

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

COURT-VI

IB-2152/ND/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. Adaab Hotels Ltd.**

Mr. Hukum Singh

...Financial Creditor

Versus

M/s. Adaab Hotels Ltd.

...Corporate Debtor

Order delivered on 6th November, 2019

Coram:

SHRI. CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
DR. V.K. SUBBURAJ, HON'BLE MEMBER (TECHNICAL)

For the Operational Creditor: Mr. Rana Mukherjee,
Mr. Indranil Palzer,
Ms. Kanika Daisy, Adv.

For the Respondent/ Corporate-Debtor : Mr. Sanjay Mann,
Ms. Dimple Singh
Simantini,
Mr. Paul, Simran, Adv.

ORDER

Per. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Counsels for both the sides are present. Under consideration is an application filed under Section 7 of the IBC, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIR Process, declaration of Moratorium and appointment of IRP.

2. The Counsel for the Financial-Creditor has submitted that an amount of Rs. 1,18,24,984/- is payable by the Corporate-Debtor. In support of the claim, the Financial-Creditor has placed on record, the balance-sheet at Page Nos. 19, 36 and 53. At Page No. 19, the balance-sheet as on 31.03.2016 shows an amount of Rs. 51,85,756.63/- as outstanding plus interest. At page No. 36, the balance-sheet as on 31.03.2017 shows an amount of Rs. 42,45,286.15, as outstanding plus interest. At page No. 53, the balance-sheet as on 31.03.2018 shows an amount of Rs. 50,05,438.16 as outstanding plus interest. Apart from this, the Financial-Creditor has placed on record the account statement, which finds place at page 98, 99 and 104, which provides details of the bank transactions in relation to the loan advanced from time to time. m
3. The Corporate-Debtor has filed the reply statement, wherein manifold defence has been raised. It is submitted in the reply that the Financial-Creditor is promoter and former director of the Corporate-Debtor, who was removed from the directorship of the Company, as he has indulged in gross anti company activities and for illegally siphoning of funds, forging and fabricating of documents. It is submitted that the Financial-Creditor is trying to take benefits of his own wrongs and had filed the present petition with ulterior, mala-fide and dishonest intentions. It has specifically ~~to be~~ ^{been} pleaded in the reply m that the Corporate-Debtor does not owe any money to the Financial-Creditor and the ledger of the Corporate-Debtor appended with the petition at page no. 94 and 95 demonstrates that the Financial-Creditor is liable to pay to the Corporate-Debtor. Other details recorded in the reply are pertaining to the affairs of the Corporate-Debtor.
4. The learned Counsel for the Corporate-Debtor has referred to the document dated 06.07.2019 placed at page no. 67 which is a reply given to the Board of Directors of the Corporate-Debtor by the

Financial-Creditor, wherein under Para No. 'N', it is recorded that the premises were finally handed over to M/s. Prem and Company after removing the belongings of Adaab Hotels [the Corporate-Debtor] on 15th June, 2019. The Counsel for the Corporate-Debtor referred to the latest balance-sheet placed at page no. 138, of which relevant entry is found at page no. 141, wherein against the name of Financial-Creditor i.e., Hukum Singh the balance as on 31.03.2019 is shown as "00." A query was raised by the Bench as to how the loan amount shown in the three balance-sheets has been paid to the financial-creditor. The Counsel for the Corporate-Debtor submitted that the Financial-Creditor and the directors in the Corporate-Debtor are close relatives and there are certain transactions including a transaction pertaining to Rs.19,00,000/- lakhs under which a car has been purchased by the Financial-Creditor for gifting the same to his daughter at the time of marriage solemnised on 06.02.2019. The learned Counsel for the Corporate-Debtor has referred to the ledger account which is placed at page 94 and 95 for the year February, 2018 to 31st March, 2019, which reflects that on 31.03.2019, there is an outstanding amounting to Rs. 17,11,585.60 against the name of the Financial-Creditor i.e. Mr. Hukum Singh. It is further submitted by the learned Counsel for the Corporate-Debtor that when the Financial-Creditor was the director of the Corporate-Debtor, the cash in hand was available with him, as reflected in the balance-sheet. It is further submitted by the learned Counsel for the corporate-debtor that the Financial-Creditor has claimed interest for the year 2018-19, whereas a Resolution has been passed by the Board on 05.04.2018, by which it was decided that no interest is to be paid to the Directors for their investment, W.e.f. the date of passing of the Board Resolution. However, the original Board Resolution is not available on the case file. It is further added by the learned Counsel for the Corporate-Debtor that as per the document placed at page No. 141 of the typed set filed with the petition, the unsecured loan from Directors carries no interest. The learned Counsel for the Corporate-

Debtor referred to the details of investments made by the company at Jaipur Unit, and ~~related~~^{stated that} the belongings of the company were removed from the premises by the Financial-Creditor and he has never accounted for the same, in connection with which a criminal complaint is pending with EOW Delhi.

