

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 28/KB/2019

IN THE MATTER OF:

An application under Section 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to adjudication Authority) Rules, 2016;

And

IN THE MATTER OF:

JM Financial Asset Reconstruction Company Ltd. A company incorporated under the Companies act, 1956 and registered under Section 3 of the SARFAESI Act, 2002 as a Securitisation and Reconstruction Company having its registered office at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai 400025 and amongst others having another office at 3rd Floor, B Wing, Plot No. 68E, Opp Tata Steel, Off Dattapada Road, Borivali East, Mumbai - 400066 acting in the capacity as a trustee of the JMFARC - ICICI Bank September, 2016-Trust for the benefit of the holder of the security receipt issued by the trustee and having its office in Kolkata at 8th Floor, Kankaria Estate 6 Little, little Russel Street, Kolkata, West Bengal - 700071.

.....Financial Creditor / Applicant.

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And

IN THE MATTER OF:

Krish Raipur Hotels Pvt. Ltd., a company registered under the Companies Act, 1956 and having registered office at Perfect Chambers 36, G.C. Avenue, Kolkata - 700013, West Bengal

....Respondent / Corporate Debtor.

CORAM:

Shri M. B. Gosavi., Member (Judicial)

Shri V.K. Gupta, Member (Technical)

COUNSELS ON RECORD:

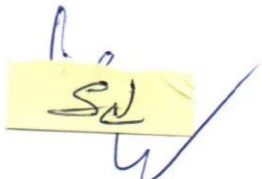
1. Mr. Utsav Mukherjee, On behalf of Financial Creditor
2. Ms. Sweta Murgai, Advocate on behalf of Corporate Debtor

Date of pronouncement of order: 30/09/2019

ORDER

Per Shri V.K. Gupta, Member (Technical)

This application has been filed under Section 7 of the IBC by the Financial Creditor namely JM Financial Asset Reconstruction Company Ltd. to initiate Corporate Insolvency Resolution Process against the Corporate Debtor namely Krish Raipur Hotels Private Limited.





2. The amount of default has been stated at Rs. 148,8720127/- and date of default has been stated as 1st May, 2016 being classification of the Corporate Debtor account as NPA. The Financial Creditor is an assignee of ICICI Bank (Assignor) who vide its deed of assignment dated 30th September, 2016 assigned the date of Corporate Debtor to the assignee.

3. The original loan had been disbursed against securities the moveable and immovable properties. On failure to repay the loan amount under Section 13(2) of SARFAESI Act, 2002 was issued which remain unanswered. The Ld. Counsel further claimed that petition under Section 7 had been filed on 2.1.2019 which was well within the period of limitation for 3 years from the date of declaring the account as NPA on 1st May, 2016 and loan recall notice dated May 23, 2016.

4. The Ld. Counsel after narrating these facts and submitted that the Corporate Debtor had taken two defences, defence number one was in regard to a competency of the person who signed the Petition and second was that the Corporate Debtor had filed a counter claim before DRT. In regard to second contention of the Corporate Debtor, Ld. Counsel of Financial Creditor placed strong reliance on the decision of the Hon'ble Supreme Court in case in the case of Swiss Ribbons wherein it was had held that counter claims could be made during the CIRP Process as per the Rules and Regulations of the IBC Code, 2016 and, hence, such counter claim was not a bar on the maintainability of the Petition at this stage.

5. The Ld. Counsel for the Corporate Debtor claimed that the original lender had sanctioned a loan of Rs. 100 crores but only 60 crores were

disbursed which led to a situation whereby the Corporate Debtor could not complete the project and consequently put Corporate Debtor into a situation where Corporate Debtor could not repay the loan. For such conduct of the original lender, Corporate Debtor had filed suit before DRT claim of damages.. The Ld. Counsel further contended that the original loan amount was Rs. 62 crores whereas interest had been charged to the esteem of Rs. 100 crores which included default interest for which no provision existed in the sanction letter / Agreement entered into by both the parties. The Ld. Counsel further contended that single deed of assignment was executed by the original lender with the assignee for five parties, hence, for this reason deed of assignment was invalid and consequently, the assignee did not have any locus standi in the matter. The Learned Counsel thereafter contended that debt was actionable claim within the meaning of Section 132 of Transfer of Property Act, 1882, hence, assignee should have taken it with liabilities but it was not so, hence, such assignment violated provisions of Section 132 of Property Act, 1882 and, therefore, such deed was not enforceable and valid for the purposes of IBC, 2016. In support of its claims, our attention was drawn to various clauses of deed of assignment.

