

ORDER

Per : Sh. L.N. GUPTA, M (T) & Sh. HARNAM SINGH THAKUR, M (J)

Punjab National Bank (for brevity, the **“Applicant”**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **‘IBC, 2016’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Garib Nawaz Hotels Pvt Ltd. (for brevity, the **"Respondent"**)

2. The Respondent namely, Garib Nawaz Hotels Pvt Ltd. is a Company incorporated on 07.11.2008 with CIN U01403CH2008PTC031426 under the provisions of the Companies Act, 1956 having its registered office at 29/7, Industrial Area, Phase-II, Chandigarh- 160002, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs. 50,00,000/- and the Paid-up Share Capital of the Company is Rs. 50,00,000/- as per the Master Data.

3. In its application, it is averred by the Applicant that vide sanction letters dated 17.06.2010, 01.06.2011, 27.12.2012, 29.09.2015 and 17.04.2014, it had sanctioned credit facilities like Term Loan, Car Loan, Bank Guarantee, etc., aggregated to Rs. 38 Crores ("Credit Facilities") in favour of the Respondent.

4. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of its application read thus:

Part-IV		
PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>The Corporate Debtor has been sanctioned the following credit facilities:</p> <p>a) Date of sanction: 17.06.2010 for Term Loan of Rs.1700 lakh & Bank Guarantee of Rs.27.73 lakh</p> <p>b) Date of Sanction: 01.06.2011 for Term Loan of Rs.400 lakh & Bank Guarantee of Rs.82.27 lakh (enhanced from Rs.27.73 lakh to Rs.110 lakh)</p> <p>c) Restructuring of Term Loans and Bank Guarantee for total amount of Rs.2539.83 lakh</p> <p>d) Date of Sanction: 27.12.2012 for Term Loan of Rs.500 lakh</p> <p>e) Date of Sanction: 29.09.2015 for Term Loan of Rs.900 lakh</p> <p>f) Date of Sanction: 17.04.2014 for Car Loan of Rs.13,29,000/-</p> <p>Copies of sanction dated</p>

		<p>17.06.2010, 01.06.2011, 27.12.2012, 29.09.2015 & 17.04.2014 are annexed as <u>Annexure A-6 to A-10</u> (Page 78-109) respectively.</p> <p><u>Date of disbursement:</u> On various dates during the year 2010, 2011, 2012, 2014 & 2015.</p>
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Rs.29,46,26,936/- as on 31.05.2019</p> <p>The computation of amount and Calculation of interest and total amount of default, in tabular form are collectively annexed as <u>Annexure A-11</u> (Page 110-114).</p>

5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 29,46,26,936/- as on 31.05.2019. It has been added that the Account of the Respondent Company was classified as NPA on account of default on 09.10.2017. Since no specific date of default has been mentioned by the Applicant, even by taking the date of NPA as date of default, the application having been filed on 07.006.2019 is well within the limitation. Details of the defaulted amount claimed in Part IV of the Application has been provided by the Applicant on Page 43 of the Application, which reads thus:

COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891)	
Statements of accounts as on 31.05.2019 duly certified under Bankers' Books Evidence Act, 1891 and Computer Certificate regarding the software used by the financial creditor are annexed as <u>Annexure A-17 to A-22</u> respectively (Page 181-245) respectively.	
The details of the accounts are as follow:-	
a) Term Loan-....IC-45:	Rs.14,65,64,791/-
b) Term Loan-....IC-63:	Rs. 2,80,15,920/-
c) Term Loan-....IC-81:	Rs. 1,61,46,258/-
d) Term Loan-...IC-100:	Rs. 4,14,77,884/-
e) Term Loan-....NE-35:	Rs. 6,13,01,595/-
f) Car Loan-....NG-43:	Rs. 6,52,420/-
g) Expenditure :	Rs. 4,68,068/-
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Total	: Rs.29,46,26,936/-

6. It is further submitted that on 29.08.2018, the Applicant Bank issued the Loan Recall Notice-cum-invitation of Guarantees, calling upon the CD and other obligors to pay the defaulted amount.

7. In support of its contention, the Applicant has relied upon the following documents:

- i. Sanction Letters dated 17.06.2010, 01.06.2011, 27.12.2012, 29.09.2015 & 17.04.2014.
- ii. ROC showing the charge of the properties in favour of the Financial Creditor.
- iii. Notice to defendants in OA No. 2164/2018, case titled Punjab National Bank Vs. M/s Garib Nawaz Hotels Private Ltd., for recovery of Rs. 27,00,81,532/- issued vide order dated 18.09.2018. Copy of reply dated 25.04.2019 in this recovery suit.
- iv. Notice dated 18.10.2017 under section 13(2) of the SARFAESI, Act 2002 along with postal receipts.
- v. Demand Notice dated 29.08.2018 along with postal receipts.
- vi. The Latest and complete copy of the Financial Contract reflecting all amendments and waivers.
- vii. CIBIL Report dated 01.06.2019.
- viii. Statements of accounts as of 31.05.2019 duly certified under Bankers' Books Evidence Act, 1891 and Computer Certificate regarding the software used by the financial creditor.

8. Based on the abovementioned facts and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

9. On the issuance of notice, the Respondent /CD through its Managing Director Mr. Sunil Kumar Bansal filed its reply dated 16.12.2019 and written submissions dated 07.03.23 stating mainly, the following:

9.1 There is no specific authorization attached or shown to have been given to the person filing the present application to initiate the present application under Section 7 of the IBC 2016. It is purportedly filed by one Mr. Ved Prakash, who is stated to be Manager, Assets Recovery Management Branch, Sector 17-B, Chandigarh, of the Applicant Bank, declaring that the said Mr. Ved Prakash is duly authorized to file the present application vide power of attorney dated 21.08.2015 annexed as Annexure A-1 to the Application. No date is mentioned on the alleged power of attorney at all and is not shown as to how and under what authority Applicant Bank has authorized Mr. Ved Prakash to file the present Application. Thus, the said power of attorney is bad in law and the same renders the present application as non-maintainable and liable to be rejected.

9.2 The alleged power of attorney is prima facie grossly incomplete as certain pages are missing from the said power of attorney and it does not bear the proper signatures and stamp of the Executant of the Power of attorney or the purported attorney Mr. Ved Prakash himself. The said Power of attorney does not even bear the signatures of any witness to it

and also does not mention anything about the designation or any employee identification of Mr. Ved Prakash. Thus, the present application is liable to be rejected at the threshold.

9.3 The Applicant approached the Respondent Company for takeover of a loan from Punjab & Sind Bank (PSB), to which they agreed and the applicant bank offered that a rebate of 1% would be given to it on interest to be charged. But the applicant bank backed out of its promises and has wrongly calculated the interest while filing the case, without considering the rebate of 1% which led to erosion of capital/money in the form of extra payment of interest that could otherwise be utilized towards the repayment of the existing loan amount.

10. While perusing the record, it is seen from the order dated 21.03.2022 that a third party namely, TDS Management Consultant Pvt Ltd. (or TDS in short, claiming to be a 50% shareholder) represented by Mr. Arvind Baloni through Mr. Anil Kumar Aggarwal, Advocate also filed a reply vide CA No. 903/2019, which was taken on record. TDS filed its reply dated 18.10.2019 and written submissions dated 06.01.23 submitting mainly, the following: -

10.1 When the corporate debtor was in financial crisis, its directors Mr Sunil Kumar Bansal and Mrs. Priyanka Bansal (for short, "**the Bansal's**") approached the TDS Management Consultant Pvt. Ltd. (**for short, "TDS"**) with the proposal that the TDS may purchase a stake in the hotel by

becoming not less than 50% shareholder in the corporate debtor. Accordingly, an MOU dated 16.12.2017 was executed between the TDS and the corporate debtor through its Director Mr. Sunil Kumar Bansal. According to this MOU, TDS was allotted/ transferred 50% shares in the share capital of the corporate debtor and its nominee Mr. Arvind Baloni was appointed as a director of the corporate debtor.

10.2. The applicant Bank has been acting in connivance and collusion with the promoters/directors of the company namely Mr. Sunil Kumar Bansal and Mrs. Priyanka Bansal. The applicant had directly or indirectly allowed the said promoters/directors of the corporate debtor to open and operate bank accounts in other banks. Hence the applicant cannot take advantage of their own wrong.

10.3 The applicant bank has concealed the material fact that it has given loans/ credit facilities of the amount aggregating to Rs. 11.45 crores to M/s Garib Nawaz Polymers Private Limited which is the private company of “Bansals” and in violation of Section 295 of the Companies Act, 1956 (now Section 185 of the Companies Act, 2013) it has illegally mortgaged/hypothecated/charged the hotel property and other assets of the corporate debtor as security and has also taken guarantee of the corporate debtor for securing the loans/credit facilities given by it to M/s Garib Nawaz Polymers Private Limited.

10.4 The applicant bank has further concealed the material fact that it has given loans/ credit facilities of the amount aggregating to Rs. 10.90 crores to M/s G. N. Pets which is a proprietorship Firm of Mr. Sunil Kumar Bansal, a Director of the Corporate Debtor. And in violation of Section 295 of the Companies Act, 1956 (now Section 185 of the Companies Act, 2013) the bank has illegally mortgaged/hypothecated/charged the hotel property and other assets of the corporate debtor as security and has taken guarantee of the corporate debtor for securing the loans/credit facilities given by it to M/s G.N. Pets. Giving of such security or guarantee by the corporate debtor for the loans of a proprietorship firm of its Director is prohibited under Section 295 of the Companies Act 1956. Hence, the security and guarantee given by the Corporate Debtor for the loans/ credit facilities of M/s G.N. Pets are illegal, null and void.

10.5 The application has not been filed with proper resolution/authorization. The General Power of Attorney attached with the application in favour of Mr. Ved Prakash, Manager of PNB is not signed by any officer of the bank. Moreover, all the pages of the impugned power of attorney have not been placed on record. The incomplete and unsigned General Power of Attorney is null and void and it cannot be admitted in evidence as such. The authority letter attached with the application dated 06.06.2019 is signed by another officer not named in the power of attorney and it is not supported by the resolution of the Board of Directors of the bank.

11. In rebuttal, the applicant has filed a Rejoinder dated 06.01.2020 to the reply filed by the Corporate Debtor; a rejoinder dated 12/08/2022 to the reply filed by TDS and written submissions dated 17.02.23 stating mainly the following:

11.1 The General Power of Attorney dated 21.08.2015 has been issued by the competent authority of the Applicant Bank in favour of Sh. Ved Prakash, the Manager by whom the present application under Section 7 has been filed. However, inadvertently, the last page of the GPA could not be annexed to the main application. It is contended that the GPA dated 21.08.2015 is complete in all respects and the affidavit of the said manager in support are annexed as Annexure A-2 & A-3 respectively. Soon after filing of the application, the original GPA complete in all respects was also exhibited before the Ld. Registrar, as per the laid down procedure. In para 4 of the GPA, it has been incorporated that the GPA holder has the power to do and transit singly the following acts and matters and things as mentioned therein. The GPA holder has also been authorized to take steps to initiate Insolvency and Liquidation Proceedings against the debtors of the bank, to appear and Act in a Court of Insolvency and Liquidation Judge, to file claims etc. As such, the GPA issued by the competent authority of the bank is genuine and valid. In addition to the GPA, the specific authority dated 06.06.2019 (Annexure A-2 of the application) issued by the Assistant General Manager of the bank, who is

in charge of the branch of the Financial Creditor, has also been placed on record.

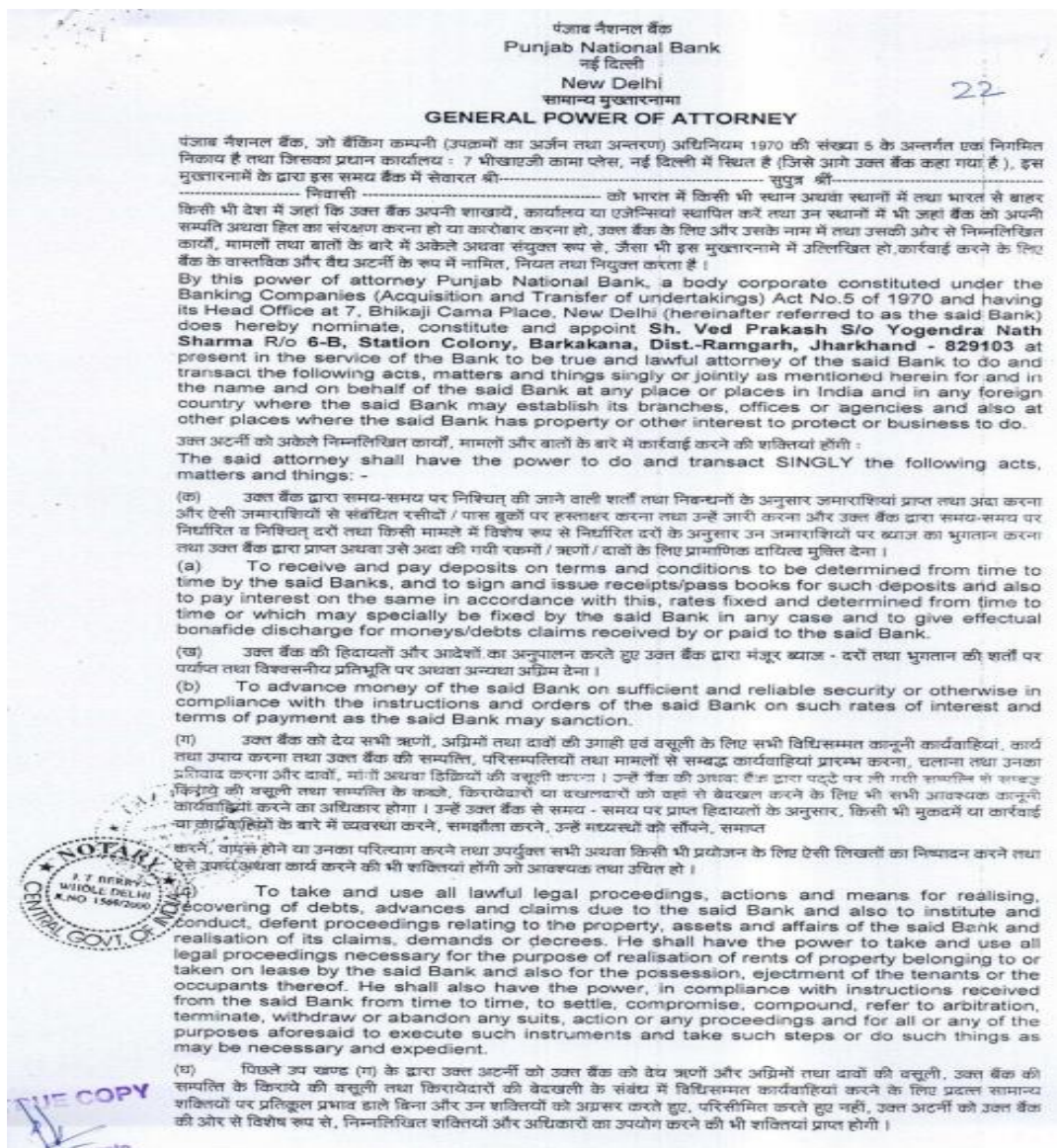
11.2 No such pre-condition of rebate in rate of interest (as claimed by the respondent) has ever been offered by the Financial Creditor to the Corporate Debtor. The floating rate of interest has been charged by the Financial Creditor according to the terms and conditions of the sanction of the credit facilities and loan and security documents executed by the Corporate Debtor along with guarantors and mortgagors.

12. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by both parties. The Respondent in its defence has contended that the application has not been filed with proper resolution/authorization of the Bank. The General Power of Attorney attached with the application in favour of Mr. Ved Prakash, Manager of PNB is not signed by any officer of the bank and is incomplete as certain pages are missing.

Per Contra, the Applicant has annexed various documents to prove that the General Power of Attorney dated 21.08.2015 has been issued by the competent authority of the bank in favour of Sh. Ved Parkash, the Manager by whom the application u/s 7 has been filed. During the hearing, Ld. Counsel stated that inadvertently, the last page of the GPA could not be annexed with the application. In support of its contentions, the Ld. Counsel for the Applicant referred to the GPA dated 21.08.2015

and affidavit of the said manager in support annexed as Annexure A-2 & A-3 respectively in rejoinder and the specific authority dated 06.06.2019 (Annexure A-2 of the application) issued by Assistant General Manager of the bank, who is in-charge of the branch of the Financial Creditor.

13. To examine the contention of the respondent regarding the "GPA", we refer to the document i.e., "The General Power of Attorney placed by the applicant in its Rejoinder (Pages 21 -25)" which reads thus:



23

(d) Without prejudice to the general powers granted to the said attorney by the proceeding sub-clause(c) regarding taking lawful proceedings for recovering debts and advances and claims due to the said Bank, for the purpose of realisation of rents of property and for ejectment of tenants of the said Bank, and in furtherance but not in limitation thereof, the said attorney shall have, in particular, the following powers and authorities to be exercised by him on behalf of the said Bank.

(i) मुकदमे चलाने, अपील, पुनरीक्षण, याचिकाएं, कानूनी कार्यवाहियां तथा आवेदन - पत्र वापर करने तथा उनका प्रतिवाद करने की शक्ति।

To institute suits, to file appeals, revisions, writs, legal proceedings and applications and defends the same.

(ii) उक्त बैंक की ओर से किसी भी आरम्भिक अधिकारिता वाले न्यायालय, अपील पुनरीक्षण न्यायालय, सिविल, फौजदारी तथा राजस्व न्यायालयों, अधिकरणों तथा कार्यालयों / अधिकारियों के समक्ष उपस्थित होने तथा कार्यवाई करने और ऐसे न्यायालयों, अधिकरणों तथा कार्यालयों के समक्ष उपस्थित होने के लिए उक्त बैंक की ओर से वकील करने की शक्ति।

To appear and act on behalf of the said Bank in any court of original jurisdiction, court of appeal, revision, in civil, criminal, revenue courts, tribunals and office/offices and to engage counsel on behalf of the Bank for such courts, tribunals and offices.

(iii) उक्त बैंक की ओर से नीलामी - विक्रयों में बोली लगाने की शक्ति।

To bid at auction sales on behalf of the said Bank.

(iv) उक्त बैंक के ऋणकर्ताओं के विरुद्ध फौजदारी कार्यवाही / कार्यवाई तथा दिवाले और समापन की कार्यवाही करने, दिवाला और समापन न्यायाधीश के न्यायालय में और शासकीय रिसेवर तथा समापक के समक्ष उपस्थित होने और कार्यवाई करने, दावे दाखल करने, दिवाला तथा समापन न्यायालय में और शासकीय रिसेवर तथा समापक के समक्ष उक्त बैंक के ऋणों को सिद्ध करने, दिवालियों की दायित्व मुक्ति का विरोध करने और किसी भी दिवाले अथवा समापन मामले के संबंध में दिवाला अथवा समापन न्यायालय द्वारा घोषित लाभों को वसूल / प्राप्त करने की शक्ति।

To take criminal proceedings/action and take insolvency and liquidation proceedings against the debtors of the Bank, to appear and act in a court of insolvency and liquidation judge and before the Official Receiver and Liquidator, to file claims prove debts of the said Bank in the insolvency and liquidation Court and before the Official Receiver or Liquidator, to oppose discharge of the insolvent and to collect/receive dividend declared by the insolvency or liquidator court in respect of any insolvency or liquidation case.

(v) उक्त बैंक द्वारा खरीदे गये स्टाम्पों को राशि की वापसी के लिए आवेदन करने तथा धन - वापसी - वाउचर प्राप्त करने की शक्ति।

To apply for refund of stamps purchased by the said Bank, and to obtain refund vouchers.

(vi) उक्त बैंक के देनदारों के लेनदारों की किसी भी बैठक अथवा ऐसे देनदारों के दिवाले या समापन के संबंध में उनके लेनदारों को किसी भी बैठक में उपस्थित होने, भाग लेने और किसी भी ऐसी कम्पनी के शेयरधारियों को बैठक में भाग लेने की शक्ति जिसका उक्त बैंक भी शेयरधारी अथवा डिबेन्चरधारी हो।

To appear in and attend any meeting of the creditors of the debtors of the said Bank, or any meeting of creditors of such debtors in connection with their insolvency or liquidation and also to attend meetings of the share-holders of any company in which the said Bank is a share-holder or debenture holder.

