



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 144 (PB)/2022**

**ORDER UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE
INSOLVENCY AND BANKRUPTCY (APPLICATION TO
ADJUDICATING AUTHORITY) RULES, 2016.**

IN THE MATTER OF:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

THE RUBY, 10TH FLOOR 29, SENAPATI BAPAT MARG,

DADAR (WEST), MUMBAI – 400028 **FINANCIAL CREDITOR**

Versus

HARVEST HOTELS AND SERVICED APARTMENTS PVT. LTD.

K-52-A, S/F KALKAJI, NEW DELHI

SOUTH DELHI, DELHI – 110019 **CORPORATE DEBTOR**

ORDER DELIVERED ON: 07.10.2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Financial Creditor: Adv. Ms. Mahima Singh

For the Corporate Debtor: Adv. Mr. Arun Srikumar, Adv. Ms. Mansi
Binjrajka

ORDER


PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application, filed by Asset Reconstruction Company (India) Limited, (hereinafter referred to as 'ARCIL'),



the Financial Creditor (FC)/Applicant, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz., Harvest Hotels and Serviced Apartments Pvt. Ltd, for default in repayment of Rs. 187,48,33,568 (Rupees One Hundred and Eighty-Seven Crores Forty-Eight Lakhs Thirty-Three Thousand Five Hundred and Sixty-Eight Only).

2. The Corporate Debtor was incorporated on 17/11/2009, having CIN:U55101DL2009PTC196079, under the Companies Act, 1956. The registered office is K-52-A, S/F Kalkaji, New Delhi, South Delhi, Delhi-110019, India. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor as accessed from the MCA website is annexed as **Annexure C**.
3. The present application was filed on 18.01.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 187,48,33,568 (Rupees One Hundred and Eighty-Seven Crores Forty-Eight Lakhs Thirty-Three Thousand Five Hundred and Sixty-Eight Only), as on 27.12.2021.
4. **Submissions of the Financial Creditor:**
 - i. The Applicant is an assignee of the financial debt owing from the CD to Central Bank of India, State Bank of



Patiala (now State Bank of India), and Allahabad Bank collectively hereinafter referred to as "Assignor Banks".

- ii.** The Assignor Banks had granted financial assistance to the CD from time to time. On account of the non-repayment of these facilities, and at the request of the CD, the facilities were restructured/rescheduled. The Assignor Banks entered into a Master Restructuring Agreement ('MRA') dated 29 December 2014 with the CD, pursuant to which, the debt was restructured. The total principal amount of financial debt granted by the Assignor Banks to the CD under the MRA was INR 101.25 crores.
- iii.** Due to non-service of its debt, and non-fulfillment of debt repayment obligations under the MRA, CD's loan accounts as maintained by the Assignor Banks were classified as a Non-Performing Asset ("NPA").
- iv.** One of the Assignor Banks i.e. The Central Bank of India filed a company petition being **C.P.(IB) 79/PB/2019** under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") against the CD which was admitted vide order dated 01.03 2019. The Assignor Banks assigned the debts to the Petitioner/Applicant by way of assignment agreements dated 19 July 2019 (between State Bank of India and ARCIL), 29.07. 2019 (between Central Bank of India and ARCIL) and 25.09.2019 (between Allahabad Bank and ARCIL).
- v.** Thereafter, by way of an undertaking dated 22.08.2019 CD's promoters undertook to repay ARCIL according to the terms of the undertaking. The applicant/ARCIL on the



basis of their assessment and evaluation of the undertaking accepted the same and allowed and authorized Mr. Navneet Gupta, the then interim resolution professional of the CD, to submit the application for withdrawal of CIRP with the Adjudicating Authority on behalf of ARCIL if it is approved in the meeting of CoC of the CD with Ninety Percent (90%) voting share.

