

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) – 734 (PB)/2022

**ORDER UNDER SECTION 7 OF THE INSOLVENCY
AND BANKRUPTCY CODE, 2016 R/W RULE 4 OF
THE INSOLVENCY AND BANKRUPTCY (APPLICATION
TO ADJUDICATING AUTHORITY) RULES, 2016.**

IN THE MATTER OF:

PUNJAB NATIONAL BANK

..... Applicant/Financial Creditor

REGISTERED OFFICE ADDRESS:
Plot No 4, Sector-10, Dwarka, New
Delhi-110075 IDENTIFICATION No.
U55101DL2010PTC211161

Versus

PELICAN GRAND MOTELS Pvt. Ltd

..... Respondent/Corporate Debtor

REGISTERED ADDRESS: 117,
ANAND VIHAR PITAMPURA NEW
DELHI DELHI-110034, INDIA CIN
No.: U55101DL2010PTC211161

ORDER PRONOUNCED ON: 12.12.2023

CORAM:

**Chief Justice (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Financial Creditor : Adv. S.K. Sharma
For the Corporate Debtor : Adv. Abhishek Gusain

ORDER

1. This is an application, filed by **Punjab National Bank** (Financial Creditor/Applicant), represented by Sh. Nand Kishore Barnwal, Chief Manager of the Punjab National Bank, Zonal Sastra Centre, SCO 60-61, Ground Floor, Sector 17-B, Chandigarh-160017 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz., M/s Pelican Grand Motels Pvt. Ltd, for a total default in repayment of **Rs. 34,89,40,821.30** (Rupees Thiry-Four Crore Eighty-Nine lakh Forty thousand Eight hundred Twenty-one and thirty paise Only).
2. The Corporate Debtor was Incorporated on **07/12/2010**, having CIN:U55101DL2010PTC211161, under the Companies Act, 1956, with the purpose of doing business in hotels, camping sites and other provision of short stay accommodations. The registered office is at 117, Anand Vihar Pitampura, New Delhi- 110034, India. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor as accessed from the MCA website is annexed at **Annexure I/B**.
3. The present application was filed on 12.09.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make the re-payment of Rs. **34,89,40,821.30** (Rupees Thiry-Four Crore Eighty-Nine

lakh Forty thousand Eight hundred Twenty-one and thirty Paise Only) as on 01.07.2022. A copy of the workings for computation of amount and days of default in a tabular form is annexed at **Part- IV of Application.**

4. It is submitted that in the month of November 2012, the Financial Creditor had sanctioned a loan of Rs 19.60 Crore and Fund Based Working Capital (FBWC) of Rs 0.30 crore vide sanction letter dated 10.11.2012 to the Corporate Debtor. Pursuant to this, loan and security documents were executed by the Corporate Debtor in favour of Financial Creditor to secure the above said credit facilities.
5. It is submitted that vide sanction letter dated 27.05.2015, the Financial Creditor has sanctioned an additional term loan of Rs. 9 Crore and reviewed an existing term loan of Rs. 19.60 crore and also renewed Cash Credit limit of Rs. 30 lakhs.
6. It is submitted that the Financial Creditor also sanctioned the OD limit against the tangible security of Rs 1.30 Crore, reduction of existing cash credit limit to nil and review of existing term loan of Rs 28.63 Crore as on 17.11.2015 in its favour on 14.12.2015.
7. It is submitted that vide sanction letter dated 27.12.2017, the Financial Creditor renewed/reviewed/sanctioned the following existing credit facility in favour of Corporate Debtor and also the Corporate Debtor had executed loan and security documents in favour of Financial Creditor:
 - The existing term loan of Rs. 19.60 Crore having a balance outstanding of Rs. 18.65 Crore was renewed as on 01.12.2017

