IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – II, CHENNAI

CP(IB)/22(CHE)/2022

(filed 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 ***Sri Ramani Resorts and Hotels Pvt. Ltd.***

State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, 2nd Floor,
No.32, Montieth Road,
Egmore, Chennai – 600 008.

... Financial Creditor

-Vs-

Sri Ramani Resorts and Hotels Pvt. Ltd.,
No.8/42, Maharaja Surya Road,
Alwarpet, Chennai – 600018,
Represented by Managing Director.

...Corporate Debtor

Order Pronounced on 06th June 2022

CORAM:

Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor:Mr.K.Chandrasekaran, Advocate
For Corporate Debtor: Mr.RaviMeenakshisundaram, Advocate

ORDER

***Per:* Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT**

Under Adjudication is an Application that has been filed by **State Bank of India**(hereinafter referred to as *'Financial Creditor"*) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency

&Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Sri Ramani Resorts and Hotels Pvt. Ltd.**(hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Bank. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U55101TN2011PTC080728which was incorporated on 20.05.2021 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.8/42, Maharaja Surya Road, Alwarpet, Chennai – 600018.As per Part III of the application, the Financial Creditor has proposed the name of oneShri.NavneethVasudevan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.21,67,53,162.30 (Rupees Twenty-One Crore Sixty-Seven Lakh Fifty-Three Thousand One Hundred and Sixty-Two and Thirty-Two paise) including cost, expenses and future interest, is being claimed by the Financial Creditor as the Financial debt and the date

of occurrence of default is mentioned as 13.11.2019. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

a) Certificate of Registration of Charge dated 17.06.2014, issued by Registrar of Companies.
b) Final Order dated 01.04.2019, passed by DRT-II Chennai.
c) Debt Recovery Certificate Issued by DRT-II, Chennai vide DRC No.437/2019.
d) Letter dated 01.02.2019 of the Respondent admitting the liability and seeking One Time Settlement.
e) Letter dated 04.08.2021 of the Respondent admitting the liability and seeking One Time Settlement

4. It was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor had availed credit facility of Rs.15,00,00,000/- from the Financial Creditor vide sanction letter dated 07.04.2014, subsequently the Deposit of Title Deeds bearing Doc.No.2293 of 2014, dated 18.08.2014 and Doc.No.1715 of 2014 dated 17.06.2014, was registered in favour of the Financial Creditor.

5. It was further submitted that the repayment schedule was revised as per the change in financial closure date and the commercial operation dated (COD) and the schedule of repayment was agreed as follows

Instalment period	Fiscal	Amount payable (Rupees)
Last quarter	2016-17	18,75,000
First 3 Quarters	2017-18	56,25,000
Last Quarter	2017-18	41,25,000
First 3 Quarters	2018-19	1,23,75,000
Last quarter	2018-19	71,25,000
First 3 Quarters	2019-20	2,13,75,000
Last quarter	2019-20	82,50,000
First 3 Quarters	2020-21	2,47,50,000
Last quarter	2020-21	86,25,000
First 3 Quarters	2021-22	2,58,75,000
Last quarter	2021-22	75,00,000
First 3 Quarters	2022-23	2,25,00,000

6. It was further submitted that the Corporate Debtor has availed various amounts totalling Rs.10,34,00,000/-(Rupees Ten Crore Thirty-Four Lakh Only) on various dates for the purpose of construction of the hotel building, but the Corporate Debtor has failed to fulfil the terms and conditions agreed in the Sanction Letter and the Loan Documents. Consequently, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.07.2016.

7. It was further submitted that in spite of repeated demands of the Financial Creditor, the Corporate Debtor had failed to repay the outstanding amount in the said credit facility, in turn, the Financial Creditor filed OA No.242/2017 before DRT-II, Chennai for recovery of Rs.15,18,93,952/- (Fifteen Crore Eighteen Lakh Ninety-Three Thousand Nine-Hindered and Fifty Two Only) together with interest

@ 13.70 p.a. from 19.03.2017. The said application was allowed by the DRT-II, Chennai vide its order dated 01.04.2019 and the Recovery Certificate in this respect was issued in DRC No.437/2019 dated 13.11.2019.

8. It was further submitted that Corporate Debtor had admitted its liability to the Financial Creditor by offering one-time settlement proposals vide letters dated 01.02.2019 and 04.08.2021.

9. It was further submitted that as per Section 22A of the Recovery of Debt and Bankruptcy Act, any recovery certificate issued under Section 22 of the Recovery of Debt and Bankruptcy Act shall be deemed to be a Decree or Order of the Court for the purpose of initiation of winding-up proceedings or insolvency proceedings. Moreover, cited the decision of the Hon'ble Apex Court in ***Dena Bank Vs. C.Shivkumar*** and pleaded that the application has been filed within three years from the date of the Debt Recovery Certificate and it is well within the limitation period.

10. In opposition to the above, the Learned Counsel for the Corporate Debtor submitted that in the sanction letter dated 07.04.2014 issued by the Financial Creditor, it was agreed that there shall be a moratorium period / repayment holiday for a period of 12 months from the commercial opening date (COD) of the hotel to be constructed by the Corporate Debtor, until such

time the Corporate Debtor was not liable to pay any amount on the accruing due of the availed credit facility.

11. It was further submitted that the Corporate Debtor had approached the Financial Creditor for revision of the opening date of the hotel subsequently the tentative opening date was revised from 01.05.2015 to 01.01.2016. Thus, any repayment obligation of the Corporate Debtor could have arisen only from 01.01.2017, which could also be extended on any revisions on the opening date of the said hotel.

12. It was further submitted that Financial Creditor has demanded the payments prematurely by approaching the representatives of the Corporate Debtor, against which the Corporate Debtor has filed suit in C.S. No.998 of 2015 before the Hon'ble High Court of Madras, wherein an interim injunction has been granted in favour of the Corporate Debtor vide order dated 29.12.2015.

13. Pursuant to the above, the Financial Creditor issued a Demand Notice dated 12.08.2016 under Section 13(2) of the SARFAESI Act, following whicha possession Notice dated 03.11.2016, was issued. Subsequently, the Financial Creditor trespassed into the Corporate Debtor property. Against the act of the Financial Creditor, the Corporate Debtor had filed W.P

No.40794 of 2016, before Hon'ble High Court of Madras, which was allowed vide order dated 05.09.2019 by observing the possession acted by the Financial Creditor is not in accordance with the law. Against the order, the Financial Creditor has filed an appeal before the Hon'ble Supreme Court of India, which is *pending lis*.

14. It was further submitted that in the meantime, the Financial Creditor effected paper publication dated 09.03.2022 regarding the auction of the Corporate Debtor's property, this action is also challenged by the Corporate Debtor and the said matter was posted for hearing on 13.04.2022 for the Counter of the Respondent with the direction not to confirm the sale.

15. It was further submitted that the above said C.S.998 of 2015 is still pending on the file of XXIst Additional City Civil Court, Chennai vide OS No.4028 of 2021 (transferred due to revision of pecuniary jurisdiction). At this juncture, an enquiry is required to sort this issue and this Adjudicating Authority has no powers to go into trial and decide upon the disputes in such circumstances dismissal of this application is sought.

16. Heard the submission of both the parties.At the very outset, it will be necessary to refer to the relevant provisions of the Insolvency and Bankruptcy Code, 2016

Section 7: Initiation of corporate insolvency resolution process by financial creditor:

...

(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:*

...

The above provision clarifies that to trigger a Corporate Insolvency Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority only requires a sufficient proof for debt and default, a complete application under Section 7(2) and there is no disciplinary proceedings pending against the proposed Resolution Professional.

17. It is seen that inclause 16 of the One Time Settlement (OTS) Proposal letter dated 04.08.2021 by the Corporate Debtor, it was stated as follows

> *"16. At no point of time, we wish to deny the liability to the bank and at the same breadth, we wish to place on record that we are not responsible for the present state of affairs.*

Considering the fact that we are of not wilful defaulter and also the project has not fructified in full-fledged manner.

Therefore, we request you to consider our financial crisis and mental agony we are going through, in light of such circumstances and distressed situation, we requested for OTS proposal for Rs.5 Crores and now due to the pandemic situation and no business and serious health issues I propose Rs.4 Crores as one time settlement towards the subject matter loan account. We further undertake to pay Rs.4,00,00,000/- as one time settlement within 15 days from the date of the approval of this proposal."

The above clause clarifies that there is a default on the part of the Corporate Debtor and it has been clearly admitted by the Corporate Debtor.

18. Here it is relevant to refer to the Hon'ble Supreme Court decision in ***Innoventive Industries Ltd Vs. ICICI Bank &Anr***, wherein it was held as follows

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a 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 that the

adjudicating authority may reject an application and not otherwise"

19. In view of the above, this Adjudicating Authority is satisfied that the debt disbursed by the Financial Creditor herein is financial debt under Section 5(8), there is a clear admission of default by the Corporate Debtor in the OTS proposal letter dated 04.08.2021 and the application under Section 7 was filed on 25.11.2021, well within the limitation and there is no disciplinary proceeding pending against the Resolution Professional proposed by the Financial Creditor.

20. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the considered view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

21. The Financial Creditor has proposed the name of one ***Mr.NavneethVasudevan,*** having Registration Number**[IBBI/IPA-001/IP-P01048/2017-2018/11731],** ***(e-mail: navneethv@gmail.com)***as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward

the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

22. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

JUSTICE (RETD.)
RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

Gopishankar D