

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

CP (IB) No. 170/BB/2018
Under Section 7 of Insolvency & Bankruptcy Code, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF:

M/s Reliance Asset Reconstruction Company Limited

Reliance Centre, North Wing,
6th Floor, Off Western Express Highway,
Santacruz,
Mumbai – 400055.

Petitioner/Financial Creditor

AND

M/s. Hotel Poonja International Private Limited

K S Rao Road, Hanpankatta,
Mangalore,
Karnataka – 575 001.

Respondent/Corporate Debtor

Order delivered on: 20th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr Ashok Kumar Mishra, Member (Technical)

For the Petitioner(s): Shri Gurudas Kannur, Learned Senior Counsel
Ms. Kavitha, Advocate
Ms. Suja Surendran, Advocate

For Respondent: Shri Bopanna P.C., Advocate
Shri Rajnath H.V, Advocate
Shri S Rajashekar, Advocate

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

O R D E R

1. The Company Petition bearing **CP (IB) No. 170/BB/2018** is filed under Section 7 of Insolvency & Bankruptcy Code 2016 read with Rule 4 of I&B Code (Application to the Adjudicating Authority) Rules, 2016, by M/s Reliance Asset Reconstruction Company Limited seeking to initiate CIRP in the matter of M/s Hotel Poonja International Private Limited. The submissions made in the Company Petition are inter alia summarised as follows:
 - a. M/s Reliance Asset Reconstruction Company Limited (hereinafter referred to as "Petitioner/Financial Creditor") is a company incorporated on 17.04.2016 having its registered office at Reliance Centre, North Wing, 6th Floor, Off Western Express Highway, Santacruz, Mumbai - 400055.
 - b. Whereas, M/s Hotel Poonja International Private Limited (hereinafter referred to as "Respondent/Corporate Debtor") is a private limited company incorporated on 10th September, 1984 bearing CIN U55101KA1984PTC006360. It's authorised and paid up share capital is Rs. 2,00,00,000/-. The registered office of the Respondent/Corporate Debtor is situated at K S Rao Road, Hanpankatta, Mangalore, Karnataka-575001.
 - c. The Respondent/Corporate Debtor had approached Vijaya Bank for securing a loan and after all the compliances a Term Loan Facility of Rs. 40,00,000/- was granted to the Corporate Debtor. The Corporate Debtor has defaulted to make the payment of the loan and as a result of which the account was declared as NPA on 1.04.1993. As on 18.07.2018, an amount of Rs 145,44,46,651.32 is outstanding and due.
 - d. Whereas, Vijaya Bank assigned the debt to M/s Reliance Asset Reconstruction Company Limited i.e., Petitioner/Financial Creditor herein, vide assignment agreement dated 3rd May, 2011.

- e. The Petitioner has furnished Judgement in OA No. 547/98 by Debt Recovery Tribunal dated 9th April, 2001, Recovery Certificate issued by Debt Recovery Tribunal dated 27th March, 2003 and Order in DCP No. 2691 in OA No. 547/1998 by DRT dated 14th December, 2017 to evince the existence of the debt.
2. The Company Petition is opposed by the Respondent by filing Statement of Objections dated 16.01.2019, by inter alia, contending as follows:
- a. The Respondent had applied for loan to the tune of Rs. 40 lakhs from Vijaya Bank during 1986 and the Bank had though sanctioned Rs. 40,00,000/-, released only a sum of Rs. 38,85,482 and did not disbursed the balance amount of Rs. 1,14,518. Vijaya Bank had adjusted the said amount of Rs. 1,14,518 towards the interest payable by the Respondent. The Respondent used to make repayment of instalments regularly and they have paid total instalment of Rs. 22,49,801/-. The Respondent attempted to settle the outstanding amount, but same did not yield fruitful results. Subsequently, Vijaya Bank filed recovery petition in OA No. 547/1998 before the Debts Recovery Tribunal, Bangalore. Wherein the DRT, Bangalore in OA No. 547/1998 issued a recovery certificate in accordance with compromise memo by virtue of which the Corporate Debtor was directed to pay balance sum of Rs. 75,00,000/- with interest at 12.5% per annum within 9 equal monthly instalments commencing from 30.06.2001.
- b. Pursuant to compromise entered into the parties, the Respondent could not pay the balance amount and despite the exchange of communication between Vijaya Bank and Respondent, the parties were unable to reach a settlement. Vijaya Bank approached DRT Bangalore and obtained a recovery certificate on 27.03.2003. Subsequent to negotiations, Vijaya Bank issued a letter dated 22.12.2003 calling upon the Respondent to pay the balance amount of Rs. 40 lakhs with interest at 11.5% per annum from 1.10.2003 as per the terms of subsequent understanding. However, the Corporate Debtor did not process the payment. Subsequent to further

