



SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 28.08.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/620/2023 in CP (IB) No.248/7/HDB/2017
NAME OF THE COMPANY	Golden Jubilee Hotels Pvt Ltd
NAME OF THE PETITIONER(S)	Bank of Baroda
NAME OF THE RESPONDENT(S)	Golden Jubilee Hotels Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

This application is allowed and disposed of vide separate order.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

VL



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.620 of 2023 in
CP(IB) No.248/7/HDB/2017
Under Section 60(5) of IBC, 2016

In the matter of:

M/s. EIH Limited,
Regd. Office: 4, Mangoe Lane,
Kolkata – 700 001.

Corporate Office: 7, Shamnath Marg,
Delhi – 110 054.

.... Applicant

Vs.

1. Mr. Subodh Kumar Agarwal,
Resolution Professional of
Golden Jubilee Hotels Pvt. Ltd.,
Survey No.64, Besides Shilpakala Vedika,
Madhapur, Hyderabad – 500 081.
2. Telangana State Tourism Development Corpn. Ltd.,
Tourism House 3-5-891, Himayatnagar,
Hyderabad – 500 029.
3. Committee of Creditors,
Golden Jubilee Hotels Pvt. Ltd.,
Survey No.64, Besides Shilpakala Vedika,
Madhapur, Hyderabad – 500 081.

.... Respondents

And in the matter of:

Bank of Baroda

.... Financial Creditor

Date of order: 28.08.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)



Counsels present:

For the Applicant : Ms. Rubaina S Khatoon, Advocate
For the Respondent 1 : Mr. Y. Suryanarayana, Advocate
Heard on : 16.08.2023

[PER: BENCH]
ORDER

1. This application is filed by the Applicant M/s. EIH Limited, seeking for a direction to the 2nd Respondent not to take any coercive steps in furtherance of its Letter No.109164/AMC/TSTDCL/2006 dated 27.03.2023 and to restrain the 2nd Respondent from jeopardizing the hotel's operations by withdrawing the bar license, disconnecting electricity and water supply etc., due to non-payment of Lease Rental/ADP dues.
2. The facts, in brief, as presented in the application, are as follows:
 - a. Pursuant to the then Government of Andhra Pradesh proposal for construction and development of five-star Hotel at Madhapur on build, operate and transfer basis on the land owned by the State Government, a Development Agreement was executed with the State Government and the successful bidder Golden Jubilee Hotels Pvt. Ltd the Corporate Debtor (CD). As per Clause 5.1 (xx) of the



Development Agreement, the Technical Member of the Company shall be required to hold an equity stake not less than 16% of the proposed equity of the project company, as per the Schedule-F and continue its membership in the Consortium at least till the end of 4th year of operations.

- b. The then Government of Andhra Pradesh and the CD entered into a Lease agreement dated 09.05.2007. According to Clause No.2.4(b) of the Lease Agreement, the Lessee would open an Escrow account with a Nationalised Bank for payment of the lease fee before the due date and issue standing instructions to its bankers to transfer from its operating account to the Escrow account and from the Escrow account to the lessor.

- c. A Management Agreement dated 05.08.2006 was executed between the CD and the Applicant, enabling the Applicant to conduct operations of the Hotel in its individual capacity. The Applicant was referred to as 'Operator' and the CD as 'Owner', in the said Agreement. The Agreement was entered into to allow the Owner to obtain technical assistance services for planning, furnishing, equipping and decorating of the Hotel and Serviced Apartments and for the Operator to provide management services for the Hotel and Serviced Apartments, upon completion.



- d. As per Article V Clause 2.1.2 of the Management Agreement, all rents, rates, taxes, levies, assessments and/or impositions of any kind or nature by any local or Municipal Authority including, without limiting the generality of foregoing, ground rent, property tax, land and building tax, municipal or corporation tax or the like, howsoever characterized would be borne and met by the Owner.
- e. As per Article V Clause 2.3 of the Management Agreement, the Owner would be responsible for any rental charges, lease rentals, hire charges, or other costs and expenses for any rental, hire-purchase, and/or leasing arrangements made by the Owner for all items provided by the Owner as per the Agreement. Clause 3 of the Management Agreement states that the Owner must ensure that all payments are made by the Owner in relation to the Hotel, including repayment of loans and interest thereon.
- f. Hotel Trident commenced commercial operations on 01.09.2013 and the Applicant has been exclusively operating and managing the Hotel in terms of the Management Agreement since then, till date.
- g. On account of the CD defaulting in its payment obligation, Bank of Baroda, the Financial Creditor (FC), filed an application under Section 7 of IBC, 2016 and the same was admitted and the



moratorium was declared with respect to the CD. Claims were invited from the creditors of the CD. Resolution Professional (RP) is responsible for collating the claims. Respondent No.2 duly submitted its claims. On 30.04.2018, Respondent No.1 invited Expression of Interest (EoI) from prospective Resolution Applicants to submit their Resolution Plans.

- h. While so, the Applicant filed two applications stating that the CD going into CIRP, cannot have any bearing on the Operator related rights of the Applicant, as they were distinct rights from those of the CD and that such rights cannot be in any manner affected by the Resolution Process. Independently, the Applicant stated that it cannot be treated as a promoter of the CD, as it only was a minority Share Holder in the CD and had subscribed to such minimum percentage on account of the tender conditions requiring the Technical Member to also hold a certain percentage of Shares. The said applications were dismissed, while the application filed by the RP for sanction of the Resolution Plan was allowed. Moratorium ceased to have effect from 07.02.2020. The Applicant preferred an appeal against order dated 07.02.2020 which is pending before the Hon'ble NCLAT, New Delhi. Once a Resolution Plan is approved by NCLT, it becomes binding on all stakeholders, including the CD.



- i. Any prior existing claims against the CD need to be submitted to the RP in the prescribed manner. Once such claims are submitted and are collated, they are displayed in the Information Memorandum prepared by the Resolution Professional. Any claims not so made are treated as waived or exhausted. But once such claims are made, they are to be dealt with according to the provisions of IBC.

- j. Section 53 of the IBC prescribes a waterfall mechanism for distribution among the creditors, including the secured creditors who were given first priority. Any remaining funds are then distributed amongst equity shareholders.

- k. NCLT was pleased to grant the Resolution Applicant a period of one year from the date of approval of the plan, to obtain the written consent of the Government of Telangana for change of control and restructuring of the CD, and only after such written consent is obtained, the Resolution Applicant will have to implement the Resolution Plan submitted by it.

- l. The Successful Resolution Applicant filed IA No.509 of 2021, seeking an extension of six months to obtain necessary approvals



of Government of Telangana. A time of three months was granted by this Tribunal.

- m. The CIRP is still going on. The Trident Hotel is currently operational and generating good income and it has not been clearing its outstanding dues of lease rentals and ADP to Respondent No.2.
- n. Clause 5.1 (xx) stipulates that the Technical Member of the Company i.e. the Applicant is required to hold an equity stake not less than 16% and continue its membership in the Consortium. As the Applicant has been part of the operations of the Hotel, it has been informed that it is liable to clear the outstanding dues to Respondent No.2 which are Rs.85,63,76,178.05. The letter issued by Respondent No.2 states that either the Applicant or Respondent No.1 are to clear the same. It also mentions that failure to clear the dues within 15 days, Respondent No.2 would advise their internal departments to withdraw power supply, drinking water supply, and cancel the bar license immediately.
- o. In the said letter, which is dated 27.03.2023, Respondent No.2 refers to anterior dues and has not taken into account the mechanism as laid down under Section 30 of the IBC. Upon approval of the Resolution Plan, all claims stand extinguished and



the claims made by Respondent No.2 have already been calculated and placed in the Resolution Plan of the Blakstone Group, which was approved by this Tribunal on 07.02.2020.

- p. Respondent No.2 is trying to avoid the provisions of IBC. Even according to Article V Clause 3 of the Management Agreement, it is the Owner that is responsible for ensuring that all payments related to the Hotel, including loan repayments etc., are made promptly. The Owner is responsible for paying the Operator a management fee equivalent to 8% per annum of the Gross Operating Profit for each Fiscal Year, which includes applicable taxes. Once the Management Fee has been paid to the Operator, the Owner will receive the remaining balance of the Gross Operating Profit. This balance is calculated after the provision of Reserve for Replacement of Furniture, Furnishing and Equipment as set out in Article XX of the Management Agreement.
- q. Despite the absence of any fault on their part, the operation of the Hotel is currently under threat of disruption that will result in the stoppage of the CD's business as a "going concern".
- r. The Applicant addressed a letter to Respondent No.1 on 07.04.2023 referring the letter dated 27.03.2023 of Respondent No.2 and



informed Respondent No.1 that failure to pay the outstanding lease rent within 15 days is being threatened to result in Respondent No.2 instructing their internal departments to stop the power supply etc. and urged Respondent No.1 to take appropriate action.

- s. The Applicant addressed a letter to the Managing Director of Respondent No.2 clarifying that the initial letter should have been addressed to the Resolution Professional and that the latter was only a Nominee Director of EIH Limited on the board of Golden Jubilee Hotels Private Limited, which had been suspended on 27.02.2018 after CIRP.
- t. It is crucial to acknowledge that CIRP for the concerned CD has concluded and the Resolution Plan put forth by the Blackstone Group has been approved. The onus of ensuring the continuous operation of the CD's entity falls upon the Resolution Professional. Hence, this application.
3. Respondent No.2 remained *ex-parte*. Respondent No.1 filed Counter admitting the contentions made by the Applicant. It is further stated that the Resolution Plan approved by NCLT is under appeal before the Hon'ble NCLAT, New Delhi, and only after the outcome of the said appeal, any meaningful action can be resorted to by Respondent No.2.



- a. Respondent No.1 has taken personal visits to the office of Respondent No.2 and communicated through his letters, the legal position concerning the claims due to Respondent No.2. Respondent No.1 is statutorily duty bound to comply with the approved Resolution Plan and the provisions of the IBC and is legally bound to maintain the CD as a Going Concern. He also brought the subject matter before the Steering Committee and under their guidance, have written letters to the officials of Respondent No.2.

- b. Respondent No.2 is also one of the parties in the above appeal. Respondent No.1 is diligent in his duties and he has already informed to Respondent No.2 that any action which is coercive and which is likely to have a disruptive effect on the operations of the CD would be illegal and in contempt of Adjudicating Authority's Order.

- c. In the above background, Respondent No.1 seeks a direction to restrain Respondent No.2 from taking any disruptive action in respect of the operations of the CD.



4. Heard both the Counsel and perused the written submissions filed by both side which are almost a reiteration of their pleadings.
5. From the pleadings and the arguments, it is clear that Respondent No.2 has made a claim with regard to its dues pertaining to the period prior to the CIRP and that the same was dealt with by the Resolution Professional in accordance with the provisions of IBC, 2016.
6. According to the Management Agreement, the liability to pay the dues is, that of the CD and not that of the Applicant. The same is also not denied by the 1st Respondent. None appeared on behalf of Respondent No.2, to counter the contentions made by both the Applicant and the 1st Respondent.
7. The Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others (2019)* held that:

“the waterfall mechanism provided under Section 53 of the IBC is sacrosanct and the distribution of funds to the stakeholders must be done in accordance with the order of priority provided under the waterfall mechanism”.

Hence, the dues of Respondent No.2 have to be dealt with by the 1st Respondent under Section 53.



8. In the case of *Ghanashyam Mishra and Sons Ltd. Vs. Edelweiss*

Asset Reconstruction Co. Ltd., the Hon'ble Supreme held that:

“the Government and local authorities are bound by a Resolution Plan approved by the Adjudicating Authority and once a Resolution Plan is approved, it becomes binding on all stakeholders including the statutory creditors. Further held that the objective of the IBC is to balance the interests of all stakeholders involved in the resolution process and the statutory creditors cannot be treated differently from other creditors. It was further observed that the interests of the statutory creditors are adequately protected under the IBC, as they are given priority in the waterfall mechanism.”

9. The claims if any are to be submitted to the Resolution Professional and are already submitted in this case. Hence, taking coercive steps in order to realise the amounts for which they already made a claim, is sheer abuse of process of law.

10. In view of the above, we allow this application, directing Respondent No.2 not to take any coercive steps in furtherance of its Letter No.109164/AMC/TSTDCL/2006 dated 27.03.2023 and they shall not withdraw the bar license or disconnect the electricity and water supply.

11. In the result, **IA No.620 of 2023 in CP (IB) No 248/7/HDB/2017** is accordingly allowed and disposed of.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

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