



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) – 734 (PB)/2022

**ORDER 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:

PUNJAB NATIONAL BANK

..... Applicant/Financial Creditor

REGISTERED OFFICE ADDRESS:
Plot No 4, Sector-10, Dwarka, New
Delhi-110075 IDENTIFICATION No.
U55101DL2010PTC211161

Versus

PELICAN GRAND MOTELS Pvt. Ltd

..... Respondent/Corporate Debtor

REGISTERED ADDRESS: 117,
ANAND VIHAR PITAMPURA NEW
DELHI DELHI-110034, INDIA CIN
No.: U55101DL2010PTC211161

ORDER PRONOUNCED ON: 28.02.2023

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Financial Creditor : Adv. S.K. Sharma
For the Corporate Debtor : Adv. Abhishek Gusain



ORDER

PER : AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application, filed by **Punjab National Bank** (Financial Creditor/Applicant), represented by Sh Nand Kishore Barnwal, Chief Manager of the Punjab National Bank, Zonal Sastra Centre, SCO 60-61, Ground Floor, Sector 17-B, Chandigarh-160017 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz., M/s Pelican Grand Motels Pvt. Ltd, for a total default in repayment of **Rs. 34,89,40,821.30** (Rupees Thirty-Four Crore Eighty-Nine lakh Forty thousand Eight hundred Twenty-one and thirty paise Only).
2. The Corporate Debtor was Incorporated on **07/12/2010**, having CIN:U55101DL2010PTC211161, under the Companies Act, 1956, with the purpose of doing business in hotels, camping sites and other provision of short stay accommodations. The registered office is at 117, Anand Vihar Pitampura, New Delhi- 110034, India. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor as accessed from the MCA website is annexed at **Annexure I/B**.
3. The present application was filed on 12.09.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make the re-payment of Rs.



34,89,40,821.30 (Rupees Thirty-Four Crore Eighty-Nine lakh Forty thousand Eight hundred Twenty-one and thirty Paise Only) as on 01.07.2022. A copy of the workings for computation of amount and days of default in a tabular form is annexed at **Part- IV of Application.**

4. It is submitted that in the month of November 2012, the Financial Creditor had sanctioned a loan of Rs 19.60 Crore and Fund Based Working Capital (FBWC) of Rs 0.30 crore vide sanction letter dated 10.11.2012 to the Corporate Debtor. Pursuant to this loan security documents were executed by the Corporate Debtor in favour of Financial Creditor to secure the above said credit facilities.
5. It is submitted that vide sanction letter dated 27.05.2015, the Financial Creditor has sanctioned an additional term loan of Rs. 9 Crore and reviewed an existing term loan of Rs. 19.60 crore and also renewed Cash Credit limit of Rs. 30 lakhs.
6. It is submitted that the Financial Creditor also sanctioned the OD limit against the tangible security of Rs 1.30 Crore, reduction of existing cash credit limit to nil and review of existing term loan of Rs 28.63 Crore as on 17.11.2015 in its favour on 14.12.2015.
7. It is submitted that vide sanction letter dated 27.12.2017, the Financial Creditor renewed/reviewed/sanctioned the following existing credit facility in favour of Corporate Debtor and also the Corporate Debtor had executed loan and security documents in favour of Financial Creditor:
 - The existing term loan of Rs. 19.60 Crore having a balance outstanding of Rs. 18.65 Crore was renewed as on 01.12.2017



- Existing term loan of Rs. 9.00 Crore having an outstanding balance of Rs. 8.43 Crore as on 01.12.2017
 - OD limit against tangible security of Rs 1.3 Crores.
8. It is submitted that Corporate Debtor has executed/signed balance and security on 12.03.2018 for the Account Number of the Corporate Debtor No- 118300IB00004192, 118300IB00004147 and 1183009300021622 whereby the balance confirmation was done by the Corporate Debtor for Rs 8,68,90,846, Rs 18,18,16,384 and Rs 1,21,26,517.13 and executed respectively.
9. It is submitted that the since the Financial Creditor failed to maintain the financial discipline and was irregular in servicing the said debt, the account of Corporate Debtor was declared as Non-Performing Asset (NPA) on 01.11.2019 wherein the outstanding balance as on that date was Rs 25,51,55,184 (Rupees twenty-five crores fifty-one lakhs fifty-five thousand one hundred and eighty-four only)
10. It is submitted that on 02.11.2019 the Financial Creditor issued a recall notice under Section 13(2) of the SARFESI Act, 2002 to the Corporate Debtor to discharge its liability.
11. It is submitted that the total amount claimed to be in default as on 1.07.2022 is as follows:

Account No. PNB118300IB00004147

[Term Loan]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs. 15,81,75,000.00	Rs. 15,81,75,000.00



Recorded Interest	Rs.72,12,280.63	Rs.6,87,40,553.42
Total Outstanding	Rs.16,53,87,280.63	Rs.22,69,15,553.00
Days past due	90 Days	973 Days

Account No. PNB118300IB00004192

[Term Loan]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs.7,26,75,000.00	Rs.7,26,75,000.00
Recorded Interest	Rs.32,51,354.51	Rs.3,16,31,010.51
Total Outstanding	Rs.7,59,26,354.51	Rs.10,43,06,010.51
Days past due	90 days	973 days

Account No. PNB1183009300021622

[ODIP]

Particulars	As on 01.11.2019	On 1.07.2022
Due	Rs.1,28,46,328.24	Rs.1,28,46,328.24
Recorded Interest	Rs.3,56,578.00	Rs.48,72,929.13
Total Outstanding	Rs.1,32,02,906.24	Rs.1,77,19,257.37
Days past due	90 days	973 days



TOTAL AMOUNT DUE AS ON 01.07.2022

Particulars	Amount (Rs)
Principal	24,36,96,328.24
Interest	10,52,44,493.06
Total	34,89,40,821.30

12. The Financial Creditor has placed the following Documents on record:

- i. True Copy of the Agreements of Loan/CC/OD, Overdraft and Term Loan at Annexure I/H.
- ii. Statement of Accounts along with certificate under Section 2A of the Banker's Book of Evidence Act 1891 at Annexure I/I.
- iii. True Copy of Recall Notice under Section 13(2) of SARFESI Act, 2002 DATED 02.11.2019 along with the objections under Section 13A and its counter reply at Annexure I/J.
- iv. Record of Default registered with the Information Utility at Annexure I/G.
- v. True Copy of Notice Under Section 13(4) of SARFESI Act, 2002 dated 27.07.2020 at Annexure I/K.
- vi. True Copy of Balance & Security Confirmation Letter dated 12.03.2018.

Analysis and Findings



13. We have heard the Ld. Counsel for the petitioner and respondents and perused the documents submitted. We find on 06.01.2023 during the course of hearing, the following order was passed:

“Today, when the matter was heard, Mr. S.K. Sharma, Ld. Counsel for other petitioner and Mr. Abhishek Gusain, Ld. Counsel for the respondent appeared. Notice was issued to the respondent on 17.10.2022. After service, it appears that the respondent has filed reply and served it on the petitioner’s counsel but the copy of the same has not been filed before the NCLT and when the query was raised to the counsel as to whether there is a date on which the reply was filed to the section 7 petition, he is unable to give a date or proof of the same to NCLT.

*Ld. Counsel for the respondent informed us that the reply has been filed vide diary No. 0710102074302022 on 29.11.2022. We find from the DMS that it is still continues under scrutiny and the respondent has not chosen to rectify the defects so as to bring it on record. **This shows the callous attitude on the part of the CD, as he is not defending the case hence we have no other option except to close the right of filing reply.***

Arguments heard. Order reserved.”