- vi.** On 28.08.2019 the CoC in **C.P.(IB) 79/PB/2019**, wherein the ARCIL held 91.76% voting share, resolved to withdraw the CIRP against the CD and further resolved that Mr. Navneet Gupta, the then Interim Resolution Professional be authorized to file the necessary application in this regard and also to do any other formality, if necessary.
- vii.** In furtherance of the same, vide order dated 05.09.2019 in **C.A.-1708(PB)2019**, while allowing the withdrawal of **C.P.(IB) 79/PB/2019** without granting liberty to file a fresh petition or taking on record the terms of the undertaking, the Adjudicating Authority dismissed the CIRP proceedings against the CD. Thereafter, according to the Applicant/FC/ARCIL the Respondent company/CD failed in its repayment of the debt as per the undertaking and committed default as per the provisions of the IBC, 2016.
- viii.** ARCIL had written several letters to the Corporate Debtor seeking compliance of the proposal/undertaking dated 22 August 2019. However, the Corporate Debtor and its promoters and guarantors failed to fulfill their repayment obligations as per the undertaking. Hence, the Applicant



issued a recall notice dated 25 May 2021 to the Corporate Debtor recalling the loan amount and calling upon the Corporate Debtor, its promoters, and guarantors to repay the entire outstanding amount under various credit facilities extended by the lenders/assignors.

- ix. Corporate Debtor's loan accounts as maintained by the lenders/assignors were classified as 'NPA' by the lenders/assignors on the following dates:

State Bank of India: NPA date, 30 April 2017

Central Bank of India: NPA date, 30 October 2017

Allahabad Bank: NPA date, 31 December 2014.

National E-governance Services Ltd. (NeSL) record of default dated 07.12.2021: (Ref: Page 710, Volume 4 of the Application)

Further, as per the 22.08.2019 Undertaking, the amounts were repayable by the Corporate Debtor on a quarterly basis commencing from June 2020 and till December 2023 {as detailed in Clause 4(x)(a) of the undertaking}. On account of the non-payment of these amounts, ARCIL issued a recall notice dated 25 May 2021 recalling the loan amount and calling upon the Corporate Debtor, its promoters, and guarantors to repay the entire outstanding amount within 15 days (i.e. by 8th June 2021). However, no amounts have been paid and the Corporate Debtor continues to be in default.

- x. The total amount in default is INR 187,48,33,568 (Rupees One Hundred and Eighty-Seven Crores Forty-Eight Lakhs Thirty-Three Thousand Five Hundred and Sixty-Eight) which includes:

Principal Outstanding Amount- INR 94,85,25,793



Simple Interest Amount- INR 67,11,34,444

Compound Interest Amount- INR 21,14,57,412

Penal Interest Amount- INR 4,37,12,919

(Ref: Page 45-63, Volume 1 of the Application).

- xi.** Further, the Applicant submits that only the existence of 'debt' and 'default' have to be considered by this Adjudicating Authority while examining/adjudicating an application under Section 7 of the Code. The Hon'ble Supreme Court in the matter of **M/s Innoventive Industries Limited v ICICI Bank & Anr AIR (2018) SCC 407 (Paragraph Nos. 28 and 30)** has held that while deciding an application under Section 7 of the Code, the Adjudicating Authority only needs to be satisfied on the existence of debt and default. It has been held that the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the FC 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.
- xii.** The Applicant also submits that there is no express bar under the Code for filing a fresh CIRP application after withdrawal under Section 12A.
- xiii.** The Financial Creditor has placed the following documents on record:
- a)** Tabular details of dates of disbursements of the aforesaid facilities by the Assignor Banks to the Corporate Debtor are annexed as **Annexure E**.



- b) A copy of the workings for computation of amount and days of default in a tabular form is annexed as **Annexure F.**
- c) Copies of assignment agreements between the Assignor Banks and ARCIL are annexed as **Annexure O.**
- d) A copy of the table containing the dates of creation of securities and copies of documents creating the securities is annexed as **Annexure R.**
- e) Copies of certificates of registration of charge are annexed as **Annexure S.**
- f) Copies of default reports as submitted to and held by the NeSL are annexed as **Annexure U.**

5. **Submissions of the Corporate Debtor:**

The Corporate Debtor entered appearance on 19.04.2022 and filed its reply on 26.04.2022.

In its written reply dated 26.04.2022, the Corporate Debtor submitted that:

- i. The Applicant (FC) took over the debts of the said previous Applicant (viz. Central Bank of India), ostensibly as a measure of 'asset reconstruction' under Sections 5-9 of the SARFAESI Act, 2002, after the commencement of CIRP in the earlier proceeding. It thereafter withdrew the said previous petition (**C.P.(IB) 79/PB/2019**), after taking 100% COC consent (and by also acquiring other debts owed by the Respondent Company to other PSU banks). No leave of this Hon'ble Adjudicating Authority was taken at that time to institute any further petition in future, in relation to the loans claimed by the various then COC members. As such, the present petition is not maintainable in



law, in light of the well-settled principle of law disallowing fresh petitions on causes-of-action in relation to which earlier actions have been withdrawn without leave, which is enshrined inter alia in Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908. In any event, and without prejudice to the foregoing, the present petition has evidently been filed with mala fide intent and in order to circumvent commitments made by the Applicant to the Respondent Company.

- ii.** The earlier petition seeking commencement of CIRP as against the Respondent Company was withdrawn with the express objective of facilitating the completion of the construction project being undertaken by the Respondent Company under its present management (which, for various reasons, including inter alia the outbreak of COVID-19, is yet to be achieved).
- iii.** The Applicant is clearly only aiming to arm-twist the present management (i.e., promoter) of the Respondent into paying it more amounts, and/or into making fresh financial commitments to it, even prior to the commencement of cash-generating activity by the Respondent (which was clearly agreed to be awaited by it, before demanding any repayments).
- iv.** The Respondent Company has been developing a commercial building in Bengaluru for the past several years, to cater to the luxury long-stay accommodation needs of business executives and professionals ('the Project'). The building conceived of by the Respondent Company is nearing completion, and already has all



116 of its planned luxurious "serviced apartments' in near-ready condition with almost all the intended facilities, fixtures, and fittings already installed/completed. Only the installation of the Sewage Treatment Plant (STP), fire safety measures, central kitchen, and IT integration remain (and a few minor facilities), following which the Occupancy Certificate from the Jurisdictional Municipal Authority i.e., Bruhat Bengaluru Mahanagara Palike (BBMP) can also be obtained.

- v. The construction had been halted initially by the onset of COVID-19 and subsequently as the Applicant has forcibly taken over possession of the Project site (while causing extensive damage worth approx. INR 3 crores to the Project assets), by invoking the SARFAESI Act prematurely and even prior to completion of construction (which, as stated earlier, was expressly agreed to be allowed to be completed by the present management of the Respondent).
- vi. The Respondent Company had concededly availed of loans from various PSU banks since around 2011 and 2013, for the purposes of putting up this construction (in addition to infusing several crores of its promoters' and shareholders' own funds, as equity). It is pertinent to note that the above Project at Bengaluru is the only valuable asset of the Respondent Company, and the only project that it has ever undertaken.
- vii. The Respondent Company already has a contractual arrangement in place with one of the world's leading

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hospitality brands (viz., Marriott Hotels), to facilitate the operation of its premises by the Marriott Group under a 'management operations contract' (upon the completion of construction). This contract ensures that the marketing power of a high-quality global brand is available to the Respondent Company, by leveraging the Marriott brand. The terms of this Operating Agreement are also known to the Applicant.

- viii.** The entire commercial objective behind the transfer of the liabilities then owed by the Respondent Company to three different PSU banks, on a lump sum basis, to the Applicant (ARCIL) was only so as to facilitate completion of the Project by the promoters of the Respondent Company at a realistic pace, through an infusion of further funds, and without facing the burden of being an 'NPA' to multiple PSU Banks (which would have operated as a practical barrier to raising further funding from any source).

- ix.** However, despite the aforesaid assessment as regards desirability of having the Promoters complete the Project, and despite oral assurances to assist the Promoters in finding funding for the Project, no assistance was forthcoming from the Applicant. The Promoter was therefore forced to raise funds from private moneylenders, at usurious rates, to try and get the pending works done (in a desperate rush to complete the work and generate cash flows for the Respondent). The Promoter approached private moneylenders and incurred personal debts in his own



name at a huge cost, and no assistance at all was forthcoming for the Project from the Applicant.

