

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

C.P. (IB) No. 2459/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

TJSB Sahakari Bank Limited

...Financial Creditor / Applicant

V/s

**KDJ HOLIDAYSCAPES AND RESORTS
LIMITED**

...Corporate Debtor / Respondent

Order Dated: 23rd September 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Nausher Kohli & Adv. Jyoti Muley

For the Respondent: None present

Per: V. P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 2459(IB)/MB/2019 filed by **TJSB Sahakari Bank Limited**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **KDJ HOLIDAYSCAPES AND RESORTS LIMITED**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹5,46,34,862/- (Rupees Five Crore Forty-Six Lakh Thirty-Four Thousand Eight Hundred And Sixty Two Only) along with interest as on 31.03.2019. Mr. Kishor Narayan Satpute files the Application, Manager HO Recovery, of the Financial Creditor duly authorised to file this Application vide Resolution dated 23.05.2019.
3. The Applicant submits that it had sanctioned a loan in nature of Cash Credit facility to the tune of ₹3,25,00,000/- (Rupees Three Crore and Twenty Five Lakh Only) to the Corporate Debtor vide Disbursement Order dated 25.11.2013 and Sanction Letter No. 43/23 dated 25.11.2013. The Applicant and Corporate Debtor entered into Facility Agreement dated 17.12.2013 in respect of the said credit facility, and Deed of Hypothecation secured the credit facility. The Applicant has also filed Promissory Note; Letter of lien and set off; Irrevocable Power of Attorney; Mortgage of immovable property by Deposit of Title Deeds;

Corporate Guarantees and Personal Guarantee Agreements dated 17.12.2013 in support of its claim. Copies of the Documents mentioned supra are annexed to the Application.

4. It is submitted that the Corporate Debtor passed Board Resolution dated 27.11.2013 accepting the credit facility given by the Applicant and further authorised its Directors, Mr Vinod Deora and Mr Surendra Kedia, who signed the Facility Agreement dated 17.12.2013 on behalf of the Corporate Debtor. The copy of the said Board Resolution is annexed to the Application.
5. The said credit facility was repayable on-demand or at expiry of 365 days from the date of the first withdrawal from the said credit facility, whichever is earlier, unless renewed. It is submitted that the said credit facility was renewed vide Technical Renewal of Cash Credit Letter dated 24.01.2014, Disbursement Order and Sanction Letter both dated 31.01.2015 and Technical Renewal of Cash Credit Letter dated 30.07.2015. Copies of the Documents mentioned supra are annexed to the Application.
6. The Applicant issued Notice dated 03.12.2015 under Section 13(2) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 and intimated that Account of Corporate Debtor is classified as Non – Performing Asset and further called upon the Corporate Debtor, its Directors and Guarantors to discharge their liabilities in full with respect to the credit facility sanctioned. After that, the Applicant took over possession of the immovable property under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. The copy of Possession Notice and Panchnama both dated 02.08.2016 are annexed to the Application.
7. The Applicant issued a Show Cause Notice dated 07.08.2018 for declaring the Corporate Debtor and its Directors as Wilful Defaulters. The Corporate Debtor vide its Letter dated 20.08.2018 replied to the Show Cause Notice and admitted the debt and default thereof and requested further time to repay the debt to the Applicant. Further, the Corporate Debtor vide its Letter dated 03.10.2018 requested the Applicant to grant more time for preparing a detailed repayment plan. Also, vide letter dated 11.10.2018 the Corporate Debtor offered to pay ₹2,00,000/- (Rupees Two Lakh Only) on a monthly basis to the Applicant. The copy of Show Cause Notice dated 07.08.2018, and Letters dated 20.08.2018, 03.10.2018 and 11.10.2018 are annexed to the Application.

8. The Applicant has annexed Statement of Loan Account of Corporate Debtors prepared by the Applicant dated 27.05.2019 reflecting the outstanding balance due from Corporate Debtor to Applicant. Bank Certificate under Bankers Books Evidence Act, 1891 is also annexed. The Applicant has further annexed Index of Charges for Corporate Debtor reflecting the name of Applicant as Charge Holder.
9. The Applicant was directed to serve the Court Notice to Corporate Debtor vide our Order dated 19.07.2019. The applicant filed its affidavit of service on 22.08.2019 proving the service upon Corporate Debtor.
10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to ₹3,25,00,000/- (Rupees Three Crore and Twenty Five Lakh Only) is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this Application. The Corporate Debtor even admits the outstanding debt in its correspondence dated 20.08.2018, 03.10.2018 and 11.10.2018. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. The Corporate Debtor has failed to appear before this Bench even after having service of notice of hearing. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor.
11. The Application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the Application deserves to be admitted.
12. The Applicant has proposed the name of Mr Pradeep V. Samant, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00164/2017-18/10433] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.
13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **TJSB Sahakari Bank Limited**, Financial Creditor / Applicant, against **KDJ HOLIDAY SCAPES AND RESORTS LIMITED**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Mr Pradeep V. Samant**, a registered insolvency resolution professional

having Registration Number **[IBBI/IPA-002/IP-N00164/2017-18/10433]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)

23rd September 2019