

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

SL. No.133

Video Conference

**CORAM: HON'BLE BHASKARA PANTULA MOHAN-MEMBER JUDICIAL
HON'BLE DR. BINOD KUMAR SINHA- MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.01.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/206/2021
NAME OF THE COMPANY	YKM Emertainment & Hotels Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	YKM Emertainment & Hotels Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

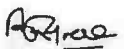
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Learned Counsel for the Financial Creditor appeared via video conference. Order pronounced vide separate sheets. This CP is admitted.


Member (T)

Nilesesh


Member (J)

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

Company Petition IB (IBC)/206(HYD)2021
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s YKM ENTERTAINMENT & HOTELS PRIVATE LIMITED

Between:

M/s. State Bank of India,
Stressed Assets Management Branch,
Secunderabad, Door No.6-2-915,
5th Floor, Rear Block, HMWSSB Compound,
Khairthabad, Hyderabad – 500004.
Represented by Mr. C. Ravi Shankar,
Assistant General Manager

...Petitioner/
Financial Creditor

And

M/s. YKM Entertainment & Hotels Private Limited,
Registered Office: H.No.6-3-883/F1, 2nd Floor,
Pothula Towers Annex, Somajiguda,
Hyderabad TG 500082 IN.

...Respondent/
Corporate Debtor

Date of Order: 05.01.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. GP Yash Vardhan, Counsel

For the Corporate Debtor: None (*Ex-parte*)

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Per: Bench

ORDER

1. Under consideration is a Company Application filed by M/s State Bank of India (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. YKM Entertainment and Hotels Private Limited. (in short, "*Respondent/Corporate Debtor*").
2. Brief facts as stated by Applicant are as under:
 - a. That the Corporate Debtor, pursuant to availing the Financial Assistance from Financial Creditor and Associate Banks under the consortium arrangement has committed default in repaying the loan amounts. That the Financial Creditor has preferred an Original Application No. 767 of 2018, ("O.A." before the Hon'ble Debt Recovery Tribunal, Hyderabad-II ("Hon'ble DRT")) against the Corporate Debtor and other Defendants therein for recovering an amount of Rs.184,82,88,871.00 (Rupees One Hundred and Eighty Four Crores Eighty Two Lakhs Eighty Eight Thousand Eight Hundred and Seventy One only) along with interest.
 - b. That during the pendency of the said O.A., an OTS was offered by the Corporate Debtor vide its letter dated 02.04.2019 addressed to the Financial Creditor, wherein, the Corporate Debtor has admitted to its liability towards the Financial Creditor. Thereafter, the Financial Creditor, through its letter dated 01.08.2019 has approved the OTS with certain terms and conditions, one of such conditions being that, in the event the Corporate Debtor, fails to pay the OTS amount or any instalment within the schedule period, Financial Creditor reserves its right to cancel the OTS and entire dues of the Financial Creditor as claimed before the Hon'ble DRT in the O.A. with interest and costs will become due for payment after adjusting the amount recovered under OTS.

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- c. That thereafter the Corporate Debtor passed a Board Resolution at its meeting held on 06.08.2019 accepting the terms of the OTS. Subsequently, I.A. 4620 of 2019 has been filed before the Hon'ble DRT to record the compromise, wherein, the Corporate Debtor has agreed that in the event of failure in payment of compromise settlement/OTS, the same shall be treated as cancelled and the Financial Creditor shall be entitled to OA claim after adjusting the amounts already paid by the Corporate Debtor. The Hon'ble DRT after recording the terms agreed under the Joint Compromise Memo has allowed the O.A. vide Orders dated 19.09.2019 by giving liberty to the Financial Creditor to approach the Hon'ble DRT for issuance of Recovery Certificate against the Corporate Debtor and other Defendants therein in the event of default in payment of OTS.
- d. That it is pertinent to note that as the Corporate Debtor failed to pay the amount as agreed under OTS, the Financial Creditor has issued a letter dated 24.01.2020 to the Corporate Debtor, bringing to its notice that in spite of granting time and sending repeated reminders it has not paid any instalments as per the OTS, as such the OTS sanctioned has been cancelled. Subsequently, the Financial Creditor filed a Miscellaneous Application (MA) numbered as M.A. No.61 of 2020 before the Hon'ble DRT bringing to its notice about the fact that the Corporate Debtor has failed to comply with the terms of the OTS and Joint Compromise Memo and prayed the Hon'ble DRT to pass Order for the amount claimed under O.A. The said M.A. is pending for orders before the Hon'ble DRT.
- e. That as the Corporate Debtor failed to honour the terms of the OTS, the Corporate Debtor is due and liable to pay the entire outstanding amounts.
- f. That the Corporate Debtor, in its Financial Statement for the years 2015-2016, 2016-2017, 2018-2019 & 2019-2020 has declared that it is due and liable to pay the outstanding to the Financial Creditor and also declared and confirmed the charge being created in favour of the Financial Creditor.

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- g. That the Corporate Debtor from time to time has been admitting its liability towards the Financial Creditor. As such, the Company Petition is within the Limitation period.
 - h. The instant Application is filed for an amount of Rs.277,55,86,069/- comprising of Outstanding as on 19.07.2021 Rs.137,20,30,278/-, Accrued interest w.e.f 01.09.2016 of Rs.137,65,55,791/- and Non fund based liability of Rs.2,70,00,000/-.
 - i. That in view of the aforesaid facts and circumstances of the case, it is prayed that the Adjudicating Authority may be pleased to admit the instant application.
3. During the hearing held on 22.11.2021, after sufficient notice and paper publication, the Corporate Debtor was proceeded ex-parte.
 4. Heard and perused the record.
 5. After hearing the Financial Creditor and perusing record, it is observed that the Corporate Debtor has declared in its Audited Financial Statements for F.Y's 2015-16, 2016-17,2017-18,2018-19 and 2019-20, the long term borrowings from the Financial Creditor/Applicant herein. Further in Notes to Accounts for the Audited Balance Sheet for F.Y. 2019-20 the Corporate Debtor has declared as under:
"The Company has entered into One Time Statement dated 1st August 2019 with State Bank of India to settle the Outstanding SBI Loan (NPA) and interest dues with One time payment of 112.00 crores plus cash margin of BG outstanding of 2.7 crores to be paid in 4 payments before 31st January 2020."
 6. The outstanding balance as on 31.03.2020 stood at Rs.197.96 crore. Copy of the aforementioned OTS proposal, the Joint Compromise Memo and OTS cancellation letter are also placed on record by the Financial Creditor which are perused.
 7. A conjoint reading of the details of Long Term Borrowings as reflected in the Balance Sheet, as well as the OTS related documents and the afore-extracted Note to Accounts clearly indicates that there was a 'financial debt' owed by the Corporate Debtor to the Financial Creditor and there was a "default" on the part of the Corporate Debtor as claimed by the

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Financial Creditor. We, therefore, are of the view that in the instant case there is a financial debt and there has been a default in repayment of the same and that this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

".....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the Financial Creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

8. The Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.
9. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.
10. The Financial Creditor proposed the name of Mr. Dantu Indu Sekhar, Interim Resolution Professional and he has given his written consent in Form 2. Accordingly, this Tribunal appoints Mr. Dantu Indu Sekhar, having Registration No. IBBI/IPA-003/IPA-ICAI-N-00233/2019-2020/12773 e-mail id: indu.sekhar3@gmail.com as Interim Resolution Professional. He is directed to file valid Authorization for Assignment within three days from the date of this order.

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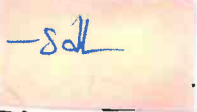
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11. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
12. We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards an advance fee of IRP and expenses towards CIRP, which shall be ratified and reimbursed later on by CoC.
13. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP for the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
 - 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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor;*
 - v. *Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
14. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services

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- 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. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to 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.
15. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
 16. The Petitioner/Financial Creditor as well as the Registry is directed to send a 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.
 17. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
 18. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
 19. Accordingly, this Petition is admitted.



Dr. Binod Kumar Sinha
Member Technical
Santi/SKRathi



Bhaskara Pantula Mohan
Member Judicial