- Existing term loan of Rs. 9.00 Crore having an outstanding balance of Rs. 8.43 Crore as on 01.12.2017
 - OD limit against tangible security of Rs 1.3 Crores.
8. It is submitted that Corporate Debtor has executed/signed balance and security on 12.03.2018 for the Account Number of the Corporate Debtor No- 118300IB00004192, 118300IB00004147 and 1183009300021622 whereby the balance confirmation was done by the Corporate Debtor for Rs 8,68,90,846, Rs 18,18,16,384 and Rs 1,21,26,517.13 and executed respectively.
9. It is submitted that the since the Financial Creditor failed to maintain the financial discipline and was irregular in servicing the said debt, the account of Corporate Debtor was declared as Non-Performing Asset (NPA) on 01.11.2019 wherein the outstanding balance as on that date was Rs 25,51,55,184 (Rupees twenty-five crores fifty-one lakhs fifty-five thousand one hundred and eighty-four only)
10. It is submitted that on 02.11.2019 the Financial Creditor issued a recall notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor to discharge its liability.
11. It is submitted that the total amount claimed to be in default as on 1.07.2022 is as follows:

Account No. PNB118300IB00004147

[Term Loan]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs. 15,81,75,000.00	Rs. 15,81,75,000.00

Recorded Interest	Rs.72,12,280.63	Rs.6,87,40,553.42
Total Outstanding	Rs.16,53,87,280.63	Rs.22,69,15,553.00
Days past due	90 Days	973 Days

Account No. PNB118300IB00004192

[Term Loan]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs.7,26,75,000.00	Rs.7,26,75,000.00
Recorded Interest	Rs.32,51,354.51	Rs.3,16,31,010.51
Total Outstanding	Rs.7,59,26,354.51	Rs.10,43,06,010.51
Days past due	90 days	973 days

Account No. PNB1183009300021622

[ODIP]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs.1,28,46,328.24	Rs.1,28,46,328.24
Recorded Interest	Rs.3,56,578.00	Rs.48,72,929.13
Total Outstanding	Rs.1,32,02,906.24	Rs.1,77,19,257.37
Days past due	90 days	973 days

TOTAL AMOUNT DUE AS ON 01.07.2022

Particulars	Amount (Rs)
Principal	24,36,96,328.24
Interest	10,52,44,493.06
Total	34,89,40,821.30

12. The Financial Creditor has placed the following Documents on record:

- i. True Copy of the Agreements of Loan/CC/OD, Overdraft and Term Loan at Annexure I/H.
- ii. Statement of Accounts along with certificate under Section 2A of the Banker's Book of Evidence Act 1891 at Annexure I/I.
- iii. True Copy of Recall Notice under Section 13(2) of SARFAESI Act, 2002 dated 02.11.2019 along with the objections under Section 13A and its counter reply at Annexure I/J.
- iv. Record of Default registered with the Information Utility at Annexure I/G.
- v. True Copy of Notice Under Section 13(4) of SARFAESI Act, 2002 dated 27.07.2020 at Annexure I/K.
- vi. True Copy of Balance & Security Confirmation Letter dated 12.03.2018.

13. **Submissions made by Ld. Counsel for the Respondent:**

- i. It is submitted that the Bank has filed the present application on the premise that the Borrower Company is in default of payment of amount due under the terms of contract i.e sanction letter dated 10.11.2012. The perusal of the sanction letter reveals that before disbursement of the sanctioned loan amount, land on which the hotel was to be constructed was to be entered into a registered lease deed for 30 years in favour of the Borrower-Company, and as such it constituted a pre-condition for entering into the contract between Bank and the Borrower, which has not been complied with by the bank. In view of this non-compliance of the pre-requisite condition which was essential for forming a valid contract. The Contract-cum-sanction letter dated 10.11.2012 is *void-ab-initio*, not only on the ground of non-compliance of the pre-requisite condition, but also on account of fraud committed by the bank, which is subject matter of the Civil Suit No. 1942 of 2022, filed by the Borrower Company before Civil Court, JMIC, Karnal (Haryana).
- ii. It is submitted that the Bank is conscious of the fact that the outcome of the suit is likely to go against the Bank and therefore the Bank in order to avoid any adverse orders or decree against it, and in order to circumvent the suit proceedings has filed the present proceedings. The application of the Bank is therefore liable to be dismissed forthwith.
- iii. It is submitted that the Borrower Company is an MSME, and the Borrower Company had applied for additional loan in March-2018, and the application was appraised and recommended by the Bank after conducting Techno-

Economic Viability (TEV) Study. However, the Applicant-Bank did not sanction release of additional facilities, ignoring all statutory binding notifications issued by the RBI for release of loan applicable on all MSME units. Such a conduct of the Applicant Bank caused huge loss to the Borrower Company for which they are liable to compensate the Borrower Company for the damages so caused. Though the bank has filed OA no.1293 of 2020 before DRT-II, Chandigarh and the counter claim could have been filed by the Borrower Company in the said proceedings before DRT, but the Borrower has filed the above suit for damages before JMIC, Karnal.

