



**NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-V**

Company Petition No. 203 of 2021

In the matter of Section 7 of Insolvency and bankruptcy Code, 2015 read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IDBI Bank Limited,

IDBI Tower, World Trade Centre Complex, Cuffe Parade, Mumbai, Maharashtra-400005

...Financial Creditor

VS

Simm Samm Hotels Private Limited,

Office Nos. 3,4,5,6, Shitla Devi Co-op. Housing Society Limited, Opposite Indian Oil Nagar, D.N. Nagar, Andheri (West), Mumbai, Maharashtra – 400053

...Corporate Debtor

Order pronounced on: 12.04.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For Petitioner: Adv. Anshul Sehgal a/w Adv. Divyanshu Jain i/b Luthra & Luthra Law Offices.

For Corporate Debtor: Adv. Vishal Chavan.

Per: Kuldip Kumar Kareer (Judicial)



ORDER

1. This Company Petition is filed by Petitioner, namely IDBI Bank Limited, (hereinafter called “**Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Simm Samm Hotels Private Limited (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Financial Creditors. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 124,46,06,987.80/-.

FACTS OF THE CASE

2. The Corporate Debtor approached the Financial Creditor seeking sanction of certain credit facilities in 2013. The Financial Creditor granted facility of Rs. 145,00,00,000/- comprising of a Rupee Term Loan for a sum of Rs. 135,00,00,000/- and Bank Guarantee (project specific for EPCG/ Export Promotion Capital Goods) to a tune of Rs. 10,00,00,000/-.
3. The Financial Creditor issued a Sanction Letter bearing number IDBI/CBG-Pune/SSHPL/1362 dated 18.02.2013, for the grant of Credit Facilities to the Corporate Debtor. Subsequently, the Corporate Debtor entered into a Loan Agreement dated 15.03.2013 (**Loan Agreement**) with the Financial Creditor for a Rupee Term Loan/ RTL for a sum of Rs. 135,00,00,000/- (hereinafter referred to as the “**Loan/ Term Loan**”) for hotel to be allocated at Plot bearing C.S. No. 145/2 of Village Sahar at Sahar Road, Andheri (East), Mumbai, Near Chatrapati Shivaji International Airport, Mumbai.
4. Simultaneously, the Corporate Debtor and the Financial Creditor entered into a Facility Agreement dated 15.03.2013 (hereinafter referred to as the “**Facility Agreement**”) for the sanction of Working Capital



Facilities of Rs. 10,00,00,000/- (**Working Capital Facility**), to be utilized by Corporate Debtor for meeting as part of its working capital requirement.

5. Mrs. Santosh Swaran Salaria, Mr. Shammee Swaran Salaria and Mr. Swaran Salaria (**Guarantors**) executed a Guarantee Agreement dated 15.03.2013 in favour of the Financial Creditor.
6. Subsequently, a Consortium was formed between the Financial Creditor and Union Bank of India (hereinafter Financial Creditor and Union Bank of India are collectively referred to as the "**Simm Sann Consortium Bankers**"). It was agreed between the Financial Creditor and Union Bank that the sanction loan of Rs. 145,00,00,000/- would be shared between them i.e. the Financial Creditor and the UBI, to the extent of Rs. 85,00,00,000/- and Rs. 60,00,00,000/- respectively.
7. Consequently, Consortium Loan Agreement dated 27.03.2014 (**Consortium Loan Agreement**) was executed amongst the Corporate Debtor, Union Bank and the Financial Creditor, recording the terms of the revised sanctioned loan. Thereafter, the Guarantee Agreement dated 27.03.2014 was also executed by the Guarantors in favour of the Financial Creditor and UBI/ Union Bank.
8. On request of the Corporate Debtor for enhancement of term loan and renewal-cum-reduction of the working capital facilities, additional term loan sanction letter dated 01.09.2016 bearing Ref. No. IDBI/MCG-Pune/16-17/SSHPL/603 (**Additional Term Loan Sanction Letter**) was issued by Financial Creditor to Corporate Debtor, which was duly acknowledged on behalf of the Corporate Debtor, whereby the Financial Creditor agreed to enhance and renew the aforesaid credit facilities to an overall limit of Rs. 98,00,00,000/-. The particulars of the loan are as follows:



Particulars	Individual Facility limit forming part of the overall limit of Rs. 98 Crore (Rs. In Crore)	
	Existing	Revised
(A) Fund Based		
Rupee Term Loan-I (RTI-I) (Existing)	75.00	75.00
Rupee Term Loan-II (RTI-II) (Additional)	0.00	21.00
(B) Non-Fund Based		
Bank Guarantee Limit	10.00	2.00
Total	85.00	98.00

9. Certain terms of Additional Term Loan Sanction Letter were amended by a letter issued Financial Creditor on 14.09.2016. Thereafter, the Corporate Debtor, UBI and the Financial Creditor executed the First Supplemental Consortium Agreement dated 18.10.2016 (hereinafter referred to as the **“First Supplemental Consortium Loan Agreement-2016”**).
10. First Supplemental Guarantee Agreement dated 20.10.2016 was executed by Guarantors in favour of Financial Creditors and UBI. Thereafter, Mr. Shammee Swaran Salaria and Smt. Santosh Swaran Salaria, executed first supplemental agreement of pledge of share dated 20.10.2016 in favour of Financial Creditor and UBI.
11. Subsequently, First Supplemental Consortium Loan Agreement dated 20.02.2017 (hereafter referred to as the **“First Supplemental Consortium Loan Agreement-2017”**) was executed between the Corporate Debtor, UBI and the Financial Creditor, wherein, the sanction loan of Rs. 158,00,00,000/- was enhanced to Rs. 175,00,00,000/-, pursuant to the enhancement of Rupee Term Loan by UBI from Rs. 60,00,00,000/- to Rs. 77,00,00,000/-.



12. The Financial Creditor and Union Bank further entered into First Supplemental Inter Se Agreement dated 20.02.2017, to record the amended limits of the aforesaid credit facility and the recognition of the Financial Creditor as a Lead Banker in the Consortium.
13. On the request of the Corporate Debtor, a sum of Rs. 96,00,00,000/- was disbursed by Financial Creditor, which includes disbursement of 75 Crores between 25.03.2013 to 12.04.2017 against RTL-I (Loan Account no. 0390673200000277) and 21 Crores between 28.10.2016 to 19.08.2017 against RTL-II (Loan Account no. 0390673200000480) in terms of the loan agreements entered between the Financial Creditor and the Corporate Debtor. The Financial Creditor has further issued bank Guarantees for aggregating limit of Rs. 1,97,75,772/- in terms of the Facility Agreements entered between the Financial Creditor and the Corporate Debtor.
14. The Financial Creditor has submitted that the Corporate Debtor was obligated to repay the Principal Amount of the Loan as per the terms of the above-mentioned contracts along with the interest outstanding from time to time. It was further submitted that despite several requests and reminders made by the Financial Creditor, the Corporate Debtor failed to make the due payment, resulting in several events of default which continue till date in connection with the said agreements. It has been submitted that first default was occurred on 28.02.2019 under RTL-I and on 31.03.2019 under RTL-II.
15. It was submitted that the Corporate Debtor vide Revival Letter 04.04.2019 (hereinafter referred to as the “**Revival Letter**”) issued to Financial Creditor, acknowledged the factum of its indebtedness and subsistence of various securities issued by the Corporate Debtor in favour of the Financial Creditor.



16. The Accounts of the Corporate Debtor maintained with the Financial Creditor was declared as a Non-Performing Assets (“**NPA**”) on 29.06.2019. The Financial Creditor was constrained to issue a Recall Notice dated 27.09.2019 (hereinafter referred to as the “**Recall Notice**”) to the Corporate Debtor seeking payment of the due amount, within a period of 15 days from the date of the said notice. The Financial Creditor further issued a notice dated 14.10.2019, to the Guarantors, invoking the personal guarantee.
17. The Financial Creditor has stated that an aggregate sum of Rs. 124,46,06,987.80/- is under default as on 30.11.2020. It was further submitted that the Corporate Debtor, till date, has not made the payment of the outstanding dues to the Financial Creditor. Hence this present petition.
18. It is pertinent to mention that in this case no reply was filed on behalf of the Corporate Debtor and vide order dated 09.06.2022, the Corporate Debtor’s right to file reply was forfeited.

FINDINGS

19. We have heard the counsel for the parties and gone through the records.
20. It is pertinent to mention that vide order dated 15.07.2022, the Petition was dismissed for non-prosecution. Subsequently, an application bearing no. RST-A-14/2022 was filed on behalf of the Financial Creditor, which was allowed, and the Petition was restored to file vide order dated 20.12.2022.
21. It is worth noting that the Counsel for the Corporate Debtor admitted the liability, as stated in the interim order dated 09.06.2022. It was further observed in the said order that the settlement negotiations between the parties had failed.



22. The Financial Creditor has claimed a total amount of Rs. 124.46 crores to be outstanding at the time of filing of the Petition. Out of this amount, a sum of Rs. 96 crores were disbursed in via two accounts, first being for a sum of 75 Crores between 25.03.2013 to 12.04.2017 against **RTL-I Loan Account No. 0390673200000277** and another amount of Rs. 21 Crores was disbursed between 28.10.2016 to 19.08.2017 against **RTL-II/Loan Account No. 0390673200000480** by the Financial Creditor to the Corporate Debtor.

23. The Financial Creditor had further issued following Bank Guarantees:

1. Bank Guarantee dated 02.01.2018 for 19.5 Lakhs
2. Bank Guarantee dated 22.11.2014 for 58.9 Lakhs
3. Bank Guarantee dated 08.12.2014 for 56.4 Lakhs
4. Bank Guarantee dated 03.08.2016 for 3 Lakhs
5. Bank Guarantee dated 10.10.2016 for Rs. 10 Lakhs
6. Bank Guarantee dated 24.10.2016 for Rs. 19 Lakhs
7. Bank Guarantee dated 31.07.2017 for Rs. 30 Lakhs

24. The first ever default took place on 28.02.2019 under RTL-I and again on 31.03.2019 under RTL-II. The account of the Corporate Debtor was declared NPA on 29.06.2019. Therefore, the date of default is 28.02.2019 and 31.03.2019.

25. Since no reply has been filed on behalf of the Corporate Debtor, the averment made in the Petition u/s. 7 have not at all been controverted. In addition to this, as stated above, the Counsel for the Corporate Debtor candidly admitted the liability of the Corporate Debtor to pay the outstanding amount claimed in the Petition. Even otherwise, from the perusal of the documents, it is revealed that the default took place on 28.02.2019 and 31.03.2019, which is not covered under Section 10A period and as such the present petition is held to have been filed within the period of limitation.



26. No other points have been raised on behalf of the Corporate Debtor.
27. From the above discussions, we are of the considered view that the Petitioner has been able to establish that the Corporate Debtor has availed the financial debt and has committed default in its payment and therefore, a strong case of admission of the Petition u/s. 7 of the Code is made out. The Petition is, therefore, admitted in following terms:

ORDER

- a. The above Company Petition No. (IB) 203 of 2021 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Simm Samm Hotels Private Limited.**
- b. This Bench hereby appoints **Mr. Huzefa Fakhri Sitabkhan**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00031/2017-18/10115 and having Email Id: huzefa@thinkcapital.in as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. Five Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. This Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of



by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no. 203 of 2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)