



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1093/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Indian Bank (e-Allahabad Bank)

(PAN: AACCA8464F)

(TAN: NGPA02932G)

...Financial Creditor

v/s.

N. Kumar Hosing & Infrastructure Private
Limited

[CIN: U55101MH2001PTC130864]

...Corporate Debtor

Order Delivered on:24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. V.N. Ajikumar, Ld. Counsel.

For the Corporate Debtor:

Ms. Sneha, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Allahabad Bank (now Indian Bank) ("the Financial



Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against N. Kumar Housing & Infrastructure Private Limited against the Corporate Guarantor/ Debtor.

- 1.1. The Company Petition is filed on 17.03.2020 claiming an amount of Rs.60,62,82,715.78 in default. The Part IV of Form 1 specify the date of default as 31.12.2019 and date of NPA is stated as 30.03. 2017. The recall notice was issued on 03.04.2017 giving 60 days’ time to the principal borrower as well as to the Corporate Guarantor to discharge the entire liabilities as on date which future interest to the Financial Creditor. According to this recall notice, the default date can be said to be 02.06.2017.
2. The applicant submits that the Financial Creditor sanctioned Term Loan Credit Facility of Rs.62 Crores vide sanction letter dated 23/3/2011 for construction and operation of the Luxury Club House and Resorts at the project costs of Rs.93.70 Crores upon the request of Principal borrower and associated Company (Poonam Resorts Ltd) and the Corporate Guarantor, through its director Mr. Nandkumar Harchandani, authorized vide its Board Resolution dated 17-03-2011, executed security documents including Deed of Guarantee and Mortgage documents to secure the said Term Loan of Rs.62 Crores on 23.03.2011. The Corporate Guarantor/Corporate Person has as also executed a Letter confirming Deposit of Title deeds dated 24-3-2011 in respect of immovable property, situated at Nagpur and owned by it, to secure the Term Loan of Rs.62 Crores
- 2.1. Since, the principal borrower defaulted in repayment of the Term Loan dues leading to classification of this credit facility as Non- Performing Assets (NPA) on 31-3-2017.



2.2.The Financial Creditor issued Demand Notice dated 03-4-2017 under section 13(2) of the SARFAESI Act, 2002 giving 60 days' time to the principle borrower as well as to the Corporate Guarantor to discharge the entire liabilities. Despite having receipt of the said Demand notice, the Principal borrower as well as guarantors failed and neglected to comply with the said requisitions, thus the Financial Creditor initiated measures under section 13(4) of the SARFAESI Act, 2002 for enforcement of secured assets. The Financial Creditor has also filed Original Application under section 19(1) of the RDDB&FI Act, 1993 before the Hon'ble Debts Recovery Tribunal, Nagpur for recovery of its dues. Being aggrieved by action/measures taken/adopted by Financial Creditor under the SARFAESI Act, 2002, the borrower/guarantor have filed separate Securitisation Application under section 17 of the said Act before the Debts Recovery Tribunal, Nagpur and the said proceedings are pending.

2.3.The Financial Creditor has also filed Company Petition No 3631 of 2018 against the Principal Borrower/Corporate Debtor under section 7 of the IBC, 2016, which is pending in this Hon'ble NCLT, Mumbai. In view of execution of Contract of Guarantee by Corporate Guarantor/Corporate person to secure the loan advanced to principal borrower, who has committed default in payment of dues, this Hon'ble Tribunal is having jurisdiction to entertain and decide the above Petition under section 7 read with 60(2) of the IBC, 2016 and Rules framed thereunder.

2.4.The Financial Creditor is maintaining the statement of account No.50058551131 of principal borrower i.e. Poonam Resorts in the usual banking course of business, wherein after taken into consideration of Lat part payments made on 17.01.2017 by principal borrower, there is



outstanding dues of Rs.60,62,82,715.78 is due and payable to financial Creditor as on 31-12-2019.