- iv. It is submitted that though the Applicant Bank conducted TEV study on 19.10.2019, as per which the Bank officials found that the MSME unit of the defendant is technically fit and economic viable, however the Bank instead of conducting restructuring activities, initiated the default notice which is not in accordance with the law. It is pertinent to mention here that the Borrower Company has filed a Civil Writ Petition CWP/27968/2019 before the Hon'ble High Court of Punjab & Haryana. The Bank has concealed before this Hon'ble Tribunal the factum of the above writ petition with oblique intentions and motives, and the Bank is escaping to file its reply/ counter affidavit in the said writ petition before the Court even after a lapse of more than 2 years.
- v. It is submitted that the Bank has filed the application under Section 7 of the Code against the borrower company supported by affidavit of one Shri Nand Kishore Barnwal, Chief Manager of the Bank and Shri Nand Kishore Barnwal in para 1 of his affidavit has stated that "deponent is

authorized officer of FC i.e. PNB and authorized to represent the FC in the accompanying application. A perusal of the affidavit dated 24.08.2022 of Shri Nand Kishore Barnwal, Chief Manager filed along with application under Section 7 of IBC with so called authorization letter dated 21.06.2022 clearly shows that there is no authorization of the Board, much less in the form of any Board resolution, in favour of Shri Nand Kishore Barnwal, Chief Manager. Further the Board Resolution dated 04.12.2020 is also not placed on record before this Tribunal in support of the authorization of Shri Nand Kishore Barnwal. The so called authorization letter dated 21.06.2022 states that Board had authorized Shri SK Raizada, but fact remains on record that the present application has not been filed by Shri SK Raizada.

vi. It is submitted that the application in the present case has been filed on 12.09.2022 and the Authorization for Assignment (AFA) of the Resolution Professional is apparently valid w.e.f 04.10.2022. Further the consent to act by the RP has been obtained on 21.06.2022, the date on which the proposed RP was not eligible to undertake any assignment. Thus filing of name of such RP who is not eligible makes the application defective and is in violation of law.

14. Submissions made by the Ld. Counsel for the Financial Creditor to Counter the Submissions made by Ld. Counsel for the CD

i. It is submitted that the first allegation levelled by the CD is the Financial Creditor has filed an application without any authorization ignoring the fact that the petition has been filed by a duly authorized officer of the Bank vide

Authority letter dated 21.06.2022 which has also been annexed as Annexure No. I/A in the petition. Further, second allegation levelled is that the authorization for verification is not by a competent person which is a glib excuse as the entire petition is verified by the competent person authorized by the Bank. Further, the Corporate Debtor is not aware of the procedural requirements which mandated the service to the IBBI before filing the application before the NCLT, and other documents are the IRP documents- Authorization and Certificate of Registration which was fulfilled as per the objection/requirement of the Section 7 petition under I&B Code, 2016.

- ii. The third allegation levelled is in regard to the consent of the IRP which has to be obtained from the IRP as per the requirements of the Act accompanied with the valid certificate confirming the eligibility for appointment. The final petition after removing all objections and complying with all the requirements was filed on 06.10.2023 (**sic, should be 06.10.2022**) with a valid authorization for assignment of IRP valid from 04.10.2022 to 03.10.2023. Moreover, the AFA keeps on renewing and it doesn't in any way hold a valid ground for dismissal of the CP where the prerequisite for debt and default is established.
- iii. The next allegation levelled is that the provisions of the Banker's Book Evidence Act is not complied with, which is wrong. The certificate under Banker's Book Evidence Act is annexed with the application. The date has been inadvertently skipped which does not in any case bar the Section 7 petition to get admitted considering all the pre-

requisites have been fulfilled. Further, the debt is also recorded with the Information Utility.

iv. It is submitted that the CD is trying to buy time by raising various baseless, frivolous disputes on one or the other pretext.

15. Orders Passed by Hon'ble Delhi High Court and Hon'ble NCLAT

It is to be noted that this particular petition was admitted by this Adjudicating Authority on 28.02.2023 and thereafter the following orders were passed by Hon'ble Delhi High Court and Hon'ble NCLAT and the matter has been remanded back.

