

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-1913(ND)/2019

IN THE MATTER OF:

**Indian Bank
(Erstwhile Allahabad Bank)
2, Netaji Subhash Road,
Kolkata 700001 and
SAM-Large Branch at 17, Parliament Street,
New Delhi-110001**

...Financial Creditor

VERSUS

**M/ s. Nimitaya Hotel and Resorts Limited.
201, Empire apartment
98, M.G. Road Sultanpur
Mehrauli, New Delhi 110030**

...Corporate Debtor

Section: 7 of IBC, 2016

Judgment Delivered on : 24.12.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Reema Khorana and Adv. Kartik Rathi.
For the Respondent : Presence not marked

(IB)-1913(ND)2019 
Indian Bank Vs. M/s Nimitaya Hotel and Resorts Limited

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Indian Bank (Erstwhile Allahabad Bank) (for brevity the **'Financial Creditor'**) through its Authorized Representative Sh. Ratan Anand, who is duly Authorized by Power of Attorney dated 14.03.2015 and Board Resolutions dated 08.01.2018, has filed the present Application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Nimitaya Hotel and Resorts Limited (for brevity **'Corporate Debtor'**).

2. The Corporate Debtor namely, M/s Nimitaya Hotel and Resorts Limited is a Company incorporated on 27.09.2006 under the provisions of erstwhile Companies Act, 1956 with CIN U55101DL 2006PLC154353 having its registered office at 201, Empire Apartments, MG Road, Sultanpur, New Delhi-110030, which falls within the jurisdiction of this Tribunal.

3. The Authorized Share Capital of the Corporate Debtor Company is Rs.1,0,00,00,000/- and Paid-up Share Capital of the Company is Rs.3,83,50,000/- as per the Master Data annexed with the Application.

4. From the perusal of the records, it is observed that the matter was heard earlier by the predecessor Bench and reserved for Orders on 10.02.2020. However, vide Order dated 14.02.2020 of the Single Bench in IA-1107/2020 filed by the Corporate Debtor stating certain developments and the directions of the Hon'ble High Court of Delhi vide order dated 10.02.2020 to consider the Corporate Debtor's OTS proposal within a period of three weeks, time was allowed to the Respondent. The matter has remained pending since then and was finally heard on 13.12.2021 and reserved for orders.

5. That the Applicant has submitted that it had provided the credit facilities to the Corporate Debtor, details of which are given in the Part IV of its Application. The scanned copy of the Part IV of the application is reproduced overleaf :

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>INITIALLY ON 25.03.2010 THE FINANCIAL CREDITOR HAD SANCTIONED FRESH BANK GUARANTEE LIMIT OF RS. 0.80 CRORE. THEREAFTER ON THE REQUEST OF THE BORROWER, THE FINANCIAL CREDITOR VIDE SANCTION LETTER DATED 03.06.2010, ENHANCED THE BG LIMITS TO RS.1.50 CRORES.</p> <p>FURTHER VIDE SANCTION LETTER BEARING NO. IFB/ND/Gr-Op/NHRL/503 DATED 30.06.2010, THE FINANCIAL CREDITOR ON THE REQUEST OF CORPORATE DEBTOR, RENEWED THE EXISTING BANK GUARANTEE LIMIT OF RS. 1.50 CRORES AND SANCTIONED OVER DRAFT LIMIT OF RS. 92 CRORES.. THEREAFTER VIDE SANCTION LETTER BEARING NO. IFB/ND/GR-OP/NIMITAYA/599 DATED 20.09.2010, THE FINANCIAL CREDITOR ON THE REQUEST OF CORPORATE DEBTOR, ENHANCED THE BG LIMIT TO RS. 3 CRORES AND REDUCED THE RATE OF INTEREST ON THE OVERDRAFT LIMIT.</p> <p>AT THE REQUEST OF THE BORROWER, THE FINANCIAL CREDITOR VIDE SANCTION LETTER DATED 06.04.2011, ENHANCED THE OD LIMIT TO 98 CRORES.</p>

		<p>THEREAFTER VIDE SANCTION LETTER BEARING NO. IFB/ND/Gr-II/NHRL/503 DATED 23.08.2011, ENHANCED THE EXISTING OD LIMIT OF RS. 98 CRORES TO 108 CRORES AND REVIEWED THE EXISTING BANK GUARANTEE LIMIT OF RS. 3 CRORES.</p> <p>THEAFTER VIDE SANCTION LETTER DATED 01.04.2013 AND 15.09.2014, THE FINANCIAL CREDITOR ON THE REQUEST OF THE CORPORATE DEBTOR, REVIEWED THE LIMITS SANCTIONED TO THE BORROWER.</p> <p>VIDE SANCTION DATED 27.09.2017 THE OD LIMIT OF RS. 108 CRORES WAS RENEWED AND THE BG LIMIT OF RS. 3 CRORES WAS CANCELLED BY THE FINANCIAL CREDITOR.</p> <p>TOTAL AMOUNT OF DEBT GRANTED TO THE CORPORAET DEBTOR FROM TIME TO TIME IS MORE PARTICULARLY DESCRIBED IN ANNEXURE IA.</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM IS ATTACHED)</p>	<p>Rs. Rs134,42,28,195/ (RUPEES ONE HUNDRED AND THIRTY FOUR CRORES FORTY TWO LAKHS TWENTY EIGHT THOUSAND ONE HUNDRED AND NINETY FIVE ONLY)</p>

		<p>AS ON 25.07.2019 THE ACCOUNT WAS CLASSIFIED AS NPA ON 02.11.2017 AMOUNT CLAIMED TO BE IN DEFAULT IS MORE PARTICULARLY DESCRIBED IN ANNEXURE IB</p>
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6. It is submitted by the Applicant that the account of the Corporate Debtor was classified as NPA on 02.11.2017. It is added that the total amount of default committed by the Corporate Debtor amounts to Rs.134,42,28,195/- as on 25.07.2019 in respect of the overdraft facility availed by the Corporate Debtor from the Applicant/Financial Creditor.