6. We have heard both the Counsels and also perused material on record. It is noted that the loan has been declared NPA on 1st May, 2016 and loan was recalled on 23rd may, 2016. Petition has been filed within a period of 3 years from that date, hence, Petition is not barred by limitation. As regards to the contention, in regard to counter claim filed by the Corporate Debtor against the original lender, in our opinion, the same cannot be considered at this stage for the reason that Section 7 of IBC Code provides that if there is financial debt which is due and payable and there is a default either in part or

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whole, the Financial Creditor or its assignee can file application under Section 7 of the IBC Code, 2016. The disputed financial debt can be a subject matter of application under Section 7 of the IBC Code, 2016 except where liability to pay at all does not exist. Further CIRP regulations provide for lodging of any amount owed by Financial Creditor to the Corporate Debtor with proof thereof is the relevant forms prescribed thereunder. Thus, the legislature has intended to allow an opportunity to set off of its counter claim only during CIRP Process and not at the stage of admission of application filed under Section 7 of IBC, 2016. Similar position remains for the set off extra interest / penal interest of the charged by the Financial Creditor.

7. It is now a settled position that Insolvency and Bankruptcy Code is a complete mechanism by itself for CIRP and provisions of any statute contrary to the provisions of the code or in such instrument would not have any adverse bearing on the maintainability of the petition filed under Section 7 of the IBC, 2016. The term "claim" as contended in Section 3 (6) of the IBC and, therefore, the contention of the Corporate Debtor that provisions of Section 132 of Transfer of Property Act, 1882 not complied with, if at all, would not have any bearing on the maintainability of this petition / application.

8. Now, the only question remains to be seen is whether deed of assignment is proper or not, merely for reason that by one deed of assignment, the original lender has assigned debt of five debtors to the assignee. It is not in dispute rather it is an established fact that name of the Corporate Debtor exists in such deed of assignment. In our view there is no bar under any law or under Section 5 (6) of IBC, 2016 that through a single deed of assignment debt of more than one debtor cannot be assigned to one assignee.

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9. The name of IRP has been proposed who has given his consent and no disciplinary proceedings are pending against the proposed IRP. Therefore, we approve the IRP proposed by the Financial Creditor. Further, the application is otherwise complete in all respects, hence, we admit the said order as under:

ORDER

- i. The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of the Corporate Debtor namely Krish Raipur Hotels Pvt. Ltd.
- ii. We hereby declare a Moratorium and public announcement in accordance with Sections 13 to 15 of the IBC, 2016.
- iii. The 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. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. 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

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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 possession of the corporate debtor.
- v. The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- vi. 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.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the

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resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. **Mr. Amit Chandrashekhar Poddar, CA**, with address at AKSHAT, 7, Vijay Nagar, Katol Road, Near Durga Mata Mandir, Opp. NCC Office, Nagpur - 440013 and **Registration No. IBBI/IPA-001 /IP-P00449 /2017-18 /10792** is hereby appointed as **Interim Resolution Professional** for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- xi. 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.
- xii. The IRP is directed to see that Regulation 40A of IBBI (IRP for Corporate Persons) Regulations, 2016 is complied strictly and file progress report in terms of compliance of the Regulation.
- xiii. The Applicant/Financial Creditor is directed to deposit Rs. **3,00,000/-** (Rupees Three Lacs only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the

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preliminary expenses for initiating the CIR Process by the IRP, as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

xiv. Registry is hereby directed under Section 7(7)(a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

10. List the matter on 21/10/2019 for the filing of the progress report.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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30/9/2019
(V.K. Gupta)
Member (Technical)

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30/9/2019
(M.B. Gosavi)
Member (Judicial)

Signed on this, the 30th day of September, 2019.

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