S~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd February, 2023

+ **W.P.(C) 2281/2023 and CM APPL. 8627/2023, 8628/2023**

PELICAN GRAND MOTELS PRIVATE LIMITED Petitioner

Through: Mr. Ramesh Kumar, Adv. (M:
9540999465)

versus

PUNJAB NATIONAL BANK Respondent

Through: Mr S K Sharma, Advocate. (M:
9871588055)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.8627/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 2281/2023 & CM APPL.8628/2023

3. The present Petition has been filed by the Petitioner challenging the impugned order of the National Company Law Tribunal (*hereinafter* 'NCLT') dated 6th January, 2023. In view of the fact that the reply of the Petitioner to the Section 7 Petitioner under the IBC, filed by the Respondent, was under objection, the NCLT closed the right to file the reply. On the same day the arguments have been heard and the order has been reserved.

4. Ld. counsel for the Petitioner submits that there was a delay in filing the reply, however, the same is not deliberate as it was only under objections and an opportunity may be given to the Petitioner to plead its case before the NCLT.

5. On behalf of the Bank, it is submitted that the Order dated 6 January, 2023 is an appealable order before the National Company Law Appellate Tribunal ('NCLAT').

6. This Court notices that in this petition, Punjab National Bank ('PNB') had filed a Section 7 petition under the Insolvency and Bankruptcy Code, 2016 (hereinafter 'IBC') against the Petitioner - Pelican Grand Mot Private Limited. Notice was issued for the first time on 17th October, 2022 and the Petitioner was called upon to file a reply. The first Order of the NCLT dated 17th October, 2022 reads as under:

"This is a petition filed under Section 7 of the Insolvency & Bankruptcy Code 2016. It is stated by the petitioner that notice in terms of Rule 4 of Adjudicating Authority, IBC Rules, 2016 has already been issued on the Corporate Debtor.

*In view of the Judgment passed by the Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. & Anr. Vs Union of India & Ors.**, reported in (2019) 4 SCC 17, the Paragraph 58 reads as follows:*

" ... A conjoint reading of all these Rules makes it clear that at the stage of the Adjudicating Authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the application filed with the Adjudicating Authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said application."

*And in the matter of **M/s Surendra Trading Company Vs. M/s Juggilala Kamlapat Jute mills Company and Ors.** Reported in 2017 SCC online SC 143, the Paragraph 24 reads as follows:*

"Further, we are of the view that the judgments cited by the NCLAT and the

principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible. "

*And in the Judgment passed by the Hon'ble NCLA in the matter of **Innovative Industries Vs ICICI Bank reported in 2018 1 SCC 407**, the Paragraph 64 reads as follows:*

"The different decisions of the Hon'ble Supreme Court, as referred to above and exception of principles of natural justice as noticed and summarised in the preceding paragraphs is not applicable to the insolvency resolution process as it is not a case of emergency declared or prejudicial to public interest or that there is a statutory exclusion of rules of natural justice or it is impracticable to hold hearing. It is not the case that no right of any person has been affected, as immediately on appointment of an Interim Resolution Professional, the Board of directors stand superseded. There are other persons who are also affected due to order of moratorium. Therefore, the 'adjudicating authority' is duty bound to give a notice to the corporate debtor before admission of a petition under Section 7 or Section 9. "

Accordingly, notice to the Respondent/Corporate Debtor, be issued, returnable by seven days.

This Notice to be sent by the Petitioner /Financial Creditor under NCLT Rules, Form-5.

1. By way of an email to the registered email of the Corporate Debtor available with the petitioner.

2. By way of an email to the CD email address registered with the MCA.

3. Service by way of Dasti within three days for today.

4. Proof of Service in anyone of the above form filed by way of an affidavit before the next date of hearing.

List the matter for further consideration on 02.11.2022.”

7. On 2nd November, 2022, the time was given to the Petitioner to file a reply. The said order reads as under:

“Ld. Counsel for the petitioner seeks time to file the hard copy of the pleadings. Ld. Counsel for the CD seeks time to file the reply.

List the matter again on 30. 11.2022.”

