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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/279/CHE/2021

*(filed 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 **GBJ Hotels Private Limited***

Indian Overseas Bank

Asset Recovery Management Branch
Cross Cut Road, Gandhipuram
Coimbatore- 641 012

... Financial Creditor

-Vs-

GBJ Hotels Private Limited

Registered office at
164, 165, Avinashi Road
Peelamedu
Coimbatore
Tamil Nadu- 641 004

... Corporate Debtor

Order pronounced on 19th April 2022

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)


For Financial Creditor : ML Ganesh , Advocate

For Corporate Debtor : K.S. Ravichandran, PCS

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This is an Application filed by **Indian Overseas Bank**
(hereinafter referred to as "**the Financial Creditor**") against **GBJ**
Hotels Private Limited (hereinafter referred to as "**the**



Corporate Debtor") under Section 7 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Affidavit verifying the Application is placed at page nos. 5-6 of the Application typeset and the same authorizes R.Rakesh the Asst. General Manager of the Financial Creditor, to sign on behalf of the Applicant.

2. From Part-I of the Application, it can be seen that the Applicant Financial Creditor is a Bank. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 12.08.2008 bearing CIN:U55101TZ2008PTC014695 . The Registered office of the Corporate Debtor as stated in the Application is No.164 & 165, Avinashi Road, Peelamedu, Comibatore-641 004. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Mahalingam Suresh Kumar, Reg. No. IBBI/IPA-001/IP-P00110/2017-2018/10217; as the IRP.

3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs 100.64 Crores /-, LG of Rs.2.77 crores and miscellaneous cash credit of Rs. 5 Crore vide sanction letter dated 04/10/2017 as 'Financial debt' due and payable by the

Corporate Debtor. In Part-IV of the Application the Financial Creditor had stated that the Loan Accounts of the Corporate Debtor were running irregular on 01.03.2019 and was declared NPA on 01/06/2019. As per the Information utility attached in page 230-234 of the Application typeset the date of default is stated to be 01.06.2019.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor had approached the Financial Creditor for its business operation and credit facilities was extended from time to time to the Corporate Debtor in the following manner:-

DATE	NATURE OF FACILITY	LIMIT
30/12/2011	Term loan with sublimit of LC	Rs. 108 crores
04/10/2017	Renewal of term loan	Rs.100.64 crores
04/10/2017	LG	Rs. 2.77 crore
04/10/2017	Miscellaneous cash credit	Rs. 5 crore

5. Further, it was submitted by the Learned Counsel for the Financial Creditor that the guarantors/ directors and corporate guarantor shree Murugan Floor Mills Private Limited and Rajaram Flour Mill Private Limited offered guarantee in favour of the Financial Creditor and executed loan security documents dated 19/05/2012 and 07/10/2017 respectively. Further, the Ld. Counsel for the Financial Creditor stated that Mr.G.Balasubramaniam, Mrs.B.Jeevarathinam and corporate guarantors, Shree Murugan

Flour Mills Private.Ltd and Rajaram Flour Mill Private Ltd had offered collateral security of immovable property to secure the loan amount by executing memorandum relating to deposit of title deeds in terms of Section 58(f) of the Transfer of Property Act.

6. Subsequently, the Ld. Counsel for the Financial Creditor submitted that revival letters on 15/04/2015, 09/04/2018 were executed for the purposes of the Limitation Act, 1963. Further, as the Corporate Debtor failed to service the principal and interest regularly in terms of loan security documents, the loan accounts had slipped into NPA category on 01/06/2019 as per RBI guidelines.

7. The Ld. Financial Creditor counsel submitted that a demand notice under section 13 (2) of the SARFAESI Act on 19/06/2020 and possession notice on 07/01/2021 was effected against the Corporate Debtor.

8. The Ld. Counsel submitted that the loan account slipped into NPA on 01/06/2019 and hence the above application is filed within three years from the date of default and execution of revival letters and thus this Application falls within the Limitation period. Further, the Financial Creditor stated that the corporate guarantor, Shree Murugan Flour Mills Private Ltd had also individually availed credit facilities from the financial creditor and defaulted to repay the

same, therefore a Section 7, Application is pending on file of this Tribunal against the Corporate Guarantor.

9. The Ld Counsel for the Financial Creditor submitted that the Corporate Debtor and guarantors are jointly and severally liable to pay the sum of 'Rs. 107.48 Cr' as on '06.10.2021' as per account maintained by the Financial Creditor in the regular course of business.

10. The Respondent / Corporate Debtor has filed counter and the Ld. Authorized Representative for the Corporate Debtor submitted that the past years due to various factors such as market fluctuations and as such the Corporate Debtor was not in a position to make the payment at the moment due to global financial crisis owing to COVID - 19 pandemic and the Respondent is making efforts to settle the dues to the creditors but is in need of further period of time for settling the matter with the Financial Creditor.

11. Further the Ld. Authorized Representative for the Corporate Debtor had averred in para 15 of the counter statement that, the Financial Creditor had rejected the OTS dated 18.12.2021 made by the Corporate Debtor for Rs.84.81 Crores. Further it was stated that the Asset Management Branch of the Financial Creditor

summarily rejected the OTS proposal vide e-mail dated 18.12.2021.

12. Heard the submissions made by the Learned Counsel for the parties. From the averments made in the counter, it is clearly seen that the Corporate Debtor has admitted its liability based on the OTS 18.12.2021 and the same clearly proves the existence of a 'Financial Debt' which is due and payable to the Financial Creditor. Further, it is also seen that the 'default' which is arising in the present Application has happened much before the advent of COVID - 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

13. Further, on the aspect of limitation, it is seen that the Corporate Debtor has committed default in repayment of the dues owing to which the Loan Account of the Corporate Debtor was declared NPA on 01/06/2019 and if the said date is taken into consideration as the date of default, then the present Application filed under Section 7 of IBC, 2016 before this Tribunal on 27/10/2021.

14. Thus, this Tribunal places on record the OTS dated 18.12.2021 amounting to Rs. 84.81 crores and the Rejection effected by the Financial Creditor dated 18.12.2021 in which the

Financial Creditor had categorically requested the Corporate Debtor to increase the OTS amount. This *ex facie* proves the existence of a 'Financial debt' and 'default'.

15. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application.



It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a 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 that the adjudicating authority may reject an application and not otherwise.

16. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.



17. The Financial Creditor has proposed the name of **Mr. Mahalingam Suresh Kumar** (msureshkumar@icai.org), Reg. No. *IBBI/IPA-001/IP-P00110/2017-2018/10217* as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 20.02.2023. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

19. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

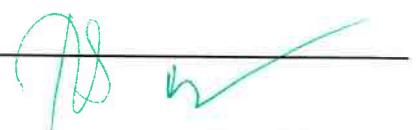
20. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

21. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in



terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

24. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also

be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

26. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

27. Post this CP/IB/279/CHE/2021 for hearing on **07.06.2022**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita