

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) No. 2445/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

Bank of Baroda

...Financial Creditor / Applicant

V/s

Genesis Resorts Private Limited

...Corporate Debtor / Respondent

Order Dated: 11th December 2019

Coram: Mr Rajesh Sharma

Mr Bhaskara Pantula Mohan

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

For the Applicant: Advocate Darshit Dave, Advocate Nishit Dhruva
& Advocate Rohan Agarwal i/b. MDP & Partners

For the Respondent: None present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 2445/NCLT/MB/2019 filed by **Bank of Baroda**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Genesis Resorts Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The application is filed claiming a total default of ₹231,09,89,579/- (Rupees Two Hundred Thirty One Crore Nine Lakh Eighty Nine Thousand Five Hundred Seventy Nine Only). The application is filed by Mr Umesh Balaram Sonkar,

Chief Manager, of the Financial Creditor duly authorised to file this application vide letter dated 24.06.2019.

3. The Applicant submitted that it had sanctioned credit facilities to the Corporate Debtor to the tune of ₹149,05,14,288/- (Rupees One Hundred Forty Nine Crore Five Lakh Fourteen Thousand Two Hundred Eighty Eight Only), vide three Sanction Letters. The Applicant submitted that vide Sanction Letter dated 15.11.2012 it sanctioned Term Loan of ₹118,91,00,000/- (Rupees One Hundred Eighteen Crore Ninety One Lakh Only) and Bank Guarantee of ₹2,00,00,000/- (Rupees Two Crore Only) to the Corporate Debtor; vide Sanction Letter dated 07.01.2014 the Applicant reviewed the above Term Loan and Bank Guarantee and also sanctioned fresh Term Loan of ₹15,00,00,000/- (Rupees Fifteen Crore Only); vide Sanction Letter 16.03.2015 the Applicant reviewed above Term Loans and Bank Guarantee and further sanctioned fresh Funded Interest Term loan of ₹21,42,00,000/- (Rupees Twenty One Crore Forty Two Lakh Only). The said three Sanction Letters are annexed to the application.
4. The Applicant submitted that, Deeds of Mortgage dated 26.12.2012, 29.01.2014 and 28.11.2016; Deeds of Hypothecation dated 12.12.2012, 29.01.2014 and 31.03.2015; Demand Promissory Notes dated 12.12.2012, 29.01.2014 and 31.03.2015 and Deeds of Personal Guarantees dated 12.12.2012, 29.01.2014 and 31.03.2015, all secured the said credit facilities. Copies of the documents mentioned supra are annexed to the application.
5. The Applicant further submitted that the Corporate Debtor vide Letters of Acknowledgement of Debt dated 19.09.2014 and 08.08.2017, confirmed and acknowledged its indebtedness towards the said debt. The said letters are annexed to the application.

6. The Applicant submitted that the Corporate Debtor defaulted in repayment of said credit facilities and therefore the Account of Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.11.2016. The Applicant submitted that, it issued Notice dated 14.03.2017 under Section 13(2) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest (SARFAESI) Act, 2002 calling upon the Corporate Debtor and its Personal Guarantors to discharge the outstanding liabilities of ₹179,02,91,487/- (Rupees One Hundred Seventy Nine Crore Two Lakh Ninety One Thousand Four Hundred Eighty Seven Only) including interest. The copy of Applicant's Notice dated 14.03.2017 is annexed to the Application.
7. The Applicant has annexed Statement of Accounts of Corporate Debtor prepared in its Books of Accounts for period 31.01.2016 to 24.06.2019, reflecting total outstanding balance of ₹149,96,91,486/- (Rupees One Hundred Forty Nine Crore Ninety Six Lakh Ninety One Thousand Four Hundred Eighty Six Only) due from the Corporate Debtor. Bank Certificates dated 25.06.2019 under Bankers Books Evidence Act, 1891 are also annexed. The Applicant has further annexed Certificate of Registration for Modification of Charge for Corporate Debtor reflecting the name of Applicant as Charge Holder and Commercial Credit Information Report (CIBIL) dated 25.06.2019 reflecting the classification of Corporate Debtor's account as Doubtful.
8. The Applicant filed present application on 26.06.2019. The Applicant was directed to serve Notice of Hearing to the Corporate Debtor vide our Order dated 17.07.2019. The Applicant has filed its affidavit of service proving the service of notice of hearing upon Corporate Debtor. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence even after providing opportunities to do so.

9. The Counsel for Corporate Debtor appeared on the date of hearing and once again requested time for filing reply however, such request was denied, and Corporate Debtor was set ex-parte. We have heard the parties and perused the records.
10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than ₹1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this application. The Corporate Debtor has also admitted the financial debt vide Letters of Acknowledgement of Debt dated 19.09.2014 and 08.08.2017. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. Further, the Corporate Debtor has failed to appear before this Bench even after having service of notice of hearing. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor.
11. The application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
12. The Applicant has proposed the name of Mr Vijay Pitamber Lulla, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00323/2017-18/10593] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.
13. The application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 7 of

the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, filed by **Bank of Baroda**, Financial Creditor / Applicant, against **Genesis Resorts Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to –

- (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - (b) a surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Vijay Pitamber Lulla**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00323/2017-18/10593]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

11th December 2019