

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/726/2020

*(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 **Auromatrix Hotels Private Limited***

IDBI Bank Limited

IDBI Tower,
WTC Complex, Cuffe Parade,
Mumbai-400 005

... Financial Creditor

-Vs-

Auromatrix Hotels Private Limited

No.86, Aarti Arcade,
Dr. Radhakrishnan Salai,
Flat No. 19, 20,
Mylapore, Chennai – 600 004.

... Corporate Debtor

*Order pronounced on **26th November 2021***

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor : S Sathiyarayanan, Advocate

For Corporate Debtor : AK Mylsamy Associates, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an Application filed by IDBI Bank Ltd. (hereinafter referred to as "**the Financial Creditor**") against **Auromatrix Hotels Private Limited** (hereinafter referred to as "**the Corporate Debtor**") under Section 7 of the Insolvency &

Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 29.04.2002 bearing CIN: U36100TN2002PTC048848. The registered office address of the Corporate Debtor as per the Application is stated to be situated at 1st Floor, No, 4/1, Kapaleeswara Nagar, Neelankarai Village, Kalaingar Karunanidhi Salai, Sholinganallur, Chennai - 600041. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Tharuvavi Ramchandran Ravichandran, Reg. No. IBBI/IPA/-002/IP-N00241/2017-18/10692; to act as the IRP.

3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.18,22,50,765.06/- which is due and payable by the Corporate Debtor. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

S. No	DATE	DESCRIPTION
1	12.10.2010	Letter of Intent
2	15.10.2010	Copy of Resolution of Board Meeting of Auro Maritech Pvt. Ltd
3	15.10.2010	Copy of Resolution of Board Meeting of Auro Maritech Pvt. Ltd
4	15.10.2010	Copy of Resolution of Board Meeting of Auro Maritech Pvt. Ltd
5	15.10.2010	Board Resolution Meeting of Corporate Guarantor - Ecosphere Realty Developments Private Limited
6	15.10.2010	Copy of Resolution of Board Meeting of Corporate Guarantor - the Corporate Debtor, Auromatrix Hotels Pvt Ltd
7	10.11.2010	Loan Agreement
8	10.11.2010	Deed of Hypothecation
9	20.07.2011	Declaration and Undertaking of Corporate Debtor
10	20.07.2011	Declaration and Undertaking of Mr. S. Santhanakrishnan
11	20.07.2011	Declaration and Undertaking of Corporate Guarantor - M/s. Ecosphere Realty Developments Private Limited
12	13.03.2012	Declaration and Undertaking of Mr. S. Santhanakrishnan
13	13.03.2012	Declaration and Undertaking of Corporate Guarantor - M/s. Ecosphere Realty Developments Private Limited
14	13.02.2012	Declaration and Undertaking of Mr. S. Radhakrishnan
15	13.02.2012	Memorandum of Deposit of Title Deeds (vide Doc. No. 304 of 2012) executed by Mr. S. Radhakrishnan
16	13.02.2012	Memorandum of Deposit of Title Deeds (vide Doc. No. 305 of 2012) by Corporate Guarantor - Ecosphere Realty Developments Private Limited
17	13.02.2012	Memorandum of Deposit of Title Deeds (vide Doc. No. 306 of 2012) by Mr. S. Santhanakrishnan
18	02.04.2013	Statement of Balance of Corporate Debtor
19	08.01.2014	Sanction Letter
20	29.01.2014	Copy of Resolution of Board Meeting of AuroMaritech Pvt. Ltd
21	29.01.2014	Copy of Resolution of Board Meeting of Corporate Debtor - Auromatrix Hotel Private Limited
22	31.01.2014	Demand Promissory Note
23	31.01.2014	Supplemental Guarantee Agreement executed by Mr. S. Santhanakrishnan and 3 others
24	31.01.2014	Supplemental Guarantee Agreement executed by Corporate Debtor -Auromatrix Hotels Private Limited
25	31.01.2014	Supplemental Guarantee Agreement executed by Corporate Guarantor -Ecosphere Realty

		Developments Private Limited
26	31.01.2014	Amendatory Agreement to the Loan Agreement
27	07.09.2015	Notice Invoking Corporate Guarantee
28	14.08.2018	Request Letter of AuroMaritech Pvt. Ltd for OTS
29	16.08.2018	Letter for submission of papers for processing the settlement request
30	03.10.2018	OTS Letter to Auro Maritech Pvt. Ltd
31	09.10.2018	Request for Modification of Terms of OTS by AuroMaritech Pvt. Ltd
32	31.10.2018	Revised Payment Schedule - OTS
33	27.12.2018	Request Letter for Extension of Time by AuroMaritech Pvt. Ltd
34	29.12.2018	Extension of the OTS Terms
35	16.03.2019	OTS Revocation Letter
36	27.01.2020	Notice Invoking Corporate Guarantee
37	21.11.2020	Statement of Accounts
38	21.11.2020	Certificate under Bankers Book of Evidence Act, 1989

4. The Learned Counsel for the Financial Creditor submitted that on the request of Auro Maritech Private Limited (Principal Borrower), during the year 2010 Financial Creditor has sanctioned Term Loan (TL) of Rs. 900 Lakh and Working Capital Loan of Rs. 100 Lakh for setting up of integrated marine fish (Sea Bass) production and processing unit at Siruthambur Village, TN. The assets of the Principal Borrower and the Guarantors were offered as security to the Applicant Financial Creditor and one of the Corporate Guarantor was the Corporate Debtor.