3. The Corporate Debtor failed to file the reply despite given opportunity to do so vide Court notice dated 07.12.2020 and another notice dated 22.10.2021. Accordingly, right to file reply was forfeited vide order dated 23.11.2021. However, the Respondent Corporate Debtor filed an IA (Diary No 0860) on 26.02.2021 challenging the maintainability of the petition of this application stating that the guarantor is ready to clear the legitimate dues of the Principal Borrower and there is no debt due payable and no default on the part of present guarantor. In support of its contention the respondent has relied upon judgement of Hon'ble NCLAT dated 16.01.2019 in the case of *Export Import Bank of India Limited v/s CHL Limited {CA (AT) (Insolvency 51)/2018}*.

3.1. The respondent has filed objections cum affidavits of the Corporate Guarantor (Diary No 1383) on 01.02.2022 again objecting on the similar grounds and also on the ground that the counter claims of the Corporate Guarantor is pending in DRT, Nagpur bench; Suppression of facts; the guarantee cannot invoked against the respondent in view of pre-existing dispute in relation to the facility granted to the Principal Borrower; and pendency of reconciliation of accounts with the Financial Creditor. The respondent also submitted that it is already shown its readiness to deposit Rs.5 Crores (to show his bonafides) in one stroke and ready to decide and discuss the balance dues in the said case on merits.

4. The Financial Creditor has proposed the name of IRP to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.



5. We have heard both the parties and perused the material on record.

5.1. There is no dispute that the Principal Borrower had availed the Credit Facilities and the respondent had guaranteed the said credit facilities. The dispute is limited to the determination of liability of the Principal Borrower on the grounds of irregularities in disbursement of the Loan amount beyond Rs.25 Crores. It is noticed that NCLT Mumbai bench vide its order dated 16.10.2019 in Company Petition No 3631 of 2018 had appointed PWC to examine every aspect of allegations made by the Principal Borrower and directed it to submit an independent Report. However, no such report is on record of the Adjudicating seized of petition u/s 7 of the Code against the Principal borrower.

5.2. The facts of the case *Export Import Bank of India Limited v/s CHL Limited (supra)* are distinguishable and reliance placed by the Corporate Debtor to defend the present application is ill-conceived. In that case, the Principal Borrower had disputed its obligation towards the credit facility on the ground that the entire loan was not disbursed and there was a delay in disbursement of the amount. These disputes were settled in the Judicial proceedings at Economic Court of Dushanbe whereby the court had directed that repayment of Principal will start after two years following the issuance of credit funds in full and recalculation of the loan funds and interest accrued thereon. These directions led the Hon'ble NCLAT to hold that pending the compliance of this order a debt cannot be said to be due and consequently in default. In the case before us, there is no dispute as regards disbursement of Rs 25 Crores and the Corporate Guarantor as well as Principal Borrower submitted that they are ready to settle with the Financial Creditor and the respondent had submitted before this bench that it is ready to pay Rs25 crore at one stroke.



- 5.3. The Respondent/Guarantor has not filed any application seeking recall of order dated 23.11.2021 setting it as *ex-parte*, hence the objections raised vide objections cum affidavits of the Corporate Guarantor (Diary No 1383) on 01.02.2022 cannot be taken into consideration by this bench. However, in the interest of justice, we have perused these objections and we find that there is no substance in the defense taken in this application.
6. In view of foregoing discussion, we find that the present petition deserves to be admitted for initiation of Corporate Resolution Process against the Guarantor Corporate Debtor.

ORDER

The petition bearing CP(IB) filed by, Indian Bank (e-Allahabad Bank) Operational Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against N. Kumar Hosing & Infrastructure Private Limited is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- (f) The bench hereby appoints Miss. Minita Dhirajlal Raja, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00635/2017-2018/11088. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to



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the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

(k) This order disposed off IA (Diary No 0860) on 26.02.2021 also.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
24.02.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)