

IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

C.P. No. IB-1053 (PB)/2020

IN THE MATTER OF

M/s. Citron Strategies Private Limited

.... Applicant/Financial Creditor

VERSUS

M/s. Leading Hotels Limited

.... Respondent/Corporate Debtor

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

Order Pronounced on: 25.06.2021

CORAM:

DR. DEEPTI MUKESH

MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA,

MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor: Mr. Abhinabh Garg &
Mr. Anirudh Bhatia, Advocate.

For the Corporate Debtor: Mr. Harshal Kumar, Advocate.

MEMO OF PARTIES

Citron Strategies Private Limited

Registered Office at:

602, Block-A, Naurang House, 21,
Kasturba Gandhi Marg,
Connaught Place,
New Delhi-110001.

.... Applicant/Financial Creditor

Versus

Leading Hotels Limited

Registered Office at:

131, 1st Floor, Ansal Chambers- II, 6,
Bhikaji Cama Place.
New Delhi-110066.

.... Respondent/Corporate Debtor



ORDER

Per- Dr. Deepti Mukesh Member (Judicial)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Citron Strategies Private Limited through its Director, Mr. Yogi Bhartari, who has been duly authorised vide Board Resolution dated 27.02.2020 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Leading Hotels Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 12.07.2012 having CIN U74140DL2012PTC238704. The applicant company is engaged in the business of Agro Commodity Broking, having its registered office at 602, Block-A, Naurang House, 21, Kasturba Gandhi Marg, Connaught Place, New Delhi-110001.



3. The Corporate Debtor is a limited company incorporated under the provisions of Companies Act, 1956 on 01.12.2005 having U55101DL2005PLC143141, the corporate debtor company is engaged in the business of hotels and camping sites, having its registered office at 131, 1st Floor, Ansal Chambers- II,6, Bhikaji Cama Place, New Delhi-110066.
4. The applicant had submitted that, the applicant had given a loan of Rs. 65,00,000/-, to the corporate debtor, as per the arrangement agreed between the parties in the form of Inter Corporate deposits "ICD" on 23.04.2015, for the period of 91 days, from the date of disbursement which is the same date as letter dated 23.04.2018, against which the corporate debtor had issued a letter of undertaking against the 1st ICD is reproduced here under:

"Securities provided by the corporate debtor to the applicant in lieu of the 1st ICD:

- i) Undertaking alongwith two post-dated cheques of Rs. 65,00,000 (Principal) and Rs. 2,47,944 (interest rate of 17%)*
- ii) Demand Promissory Note towards repayment of inter corporate deposit."*



S.No.	Cheque No.	Cheque Date	Amount (Rs.)	Bank Name & Branch on which the Cheque is drawn
1.	545853	23.07.2018	2,47,944/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048
2.	545854	23.07.2018	65,00,000/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048

The copies of the said Letter, Undertaking for Inter Corporate Deposit, Money Receipt and Demand Promissory Note all dated 23.04.2018 are annexed.

5. Thereafter, the corporate debtor again approached the applicant to provide an additional loan of Rs. 65,00,000/- in the form of 2nd ICD at the rate of 17% interest for the period of 96 days, from the date of disbursement which is same as the letter dated 18.07.2018, against which the corporate debtor had issued the similar letter of undertaking for the ICD is reproduced as under:

“Securities provided by the corporate debtor to the applicant in lieu of the 2nd ICD:

- i) Undertaking alongwith two post-dated cheques of Rs. 65,00,000 (Principal) and Rs. 2,61,567 (interest)*
- ii) Demand Promissory Note towards repayment of inter corporate deposit.”*



S.No.	Cheque No.	Cheque Date	Amount (Rs.)	Bank Name & Branch on which the Cheque is drawn
1.	546174	22.10.2018	2,61,567/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048
2.	606035	22.10.2018	65,00,000/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048

The copies of the said Letter, Undertaking for Inter Corporate Deposit, Money Receipt and Demand Promissory Note all dated 18.07.2018 are annexed.

6. Thereafter, as per the request of the corporate debtor vide its letter dated 23.07.2018 for the extension of 1st ICD on the aforementioned terms, the applicant agreed to grant the extension for the period of 90 days to the corporate debtor. The corporate debtor had further provided the same kind of fresh undertaking along with two post-dated cheques (covering the principal and interest amount) and a demand promissory note dated 22.10.2018. Copies of the said letter, undertaking and demand promissory note are annexed.



7. It is further, submitted by the applicant that, the corporate debtor had further, requested to merge both the ICDs amounting to total sum of Rs. 1,30,00,000/- and further sought an extension 91 days for repayment of the entire amount vide its letter dated 22.10.2018. the applicant agreed to it against which the corporate debtor had provided undertaking along with two post-dated cheques (covering the principal and interest amount of both the ICDs) and a demand promissory note dated 21.01.2019.

S.No.	Cheque No.	Cheque Date	Amount (Rs.)	Bank Name & Branch on which the Cheque is drawn
1.	546174	22.10.2018	4,95,887/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048
2.	606035	22.10.2018	1,30,00,000/-	Indusind Bank, M-56 GK-II Branch, New Delhi, 110048

The copies of the Rollover of ICD, Undertaking for ICD, Money Receipt, and Demand Promissory Note and copies of the post-dated cheques are annexed.

8. The corporate debtor vide its letter dated 21.01.2019 requested for an extension for the repayment of the ICD, on the same term and submitted a repayment plan with the proposed dates of

payment as 21.01.2019, 22.04.2019, 22.07.2019 and 22.10.2019. The extension for repayment for entire amount as requested by the corporate debtor scheduling with the proposed payment dates was accepted by the applicant with the security, given by corporate debtor.