(k) सम्पत्ति हस्तांतरण रजिस्ट्रार अथवा उप-रजिस्ट्रार के कार्यालय से उक्त बैंक के नाम तथा पक्ष में रजिस्टर्ड दस्तावेजों को प्राप्त करने की शक्ति।

(e) To receive back from the Office of the Registrar or sub-Registrar of Assurances, documents registered in favour of and in the said Bank.

(c) उक्त बैंक के खजाने, सुरक्षित जमा कक्ष, कार्यालय बहियों, लैजर्स, स्टाम्पों, पत्रों, कार्यालय / विभागों की कर्मचारियों और सेवारत अन्य व्यक्तियों पर नियंत्रण रखने तथा पर्यवेक्षण की शक्ति।

(f) To keep control and supervision over treasury, sale deposit vault, office books registers, stamps, correspondence, keys of the office/departments and employees and servants of the said Bank.

(g) भारत अथवा भारत से बाहर किसी भी देश में किसी भी बैंक तथा वित्तीय संस्थानों / प्राधिकरणों में उक्त बैंक की ओर से उसके नाम से खाते खोलने, चलाने तथा बन्द करने और समय - समय पर किसी भी बैंकों तथा वित्तीय संस्थानों, प्राधिकरणों में उक्त बैंक के खातों की जांच करने, उन्हें निपटाने, समायोजित करने की शक्ति।

(g) To open operate and close accounts on behalf of and in the name of the said Bank with any Banks and financial institutions/authorities in India or in any foreign country and periodically to examine, settle and adjust accounts of the said Bank with any other Banks, and financial institutions/authorities whatsoever.

(j) सामान्य कारोबार के दौरान भारतीय रिजर्व बैंक, भारतीय स्टेट बैंक अथवा अन्य बैंकों से ओवरड्राफ्ट, नकद उधार, मांग ऋणों के रूप में अथवा अन्यथा धन उधार लेने तथा इन ऋणों के पुनर्भुगतान की प्रतिभूति के रूप में उक्त बैंक के सरकारी बंधन - पत्रों, शेयरों अथवा प्रतिभूतियों या परिसम्पत्तियों को गिरवी, बंधक अथवा दृष्टिबंधक रखने तथा इस प्रयोजन के लिए अथवा इस संबंध में सभी बीमों, डिपोजिटों, बंधन - पत्रों, प्रतिभूतियों, बंधकों तथा रसीदों पर हस्ताक्षर करने, उन्हें निष्पादित करने तथा रजिस्टर करने, उनकी सुपुर्दागी देने तथा उनका नवीकरण करने और ऐसी प्रतिभूतियों या परिसम्पत्तियों का परिक्रमण, पृष्ठांकन समनुदेशन, हस्तांतरण करने की शक्ति।

(h) To borrow money, in due course of business from the Reserve Bank of India, State Bank of India or other Banks by way of overdraft, cash credit, demand loans or otherwise and to secure or repayment thereof by pledge, mortgage or hypothecation of Government promissory notes, stock, shares or other securities or assets of the said bank land for that

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purpose or in connection therewith to sign, execute, register, deliver and renew all assurances, deeds, promissory notes, securities, mortgage and receipts and to negotiate, endorse, assign, transfer any such securities of assets.

24

(क) उक्त बैंक और / अथवा उसके कर्मचारियों के लिए कार्यालय - परिसर या अन्य प्रकार की अचल सम्पत्ति पट्टे पर लेने तथा इस संबंध में आवश्यक पट्टा - विलेख को निष्पादित करने तथा उसे रजिस्टर करवाने की शक्ति।

(i) To take office premises or other immovable property on lease for purpose of the said bank and/or its employees and to execute necessary lease deed and to have the same registered.

(ग) चेकों, ड्राफ्टों, हुण्डियों, विनिमय - बिलों, वचन - पत्रों तथा अन्य लिखतों को तैयार करने, काटने, उन पर हस्ताक्षर करने या उन्हें पृष्ठांकित करने, खरीदने, बेचने, भुनाने अथवा स्वीकार, वसूल करने की शक्ति।

To make, draw, sign or endorse, purchase, sell discount or accept, collect cheques, drafts, hundies, bills of exchange, promissory notes and other instruments.

2. उक्त अटर्नी को उक्त बैंक के किसी अन्य मुख्तारनामा - धारक के साथ जिन्हें कि उनके पक्ष में दिये गये मुख्तारनामा द्वारा प्रदान अपेक्षित शक्तियां तथा प्राधिकार प्राप्त हों, संयुक्त रूप से अथवा बैंक द्वारा इस संबंध में विशेष रूप से प्राधिकृत किसी अन्य अधिकारी के साथ संयुक्त रूप से निम्नलिखित कार्यों, मामलों तथा बातों के संबंध में कार्रवाई करने का प्राधिकार तथा शक्ति प्राप्त होगी।

The said attorney shall have the authority and power to do and transact any of the acts matters and things mentioned hereunder JOINTLY with any other power of Attorney-holder of the said Bank, having and possessing the requisite power and authority conferred on him by the power of attorneys in his favour or jointly with another officer specially authorised by the Bank in this behalf.

(क) उक्त बैंक द्वारा समय - समय पर निर्धारित शर्तों तथा निबंधनों के अनुसार उक्त बैंक के नाम से तथा उनकी ओर से चांदी तथा सोने के सिक्कों और बुलियन तथा अन्य देशों के करेंसी नोटों को खरीदना तथा बेचना।

(a) To buy and sell silver and gold coins and bullion and currency notes of other countries in the name and on behalf of the said bank on terms and conditions as determined from time to time by the said Bank.

(ख) उक्त बैंक की राशि का सरकारी प्रतिभूतियों, बूनिटों, कम्पनियों के शेयरों तथा अन्य प्रतिभूतियों में निवेश करना। वह उक्त बैंक द्वारा निर्धारित रूप से उक्त प्रतिभूतियों की आगे की बिक्री, समनुदेशन, हस्तांतरण कर सकते हैं अथवा अन्यथा उनका निपटारा कर सकते हैं। उन्हें उक्त बैंक के प्राहकों के लिए सरकारी प्रतिभूतियों, शेयरों तथा अन्य प्रतिभूतियों को बेचने और खरीदने तथा ऐसी प्रतिभूतियों के लाभों का / ब्याज की राशि तथा मूलधन की राशि प्राप्त करने की भी शक्ति प्राप्त होगी।

(b) To invest money belonging to the said Bank in Government securities, units shares of companies and other securities. He may further sell, assign transfer or otherwise dispose of the said securities as determined by the Bank. He shall also have the power to sell and buy Government Securities, shares and other securities for customers of the said bank and to collect the amount of dividend/interest and principle of such securities.

(ग) उक्त बैंक द्वारा समय - समय पर निर्धारित शर्तों तथा निबंधनों पर सुरक्षित अधिरक्षा में रखने के लिए सामान / वस्तुएं प्राप्त करने की शक्ति।

(c) To receive articles/things for safe custody on terms and conditions as determine from time to time by the said Bank.

(घ) बैंक के कारोबार के प्रयोजन के लिए उक्त बैंक की ओर से तथा उसके नाम से सभी सविदाओं, करारों, किलेखों, अंतरणों, समनुदेशनों, लिखतों पर हस्ताक्षर करना, उन्हें तैयार करना तथा कोई भी अन्य कार्य करना। उन्हें ऐसी सभी सविदाओं तथा करारों का नवीकरण करने, उनमें परिवर्तन करके तथा उन्हें दायित्वमुक्त करने और उनके नवीकरण, उनमें परिवर्तन तथा दायित्वमुक्त के लिए अपेक्षित सभी कार्य करने की शक्ति प्राप्त होगी।

(d) To sign, make execute and do on behalf and in the name of the said bank all contracts, agreements, deeds, transfers, assignments, instruments and other things whatsoever for the purposes of the business of the bank. He shall also have the power to renew, vary and discharge all such contracts and agreements and do all things requisite for obtaining a renewal, variation and discharge thereof.

(इ.) गारंटियां तथा क्षतिपूर्तियां देना तथा उनका निष्पादन करना।

(e) To give and execute guarantees and indemnities

उक्त बैंक के कारोबार के प्रयोजन के लिए उक्त बैंक की ओर से तथा उसके नाम से सभी सविदाओं, करारों, किलेखों, अंतरणों, समनुदेशनों, लिखतों पर हस्ताक्षर करना, उन्हें तैयार करना तथा कोई भी अन्य कार्य करना। उन्हें ऐसी सभी सविदाओं तथा करारों का नवीकरण करने, उनमें परिवर्तन करके तथा उन्हें दायित्वमुक्त करने और उनके नवीकरण, उनमें परिवर्तन तथा दायित्वमुक्त के लिए अपेक्षित सभी कार्य करने की शक्ति प्राप्त होगी।

GENERAL: - The said attorney, by virtue of these presents shall have the power to do generally everything requisite for all or any of the aforesaid purposes and also for other general banking business, usually done and transacted by Banks and sign on behalf and in the name of the said Bank in the usual and ordinary course of business.

TRUE COPY
Advocate



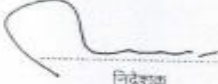
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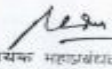
4. बोर्ड के दिनांक के संकल्प संख्या) के अन्तर्गत गठित की गयी निदेशक-
 मण्डल की समिति जिसमें श्री शामिल हैं, ने अपने दिनांक
 संकल्प सं. के द्वारा श्री को
 बैंक के लिए और बैंक की ओर से अद्वितीय रूप में नियुक्त किया है तथा उन्हें अनुमोदित दृष्ट के अनुसार इस मुकररनामे में
 उल्लिखित शक्तिया प्रदायीकृत की हैं।
 That the Committee of the Board of Directors, consisting of Shri Gauri Shankar,
 Executive Director, Shri K.V.Brahmaji Rao, Executive Director Dr Ram S
 Sangapure, Executive Director, Shri Dilip Kumar Saha, Director and Shri T.C Jhalani,
 Director constituted under Board Resolution No.4 Dated 23.12.2014, has by its
 Resolution No. 1 dated 21.08.2015 appointed Sh. Ved Prakash as an attorney for
 and on behalf of the Bank and delegated to him the powers hereinbefore mentioned,
 as per draft approved by the Board.


