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

CP/IB/243/2021

*(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. Hotel Milestonnez India Private Limited

State Bank of India

Stressed Assets Management Branch
Red Cross Building, No.32
Red Cross Road, Egmore,
Chennai - 600008

Represented by its Assistant General Manager
Mr. R. Rupalingappa

... Applicant/Financial Creditor

-Vs-

M/s. Hotel Milestonnez India Private Limited

34, Santa Velur, Sungavarchatram
Post, Sriperumbudur,
Kanchipuram - 602106

...Respondent/Corporate Debtor

Order Pronounced on 19th April 2022

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : B. Raghavaiu Naidu, Advocate
K. Chandrasekaran, Advocate
R. Vigneshwaran, Advocate*

*For Corporate Debtor : A.M. Sridharan, Advocate
B. Sarath Babu, Advocate
S. John Major, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under Adjudication is an Application that has been filed by **State Bank of India** (hereinafter referred to as '*Financial Creditor*') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Hotel Milestonnez India Private 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 a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is State Bank of India having its branch office at Chennai. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN: U155101TN2010PTXC074489 incorporated on 04.02.2010 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at 34 Santa Velur, Sungavarchatram Post, Sriperumbudur, Kanchipuram – 602106. As per Part III of the application, the Financial Creditor has proposed

the name of one Mr. Amier Hamsa Ali Abbas Rawther, as the Interim Resolution Professional, who has also filed his consent in Form - 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.19,37,60,481.36/- as on 12.09.2021 are being claimed by the Financial Creditor as the financial debt and the date of default is mentioned as 27.09.2017. Part - V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. Learned Counsel for the Applicant submitted that the Corporate Debtor is engaged in Hotel Business. The Corporate Debtor had availed the cash credit facilities amounting to Rs. 1 Crore and Term Loan of Rs.10 Crore on 27.01.2011, and another Term Loan of Rs.5.25 Crore on 17.05.2013 from the Financial Creditor.


5. It was further submitted that the loan account of the Corporate Debtor had become NPA in the books of the Financial Creditor on 29.06.2013, and it was transferred to Stressed Asset Management Branch.



6. It was further submitted that the Financial Creditor had filed OA No.760/2015 before DRT-II, Chennai for recovery of Rs. 13,55,51,172.80/- which was allowed by the DRT on 24.07.2017 and a recovery certificate was also issued in DRC No. 463/2017 on 27.09.2017.

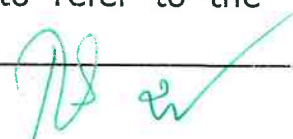
7. It was further submitted that the Corporate Debtor is liable to pay a sum of Rs. 19,37,60,481.36/- as on 12.09.2021 towards the credit facilities availed from the Financial Creditor. It was further submitted that the Financial Creditor offered One Time Settlement (OTS) to the Corporate Debtor for a sum of Rs. 6,05,29,067/- which was accepted by the Corporate Debtor on 23.11.2020 and remitted a sum of Rs. 30,40,000/- under the OTS proposal on 11.11.2020.

8. In view of the submissions *supra*, the Ld. Counsel for the Financial Creditor argued that the present application has been filed by invoking the final order dated 24.07.2017 passed by the DRT against the Corporate Debtor and further argued that the OTS acceptance letter dated 23.11.2020 of the Corporate Debtor shall be taken as evidence for admission of the default and sought initiation of CIRP against the Corporate Debtor.



9. The Learned Counsel for the Corporate Debtor submitted that the present application was governed by Article 137 of the Limitation Act, since the NPA was dated 29.06.2013 and the demand notice under section 13(2) of SARFAESI Act issued on 20.01.2015 and that the date of default ought to be from the date of proceeding under SARFAESI and accordingly prayed that the present applicant was barred by limitation.

10. We have heard both the parties and perused all the documents placed on record. As noticed from the relevant parts of the order of the DRT-II, Chennai dated 24.07.2017 in OA No.760/2015, makes it clear that there is an existence of debt and default in respect of the Corporate Debtor and it gives a fresh cause of action to approach this Adjudicating Authority under Section 7 of IBC, 2016. The One Time Settlement (OTS) letter dated 19.10.2020 proposed by the Financial Creditor, subsequent payment of Rs. 30.40 lakhs on 11.11.2020, acceptance by the Corporate Debtor vide its letter dated 23.11.2020 clearly shows admission of debt and default by the Corporate Debtor. Further, the limitation period to file the application before this Adjudicating Authority begins from the date of accepting OTS letter i.e. 23.11.2020 and as such the present application is filed within the limitation period. In this regard, it is relevant to refer to the



precedent of the Hon'ble Apex Court in **Dena Bank Vs. C. Shivakumar Reddy and Anr.**, it was held as follows:

"138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant Bank, would not be barred by limitation at least till 24th May, 2020.

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142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."

11. In respect of the aforesaid observations by the Hon'ble Supreme Court and considering the facts and circumstances of the case as well as the position of Law, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

12. The Financial Creditor has proposed the name of one **Mr. Amier Hamsa Ali Abbas Rawther**, having Registration Number **[IBBI/IPA-001/IP-P01727/2019-2020/12620]**, (e-

mail ID: amierhamsa@gmail.com having Authorisation for Assignment valid upto 14.11.2022 as Interim Resolution Professional (IRP) and 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 IBC, 2016.

13. 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 respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

14. However, during the pendency of moratorium period in terms of Section 14(2) 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 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.

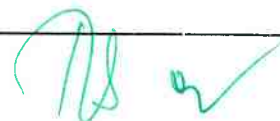
(3) The provisions of sub-section (1) shall not apply to

- (a) 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;
- (b) a surety in a contract of guarantee to a corporate debtor.

15. 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.

16. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. 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 IBC, 2016 and file his report within 30 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the 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 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

19. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. 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 Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.



21. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

22. Post this CP/IB/243/CHE/2021 for hearing on **07.06.2022**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Sudhir