- communication between the parties. Vijaya Bank addressed a letter dated 13.09.2008 calling upon the Corporate Debtor to pay a sum of Rs. 47,10,000/- towards full and final settlement of the loan amount.
- c. However, Vijaya Bank did not accept the mount under OTS scheme and the Bank addressed a letter dated 06.07.2009 contending that they are going to publish the name of the Respondent as wilful defaulter. The Corporate Debtor sought to extend the time for payment and pay the balance amount of Rs. 40 lakhs vide letter dated 27.4.2011. Vijaya Bank vide letter dated 14.5.2011 informed the Corporate Debtor, that the decree was assigned and transferred to the Petitioner/Financial Creditor.
- d. As Vijaya Bank and the Petitioner were not considering the case of the Respondent, the Respondent approached the Hon'ble High Court of Karnataka by filing W.P. No. 28437/2011 and sought for writ of mandamus, directing Vijaya Bank to consider the representation dated 27.04.2011 and sought for the Bank to furnish an attested copy of the alleged Assignment Agreement dated 3.05.2011. The Hon'ble High Court of Karnataka disposed the writ petition vide order dated 30.10.2013 stating that 'taking note of the exchange of correspondences between the Respondent and the Petitioner, and the Petitioner had indicated that the settlement could be possible in terms as indicated therein, it would be open for the for the Respondent to make substantial payment out of the said amount to the Petitioner and thereafter request the Petitioner for time to pay the balance amount and in such event, it is for the Petitioner to consider such representation as per procedure.
- e. During the pendency of the W.P. No. 28437/2011, the Petitioner and Respondent exchanged communication for payment of and OTS of agreed amount of Rs. 113.00 lakhs on or before 30.06.2013. Subsequently, Petitioner issued a letter dated 27.09.2013 contending that the OTS is revoked and called upon Respondent to pay Rs. 49,31,68,375/- with interest at 20.40% per annum till payment. Thereafter, Petitioner issued show cause notice dated 8.11.2013

contending that they are going to treat the Respondent as wilful defaulter. Subsequently, the Petitioner and Respondent exchanged communication regarding the non-payment of the money, wherein the Petitioner disagreed to settle and sought the Respondent to pay the dues.

- f. The Petitioner issued yet another notice dated 16.11.2016 under Section 434(a) of Companies Act, 1956 for winding up of the Respondent. Further, the Petitioner approached the Debt Recovery Tribunal in DCP No. 2691/2015 for attachment of the rent payable by Jammu & Kashmir Bank, Corporation Bank, Muthhoot Finance, Devika Saries and Dress Materials, Bombay Shop, Nirantara-a Publicity Shop, Unique Systems and Mani & Co. The Debt Recovery Tribunal, Karnataka by an order dated 15.03.2017 directed the aforesaid tenants of the Respondent to pay the rent to the Recovery Officer-1, DRT, Bangalore. The order dated 15.03.2017 came to be challenged by filing WP No. 3520/2018 by Jammu & Kashmir Bank before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court of Karnataka was pleased to grant an interim order of stay to the order dated 14.12.2017. Pursuant to passing of the interim order of stay in WP No. 3520/2018, the tenants are paying the rent to the Respondent. Further, an order passed in O.A. No. 547/1998 came to be challenged by filing WP No. 39858/2018 by one Mr. Vinay Bhat and the said writ petition is pending consideration.
- g. During 2013, the Petitioner had agreed for settling the dues at Rs. 113 lakhs, that being the case, it is not open for the applicant to contend that the Respondent is a Corporate Debtor. Vijaya Bank had obtained the decree from the Debt Recovery Tribunal and the same cannot be assigned to the Petitioner. Due to pendency of the proceedings before the Hon'ble High Court of Karnataka with regard to the claims made by the Petitioner, it is not open for the Petitioner to invoke Section 7 of the IBC, 2016.
- h. The Respondent has not committed any default in the matter and they are continuously corresponding with the Petitioner, which clearly

shows that the initiation of Corporate Insolvency Resolution Process is not proper and same requires to be rejected.

3. Heard Shri Gurudas Kannur, Learned Senior Counsel appearing on behalf of the Petitioner, Ms. Kavitha, Ms. Suja Surendran, Learned Counsels for the Petitioner and Shri Bopanna P.C, Learned Counsel for the Respondent, and perused the application and documents placed on record.

1) The Company Petition is filed U/s 7 of IBC, 2016, which reads as under:

"7. (1) A Financial Creditor either by itself or jointly with (other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government), may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. *For the purposes of this sub-section, a default includes a default in respect of a financial debt owned not only to the applicant financial creditor but to any other financial creditor of the Corporate Debtor.*

(2) *The Financial Creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*

(3) *The Financial Creditor shall, along with the application furnish-*

(a) a record of the default recorded with the information utility or such other record or evidence of default as may be specified.

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of*

other evidence furnished by the financial creditor under sub-section (3).

(5) *Where the Adjudicating Authority is satisfied that:*

(a) A default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided *that the Adjudicating Authority shall, before rejecting the application under clause (b) sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

(6) *The Corporate Insolvency Resolution Process shall commence from the date of admission of the application under sub-section (5).*

(7) *The Adjudicating Authority shall communicate:*

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor.

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

4. In the instant case, it is not in dispute that Vijaya Bank had sanctioned loan of 40 lakhs to Corporate Debtor on 20.05.1986 and it has defaulted in making payment of the loan as per the terms of the loan agreement. The account of the Corporate Debtor was classified as NPA on 1.04.1993. Vijaya Bank also filed original application OA No. 547/1998 before DRT, Bangalore and DRT has decreed and issued a recovery certificate by issuing an order dated 9th April, 2001. Further, due to non-repayment of the amount as per the order dated 9th April, 2001, DRT,

Bangalore issued another recovery certificate vide DCP No. 2691 dated 27.03.2003 directing the Recovery Officer to recover the amount of debt as stated therein. Subsequently, Vijaya Bank assigned the loan disbursed in favour of the Corporate Debtor to the Petitioner/Financial Creditor herein vide Assignment Agreement dated 3rd May, 2011. Consequently, an amended recovery certificate dated 13th May, 2011 was issued by the DRT, Bangalore recognising the assignment to the Petitioner/Financial Creditor and vesting rights of recovery with it.

5. Shri Bopanna P.C, Learned Counsel for the Respondent, has opposed the petition and stated that writ petitions filed before the Hon'ble High Court of Karnataka, wherein in WP 3520/2018 an interim stay has been granted on the notice of attachment of rent of tenants of Corporate Debtor dated 14th December, 2017 issued by the DRT, Bangalore. They have also stated that another WP 39858/2018 has been filed challenging the order passed in O.A. No. 547/2018 and the same is pending before the Hon'ble High Court of Karnataka.
6. In the present case we note that certain matters have been dealt with before the Hon'ble High Court of Karnataka viz. (i) W.P. 28437 of 2011, which has since been disposed off; (ii) W.P. No. 3520 of 2018 which has granted an interim stay in respect of the DRT order dated 14.12.2017 and directed the payment of rent to the Corporate Debtor and to that extent does not interfere with the Order of the DRT in O.A 597 of 1988; (iii) W.P. No. 39858 of 2018 filed by one Mr. Vinay Bhat in furtherance of DRT order O.A. 547 of 1998 which has since been disposed off and the said order has not been submitted before us; and (iv) W.P. No. 17390 of 2017 filed by the Corporate Debtor in respect of the DRT order dated 15.03.2017 which again deals with the rent payable vide DRT order in DCP 2691 of 2017 dated 15.03.2017 and the same stands currently adjourned.
7. It is a settled position of law that the provisions of Code cannot be invoked for recovery of outstanding amount but it can be invoked to initiate CIRP for justified reasons as per the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa*

*Software Private Limited*¹, has inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum. In another judgment rendered in *Transmission Corporation of A.P.Ltd. Vs. Equipment Conductors and Cables Ltd.*,² Supreme Court of India, it is, inter alia held that existence of undisputed debt is sine qua non of initiating CIRP.

8. Given the disputes between the parties, the orders of the Hon'ble High Court of Karnataka and the Order of the Debt Recovery Tribunal in the aforesaid matter, we do not find 'any justified reasons' to initiate Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor. Further, we reiterate that this Tribunal is not intended to be substitute to a recovery forum and that the Petitioner ought to act on the recovery certificate issued by the Debt Recovery Tribunal. Furthermore, we do not intend this Tribunal to be a victim forum shopping.
9. In the instant petition, in light of the discussion on the proposition of law entailed in the preceding paragraphs and considering the circumstances of the case; we find that the Petition filed under Section 7 of I&B Code, 2016 ought to be rejected
10. In the result, C.P. (IB) No.170/BB/2018 is hereby rejected. However, this order will not come in the way of Petitioner to invoke any other remedy available under any law including the enforcement of the recovery certificate issued by the Debt Recovery Tribunal so as to get the grievances redressed. No order as to costs


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Vy/KR

¹(2018) 1 SCC 353

²(CA No.9597 of 2018) dated 23rd October, 2018, (2018) 147 CLA 112 (SC)