इसके साक्ष्य स्वरूप बैंक के निदेशक श्री ने यह विवेक नियमित किया है
 और इस पर बोर्ड के दिनांक के संकल्प सं. के अनुसार अपनी उपस्थिति
 में बैंक की सामान्य मुद्रा लगायी है तथा बैंक के श्री ने उक्त संकल्प के
 अनुसार इस विवेक पर 20 के मास की तारीख को
 उक्त पर लिखे हैं :


In witness whereof Shri Dilip Kumar Saha a Director of the Bank has executed this deed
 presents and has caused the common seal of the Bank to be affixed hereunto in his
 presence in terms of the resolution No. 4 dated 23.12.2014 of the Board and Shri
 M.C. Madan, Asstt. General Manager, Human Resources Development Division
 (HRDD) of the Bank has signed this deed pursuant to the said resolution this 21st day
 of August, 2015.


उक्त बैंक की सामान्य मुद्रा
 Common Seal of Bank


 निदेशक
 Director


 सहायक महाप्रबंधक
 Asstt. General Manager
 पंजाब नेशनल बैंक, प्रधान कार्यालय, नई दिल्ली
 Punjab National Bank, Head Office, New Delhi

1. साक्षी 
 Witness - Shri Rajiv Kumar Dargwale, Manager,
 HRDD, HO, New Delhi


2. साक्षी 
 Witness - Shri Ajit Kumar Meher, Sr. Manager
 PAD, HO, New Delhi



 NOTARY
 CENTRAL GOVT. OF INDIA


(विवाद की स्थिति में इस फार्म का अंग्रेजी रूप मान्य होगा।)
 (In case of dispute the English version of the form shall prevail)

PNB/35 - (25) - 1532

10897/15


 NOTARY
 J.T. BERRY
 WHOLE DELHI
 R.NO. 1368/2006
 CENTRAL GOVT. OF INDIA


 TRUE COPY
 Advocate

I certify that pursuant to resolution as mentioned
 herein the common seal of the Bank has been
 affixed and P.A. executed by Shri M. C. MADAN
 SHRI DILIP KUMAR SAHA in my presence
 and they are personally known to me

 NOTARY
 21 AUG 2015

Thus, on perusal of the aforesaid document, we find that the GPA is complete for filing the application before NCLT under IBC. It is observed that this Application has been filed by the duly authorized person Sh. Ved Prakash. Thus, we reject the contentions raised by the respondent on account of GPA.

14. The Applicant Bank has also placed on record the loan recall/
Demand notice, which reads thus:



BO: Asset Recovery Management Branch
PNB House, Sector 17-B, Chandigarh 160017
Tel. No. 0172-5065218-219; E-mail - bo4537@pnb.co.in

REGISTERED POST

Annexure II
Date: 29.08.2018

To,
M/s. M/s G.N. Pet, (Guarantor)
Plot No.29/7, Industrial Area, Phase-II,
Chandigarh through its proprietor Sh.Sunil Bansal

DEMAND NOTICE

Dear Sir/Madam,

Reg: Loan account – M/s Garib Nawaz Hotels Private Limited at ours.

Please take note of the fact that on your request and guarantee, the bank has sanctioned credit limits to the tune of Rs. 38,02,92,824.00 by way of Term Loan for Rs. 37,59,29,000.00 and Bank Guarantees for Rs 43,63,824.00 in favour/in names of M/s Garib Nawaz Hotels Private Limited which it has availed at BO: Sector 22 B, Chandigarh for carrying on his business, on the terms and conditions as detailed in sanction. Besides, execution of loaning documents, you have also executed guarantee deed on 29.09.2015 to secure the repayment of the amount due into the said loan account(s). Your guarantee w.r.t. said loan is continuing and coextensive with that of the borrower for which you are jointly and severally liable.

The borrower however, has failed to comply with the said terms & conditions of the loan, particularly to repay the installments & charges and serve interest in the respective loan accounts, on time. Consequently, the loan account has become heavily irregular and finally has been classified as NPA on 09.10.2017 as per prevailing bank/RBI guidelines.

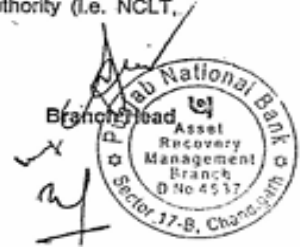
The loan accounts are irregular as under (as on 28.08.2018) :

S. N o.	Particulars of the account	Sanctioned limit	Drawing Power	(Amount In Rs)	
				Present outstanding as on 28.08.2018 (Excluding Init & other expenses)	Irregularity
1	Term Loan-1 (324800IC00000045)	17000000.00	80832890.00	114464954.86	51102107.86
2	Term Loan-2 (324800IC00000063)	40000000.00	20322000.00	22771669.00	5952615
3	Term Loan-3 (324800IC00000081)	24800000.00	10350000.00	12448350.00	4097523
4	Term Loan-4 (324800IC00000100)	50000000.00	18500000.00	32216539.33	18610538.33
5	Term Loan-5 (324800NE00000035)	60000000.00	35879638.00	57587208.00	19125300
6	Term Loan-6 (324800NG01004043)	1329000.00	641537.00	588107.00	40962
7	Bank Guarantees 3248ILG000112-398000.00 3248ILG000311-1244874.00 3248ILG000411-1528170.00 3248ILG000711-63000.00 3248ILG001113-553000.00 3248ILG001211-336780.00 3248ILG001711-240000.00	4363824.00	4363824.00	4363824.00	Nil
	Total	380292824.00	174689889.00	244440552.19	98929046.19



The bank is constantly pursuing you to redress the irregularity into your account but you are utterly negligent in complying with bank's demand. As a result, the bank recalled entire outstanding in your accounts vide letter dated 18.10.2017.

As such, the bank hereby, call upon you to deposit the entire outstanding amount due i.e. Rs. 24,44,40,552.19 as on 28.08.2018 alongwith interest/other expenses w.e.f. 01.10.2017 till date, i.e. total Rs. 27,39,66,361.20 (Interest- Rs.2,93,78,383.01, Other expenses- Rs 1,47,426.00) within a period of 15 days of this notice and positively by 13.09.2018 failing which the bank, in addition to other legal remedies available for recovery of the above said amount, will also initiate proceedings against you for resolution/liquidation before the Adjudicating Authority (i.e. NCLT, Chandigarh) under the Insolvency and Bankruptcy Code, 2016.



15. While perusing the case record, it is also noticed from the orders dated 11.08.2023, 19.10.2023, 12.12.2023 and 23.01.2024 of this Adjudicating Authority that the Respondent Company itself had proposed to the Applicant Bank for a one-time settlement of its dues, which in terms of the judgment of the Hon'ble Supreme Court in "Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr." is an acknowledgment of debt. The relevant para of the judgment dated 04.08.2021 reads thus:

*"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr.***

Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.

(Emphasis placed)

16. As regards the contention raised by the third party “TDS Management Consultant Private Limited” claiming to be a 50% of the shareholder in the CD, we refer to Para 23 of the order of the Principal Bench of NCLT in the matter of **Go Airlines (India) Limited in CP No. (IB)-264(PB)/2023**, which reads thus:

“23. Undisputedly, before the commencement of CIRP, an Application under Sections 7 and 9 are in personam i.e., a litigation between two parties, where notice to the Respondent/Corporate Debtor is a matter of right. Usually, there are no other parties as Respondent other than the Corporate Debtor in Section 7 and 9 applications. There are various instances, where the Hon’ble NCLAT and this Adjudicating Authority prohibited the intervention of other parties/ Creditors in Section 7 or Section 9 Application on the ground that they are not necessary parties to the Application. The instances of such Judgements are given below:

*(i) Hon’ble NCLAT in its Judgement dated 18.02.2021 in the matter of “**Vekas Kumar Garg vs. DMI Finance Pvt. Ltd. & Anr.**” in Company Appeal (AT) (Insolvency) No. 113 of 2021 with respect to the right of a third party to intervene in a Section 7 Application at a pre-admission stage, held as reproduced overleaf:*

“3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. **The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the ‘I&B Code’ and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.**

(Emphasis added)

(ii) NCLT Delhi Court-II, in the matter of “**SREI Infrastructure Finance Limited Vs M/s. Alstrong Enterprises India Private Limited**”, while deciding an Application IA-1615/2021 filed by Punjab National Bank opposing a Section 7 Application, observed vide order dated 02.07.2021 that:

“10. We further notice that under the scope of Section 7 of IBC, 2016, **the third person is not a necessary party. Only the Financial Creditor and the Corporate Debtor are the necessary party in these proceedings.**

11. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the IB/913/2020 has not been admitted as yet. **Therefore, in our considered view, the applicant is not a necessary party and even their prayer, which has been made under Section 60(5) of the IBC, 2016, cannot be allowed.**

(Emphasis added)

17. Thus, in terms of the judgments (supra) and the legal position stated above, we observe that a third party like TDS in the instant case has no locus in a Section 7 application. Hence, we do not consider it necessary to deal with their contentions.

18. In view of the abovementioned discussion, we find that the Applicant bank has been able to establish the debt and default of the Respondent beyond doubt.

19. In the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 the possession of the Respondent.”

20. As proposed by the Applicant, this Bench appoints Sh. Jalesh Kumar Grover as IRP having Registration IBBI/IPA-001/IP-P00200/2017-2018/10390 Email ID: jk.grover27@gmail.com. The antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority. This Adjudicating Authority further orders that:

Sh. Jalesh Kumar Grover as an IRP having Registration No. IBBI/ IPA-001/ IP-P00200/ 2017-2018/ 10390 , Email ID jk.grover27@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

21. The Applicant is directed to deposit Rs. 2,00,000/- (Two Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will

be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

22. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, and the IRP named above, by the Court Officer/Registry of this Tribunal.

23. A copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-
(L.N. Gupta)
Member (T)

Sd/-
(Harnam Singh Thakur)
Member (J)