5. The learned Counsel further referred to page 145 of the latest balance-sheet ending on 31.03.2019 wherein under the heading Loans and Advances to Related Parties a sum of Rs. 19,39,431.03 is shown against the name of Financial-Creditor.
6. The Counsel for the Financial-Creditor in reply arguments has referred to the Commercial Document Evidence Act, 1939 wherein under Section 3 (b), a presumption may be drawn in favour of the correctness of documents mentioned in the Part II of the Schedule to the Act 1939, which relate to the certified copy issued by the Registrar of Companies ('ROC'), the balance-sheets, profit and loss accounts and Audit Report of the Company, filed with the Registrar under the Indian Companies Act, 1913 and the Rules made thereunder, and submitted that the balance-sheets referred by him in support of his claims are evidencing the outstanding ~~claims~~ towards Corporate-Debtor. Therefore, presumption is drawn in favour of the correctness of those balance-sheets placed on record by the Financial-Creditor, which are not disputed by the Corporate-Debtor. The Counsel for the Financial-Creditor relied upon the Judgment of the Hon'ble **Apex Court** passed in ***Kashinath Sanikarappa Wani v. New Akot Cotton Ginning & Pressing Co. Ltd.*** 1958 SCR 1331, wherein under Para 9 and 12 their Lordships have dealt with the provisions of the 'The Commercial Documents Evidence Act, 1939' and observed that the certified copies ought to be relied upon. The Counsel for the Financial-Creditor has submitted that no plausible explanation is forthcoming from the Corporate-Debtor with regard to the latest balance-sheet, wherein outstanding is shown as 00. In

other words, the contention raised by the learned Counsel for the Corporate-Debtor that the outstanding loan has been repaid is not substantiated with any documentary evidence. The learned Counsel for the Financial-Creditor further submitted that the interest component on the amount of loan was included in the latest instalment of Rs.98,431/- paid on 05.11.2018, after passing of the Resolution by the Board as referred by the learned Counsel for the Corporate-Debtor. The Learned Counsel for the Financial-Creditor in reply arguments submitted that the amount of Rs. 19,39,43.30/- shown in the balance-sheet as on 31.03.2019 has no connection whatsoever with the Financial-Creditor.

7. After hearing both the sides and perusal of the pleadings along with record of the case file, it is noted that three balance-sheets referred by the learned Counsel for the Financial-Creditor clearly demonstrate that the amount claimed is outstanding towards the Corporate-Debtor and there is no proof of repayment as claimed by the learned Counsel for the Corporate-Debtor. The documentary evidence produced by the Financial-Creditor is supported by the accounts statement of the Financial-Creditor. The defence that has been advanced by the learned Counsel for the Corporate-Debtor in manifold does not rebut the evidence with regard to the outstanding amount claimed by the Financial-Creditor. Therefore, the defence that has been raised appears to be hollow, mere bluster and is after thought. In view of it, the defence raised by the Corporate-Debtor stands rejected.
8. The Documentary evidence placed on record by the Financial creditor is sufficient in order to ascertain the default on the part of the Corporate Debtor. Therefore, the Financial-Creditor has fulfilled all the requirements of law including the name proposed for appointment of IRP after obtaining consent in Form-2. Thus, the Application stands **admitted**. The commencement of the Corporate Insolvency

Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. Mr. Atul Kumar, Insolvency Resolution Professional as proposed by the Financial Creditor is hereby appointed as IRP. 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 I&B 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.

10. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby ordered to prohibit all of the following, namely:

(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 Securitisation 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.

11. The supply of essential goods or services of the Corporate Debtor/Guarantor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The Directors of the Corporate-Debtor, its promoters or any person associated with the Management of the Corporate-Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.
13. The Financial-Creditor and the Registry are also directed to send the copy of this Order with immediate effect 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. The address details of the IRP are as follows: -
Mr. Atul Kumar
Reg. No. IBBI/IPA-002/IP-N00357/2017-18/11007,
E-mail: atuladv@gmail.com, atul@induslawassociates.in,
Mob. No. 9810431518;
Address: B-17, 4th Floor,
Jangpura Extension,
NewDelhi-110014.
14. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate-Debtor and the RoC concerned with immediate effect.

15. The Order is dictated and pronounced in the open court in the presence of the Counsels for the Financial Creditor and the Corporate Debtor.

- Sd/-

(V.K. SUBBURAJ)
Member (Technical)

- Sd/-

(Ch. MOHD. SHARIEF TARIQ)
Member (Judicial)