5. It is admitted fact that Corporate Guarantee was issued in favour of the Applicant by the Corporate Debtor on 10/11/2010 for the credit facilities availed by the Principal Debtor.

6. The Learned Counsel for the Financial Creditor submitted that after availing the said credit facilities from IDBI Bank Ltd., the Principal Borrower and the Guarantors including the Corporate Debtor did not satisfactorily maintained the credit facilities extended to them by the IDBI Bank Ltd. and failed and neglected to regularize the account. It was submitted that the IDBI Bank Ltd. on various occasions, demanded repayment of the dues and also sent notice from the Bank and through counsel, all of which remained futile since the Corporate Debtor did not care to repay the amount.

7. On an application by the Principal Borrower, IDBI Bank Ltd. had granted restructuring vide letter dated 08/01/2014 whereby the Loan was restricted to Rs. 8.18 Crore.

8. In order to give effect to the said restructuring, the Principal Borrower and the Corporate Debtor have executed required documents and accordingly the Corporate Debtor had executed a Supplemental Guarantee Agreement on 31/1/2014. However, the Principal Borrower failed to honour his commitments and the account of the Principal Debtor was classified as Non Performing Asset (NPA) on 31/03/2014.



9. Pursuant to the default by Principal Borrower, IDBI Bank on 07.09.2015 invoked the Corporate Guarantee provided by the Corporate Debtor and demanded payment of Rs. 8,43,54,047.65/-.

10. The Principal Borrower vide letter dated 14/8/2018 approached IDBI Bank Ltd. for a One Time Settlement (OTS) offering to settle the dues for a sum of Rs. 7.75 Crores and paid a sum of Rs. 25 lakh. IDBI Bank Ltd. vide letter dated 03/10/2018 addressed to the Principal Borrower and to all of its guarantors including the Corporate Debtor conveyed their acceptance to the OTS. As per the OTS an amount of Rs. 7.75 Crores was payable by 29/12/2018.

11. It is pertinent to note that the Corporate Debtor has duly accepted the terms of OTS by way of signing on the said letter dated 03/10/2018 (*however the seal of the Corporate Debtor was found missing*).

12. On request of the Principal Borrower, IDBI Bank Ltd. extended the last date of payment to 28.2.2019 vide letter dated 29/12/2018. However, the Principal Borrower failed to pay the amount by said date and IDBI Bank revoked the OTS vide letter dated 16/3/2019.

13. Vide Notice dated 27/1/2020, IDBI Bank Ltd. invoked the Corporate Guarantee of the Corporate Debtor and demanded a sum of Rs. 15,78,31,855.06/- which the Corporate Debtor failed to pay and hence the present proceedings were initiated by the Financial Creditor.

14. Certain defects were pointed on in the application which were duly rectified and revised application was filed on 25/10/2021.

15. The Respondent / Corporate Debtor has filed counter and objects. The objections were mainly limited to raising the issue of limitation, delivery of the notice at incorrect address, date of default, incorrect calculation and restrictions as to amount payable to Rs. 8.18 Crores.

16. Heard the submissions made by the Learned Counsel for the parties. From the averments made in the counter, it is clearly seen that the Corporate Debtor has admitted its liability. Further, it is also seen that the 'default' which is arising in the present Application has happened much before the advent of Covid - 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

17. Further, due to **novation** entered 03/10/2018 by way of OTS and subsequent non-payment of OTS amount, on the aspect of limitation, it is seen that the Principal Debtor and Corporate Debtor have committed default in repayment of the dues. The Financial Creditor has issued a revocation notice on the OTS on 16/3/2019 has invoked the Corporate Guarantee on 27/1/2020 and if the said date is taken into consideration as the date of default, then the present Application filed under Section 7 of IBC, 2016 before this Tribunal on 01/01/2020 falls well within the period of limitation. Further, when an identical issue fell for consideration before the Hon'ble Supreme Court in the matter of **Laxmi Pat Surana –Vs- Union Bank of India & Anr;** (2021) 8 SCC 481, wherein the Hon'ble Supreme Court in para 43 has held as follows;

43. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the

party against whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.

18. Thus, it is no longer *res integra* that Section 18 of the Limitation Act would come into play every time when the principal borrower and / or the Corporate Guarantor (Corporate Debtor) as the case may be, acknowledge their liability to pay the debt.

19. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

20. As regards the difference between the quantum of amount of corporate guarantee and amount mentioned in the notice by Financial Creditor, let the IRP examine the claim of the Financial

Creditor and this issue is left open for the time being. Suffice to say that the default amount at present is more than Rs. 1 Crore.

21. The Financial Creditor has proposed the name of **Mr. Tharuvavi Ramchandran Ravichandran, Reg. No. IBBI/IPA/-002/IP-N00241/2017-18/10692** as the Interim Resolution Professional (IRP) who has also filed his consent in Form - 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 15.12.2021. The proposed IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 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 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.

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 moratorium period in terms of Section 14(2) 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 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 arrangement 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 period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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 Financial Creditor 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 Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond