

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.202/07/HDB/2018
Under section 7 of the IB Code, 2016
R/w Rule 4 of the Insolvency & Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of CAFÉ D LAKE PRIVATE LIMITED

Tourism Finance Corporation of India Ltd
4th Floor, Tower 1,
NBCC Plaza, Pushp Vihar,
Sector 5, Saket,
New Delhi – 110 017.

**...Petitioner/
Financial Creditor**

Versus

Café D Lake Private Limited
T.S. No.5, Block B,
Ward No.80, Buddha Purnima Lakefront,
Opp. Lake Police Station, Necklace Road,
Hyderabad – 500 005,
Telangana.

**...Respondent/
Corporate Debtor**

Order delivered on: 18.03.2019

Parties/Counsels present:-

For the Petitioner/ Operational Creditor:

Dr. S.V.Rama Krishna, Counsel.

For the Respondent/Corporate Debtor:

Mr. D.V.A.S. Ravi Prasad and Mr. D.Pavan Kumar, Counsels.



**Per: K. ANANTHA PADMANABHA SWAMY,
MEMBER JUDICIAL**

ORDER

1. Under consideration is a Company Petition filed by M/s. Tourism Finance Corporation of India Limited (in short, '**Petitioner/Financial Creditor**') against M/s. Café D Lake Private Limited (in short, '**Respondent/Corporate Debtor**') under section 7 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The Petitioner is a Public Financial Institution (PFI), having its Registered office at 4th floor, Tower 1, NBCC Plaza, Pushp Vihar, Sector 5, Saket, New Delhi – 110 017 whereas, the Respondent/Corporate Debtor is a private limited company registered under the Companies Act, 1956 having its registered office at T.S. No.5, Block B Ward No.80, Buddha Purnima Lakefront, Opp. Lake Police Station, Necklace Road, Hyderabad – 500005, Telangana and is engaged in the business of hospitality provider in terms of hotels, camping and short stay accommodation in India.
4. It is stated that the Financial Creditor is a Public Financial Institution (PFI) granted a term loan of Rs.40 Lakhs and another term loan of Rs.630 Lakhs with agreed terms and conditions in the year 2012. The Learned Counsel for Petitioner/ Financial Creditor stated that the Respondent/Corporate Debtor has defaulted the total amount of Rs.



6,35,00,000/- as principal outstanding and Rs.2,03,51,548/- as interest as on 5.02.2018.

5. The details of the Financial Contract Documents filed by the Petitioner in support of its amount in default are as follows:-

Term Loan I – Rs.40 Lakhs

- a) Sanction Letter dated 02.01.2012.
- b) Loan Agreement dated 15.02.2012 along with General Conditions.
- c) Deed of personal Guarantee Dated 14.02.2012 by Shri Vijay Vardhan Reddy.
- d) Deed of Personal Guaranteed Dated 15.02.2012 by Shri P.Prabhakar Reddy & P. Chakradhar Reddy.
- e) Deed of Hypothecation dated 15.02.2012.
- f) Agreement for Pledge of shares dated 15.02.2012.
- g) Letter confirming extension for Pledge of shares dated 15.02.2012.
- h) General Declarations and Undertakings dated 15.02.012.

Term Loan II – Rs.630 Lakhs

- a) Sanction Letter dated 13.12.2014.
- b) Loan Agreement dated 05.01.2015 along with General Conditions.
- c) Deed of Personal Guarantee dated 05.01.2015 by Shri P.Prabhakar Reddy & P.Chakradhar Reddy.
- d) Deed of Hypothecation dated 05.01.2015.
- e) Agreement for pledge of shares dated 05.01.2015.
- f) Letter confirming extension for pledge of shares dated 05.01.2015.
- g) General Declarations and Undertakings dated 05.01.2015.
- h) Deed of Assignment dated 05.01.2015.
- i) Declaration and Undertakings dated 05.01.2015 in the matter of mortgage by deposit of title deeds.
- j) Power of Attorney dated 05.01.2015 given by Corporate Debtor.




k) Escrow Agreement dated 17.04.2015.

Common Documents for Term Loan I and Term Loan II

- i) Recall Notice dated 26.08.2016 issued to the Company.
- ii) Notice dated 16.09.2016 invoking the guarantees.
- iii) Notice under Section 13 (2) of the SARFAESI Act, 2002 dated 16.09.2016.
- iv) Notice dated 20.09.2016 under section 176 of Indian Contract Act, invoking pledge of shares.

And also filed list of other documents listed below to prove the existence of Financial Debt:-