9. Thereafter, on the expiry of last repayment date being 22.10.2019, the corporate debtor had requested for further extension of 213 days for repayment of entire amount. The applicant did not consent to any further extension/rollover. However, even after repeated requests by the applicant to the corporate debtor, for the repayment of the debt amount i.e Rs. 1,34,30,497/-, no repayment was made by the corporate debtor. Therefore, the applicant filed the present application under section 7 of the Code.
10. The Corporate debtor filed its reply and raised following contentions, objecting the admission of the application as follows:



- a) That, the applicant had filled the impugned application without proposing the name of the Interim Resolution Professional under Part -III of Form 1.
- b) That no debt is due and payable to the applicant, as the corporate debtor had duly paid the interest amount of Rs. 7,744,740/- on 21.10.2019, once and further deposited the interest for the period upto 21.10.2019 for the sum of Rs. 4,74,090/- on 19.12.2019 via RTGS with the additional instalment of Rs. 1,96,176/- on 21.02.2020.
- c) That, no default occurred on behalf of the Corporate Debtor as the applicant had duly accepted the post-dated cheque bearing No. 837747 of 1,30,00,000/- for the repayment of the ICD sent by the Corporate Debtor to applicant vide letter dated 19.05.2020.
- d) That applicant had accepted the request dated 21.10.2019 of the corporate debtor for the further extension/rollover and the repayment plan of ICD of Rs. 130 Lakhs. The corporate debtor had sent nine post-dated cheques towards the payment of Principal amount



on the different dates and the same was proposed to be due and payable on 31.12.2020.

- e) That, mere return of the cheque of Rs. 30,00,000/-, on the account of payment being stopped, if considered as the default committed by the corporate debtor, then the said default does not cover the threshold limit of 1 crore as mentioned under section 4 of the I&B Code, 2016 as notified.
- f) That, applicant vide its email dated 06.05.2020 and 13.05.2020 had duly acknowledged the receipt of the principal and the interest amount paid via post-dated cheques of the debt amount and also expressed its intention to encash the same. The same is placed on record.
- g) That, the applicant did not provide any explicit consent for the renewal of the ICD dated 22.10.2018 but thereafter the applicant duly received the interest for the same and never objected to the renewal of the ICD dated 22.10.2018. That, after receiving the interest amount in

the bank account of the applicant, the rollover of the ICD dated 21.10.2019 is denied.

11. The rejoinder was not filed, written submissions of the applicant states as under:

i) All the contentions of the corporate debtor are denied.

That there is no denial/dispute by corporate debtor, with respect to the debt amount of Rs. 1,34,17,781/- (as on 30.04.2020) disbursed in the account of the corporate debtor as per ICD dated 22.07.2019.

ii) There is also no denial/dispute by the corporate debtor, to the nature of the debt covered under the definition of financial debt as per section 5(8) of the Code.

iii) The applicant had denied any further extension for repayment of the debt vide its letter dated 21.10.2019. Hence, the corporate debtor is in default for the repayment of the interest and principal amount of the ICD i.e for the sum of Rs. 1,34,17,781/- as on

30.04.2020 and the said amount has increased to Rs. 1,55,36,959/- as on 15.04.2021.

- iv) That, mere sending of the post-dated cheques to the financial creditor does not amount to, deemed acceptance by the applicant. Further, even if the aforesaid argument is taken to be correct, then also the corporate debtor is in default as the last payment received by the corporate debtor was in Feb 2020, that also being the interest amount. There is still a clear default by the corporate debtor for both interest and the principal amount.
- v) That the applicant has proposed the name of IRP along with the application itself and form-2 is also annexed.
- vi) That, the scope of the Adjudicating Authority is confined to determining the existence of the debt and default. In this regards the applicant has relied upon the Judgment of the Hon'ble Supreme Court in Innovative Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407, in respect of showing the existence of debt and default.



12. Considering the submissions made and documents on record we are convinced that, default has occurred with respect to financial debt. It is observed that ex facie there is no satisfactory evidence produced by the corporate debtor with respect to the payment made to the applicant of its debt. Further, there is no document placed on record to substantiate the defense of the corporate debtor, that the default has not occurred. As long as the extension was granted by the applicant, debt was allowed to be restructured, but after the 21.10.2019 there is no document produced to show that the debt is not due and payable.

13. We are supported by the judgement 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 the case it may give

notice to the application to rectify the defect within 7 days of 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 may reject an application and not otherwise.”

14. It is submitted that the date of default is 22.10.2019 and the application is filed on 07.11.2020, which is well within the period of limitation and not barred by law.



15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The application is complete which is filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. This bench is satisfied that a default has occurred, and debt has remained unpaid. Thus, the application warrants admission as it is complete in all aspects and is admitted initiating CIRP as prescribed under the Code.
17. The Applicant has proposed the name of Insolvency Resolution Professional, Ms. Minni Katariya, having registration No. IBBI/IPA-003/IP-N00273/2020-21/13097, and email id minnik1943@hotmail.com. A written communication sent by her in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by her that no
- C.P No. (IB)/1058(PB)/2020**



disciplinary proceedings are pending against her in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Ms. Minni Katariya as per the requirement of the IBBI Regulations. Accordingly, she satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Ms. Minni Katariya as the IRP of the Corporate Debtor.

18. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to 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.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the

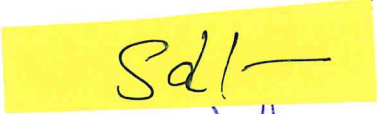


Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

20. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Ms. Minni Katariya to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the applicant. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.

21. The registry is directed to communicate a copy of the order to the Applicant, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at

the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

25.06.2021