the Financial Creditor on 07.08.2018 inter alia requesting the Financial Creditor to inform them of the outstanding amount so as to close the facility availed from the Financial Creditor and seek a release of the documents submitted together with executing the aforesaid Mortgage Deed. On the 07.08.2018 (same date) Corporate Debtor approached the Financial Creditor to pay the due amount inter alia requesting them to release the charge over the mortgage properties and issue no objection certificate.
 11. Despite the Corporate Debtor have offered to clear the outstanding dues in entirety, the Financial Creditor refused to accept the proposal of the Corporate Debtor. Therefore, the Corporate Debtor constrained to institute the Subject Suit before the Hon’ble High Court in terms of

which, the Corporate Debtor inter alia sought for a redemption of the properties mortgaged to the Financial Creditor.

12. Even the Corporate Debtor indicated their intention to clear the dues, the Financial Creditor refused to release the security interest created in their favour. In the meantime, the Corporate Debtor had identified a new investor, being India Bulls Asset Reconstruction Company Limited, who had inter alia agreed to repay the Financial Creditor entire outstanding against getting a charge on the mortgaged property. However, despite Corporate Debtor's efforts, the Financial Creditor obstinately refused to even address correspondence to the investor "India Bulls Asset Reconstruction Company Limited" and accordingly after about 6 months, the Corporate Debtor 'investors' sanctions was lapsed.
13. The Lease Rental Discounting Facility, the payments towards interest by the Corporate Debtor depended entirely on the lease rentals being earned by the Corporate Debtor. Due to several restrictions imposed by the Central and State Government pursuant to extraordinary circumstances that arose in the wake of Covid-19 pandemic, Corporate Debtor business of running and managing IT/IES building known as Supreme Business Park was gravely and severely impacted.

Findings:

14. We have heard and prudently gone through the pleadings available on record. The Financial Creditor/Petitioner Canara Bank, granted/sanctioned the Term Loan (LRD) facility to the extent of Rs.390 Crores in favour of Corporate Debtor. Despite receipt of Demand Notices u/s 13(2) of the SARFAESI Act, 2002 dated 30.10.2017 and Recall Notice dated 09.01.2018, the Corporate Debtor failed to repay the outstanding dues.

15. On perusal of records and during the course of arguments, this Bench observed that the Term Loan (LRD) of Rs.390 Crores was disbursed on the Corporate Debtor on 16.05.2014, thus the contention of Corporate Debtor that there is absolutely no outstanding debt due to the Financial Creditor as defined u/s 5(8) of the Code is not sustainable.
16. Furthermore, the only contention of the Corporate Debtor is that the Financial Creditor has not adhered to release the mortgaged property despite the investor “India Bulls Asset Reconstruction Company Limited” being ready to repay the outstanding amount in full. This itself shows that the Corporate Debtor acknowledges the liability due to the Financial Creditor.
17. The Corporate Debtor replied to the Demand Notice u/s 13 (2) of the SARFAESI Act 2002 on 23.12.2017 and the Petition was filed on 18.02.2020, which is well within the period of Limitation i.e. 3 years prescribed under Section 18 of Limitation Act, 1963.
18. The Petition is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
19. The Financial Creditor has proposed the name of Mr. Harish Kant Kaushik, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01469/2018-2019/12340] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

a) This Application being C.P. (IB) No. 1397/NCLT/MB/C-IV/2020 filed by Canara Bank, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Supreme Housing & Hospitality Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 of 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;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Harish Kant Kaushik, a Registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01469/2018-2019/12340], Phone No. 9819799455, email- harishkant2007@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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 (CoC).

- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Manoj Kumar Dubey
Member (Technical)

23.11.2022

Sd/-
Kishore Vemulapalli
Member (Judicial)