8. It is to be noted that in this order, no specific time has been given to file the reply and the matter has been adjourned to 30th November, 2022. Reply is stated to have been filed by the Petitioner on 29th November, 2022 i.e. before the next date of hearing. On 30th November, 2022, due to paucity of time, the matter is adjourned to 21st December, 2022. The said order is extracted below:

“Due to paucity of time, we are inclined to adjourn the matter for physical hearing on 21.12.2022. In the meanwhile, pleadings be completed and the hard copies be filed by the next date of hearing.”

9. On 21st December, 2022, again time is granted to file the rejoinder.

“Ld. Counsel for the Petitioner is present through video conferencing. The matter was passed over in the morning due to the absence of the counsel for the Punjab National Bank. It was observed by this Bench that one Adv. Dyuti Ghai, Proxy Counsel has been appearing on behalf of the main counsel in the hearings on 02.11.2022 & 30.11.2022. Based on our insistence, Mr. S.K. Sharma, Counsel for the Punjab National Bank appears before us and states that they have received the reply from the corporate debtor on 29.11.2022 and he seeks time to file the rejoinder. One week's time is granted to file the Rejoinder. List the matter on 03.01.2023 for physical hearing.”

10. On 3rd January, 2023, the list of dates and events along with a brief compilation of relevant documents is sought.

11. It is submitted by Id. Counsel for the Petitioner that the reply filed on 29th November, 2022 was still under objection on the date when the impugned order was passed on 6th January, 2023 and the Petitioner was never communicated any defects in the reply.

12. Ld. counsel for the Respondent submits that it was the duty of the Petitioner to ensure that the reply comes on record.

13. The order under challenge dated 6th January 2023 reads:

“Today, when the matter was heard, Mr. S.K. Sharma, Ld. Counsel for the petitioner and Mr. Abhishek Gusain, Ld. Counsel for the respondent appeared. Notice was issued to the respondent on 17.10.2022. After service, it appears that the respondent has filed reply and served it on the petitioner's counsel but the copy of the same has not been filed before the NCLT and when the query was raised to the counsel as to whether there is a date on which the reply was filed to

the section 7 petition, he is unable to give a date or proof of the same to NCLT.

Ld. Counsel for the respondent informed us that the reply has been filed vide diary No. 0710102074302022 on 29.11.2022. We find from the DMS that it is still continues under scrutiny and the respondent has not chosen to rectify the defects so as to bring it on record. This shows the callous attitude on the part of the CD, as he is not defending the case hence we have no other option except to close the right of filing reply.

Arguments heard. Order reserved."

As noted in the Order dated 6th January, 2023 passed by the NCLT clearly the reply had been filed by the Petitioner and it continued to remain under scrutiny in terms of the Data Management System (DMS), which is maintained by the NCLT itself. Thus, it is not clear as to why the reply was not on record. Be that as it may, a perusal of the order sheets as extracted above does not give any impression to the Court that the Petitioner in any manner was delaying deliberately or otherwise. On the first date when the time for reply was granted to the Petitioner, the Petitioner had filed the reply before the next date of hearing i.e. on 30th November, 2022.

14. Consequences of any order passed under section 7 of the IBC can be quite far reaching for any company. Accordingly, in the opinion of this Court, the Petitioner deserves an opportunity to defend its position. In the overall facts and circumstances of these case, it is directed as under:

- i. The Petitioner's reply, which has been filed on 29th November, 2022, shall be placed on record before the NCLT which shall take up the matter for hearing on 15th March, 2023.

- ii. The Petitioner shall be given opportunity to make its submissions in respect of the petition under Section 7 of the IBC. Thereafter, the NCLT may proceed to pass orders in accordance with law.
 - iii. The present order shall be communicated by the Registrar General to the Registrar, NCLT in order to ensure that the Petitioner's interests are not adversely affected, due to any delay in communication.
15. With these observations, this petition, along with pending applications, is disposed of. *Dasti.*

PRATHIBA M. SINGH
JUDGE

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.552 of 2023

IN THE MATTER OF:

Pelican Grand Motels Pvt. Ltd. ...Appellant

Versus

Punjab National Bank ...Respondent

Present:

For Appellant: Mr. Abhishek Gwain, Advocate.

For Respondent: Mr. S. K. Sharma, Ms. Dyuti Ghai, Advocates.

ORDER

30.05.2023: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against the order dated 28.02.2023 by which order the Adjudicating Authority has admitted the Section 7 application filed by the Financial Creditor.

