

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP (IB) No. 1139/KB/2018

IN THE MATTER OF:

Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

IN THE MATTER OF:

Punjab National Bank

... Financial Creditor

-Versus-

IN THE MATTER OF:

M/s. Hotel East Palace Pvt. Ltd., 84/4, Satyen Roy Road, 2nd floor, Behala, Kolkata- 700034

...Respondent/ Corporate Debtor

For the Financial Creditor:

1. Ms. Urmila Chakraborty, Advocate
2. Mr. D Chakraborti, Advocate

For the Corporate Debtor:

1. Ms. Swapna Choubey, Advocate
2. Mr. Udit Agarwal, Advocate

Coram: Shri Jinan K.R., Member (Judicial)
Shri Harish Chander Suri, Member (Technical)

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Date of pronouncement of the Order: 13.12.2019

O R D E R

Per Shri Jinan K.R., Member(Judicial)

1. Punjab National Bank/Financial Creditor has filed this Application, CP(IB) No. 1139/KB/2018, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, Code), read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (in short CIRP) as against M/s. Hotel East Palace Pvt. Ltd/Corporate Debtor, contending that the Corporate Debtor has committed default in repayment of a sum of Rs. 22,65,61,156.57(Rupees Twenty Two Crore Sixty five Lakh Sixty one thousand one hundred fifty six and paise fifty seven only), inclusive of interest calculated up to 31-07-2018, despite demand and recalling the loan availed by the Corporate Debtor.

2. The averments for the consideration of the Application in brief, are the following:

The Corporate Debtor had approached the Financial Creditor for financial assistance to set up a three storied Hotel project at Salt Lake, Sector-V. Pursuant to the said request, the Financial Creditor sanctioned various loans having overall limit of Rs.15 Crores subject to the terms and

conditions as mentioned in the sanction letter dated 30-07-2012(Annexure A). Upon sanctioning the loan, the Corporate Debtor executed various loan documents(Annexure B to Annexure - H). The Corporate Debtor has availed the loan limits fully and to secure further repayment of the credit facilities availed by the Corporate Debtor, the Corporate Debtor also executed the agreement of Guarantee in his personal guarantee and thereby guaranteed repayment against the entire loan advanced by the Financial Creditor in favour of the Corporate Debtor. The Corporate Debtor also created equitable mortgage over immovable properties as per the deed of mortgage(Annexure-J). However, the Corporate Debtor has failed to operate the loan account as per the terms of sanction and in spite of repeated requests and reminders, both orally and in writing, the Corporate Debtor has failed and neglected to regularise the account and as a result thereof, the loan account has been classified as Non performing asset.

In view of the classification of the account as NPA, the Financial Creditor has decided to recall the entire loan granted to the Corporate Debtor and thereby, issued a demand notice dated 14-01-2017 to the Corporate Debtor demanding an aggregate sum of Rs.16,60,32,532=00 (Rupees Sixteen Crores Sixty Lakh Thirty Two Thousands Five Hundred Thirty Two only), inclusive of interest calculated upto 31-12-2016. However, that demand also has not been answered by the Corporate Debtor and the Corporate Debtor failed to repay the entire debt as demanded and thereby, the Financial Creditor filed this Application for initiating the CIRP process as against the Corporate Debtor.

3. In compliance of the provisions of the Code under Section 7, the Applicant has produced the record of default, Annexure 1 (CIBIL Report) and also produced the Form-2 proposing the name of an Insolvency Professional, Mr. Yogesh Gupta, and upon the above said contentions, the Financial Creditor prays for admitting the Application under Section 7 of the Code.

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4. The Corporate Debtor entered appearance and objected to this Application contending that the Application is not maintainable as the Applicant has filed an application before the Debt Recovery Tribunal and the Debt Recovery Tribunal initiated the proceedings against the Corporate Debtor in SA 38 of 2017. The Financial Creditor is prevented from filing an application of this nature. Therefore, the Application is liable to be rejected. The Corporate Debtor further contended that the Applicant has failed in cause producing contemporaneous document and not produced acknowledgement of receipt of the invoices and that the Applicant has failed to establish its claim. It is further alleged that the amount claimed is not due and there was no default as alleged by the Applicant and upon the said contentions, the Corporate Debtor prays for passing an order of dismissal.

5. Heard both sides. Perused the records.

6. This is an Application filed under Section 7 of the Code by Punjab National Bank for initiating the CIRP process as against the Corporate Debtor alleging default in repayment of loan availed by the Corporate Debtor. The availing of loan and executing the documents as referred to in the Application is not at all under challenge. At the time of argument, the Ld. Counsel, appearing for the corporate Debtor, has attempted to establish that the demand for repayment of Rs.15 Crores along with interest is actually not due and payable by the Corporate Debtor. What is demanded by the Financial Creditor, here in the case in hand, is the sum of Rs. 22,65,61,156.57 (Rupees Twenty Two Crore Sixty five Lakh Sixty one thousand one hundred fifty six and paise fifty seven only), which includes interest @ 16% per annum and the demand was on the basis of terms and conditions in the sanction letter dated 30-07-2012.

None of the objections, raised at the time of hearing, seen mentioned in the reply affidavit filed on the side of the Corporate Debtor. It is strange to note that reply affidavit seen filed as if a claim of Operational Creditor is

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not maintainable for want of production of proof of delivery of invoices to the Corporate Debtor. The contention in the reply affidavit is mutually inconsistent. It is submitted that application is not maintainable because the financial creditor has already initiated proceedings before the Debt Recovery Tribunal by filing SA 38 of 2017. Filing of proceedings before the Debt Recovery Tribunal being not a bar for initiating proceeding before this Tribunal, the said objection is found not at all sustainable.

7. Admittedly, the Corporate Debtor has committed default. According to the Financial Creditor, the account maintained in the name of the Corporate Debtor has been classified as non performing asset as on 28-01-2016 and produced record of default (copy of CIBIL Report- Annexure -1 at Page 222) to prove the default. The copy of CIBIL Report shows that the account stands in the name of the Corporate Debtor is doubtful as on 28-01-2016. The Application seen filed by the Chief Manager of Punjab National Bank. An authorisation letter brought in on the side of the Applicant proving that the Chief Manager was authorised to initiate the CIRP process as against the Corporate Debtor. The Form-2 produced along with the Application proves that there is no disciplinary proceeding pending against the proposed Insolvency Resolution Professional, Mr. Yogesh Gupta. The Application under consideration is complete and therefore fit for admission. Accordingly, we admit this Application, upon the following :_

ORDERS

i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Hotel East Palace Pvt. Ltd., is hereby admitted.

ii) Moratorium is declared for the purposes referred to in

Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (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.

iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

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- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.
- viii) **Mr. Yogesh Gupta, 256, Garden Towers, Picnic Garden Road, 8th Floor, Block-A, Kolkata - 700 039,** an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, **Registration No. IBBI/IPA-001/IP-P00349/2017-18/10650,** **E-mail ID: yogeshgupta31@rediffmail.com,** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan **subject to production of written consent within one week from the date of receipt of this order.**
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

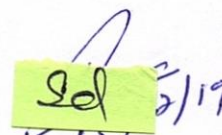
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- x) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xi) List the matter on 20th January,2020 for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (Technical)



(Jinan K.R.)
Member (Judicial)

Signed on this, the 13th day of December, 2019