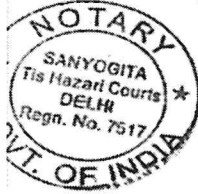
7. That in order to establish the default committed by the Corporate Debtor, the Applicant has relied upon the Loan Agreement dated 23.08.2011, Compromise Proposal letter dated 20.03.2019, and notice dated 03.01.2018 issued under Section 13(2) of SARFAESI ACT, 2002 etc. annexed with the Application.

8. On issuance of Notice, the Corporate Debtor has filed its reply and admitted the debt claimed by the Applicant. The relevant averment depicting admission of debt in the Reply is reproduced below:

“25. However, the Corporate Debtor is in process of raising funds through in order to protect it from coercive actions and proceedings initiated by the Applicant Bank in different forum. In this regard, the Corporate Debtor has again requested the Applicant Bank vide its letter/email dated 12.10.2019 to provide sometime in view of the present market conditions which is evident from applicants bank own reply to the RTI Application, as aforesaid...”

9. That in compliance of the Order dated 14.11.2019, the Corporate Debtor filed an Affidavit on 25.11.2019 and, inter alia, averred the following :

2. I say that the CD made the party payment of OTS in terms of letter dated 20.03.2019. I further say that out of Rs. 260 Crore OTS amount, the Applicant paid a total sum of Rs. 158 Crore on 30.03.2019 and for balance Rs. 102 Crore, it was granted time until 30.06.2019.



3. I say that the present affidavit is being filed in terms of directions of this Hon'ble Tribunal of dated 14.11.2019 which is passed upon the representations of the Corporate Debtor that the CD is in process of arranging funds to make payment of Rs. 102 Crore plus interest dues to the Applicant bank.

4. I say that the CD was liable to pay the balance amount of Rs. 102 Crore plus interest by 30.06.2019 in terms of OTS letter dated 20.03.2019 because of collapsing NBFC and banking system such as ILFS, DHFL and Yes Bank and owing to this reason the funds could not be arranged in time and paid to the Applicant bank, as stated in the said letter.

For Nimitaya Hotel & Resorts Limited

A handwritten signature in black ink, appearing to be 'S. S. S.', written over a horizontal line. Below the signature, the word 'Director' is printed in a small font.

Director

5. I say that the CD has made the alternative arrangements of funds to pay the outstanding liability plus interest read with the letter dated 20.03.2019 issued by the Applicant bank.

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10. That during the course of final hearing held on 13.12.2021, Ld. Counsel for the Respondent stated that it is in the process of settling the matter with the Applicant and has already paid an amount of Rs. 158 Crore on 30.03.2019 out of the OTS amount of Rs. 260 crore. For the balance amount of Rs.102 Crore, it was granted time until 30.06.2019. Though it is liable to pay the said amount but due to crisis in NBFC system, it could not pay the amount.

11. It was further stated by the Respondent that the Applicant Bank has declined all the offers made by the Corporate Debtor to settle the

matter. It was added that the Applicant Bank is in the process of assigning the loan account of the Corporate Debtor to an Asset Reconstruction Company, against which the Corporate Debtor has filed a Writ Petition before Hon'ble High Court of Delhi.

12. That in reference to the query raised by this Bench in respect of whether any stay has been granted on the IBC proceedings, the Ld. Counsel appearing for the Corporate submitted that as on date, there is no stay of any court of law on the current proceedings.

13. Per contra, the Ld. Counsel for the Applicant Bank submitted that at present neither any OTS nor any settlement process is under consideration. As regards to the Writ Petition filed before the Hon'ble High Court of Delhi, it was stated that no notice has been received by the Applicant Bank till date.

14. After perusing the Application, reply, other pleadings and hearing submission of both the parties, this Bench observes that the Applicant has clearly established the default made by the Corporate Debtor in payments. The Corporate Debtor has also admitted its liability in its reply as well as in the Affidavit dated 25.11.2019.

15. That the Corporate Debtor has not been able to give any cogent reason that as to why the CIR process shall not be initiated against it.

16. In the given facts and circumstances, the present Application being complete and having established the default in payment of the

Financial Debt for the default amount being committed above the threshold limit, **the present Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 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 the possession of the corporate debtor.”

17. As proposed by the Financial Creditor, this Bench appoints Mr. Navneet Gupta as IRP having Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619 (Email:navguptaca@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations,

2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Mr. Navneet Gupta, IRP having Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619, (Email: navguptaca@gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect.”
“The Court Officer will inform the IRP so appointed by all modes.”

The IRP is directed to take the steps as mandated specifically under Section 15, 17, 18, 20 and 21 of the IBC, 2016.

18. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. A copy of this Order shall immediately be communicated to the Applicant/Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Tribunal.

20. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.


- sd -

(L. N. Gupta)
Member (T)

- sd -

(Abni Ranjan Kumar Sinha)
Member (J)

This is to certify that the order of the Bench consisting of Hon'ble Member (J) Shri. Abni Rajan Kumar Sinha and Hon'ble Member (T) Shri L.N. Gupta was pronounced today by Hon'ble Member (T) under Rule 151(1) of NCLT Rules, 2016 as the Hon'ble Member (J) is on leave today.


(T. S. Singh)
Court Officer
24.12.2021