2. Application under Section 7 was filed by the Punjab National Bank in which the Adjudicating Authority passed an order on 06.01.2023 closing the right of the Appellant to file reply and the orders were reserved. The order passed on 06.01.2023 is as follows:

“ORDER

Today, when the matter was heard, Mr. S.K. Sharma, Ld. Counsel for the petitioner and Mr. Abhishek Gusain, Ld. Counsel for the respondent appeared. Notice was issued to the respondent on 17.10.2022. After service, it appears that the

Cont'd.../

respondent has filed reply and served it on the petitioner's counsel but the copy of the same has not been filed before the NCLT and when the query was raised to the counsel as to whether there is a date on which the reply was filed to the section 7 petition, he is unable to give a date or proof of the same to NCLT.

Ld. Counsel for the respondent informed us that the reply has been filed vide diary No. 0710102074302022 on 29.11.2022. We find from the DMS that it is still continues under scrutiny and the respondent has not chosen to rectify the defects so as to bring it on record. This shows the callous attitude on the part of the CD, as he is not defending the case hence we have no other option except to close the right of filing reply.

Arguments heard. Order reserved.”

3. The Appellant was advised to file a Writ Petition under Article 226 before the High Court. The High Court in the Writ Petition No. 2281/2023 and CM Application No. 8267/2023 filed by the Appellant passed an order on 22.02.2023. Para 14 of the order of the High Court is as follows:

“14. Consequences of any order passed under section 7 of the IBC can be quite far reaching for any company. Accordingly, in the opinion of this Court, the Petitioner deserves an opportunity to defend its position. In the overall facts and circumstances of these case, it is directed as under.

Company Appeal (AT) (Insolvency) No.552 of 2023

- i. *The Petitioner's reply, which has been filed on 29th November, 2022, shall be placed on record before the NCLT which shall take up the matter for hearing on 15th March, 2023.*
- ii. *The Petitioner shall be given opportunity to make its submissions in respect of the petition under Section 7 of the IBC. Thereafter, the NCLT may proceed to pass orders in accordance with law.*
- iii. *The present order shall be communicated by the Registrar General to the Registrar, NCLT in order to ensure that the Petitioner's interests are not adversely affected, due to any delay in communication."*

4. The order of the High Court was sent by the Registry of the High Court, which order of the High Court was not before the Adjudicating Authority when matter was heard on 28.02.2023. It appears that the order was subsequently received by the Adjudicating Authority and thereafter the Adjudicating Authority fixed date in the matter as 15.03.2023. We have been informed that the said date has also been adjourned to 29.08.2023.

5. Learned counsel for the Appellant submits that when reply was filed by the Appellant, copy of it was also received by the Financial Creditor and the Financial Creditor has also filed rejoinder affidavit, the Adjudicating Authority ought to have considered the reply specially when the High Court has passed order on 22.02.2023.

6. Learned counsel for the Respondent submits that the order of the High Court was not even before the Adjudicating Authority when order was passed on 28.02.2023, therefore, there is no error in the order admitting application under Section 7.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. From the sequence of events which has been brought on the record it does appear that reply was filed by the Corporate Debtor on 29.11.2022 which continued to be under scrutiny as per DMS, as noted in order dated 06.01.2023. Learned counsel for the Appellant submits that there are certain minor defects in the reply which Appellant was always ready to rectify. It is submitted that the High Court has passed the order on 22.02.2023 when the Appellant directly approached the High Court in a Writ Petition. Their being statutory need, the Appellant should have filed appeal, if any, against the order dated 06.01.2023 of the Adjudicating Authority, before this Tribunal.

9. Looking into the fact and circumstance of the present case, we are of the view that ends of justice be served in directing the Adjudicating Authority to consider the reply which was filed by the Appellant on 29.11.2022, especially when the Financial Creditor has already filed it rejoinder. The Adjudicating Authority passed the impugned order without taking into consideration the reply which has already filed on 29.11.2022 but laying in defect.