14. From the above order it is evident that though the right of Corporate Debtor for filing the reply was closed, but still the Corporate Debtor has submitted a brief synopsis (though not forming part of record and available on e-portal) of 3 pages to contend that:



- i. Financial Creditor/Bank was under an obligation to carry out the restructuring exercise after conducting the TEV (Technically and Economically feasible and viable) study and finding the unit is technically and economically feasible and viable.
 - ii. Various litigations were pending between the Financial Creditor & Corporate Debtor in the form of Writ, Proceedings under SARFESI Act, 2002 and Suit for Damages.
 - iii. Alleging Various Acts of Misrepresentations on behalf of the Financial Creditor/Bank.
15. The above objections do not come to the rescue of the Corporate Debtor inasmuch as the taking of loan and defaulting in repayment is not denied. Further, we are not bound to consider the above raised objections by the Corporate Debtor in view of the right for filing reply being already closed and the same also lacking merits.
16. We would now refer to Table-1 & 2 the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022 dated 14th June, 2022 which read as follows:

Regulation 21

“(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the following Tables”:

Table-1

<i>SI. No</i>	<i>Response of the Debtor</i>	<i>Status of Authentication</i>	<i>Colour of the Status</i>
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(1)	(2)	(3)	(4)
1	Debtor confirms the information of default	Authenticated	Green
2	Debtor disputes the information of default	Disputed	Red
3	Debtor does not respond even after three reminders	Deemed to be Authenticated	Yellow

“Provided that in case of Financial Creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, the information utilities will record the status of authentication of information default as indicated in the Table 2 Below”:

TABLE-2

SI. No.	Response of the debtor	Status of authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	(a) Debtor Confirms the information of default. or (b) Debtor does not respond even after three reminders	Authenticated	Green
2	Debtor disputes the information of default	Disputed	Red

17. We find that default has occurred in repayment of financial debt by the Corporate Debtor and the same is duly recorded with the Information Utility and petitioner has also attached NESL certificate indicating the default at



page 100-141 of the application with colour code being yellow. However, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, if the debtor does not respond even after three reminders then colour code will be green and the debt due will be treated as authenticated.

18. The account of Corporate Debtor was declared as Non-Performing Asset (NPA) on 01.11.2019 and the present application was filed on 12.09.2022, therefore within the limitation period for filing a section 7 application.
19. Financial Creditor has also relied on the judgment of Hon'ble Supreme Court in the matter of **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr (2019) 10 SCC 572** to state that the present applications falls within the period of limitation as the date of declaration of NPA is to be considered as the date of default for filing a section 7 application. Similarly, the judgment of Hon'ble NCLAT in the matter of **Rakesh Kumar Gupta v. Mahesh Bansal & Ors (2020) SCC OnLine NCLAT 419**. to hold that the pendency of actions under SARFESI Act or actions under Recovery of Debt and Bankruptcy Act, 1993 does not create an obstruction for filing an application under Section 7 of IBC.
20. A certificate under Section 2-A of the Banker's Book Evidence Act, 1891 has been filed by the Financial Creditor showing the total dues along with the account statements of the three loan accounts. The said certificate further discloses sufficient compliance with the provisions of the Banker's Book Evidence Act of 1891 and the same has been taken on record. Therefore, the applicant's plea of debt and default is evident enabling us to proceed as per the code,



In view of the above, we are inclined to allow this Petition

21. Further, we are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, which clearly held that:

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise”

22. Therefore, In the facts of the present case, we are satisfied that the present petition is maintainable and is within the period of limitation. Also, that the financial debt is due and there is a default in payment of debt.

ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -



- i. The Application bearing **C.P. (IB) – 734 (PB)/2022** filed by the **PUNJAB NATIONAL BANK**, the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **PELICAN GRAND MOTELS PRIVATE LIMITED**, the Respondent/(CD), is hereby admitted.
- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Applicant/(FC) has proposed the name of **PAWAN K GOEL** as the IRP. His email id is pawankgoel@gmail.com. His registration number is **IBBI/IPA-001/IP-P00203/2017-18/10392**. He has filed his written communication, (**Page 243, Volume 2 of the Application**) as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration (**Page 246, Volume 2 of the Application**). There is a declaration made by him that no disciplinary proceedings are pending against him with the Board Indian Institute of Insolvency Professional of ICAI. In addition, further necessary disclosures have been made by PAWAN K GOEL as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code.
Hence we appoint **Mr. PAWAN K GOEL** as the IRP of the Corporate Debtor.
- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under



Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The FC shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating



the status of the CD and specific mention regarding admission of this petition must be notified.

- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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**RAMALINGAM SUDHAKAR
(PRESIDENT)**

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**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**