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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)

CP (IB) No. 1278/KB/2019 alongwith CP(IB) No.1430/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Middleton Solitaire Hotel India Pvt. Ltd., having CIN U55101WB2019PTC231436, incorporated under the Companies Act, 2013 and having its registered office at 44A, Sarat Bose Road, Kolkata- 700 029;

... **Financial Creditor/Applicant**

-Versus-

In the matter of:

Middleton Hotels Private Limited, having its CIN: U51909WB1996PTC081670 incorporated under the Companies Act, 1956 and having its registered office at 10, Middleton Street, Kolkata- 700 071, W.B. within the aforesaid jurisdiction;

... **Corporate Debtor**

Counsel appeared:

1. Mrs. Manju Bhuteria, Advocate] For Financial Creditor
2. Mr. Suvam Sinha, Advocate]

1. Mr. Ashutosh Singh, Advocate] For Corporate Debtor

Date of Pronouncement of Order: 31.10.2019

ORDER

Per Shri M. B. Gosavi, Member(J):

Middleton Solitaire Hotel India Pvt. Ltd. - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Middleton Hotels Private Limited** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.50 lakhs interest accrued thereon.

2. Financial Creditor stated that as per request letter dated 20.05.2019 by the corporate debtor, it had advanced sum of Rs.50 lakhs to the corporate debtor. The loan was to be repaid within 30 days and it was to be carried interest @1% per month. Loan amount was transferred to the account of the corporate debtor maintained in Kotak Mahindra Bank through RTGS. Upon completion of one month, the financial creditor called upon the corporate debtor to pay the debt alongwith the interest. However, by letter dated 24.06.2019, the corporate debtor showed inability to pay the debt because of financial constraint and asked for some more time to repay the same. There were exchange of correspondences between the financial creditor and corporate debtor. Since the debt is not paid as agreed, this application is filed to start CIRP of the corporate debtor.

3. Financial Creditor suggested name of Mr. Chandra Kumar Jain (Mob. 9748488836) of 18, Rabindra Sarani, Poddar Court, Gate No.2, 7th floor, Room No.9, Kolkata- 700 001 having registration no. IBBI/IPA-001/IP-P00214/2017-

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18/10414 and Email Id : ckcacs@yahoo.co.in for appointment as the IRP. Proposed IRP has also certified vide Consent Letter dated 31.07.2019 that there are no disciplinary proceedings pending against him with the Board or IIPICAI.

4. Notice of this application is served on the corporate debtor. It appeared through one Mr. Joydeep Nath, Managing Director of the Corporate Debtor. He filed affidavit-in-reply. We have gone through that affidavit-in-reply. In para 6, it is stated that by letter dated 26.06.2019, corporate debtor informed the financial creditor that the corporate debtor is going in through financial crisis and all cash flows had been struck off at some premises or the other. Corporate Debtor requested the financial creditor to bear with them for some time and grant them extension of at least four weeks but the financial creditor did not agree.

5. We heard the Ld. Counsel for the financial creditor and the Ld. Counsel for the corporate debtor.

6. It is seen from the pleadings of the parties itself that the corporate debtor admitted debt due and payable by it to the financial creditor and its default by non-paying the debt. These are only two facts, Adjudicating Authority has to look into while considering application under section 7 of IBC. In this case, since both facts are admitted by the corporate debtor, we have no hesitation to admit the corporate debtor in CIRP. This application is defect-free. There appears no departmental enquiry pending against RP. Hence, we pass the following order:

ORDER

- (i) The application 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 **Middleton**

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Hotels Private Limited. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (ii) 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.104 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 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.

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iv) 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.

v) 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.

vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

vii) 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 Sec.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.

viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As per proposal given by the Financial Creditor, Mr. Chandra Kumar Jain (Mob. 9748488836) of 18, Rabindra Sarani, Poddar Court, Gate No.2, 7th floor, Room No.9, Kolkata- 700 001 having registration no. IBBI/IPA-001/IP-P00214/2017-18/10414 and Email Id: ckcacs@yahoo.co.in is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

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x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

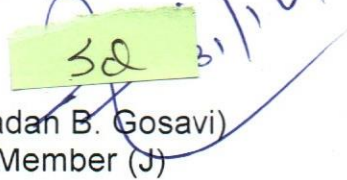
xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

xiii) CA(IB) 1430/KB/19 is filed by the Financial Creditor for early disposal of this application on the ground that debt and default is admitted. Since we have considered the main CP, **this application stands disposed off.**

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **16.12.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 31st day of October, 2019.