10. Learned counsel for the Appellant undertakes before us that defects shall be cured within two weeks from today.

11. The reply and rejoinder being already on the record, ends of justice be served in setting aside order dated 28.02.2023 and reviving Section 7 application before the Adjudicating Authority to be heard afresh taking into consideration the reply as well as rejoinder filed by the Financial Creditor. Let a copy of this order be produced before the Adjudicating Authority by the Appellant within one week from today. Within a further period of two weeks' defects shall be cured by the Appellant, as undertaken. Let the Section 7 application be listed before the Adjudicating Authority on 03.07.2023, on which date the Adjudicating Authority may consider the application as well as reply and rejoinder and take decision in accordance with law, as early as possible. Appeal is allowed to the extent indicated above.

**[Justice Ashok Bhushan]
Chairperson**

**[Naresh Salecha]
Member (Technical)**

Archana/nn

16. IA-3522/2023 and IA-1512/2023

IA-3522/2023 and IA-1512/2023 has been filed by the Pelican Grand Motels Private Limited (Corporate Debtor) for seeking the following relief:

IA-3522/2023

PRAYER

It is therefore most respectfully prayed that this Hon'ble Tribunal may kindly be pleased :

- (a) To dismiss the application namely CP(IB)-734 (PB)/2022 filed by the Financial Creditor against the Corporate Debtor under Section 7 of the IBC, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016; and
- (b) To pass any such other order or direction as deemed fit and proper in the facts and circumstances of the present case.

IA-1512/2023

It is therefore prayed that directions may please be given:

- 1. Relief sought:** In view of the facts mentioned in para 4 above the Applicant prays for the following reliefs-

Reliefs: This hon'ble Tribunal may kindly be pleased to pass a rectification order by providing an

opportunity to the Applicant herein by fixing date of hearing on 15.03.2023 in terms of order dated 22.02.2023 passed by the hon'ble High Court of Delhi at New Delhi in WPC/2281/2023.

IA-1492/2023

IA-1492/2023 has been filed by Mr. Pawan K Goel, Insolvency Professional (IRP appointed by order dated 28.02.2023) for seeking the following relief:

In view of the above,

- (a) the Applicant so faced with the CIRP order dt 28.02.2023 passed by this Hon'ble Tribunal and further the order dt 22.02.2023, passed by the Hon'ble Delhi High Court, seeks directions of this Hon'ble Tribunal as to how to proceed further in CIRP of the Corporate Debtor.
- (b) Pass any other order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

17. Analysis and Findings

- i. We have heard the Ld. Counsel for the petitioner and respondents and perused the documents submitted. We have noted the reply dated 19.06.2023. Ld. Counsel for the CD

made the following submissions based on the reply filed to the Section 7 petition. The first issue raised by the Ld. Counsel was that there was no proper authorization issued in favour of the officer who signed the Section 7 petition filed before this Tribunal. To this the Ld. Counsel for the applicant Bank submitted various documents like Board Resolution and consequent authorization letter which makes it clear that the application was filed by a duly authorized officer. We have no hesitation to reject this contention raised by the CD.

- ii. The second contention which is raised by the Ld. Counsel for the CD is that the Bank committed fraud since it did not comply with the pre-requisite conditions of the contract cum sanction letter for which he had filed a Civil Suit bearing CS No. 1942 of 2022, before the Civil Judge, JMIC, Karnal (Haryana) marked as annexure R-1. The next issue raised is that the CD is an MSME Company. It had applied for additional loan in March, 2018. A TEV study was made, however the Bank did not sanction additional loan despite RBI guidelines which is to the benefit of MSME units. The Bank, however, has been harassing the CD by filing of OA No. 1293 of 2020 before DRT-II, Chandigarh. In view of the above factor, the proceedings under Section 7 ought not to have been initiated as it is for recovery.
- iii. The next contention is that the Bank having conducted TEV Study on 19.10.2019 and since CD is an MSME, the Applicant failed to restructure the loan and vindictively initiated default notice proceedings which forced the CD to file Civil Writ petition CWP/27968/2019 before the High court of Punjab and Haryana seeking various reliefs in the nature of mandamus for additional term loans. The next contention is that there is a mis-representation by the Bank in relation to the property owned by the CD claimed to be on equitable mortgage to the

Bank (paragraph 14 of the reply). In this regard CD relied upon the Civil Suit CS/735/2022 before JMIC, Karnal against the Bank. Despite all these proceedings, the Applicant has proceeded to initiate the Section 7 application knowing fully well that the CD has been fighting against the applicant Bank in various forums as mentioned above. On this ground, it is pleaded by the Ld. Counsel for CD that the initiation of proceedings under Section 7, IBC is malafide and unlawful.

