NATIONAL COMPANY LAW TRIBUNALNEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-499(ND)/2023

IN THE MATTER OF:

HDFC BANK LIMITED
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel (West),
Mumbai-400013 **... Applicant**

VERSUS

M/s MOUNTAIN MEADOW HOLIDAYS PVT LTD.
HOUSE NO.-196,
DEEPALI ENCLAVE,
PITAMPURA,
DELHI -110034 **... Respondent**

Section: 7 of IBC, 2016

Order Delivered on: 30.11.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Adv. Pankaj Agarwal, Adv. Shashawat Srivastava, Adv. Bheem Sain Jain

For the Respondent: None

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

HDFC Bank Ltd. (for brevity, the **"Applicant"**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**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 Mountain Meadow Private Limited (for brevity, the "**Respondent**").

2. The Respondent namely, M/s Mountain Meadow Private Limited is a Company incorporated on 21.12.1993 with CIN U74899DL1993PTC056571 under the provisions of the Companies Act, 1956 having its registered office at House No. 196, Deepali Enclave, Pitampura, Delhi west, Delhi - 110034, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs.50,00,000/- and the Paid-up Share Capital of the Company is Rs.43,07,000/- as per the Master Data.

3. It is submitted by the Applicant that the Respondent Company stood as Guarantor/Mortgager in lieu of the loan facility granted by the Applicant Bank to the Principal Borrower M/s Madhuvan Tieup Pvt. Ltd, in respect of whom CIRP proceedings have been initiated, vide order dated 05.07.2023 in IB/25/ND/2023 passed by this Tribunal.

4. The particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default are mentioned in Part IV of the application, which reads thus:

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	DATE OF SANCTIONS ALONGWITH AMOUNTS: - 1) 31.05.2017: RS. 61.50 CRORES 2) 11.05.2018: RS. 25.00 CRORES
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	AMOUNT: RS. AMOUNT: RS. 104,91,22,695.66/- (RUPEES ONE HUNDRED & FOUR CRORE NINETY ONE LAKH TWENTY TWO HOUSAND SIX HUNDRED NINETY FIVE AND PAISA SIXTY SIX ONLY) AS ON 05.07.2023 ALONG WITH FUTURE INTEREST FROM 06.07.2023. DATE OF DEFAULT: ➢ 27.12.2019: THE ACCOUNT OF THE CORPORATE DEBTOR STOOD CLASSIFIED AS NPA. ➢ CORPORATE DEBTOR AS WELL AS THE CORPORATE GUARANTOR ACKNOWLEDGED THEIR LIABILITY TO PAY THE OUTSTANDING AMOUNT TO THE APPLICANT BANK IN THEIR DULY AUDITED BALANCE SHEET FOR THE YEARS ENDING ON 31.03.2020, 31.03.2021 & 31.03.2022 (DETAILED STATEMENT OF ACCOUNT ALONGWITH INTEREST CALCULATION SHEET IS ANNEXED ALONGWITH THE PRESENT APPLICATION).

5. As per Part IV of the application reproduced above, the Applicant has claimed an outstanding financial debt of Rs. 104,91,22,695.66/- and relied on 27.12.2019 as the date of default.

6. In support of its claim, the Applicant has relied on the following documents -

i) Copy of Loan Agreement dated 12.06.2016 and 15.05.2018.

ii) Copy of the Guarantee Deed 12.06.2017 and 15.05.2018

iii) Copy of the Finance Facility Agreements executed on 11.02.2022.

iv) Copy of the cheques that are signed by the Applicants in the discharge of the liability.

v) Copy of provisional Balance Sheet as of 04.03.2022.

vi) Copy of the relevant WhatsApp communications.

vii) Copy of the notices dated 20.07.2022 and 26.07.2022.

viii) Copy of the BankStatement/certificateof the Applicants.

7. Based on the aforesaid facts and documents, the Applicant has prayed for initiation of CIRP against the Respondent.

8. Despite notice, there was no representation on behalf of the Corporate Debtor. Accordingly, the Corporate Debtor was proceeded ex parte vide order 14.09.2023.

9. We heard the Applicant and went through the documents placed on record. The Applicant has primarily relied upon the date of NPA i.e., 27.12.2019 as the date of default.

10. The Applicant has annexed the Guarantee Deed dated 12.06.2017 executed by the Respondent herein to secure the loan of the Principal Borrower M/s Madhuvan Tieup Pvt. Ltd which is placed on Page 86 onwards of the Application.

11. The Applicant has recalled the loan vide its "Loan Recall and Demand Notice" dated 01.08.2020 which is on Page 342 onwards of the application.

12. Since the date of default is 27.12.2019 and the present Application has been filed on 04.08.2023, therefore, we would like to examine whether the present Application was filed within the period of Limitation.

