

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

CP (IB) NO. 38/MB/2022

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(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)*

In the matter of

Raghuleela Estates Private Limited

CIN: U45200MH2003PTC142488

Registered Office: 301, Platina, Plot No. C-59,
G-Block, BKC, Bandra (East), Mumbai-
400098, Maharashtra

.... Financial Creditor

Versus

Kambala Hospitality Private Limited

CIN: U55100MH2006PTC160635

Registered Office at: 4 Floor, Raghuleela Mega
Mall, Behind Poisar- Depot, Off S.V. Road,
Kandivali West, Mumbai- 400057

.... Corporate Debtor

Reserved for order on 10.08.2022

Order pronounced on : 06.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member Technical)

Appearance:

For the Petitioner: Mr. Devanshi Sethi, Advocate

For the Respondent: None present

Per: Shri H.V. Subba Rao, Member (Judicial)

1. This Company Petition is filed by *Raghuleela Estates Private Limited* (hereinafter called “Financial Creditor”) seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Kambala Hospitality Private Limited* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved “Financial Debt of Rs. 6,05,00,000/- only.
2. The Financial Creditor submits that a total amount of Rs. 6,05,00,000/- (Rs. Six Crores Five Lacs only) was advanced as loan to the Corporate Debtor on 31.03.2019 by Wadhwa and Associates Realtors Pvt. Ltd. which by virtue of order dated 11.02.2021 passed by this Tribunal was amalgamated into the present Financial Creditor.
3. In spite of repeated request and despite assurances made from time to time and by various emails no amounts have been paid over by the Corporate Debtor. The Corporate Debtor has vide email dated 11.09.2019 confirmed its liability. Various emails have been exchanged between the Financial Creditor and the Corporate Debtor.
4. The Corporate Debtor did not repay the loan amount and the Financial Creditor has been consistently following up with the Corporate Debtor for repayment of the said loan amount. Since no money was forthcoming the Financial Creditor sent a notice recalling the loan amount on 25.08.2021 seven days of receipt of such notice to which the Financial Creditor has

received no reply. Accordingly, the Corporate Debtor has admittedly to pay the liability on or before 02.09.2021 but the same is not paid till date. Hence this petition.

5. The matter has been listed from time to time on board. Notice sent to the Corporate Debtor was returned with an endorsement "Left without instruction" as per service affidavit dated 23.02.2022 filed by the Petitioner. Therefore, the petitioner served notice on one of its directors, Mr. Deepak Bassi through speed post and the same was delivered on 27.01.2022. The copy of service of notice on Mr. Deepak Bassi along with track report is annexed at Page 10 of the service affidavit dated 23.02.2022. Since a notice on all or any of the directors of the Company is a deemed service on the company and since the Corporate Debtor failed to appear before this bench, the Corporate Debtor was set ex-parte vide order dated 23.02.2022.
6. Heard the counsel appearing for the Financial Creditor and perused the material available on record. The above Company Petition was filed on 13.01.2022 in respect of default committed by the Corporate Debtor. The Financial Creditor got issued recall notice dated 25.08.2021 recalling the loan amount of Rs. 6,05,00,000/-. The Financial Creditor invited the attention of this Tribunal to the email dated 11.09.2019 sent by the Corporate Debtor to them whereunder the Corporate Debtor confirmed its liability. The copy of the said email is annexed as Annexure 'F' which is reproduced herein below:

ANNEXURE 'F'

46 40

From: Tushar Sawant [mailto:tushar.sawant@thewadhwaigroup.com]
Sent: 24 August 2020 13:44
To: 'Arvind Sawant'; 'Nitin Nalawade'
Cc: 'deepakbassi@khplindia.com'
Subject: RE: Loan balance as on 31st March 2019

@Deepak, this is essential since we are related parties due to the stake holding and the Income tax department is very critical on such transactions to be on arms length.

We are finalising our books for the year ended March 2020. Would appreciate a line of confirmation that the entry has been passed.

Tushar

From: Arvind Sawant [mailto:arvind.sawant@thewadhwaigroup.com]
Sent: 24 August 2020 12:56
To: 'Nitin Nalawade'
Cc: deepakbassi@khplindia.com; Tushar Sawant
Subject: RE: Loan balance as on 31st March 2019

Dear Nitin,

This is with respect to loan of Rs.6.05 cr by Wadhwa and Associates Realtors Pvt. Ltd. to KHPL. To keep this transaction at arm's length under income tax we are providing interest @14% as on 31st March 2020. Please provide interest accordingly in the books of KHPL also.

Regards,

ARvind

From: Nitin Nalawade [mailto:nitinnalawade@khplindia.com]
Sent: 11 September 2019 18:37
To: Arvind Sawant
Cc: 'Rijwan Ansari'
Subject: RE: Loan balance as on 31st March 2019

Dear Arvind,

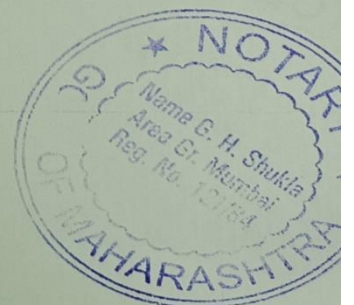
Balance as on 31st March'2019 is Rs.6,05,00,000/- is confirmed..

Regards,
Nitin N Nalawade

From: Arvind Sawant [mailto:arvind.sawant@thewadhwaigroup.com]
Sent: Wednesday, September 11, 2019 3:50 PM
To: Nitin Nalawade
Subject: Loan balance as on 31st March 2019

Dear Nitin,

Please confirm loan balance of Rs.6,05,00,000/- as on 31st March 2019 outstanding with KHPL from loan given by Wadhwa and Associates Realtors Pvt. Ltd.



7. After hearing the submissions of the counsel appearing for the Financial Creditor this bench notes that the Financial Creditor has successfully demonstrated and proved the existence of debt and default and the debt is also within limitation. The Financial Creditor has also suggested the name of the Interim Resolution Professional in Form-2 along with his consent letter. Since the Corporate Debtor remained ex-parte even without filing any reply and since the Corporate Debtor confirmed its liability, the claim of the applicant remained unchallenged. Thus, this Company Petition satisfies all the requirements for admission.
8. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. 38/IBC/MB/2022 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kambala Hospitality Private Limited.
- b. This Bench hereby appoints Mr. **S. Gopalkrishnan**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00151/2017-18/10398, having Registered Address at: R-2/202, Moraj Riverside Park, Takka, Pandal- 410206 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in

favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 - i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
 - j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
 - k. Accordingly, this Petition is admitted.
 - l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADH SANJAY BHATIA
Member (Technical)

Sd/-
H V SUBBA RAO
Member (Judicial)