- iv. We have considered the various issues raised by the CD in the reply and argued as above in detail. We notice that in all the proceedings referred to by the Ld. Counsel for the CD there is no restraint against the Applicant of any kind. We find that these proceedings are initiated by the CD after having taken the loan and not having paid the same in terms of the loan agreement. In any event the nature of loan and the conduct of CD and Applicant in the admitted loan is in multiple proceedings which has no bearing in the Section 7 petition. In the present case, there is no whisper or denial by the CD that there is no debt or there is no default. The allegations are based on other related proceedings in which no relief has been granted to the CD.
- v. Ld. Counsel for the CD was called upon to bring to our attention any order of the Court holding that the loan extended by the Bank is not realizable and not payable by the CD at any point of time. On the contrary we find that these proceedings are more in the nature of distracting the Bank in one way or the other having not honored the terms and conditions of the loan extended by the Bank.
- vi. We find that these objections raised by the CD are perfunctory and superficial. The debt and default as we have already observed is clear and present. The objections raised by the Ld. Counsel for the respondent is not tenable both in law and

facts. We are not inclined to accept the same. Further, the plea that RP did not have a valid authorization is totally misconceived because on the day the matter was listed and heard by us there was a valid authorization. This contention is also rejected.

- vii. We find that default has occurred in repayment of financial debt by the Corporate Debtor and the same is duly recorded with the Information Utility and petitioner has also attached NESL certificate indicating the default at page 100-141 of the application.
- viii. A certificate under Section 2-A of the Banker's Book Evidence Act, 1891 has been filed by the Financial Creditor showing the total dues along with the account statements of the three loan accounts. The said certificate further discloses sufficient compliance with the provisions of the Banker's Book Evidence Act of 1891 and the same has been taken on record. Therefore, the applicant's plea of debt and default is evident enabling us to proceed as per the code.
- ix. Further, we are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, which clearly held 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 application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so, long

as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise”

- x. Besides the above plea no other issue was urged by the Ld. Counsel for CD at the time of arguments. Therefore, in the facts of the present case, we find that the financial debt is due and there is a default in payment of debt.

In view of the above, we are inclined to allow this Petition

ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **C.P. (IB) – 734 (PB)/2022** filed by the **PUNJAB NATIONAL BANK**, the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **PELICAN GRAND MOTELS PRIVATE LIMITED**, the Respondent/(CD), is hereby admitted.
- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Applicant/(FC) has proposed the name of **PAWAN K GOEL** as the IRP. However, we observe that much time has elapsed since

the nomination by FC and the case had travelled upto Hon'ble High Court and Hon'ble NCLAT, in this period of time the AFA of the proposed IRP has expired, the same is evident from the extracted details from IBBI website:

Name of the IP	Mr. Pawan K Goel
Registration no	IBBI/IPA-001/IP-P00203/2017-2018/10392
Date of Registration	19-Jun-17
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPE	FALCON INSOLVENCY PROFESSIONALS LLP
Email id	pawankgoel1[at]gmail[dot]com
Address	206B and 207, Jagdamba Tower Commercial complex, 13, Preet Vihar ,National Capital Territory of Delhi ,110092
Have Valid AFA	No
AFA Certificate No.	NA
AFA Valid Upto	NA
Total CPE Earned	
Total Assignments	4

- iv. Therefore, we deem it appropriate to appoint **Mr. Binod Kumar Singh** as IRP of the CD from the available list of panel of Resolution Professionals as maintained with the IBBI.
- v. His email id is binod.adv@gmail.com. His registration number is IBBI/IPA-001/IP-P-02688/2022-2023/14108. As per the details available on IBBI website, the IRP is holding a valid AFA. Therefore, the IRP shall file his written consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- vi. In pursuance of Section 13 (2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by

Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- vii. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- viii. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- ix. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x. The FC shall deposit a sum of **Rs. 7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- xi. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

- xii. In view of the order passed in CP (IB)- 734(PB)/2022, the relief sought in IA-1492/2023, IA-3522/2023 and IA-1512/2023 has become infructuous. Accordingly, IA-1492/2023, IA-3522/2023 and IA-1512/2023 are dismissed as having become infructuous.
- xiii. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**