- I. Statement of Accounts/Ledger of the Petitioner along with supporting affidavit.
 - II. Copy of the Original Application No.674 of 2016 filed in DRT, Delhi.
 - III. Mortgage created by Shri P.Prabhakar Reddy, in favour of TFCI on 15.02.2012 & 05.01.2015 by deposit of title.
 - IV. Mortgage created by Shri P.Chakradhar Reddy, in favour of TFCI on 15.02.2012 & 05.01.2015 by deposit of title deeds by constructive delivery.
6. Respondent filed counter. The learned counsel for the Respondent submitted that
7. It is stated that the Corporate Debtor had been in the business of running hotels since 2003 and has availed facilities from different banks and financial institutions for its operations. The present petition arises out of credit facilities/financial assistance availed by Corporate Debtor from the Financial Creditor in the year 2012 been a term Loan of Rs.40,00,000/- (Term Loan I) and in the year 2015 been a Term Loan of Rs.6,30,00,000/- (Term Loan II).
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8. It is stated that during the course of its business for the past fifteen years, Corporate Debtor had availed facilities from financial institutions and serviced the same regularly. Inopportunately, from the year 2010, due to various factors such as ongoing political unrest in the State, agitation for separate Telangana State, downfall in the real estate sector, downturn in the economy, etc., the market conditions deteriorated and like other players in the hospitality and restaurant business, even the Corporate Debtor faced innumerable problem in their business and financial situation.
9. It is stated that while the Term Loan I had nearly been discharged and the Corporate Debtor is rendering full-corporation and making sufficient efforts to make timely payments in regards to Terms Loan II and the Financial Creditor was well aware of the said fact. The Financial Creditor had conveniently ignored that the subject facility was duly secured and the Corporate Debtor was cooperating with the Financial Creditor in utilization of those securities for discharging the subject facility. In fact, the Financial Creditor had also initiated proceedings before DRT under the SARFEASI Act for recovery of the facility amount by utilization of these secured assets vide O.A No.674 of 2016 and S.A.No.196 of 2017 and such proceedings are pending before DRT against the Corporate Debtor. The computation set out in exhibit-ZE of the petition does not take into account the payments made by the Corporate Debtor to the Financial Creditor and the sale proceed in a sum of Rs. 69.50 Lakhs received upon auction of the secured asset being a residential flat.
10. It is stated that, in an effort to run the business as a going concern, to safeguard the interest of its shareholders and other investors, keeping in mind the various hotels and restaurants run by the Corporate Debtor,

and the subsidiaries, time and again the Corporate Debtor had been making bona-fide attempts at regular in servicing its facilities.

11. It is stated that the Corporate Debtor is looking out for strategic and financial advisors which will help the Corporate Debtor at channelizing, restructuring and servicing its debts, to ensure that a situation of liquidation did not arise and that the Corporate Debtor continues to run as going concern.
12. It is stated that initiating the Corporate Insolvency Resolution Process would not only effect the promoter but also public at large. The other stakeholders of the Corporate Debtor including the employees, shareholders, investors and other operational creditors will also be severely impacted.
13. It is stated that, in the instance case it was not the case of the Financial Creditor that the Corporate Debtor was unable to pay is debt or it was insolvent for the same. When in the present circumstance, where the Corporate Debtor was making bona-fide efforts to service and closed its facilities, there was not question of insolvency involved in that case, and hence, there cannot be a resolution of insolvency process. The present petition therefore, as filed, for purposes other than the resolution of insolvency i.e. to harass the Corporate Debtor must be held to be malicious and was liable to be dismissed with cost.
14. Petitioner/Financial Creditor filed rejoinder and denied all the averments made in the counter and further stated that the Reply affidavit (counter) is a false affidavit as the statements made were contrary to the facts on record of the Corporate Debtor itself, as reflected in its audited Balance Sheet regarding the admitted principle dues to the Financial Creditor. The Corporate Debtor also acknowledged in its audited Balance Sheet for the



year ended 31.03.2016 at Note No.3 under the heading "Long Term Borrowing", Term Loans of Rs.6,35,00,000/- towards principle amount.

15. It is stated that the rate of interest charged is as per contractual terms as agreed between the parties. It is true that Financial Creditor had sold the residential flat for Rs.69.50 Lakhs, but the said amount had not been appropriated by the Financial Creditor as per direction of Hon'ble Debt Recovery Tribunal, Delhi vide order dated 27.07.2017 passed in SA No.196/2017 filed by CD, which stated that "*Respondent F1 may proceed for auction, however sale shall remain subject to outcome of present SA.*" And further prayed for initiation of the Corporate Insolvency Resolution Process and appointment of IRP.
16. Heard both the sides and perused the record.
17. After hearing submissions of the counsel for the Petitioner/Financial Creditor and having perused the record, this Adjudicating Authority is satisfied that the Petitioner, _____ has clearly made out his case by establishing that the Corporate Debtor has defaulted the repayment of loan of Rs. 6,35,00,000/- as principal outstanding and Rs.2,03,51,548/- as interest as on 5.02.2018 to the Petitioner/Financial Creditor by placing evidence viz., Financial Transactions, Loan Agreements, Bank Statements and copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) for which the Corporate Debtor was liable to pay. Further Respondent/Corporate Debtor nowhere denied its debt nor disputed the default of same. In these circumstances, having satisfied with the submissions put forth by the learned counsel for the Petitioner/Financial Creditor, I hereby admit the instance^{to} petition.
18. The Financial Creditor has fulfilled all the requirement of law and has also proposed the name of IRP after obtaining the written consent in Form-2. Therefore, CP (IB) No.202/07/HDB/2018 is admitted and the

commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

16. Mr. Vijaya Bhaskara Rao, is hereby appointed as IRP as proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

17. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purpose referred to in Section 14 of the I & B Code, 2016.

It is hereby ordered to prohibit all of the following, namely:-

- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*
18. The Supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provision of Sub-section (1) of Section 14 shall not apply to such transaction, as notified by the Central Government.
19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17, & 18 of the Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his function under Section 20 of the I & B Code, 2016.
20. The Financial Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I & B Code, 2016.
21. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
22. The detailed address of the IRP are as follows:-

Mr. Vijaya Bhaskara Rao
Insolvency Resolution Professional,
IP Registration No. IBBI/IPA-002/IP-N00160/2017-18/10429,
Flat No.509, Elite fort Apratments,
Near Secretariat Colony, Puppalaguda,
Manikonda, Hyderabad – 500 089.
Tel: 9642884441, 9492844441,
Email: secretaries@gmail.com.

K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL