

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

**IBA/1459/2019** 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 ***M/s. Appu Hotels Limited.***

**Tourism Finance Corporation of India Limited**  
4<sup>th</sup> Floor, Tower 1, NBCC Plaza,  
Pushp Vihar, Sector 5, Saket,  
New Delhi – 110 017

*... Financial Creditor*

-Vs-

**M/s. Appu Hotels Limited**  
Reg. Off:-  
PGP House,  
No.57, Sterling Road,  
Nungambakkam,  
Chennai – 600 034

*...Corporate Debtor*

Order Pronounced on **05.06.2020**

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : P.L. Narayanan, Counsel*

*For Corporate Debtor : Sam Jayaraj Houston, Advocate  
For M/s. Sarvabhauman Associates*

## ORDER

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. Under Adjudication is IBA/1459/2019 that has been filed by **Tourism Finance Corporation of India Limited** (hereinafter referred to as '**Financial Creditor**') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Appu Hotels Limited** (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 (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is Limited Company incorporated on 27.01.1989. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number U92490TN1983PLC009942 and registered office of the Corporate Debtor as per the Application is stated to be situated at PGP House, No.57, Sterling Road, Nungambakkam, Chennai - 600 034. As per Part III of the application, the Financial Creditor has proposed the name of one Shri. Mukesh

Kumar Gupta, Registration Number: IBBI/IPA-001/IP-P00207/2017-18/10407 as the Interim Resolution Professional

3. Part IV of the application signifies the amount of debt to the tune of Rs.17,87,09,463/- along with further interest at contractual rates with effect from 30.11.2019. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

**Term Loan I – Rs. 2000 lakh:**

- a. Sanction Letter dated 19.08.2009 issued by the Financial Creditor to Corporate Debtor for term loan of Rs.2000 lakh.
- b. Board Resolution dated 19.08.2009 of Corporate Debtor accepting terms and condition of sanction of term loan of Rs.2000 lakh.
- c. Loan Agreement dated 14.12.2009 along with General Conditions.
- d. Deed of Personal Guarantee dated 11.12.2009 by Dr. Palani G Periasamy & Mrs. Visalakshi Periasamy.
- e. Deed of Hypothecation dated 14.12.2009.
- f. Agreement for Pledge of Shares dated 23.04.2010.
- g. Declaration and Undertakings in the matter of mortgage by deposit of title deeds by way of constructive delivery dated 22.01.2020.
- h. Memorandum recorded by Indian Bank, Chennai in the matter of mortgage by deposit of title deeds by way of constructive delivery dated 22.01.2020.



**Funded Interest Term Loan II (TFCI Loan Rs.4,11,56,317):**

- a. Sanction letter dated 17.01.2018 issued by the Financial Creditor to Corporate Debtor for term loan of Rs.2000 lakh.
- b. Board Resolution dated 09.02.2018 of the Corporate Debtor accepting terms and condition of sanction of Funded Interest Term Loan of Rs.1748.04 lakh.
- c. Agreement dated 09.02.2018 executed by Corporate Debtor in favour of TFCI pending execution of Master Restructuring Agreement.
- d. Master Restructuring Agreement dated 09.02.2018 executed in favour of Joint Lenders Forum.
- e. Declarations and Undertakings in the matter of mortgage by deposit of title deeds by way of constructive delivery dated 18.03.2015.
- f. Agreement for Pledge of Shares dated 18.03.2015.
- g. Letter confirming extension of Pledge of Shares dated 18.03.2015.
- h. Agreement for Pledge of Shares dated 17.12.2018.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is engaged in the hotel business in the state of Tamil Nadu for the past 19 years and availed terms loan from the Financial Creditor aggregating to Rs.27.65 Crore for setting up hotel at Chennai, which was fully repaid by January 2013. It was further submitted that the Corporate Debtor availed a Corporate loan of Rs. 20 Crores in 2011 for cash flow requirement which was fully repaid in the month of June 2013. Besides above, the Corporate Debtor has availed



term loan of Rs.20 Crores in 2009 from the Financial Creditor and also availed terms loans from Indian Bank, State Bank of India, IDBI Bank and Bank of India for setting up hotel at Coimbatore.

5. The Learned Counsel for the Financial Creditor submitted that on account of liquidity constraints, the Corporate Debtor found it difficult to serve the debts to the Banks and the Financial Institutions and as such in the month of November 2017, the outstanding loans of the Banks and the Financial Creditor aggregating to Rs.210.60 Crore, including the Financial Creditor's amount of Rs.18.44 Crores was restructured as "flexible structure" under the 5/25 Scheme of RBI. Thus, the Financial Creditor's stake as on 27.11.2019 was restructured as follows;

*(Rs. In Crores)*

Facility	Sanctioned Amount	Principal Disbursed	Principal O/s	Overdue		ROI
				Principal	Interest	
RTL	20.00	20.00	14.87	5.19 (31.03.19)	0.34 (30.09.19)	
FITL	4.12	4.12	2.39	2.39	0.06	LTMCLR + 0.95% i.e. 12.95%
<b>TOTAL</b>	24.12	24.12	17.26	7.58	0.40	-

6. It was submitted that as per one of the terms of flexible structuring of outstanding loans under 5/25 structuring scheme, the Corporate Debtor has to complete the sale of non-core assets of land admeasuring 26.64 acres at

Gerugambakkam, Chennai by 31.03.2019 and make one bullet payment of Rs.7.53 Crores immediately upon realization of sale proceeds of the same. It was submitted that the Corporate Debtor has finalized the sale of the above land to one M/s. Casagrande Builders Private Limited Chennai at Rs. 100 Crores, however the sale did not materialize.

7. The Learned Counsel for the Financial Creditor submitted that, thereafter, the Corporate Debtor was negotiating with the alternate buyer viz. Interups, Inc. USA for the sale of land and clearance of dues to the Financial Creditor and to the other banks, however no payment has been received and as such the account of the Corporate Debtor was declared as NPA by the Financial Creditor on 30.09.2019.

8. The Learned Counsel for the Financial Creditor submitted that the term loan of the Financial Creditor was secured by creating a First Pari passu charge on all the fixed assets both present and future of hotel at Coimbatore including hypothecation of all movables and equitable mortgage of hotel land admeasuring 5.67 acre and buildings thereon. Also a first pari passu charge by way of equitable mortgage of housing quarters situated at Coimbatore. Apart from the above, it was submitted that the Financial Creditor was also having charge

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over the hotels at Chennai and has also obtained personal guarantees from the promoters of the Corporate Debtor. Under the circumstances, the Learned Counsel for the Financial Creditor stated that the Corporate Debtor is unable to pay the dues to the Financial Creditor and as such it has committed default, therefore prayed for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

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9. The Learned Counsel for the Corporate Debtor had filed reply and submitted that the Corporate Debtor is in the hotel business for the last three decades and the company employs around 800 people and the Corporate Debtor has availed loans from the Financial Creditor in the year 2010 to the tune of Rs.22.41 Crores to expand its business by mortgaging its properties worth Rs.1000 Crores as security on pari passu basis along with other consortium members and has repaid Rs.5.17 Crores towards principal and interest upto September 2019.

10. The Learned Counsel for the Corporate Debtor submitted that the Company has been servicing the loan regularly till September 2019, however due to slow down in the economy particularly in the real estate sector, the Company could not

dispose the land on time and as such could not repay the loan. It was submitted that for this purpose, the Corporate Debtor appointed a leading real estate Company CBRE for selling this land as early as August 2019. Further the Corporate Debtor has also given a wide publicity for sale by way of advertisement in the leading newspaper (both English and Tamil) as advised by the Asset Sale Committee constitute by the banks and the Financial institutions and most of the enquiries were only for joint development which would take 5 to 6 years for receipt of the sale consideration.

11. The Learned Counsel for the Corporate Debtor submitted that a leading real estate Company in Chennai, viz. Casagrand had made commitment to purchase of 25.64 acres of the vacant lands for a total consideration of Rs.100 Crore and make the full payment before May 2019, however due to the delay in arranging the funds, they could not complete the transaction within the committed time even with the extended time upto 30<sup>th</sup> June 2019. Avowing to all these difficulties faced by the Corporate Debtor, the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor is ready to settle the dues and is ready to cooperate with the Financial Creditor for OTS negotiations and if the present application is allowed, irreparable loss would be incurred to

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the Corporate Debtor and under the said circumstances, prayed for dismissal of the Application.

12. Heard the Counsel for both the parties and perused the documents placed on record. It is a fact borne on record that the Corporate Debtor is unable to repay the dues to the Financial Creditor and as such on the garb of OTS settlement the Corporate Debtor wanted to gain time to settle of the dues to the Financial Creditor. Further, a perusal of the record of proceedings dated 04.02.2020, also shows that the Corporate Debtor was putting in efforts to settle of the dues of the Financial Creditor and upon such representation being made, the Corporate Debtor was granted time to settle the matter and the matter was finally posted to 02.03.2020 for reporting settlement or to proceed with the matter. Thus, when the matter was taken up for enquiry on 02.03.2020, it has been brought to the notice of this Tribunal by the Counsel for the Financial Creditor that the Corporate Debtor has not paid the dues of the Financial Creditor and also the Learned Counsel for the Financial Creditor submitted that even in the affidavit filed by the Corporate Debtor, the outstanding debt has been admitted which is owed to the Financial Creditor.



13. Thus, we are satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd.(2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and when there is a default, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor.

14. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant –



Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

15. The Financial Creditor has proposed the name of one **MUKESH KUMAR GUPTA** having Registration Number **[IBBI/IPA-001/IP-P00207/2017-18/10407]** (Email id:- **guptam11@gmail.com**) (Mob:- **+91-9810798961**) as *Interim Resolution Professional* (IRP) and a 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.

16. 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 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."

17. 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

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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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. 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."

19. 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 Respondent 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 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-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Raymond*

*Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Members (T) present in person at Chennai and Members (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 05/05/2020 for Chennai Bench -I.*

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*N. SRIRAMASUBRAMANIAN*  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
CHENNAI BENCH  
CORPORATE BHAVAN, 3rd FLOOR  
29, RAJAJI SALAI, CHENNAI-600001