- x.** As a result of the economic distress in the first few months after the COVID-19 pandemic started, the Respondent was unable to arrange further financing (beyond the INR 8 crores quickly raised by the Promoter in 2019 itself). Only, for this reason, the Respondent could not complete the finishing works of the Project in time and has consequently been forced to delay commencing repayment as per the Undertaking which was to otherwise commence from June 2020. Despite this, the Respondent has made all efforts from its end for completing the pending works at the Project site, having received no support at all from the Applicant (which was supposed to facilitate the recovery of the Respondent Company as per the understanding arrived at during the previous CIRP).

- xi.** The entire basis for the withdrawal of the earlier application seeking commencement of CIRP as against the Respondent Company was the Applicant's own belief that the existing promoter of the Respondent Company was best suited to complete the Project, due to his relationships with various vendors at the Project site (and also with the Marriott group) and as only minor works were pending before the Project could be completed and could become operational (i.e., cash-generating).

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6. Analysis and Findings

- i. We have heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor on 01.08.2022. Ms. Mahima Singh, Ld. Counsel for the Applicant pressed her application for initiation of CIRP against the CD. For the Respondent side Mr. Arun Sri Kumar of Key Stone Partners submitted that they do not press their objections to the application and admit the debt and default. On being questioned as to why the CD is not pressing its objections which it has filed in writing, Ld. Counsel states that the Hotel is near complete but they would not be able to undertake its management operations because of the loan outstanding amount to the FC. He also stated that the CD would not be able to find a buyer for its project in the market since it is saddled with this loan. However, if the CD undergoes CIRP then there is a good chance of the CD being able to repay its loan to the ARCIL on account of a new entrant (prospective SRA) and the chances of better settlement of the CD's debt with the ARCIL. The Ld. Counsel for the CD has shown the Vakalatnama in which his name is entered and he also made the following endorsement on Page No. 20 of his reply, which is extracted below:

"The Corporate Debtor does not press the objections filed herein, subject to review of ARCIL's computations at appropriate stage by the RP. Debt and default are admitted.

-Sd-

Adv. Arun Sri Kumar (KAR/231/2009)

Advocate for Corporate Debtor".

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7. It is clear from the reading of the above paragraph that the debt of the CD is due and payable to the Applicant/FC and there is admitted default in payment of debt.
8. The present Application made by the Financial Creditor is complete in all respects as required by law. The Application establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code. Hence, we are inclined to admit this application.

9. **Order**

In the light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **CP (IB) – 144 (PB)/2022** filed by the **ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED**, the Applicant (FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **HARVEST HOTELS AND SERVICED APARTMENTS PVT. LTD**, the Respondent(CD), is hereby admitted.
- ii. As a consequence of the Application being admitted in terms of Section 7 of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent as per clauses (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 into force.
- iii. The Financial Creditor has proposed the name of **Mr. Shailendra Ajmera** as the Insolvency Professional with the

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address Ernst & Young LLP, 3rd Floor, Worldmark 1, Aerocity Hospitality District, New Delhi - 110037. His email id given is Shailendra.ajmera@in.ey.com. His registration number is **IBBI/IPA-001/IP-P00304/2017-18/10568**. He has filed his written communication (**Consent Form in Form 2, Page 40, Volume 1 of the Application**) as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration (**Page 42, Volume 1 of the Application**) and Authorization for Assignment (**Page 43, Volume 1 of the Application**) is annexed as (**Annexure - D**). Accordingly, Mr. Shailendra Ajmera is appointed as IRP.

- iv. In pursuance of Section 13 (2) of the Code, we direct the Interim Insolvency Resolution Professional to make a public announcement immediately with regard to the 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.
- v. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- vi. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets, and its documents without any delay whatsoever. He is also free to take police

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assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

- vii.** The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii.** The Financial Creditor shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix.** In terms of Section 7(5)(a) of the Code, the Registry is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the IRP by Speed Post and by Email, and in any case, not later than two days from the date of this Order. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

- Sd -

RAMALINGAM SUDHAKAR
(PRESIDENT)

- Sd -

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)