13. In this context, the Applicant has relied upon the Balance Sheet of the Respondent for the year 2019-20 to demonstrate the acknowledgment of debt made by the Respondent. The contents of the same reads thus:

(Figures in '00)

Note 16 : Contingent Liabilities

1 Guarantee given by the Company to HDFC Bank Ltd. in respect of Term Loan to M/s. Madhuvan Tieup Private Limited by Mortgaging Immovable Property located at Khasra Nos. 8/12 (4-16), 7/17/12 (1-12), 7/16 north(2-8), 8/11 (4-16), 8/20/1 min (0-17) & 8/13 min (4-16) (Bighas and Biswas) Village Khampur, G.T. Road, Delhi - 110040, amounting to Rs. 61,50,00,000/- alongwith 11 other Guarantors (including Directors of the Company).

Note 17 : Earning Per Share (EPS)

Particulars	As at 31 March 2022	As at 31 March 2021
	Rs.	Rs.
Net Profit Attributable to Equity Shareholders	(1,026.49)	821.75
Face Value per Share (Rs.)	10/-	10/-
No. of Share ourstanding at the year end	4,307.00	4,307.00
Weighted average number of shares considered for calculation of EPS	4,307.00	4,307.00
Basic & Diluted Earning Per Share (Rs.)	(0.24)	0.19

Note 18 : Related Party Disclosures

Key Management Personnel

(a) Sudha Gupta — Director

(b) Devendra Gupta — Director

(c) Raj Rani Gupta — Relative of Director

FRN. 027863N
NEW DELHI

Further, we notice that the Balance Sheet 2019-20 was signed on 02.09.2022. The relevant page depicting the date of signing reads thus:

MOUNTAIN MEADOW HOLIDAYS PRIVATE LIMITED

Provisional Notes forming part of the Financial Statements as at and for the year ended 31st March 2022

(Figures in '00)

Iote 8 : Property, Plant and Equipment .

	Particulars	Useful Lifetin Years)	Gross Block				Accumulated Depreciation				Net Block	
			Balance as at 1 April 2021	Additions/ (Disposals)	Deduction & Adjustment	Balance as at 31 March 2022	Balance as at 1 April 2021	Depreciation charge for the year	On Disposals	Balance as at 31 March 2022	Balance as at 1 April 2021	Balance at 31 Mar 2022
			Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
(a)	Tangible Assets											
	Land*	-	32,278.71	-	-	32,278.71	-	-	-	-	32,278.71	32,278.
	Total		32,278.71	-	-	32,278.71			-	-	32,278.71	32,278.
	Previous Year		32,273.71	-	-	32,278.71	-	-	-	-	32,278.71	32,278.

Guarantee given by the Company to HDFC Bank Ltd. in respect of Term Loan to M/s. Madhuvan Tieup Private Limited by Mortgaging land located at Khasra Ios. 8/12 (4-16), 7/17/12 (1-12), 7/16 north(2-8), 8/11 (4-16), 8/20/1 min (0-17) & 8/13 min (4-16) (Bighas and Biswas) Village Khampur, G.T. Road, Delhi - 10040.

As per our report of even date attached
for AGRAWAL D D & ASSOCIATES
Chartered Accountants
FRN: 027863N

TRUE COPY

[CA. DIN DAYAL AGRAWAL]
M.No.: 096679
PLACE: New Delhi
DATE: 02.09-2022
UDIN: 22096679BGWSAS9854

For & on behalf of the board of
MOUNTAIN MEADOW HOLIDAYS PRIVATE LIMITED

SUDHA GUPTA
DIRECTOR
DIN : 00314747

DEVENDRA
DIRECTOR
DIN : 00314446

14. Since the Acknowledgment of debt via the Balance Sheet was made on 02.09.2022, which is within 03 years from the date of default i.e., 27.12.2019, therefore, the period of limitation gets extended till 01.09.2025. Accordingly, the present Application being filed on 04.08.2023 is well within the Limitation.

15. Since on issuance of the notice, the Corporate Debtor neither filed its reply nor appeared, it is presumed that the CD has nothing to say in the matter.

16. The Corporate Guarantee advanced by the Respondent is covered under the ambit of Section 5 (8)(i) of IBC, 2016 as “Financial Debt”. The Applicant has also been able to establish that Respondent had committed default in repayment of Financial Debt.

17. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the 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:

> "(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent."

18. As proposed by the Applicant, this Bench appoints Mr. Umesh Gupta as IRP having Registration No. IBBI/IPA-001/IP-P0848/2017-2018/11431, Email ID: <umesh@vamindia.in> subject to the condition that no disciplinary

proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

> *"Mr. Umesh Gupta, as an IRP having Registration No. IBBI/IPA-001/IP-P0848/2017-2018/11431, E-mail ID: < umesh@vamindia.in> is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016."*

19. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

20. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, and the Information Utility/NeSL by the Court Officer/Registry of this Tribunal.

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

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)