



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

IA No.56/2022

in

IA No.293/2021

in

CP No.248/7/HDB/2017

[U/s.60(5) of Insolvency & Bankruptcy Code, 2016]

**In the matter of Bank of Baroda vs. Golden Jubilee Hotels
Private Limited**

IA 293/2021 -

Between M/s. BREP Asia II Indian Holding Co. II (NQ) Pte Ltd. and
Bank of Baroda & Ors.

IA 56/2022 -

Between:

Mr. Laxmi Narayan Sharma
Aged 63 years, Occ: Business
R/o. Flat 904, Tower-I, Block A
NCC Urban Gardenia
HITEC City Main Road, Madhapur
K.V.Ranga Reddy, Telangana – 500 081

... Applicant / Proposed Respondent
in IA 293/2021

And

1. M/s. BREP Asia II Indian Holding Co. II (NQ) Pte Ltd.
77, Robinson Road
13-00. Robinson 77, Singapore 068896



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2. Bank of Baroda
Baroda House, Mandvi
Baroda – 390 006, Gujarat
Acting through its
Corporate Financial Services Branch
1st Floor, 3-6-262/2
Thirumala Estates Building, Himayathnagar
Hyderabad – 500 029, Telangana
Represented by its Deputy General Manager
3. Mr.Subodh Kumar Agrawal
Resolution Professional for
Golden Jubilee Hotels Private Limited
Survey No.64, Beside Shilpakala Vedika
Shilaparamam, Madhapur
Hyderabad – 500 008
4. Committee of Creditors of Golden Jubilee
Hotels Pvt. Ltd.
Represented by Bank of Baroda
Baroda House, Mandvi
Baroda – 390 006, Gujarat
Corporate Office at:
Corporate Financial Services Branch
1st Floor, 3-6-262/2
Thirumala Estates Building, Himayathnagar
Hyderabad – 500 029, Telangana
5. Bank of America, N.A.
Ground, 16th, 17th and 18th Floor
A Wing, One BKC
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051, Maharashtra, India
Represented by its Deputy General Manager

... Respondents

Date of Order: 05.10.2023



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Coram:

Hon'ble Dr.Venkata Ramakrishna Badrinath Nandula, Member, Judicial.
Hon'ble Shri Satya Ranjan Prasad, Member, Technical.

Counsel present:

For the Applicant/
Proposed Respondent : Mr. Suraj Prakash, Advocate

For Respondents : Mr. Y. Suryanarayana,
Mr.Sachin Sharma, Advocates

[PER: BENCH]

ORDER

- I. This is an Interlocutory Application filed on behalf of the Applicant/Mr.Laxmi Narayan Sharma, under Section 60(5) of IBC, 2016 seeking to allow the Applicant to be arrayed as a party Respondent in IA 293/2021 in CP(IB) 248/7/HDB/2017.
- II. The gist of the Applicant's brief is –
 - i. The Interlocutory Application bearing IA 293/2021 has been filed by the Successful Resolution Applicant, BREP Asia II Indian Holding Company II (NQ) Pte. Ltd., for short 'Blackstone' for seeking declaration that the Resolution Plan as on date stands terminated, and/or is null and void, in accordance with Clause 10.6.1 of the Resolution Plan.



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- ii. The Applicant is a necessary and proper party to the subject proceedings for the following among other reasons:
- a) The Company Application CP(IB) 248/7/HDB/2017 filed by Bank of Baroda, for Short ‘Financial Creditor’ against M/s. Golden Jubilee Hotels Pvt. Ltd., for short ‘Corporate Debtor’ under Section 7 of IBC was admitted by this Adjudicating Authority, vide order dated 27.02.2018. The Applicant herein is the Promoter and Suspended Director of M/s. Golden Jubilee Hotels Pvt. Ltd., who holds 84% shareholding in the Corporate Debtor. The Applicant has provided guarantees to the loans availed by the Corporate Debtor and therefore directly affected by any decision concerning the Corporate Debtor.
- b) The COC has approved the Resolution Plan submitted by Blackstone/SRA on 21.12.2018, which was approved by this Adjudicating Authority, vide order dated 07.02.2020. The approved Resolution Plan was a conditional plan, being conditioned upon the approval of State Government for restructuring of shareholding of the Corporate Debtor within one (1) year. Clause 10.6 of the approved Resolution Plan provides that if condition precedents are not satisfied within one year from the date of approval of Resolution Plan by the Adjudicating Authority, it will expire automatically and the Resolution Plan will be null



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and void. The Resolution Plan has therefore self-terminated and expired on 06.02.2021 due to non-fulfilment of the condition precedent and the Successful Resolution Applicant had filed an IA 293/2021 seeking a declaration that the Resolution Plan stands terminated, and/or is null and void.

- c) It is averred that as the whole obligation to implement the Resolution Plan was itself conditional upon the satisfaction of some uncertain event, the approved resolution plan was completely non-feasible and non-implementable and therefore against the very provisions of IBC. It is also averred that this Adjudicating Authority has therefore erred in not following the provisions of Section 31(1) of the IBC which provides that the resolution plan be approved only if it has provisions for implementation.
- d) The Applicant being a guarantor as well as a member of the suspended board of directors of the Corporate Debtor has actively participated in all the COC Meetings and has also placed its proposal before the COC several times for settlement of the debt through One Time Settlement offer of Rs. 430 crores, which was not considered by the COC.



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e) The Applicant had preferred an Appeal CA (AT) (Insolvency) 438/2020 before the Hon'ble NCLAT, inter alia, challenging the approval of the Resolution Plan of Blackstone by this Adjudicating Authority, which is pending for adjudication. A copy of the written submissions filed in Company Appeal are filed as Annexure-1 of the application.

f) It is requested to implead in the subject proceedings as the Applicant's presence is necessary in order to enable this Adjudicating Authority to effectually and completely adjudicate upon and settle all questions involved in the subject proceedings.

III. The gist of the Resolution Professional/R3's brief is –

- i. The contents of the instant application are denied in its entirety as being false and incorrect.
- ii. It is averred that the Applicant being a member of the Suspended Board of the Corporate Debtor has no locus to seek impleadment in IA 293/2021, which was filed by the Successful Resolution Applicant seeking inter alia termination of the Resolution Plan submitted by it, that was approved by this Adjudicating Authority, vide Order dated 07.02.2020 in IA 32/2019.



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- iii. It is averred that the Applicant is not at all a necessary or proper party for the subject matter of the proceedings in IA 293/2021 as the Applicant is a member of the Suspended Board and it has been held in a plethora of cases that the suspended management/members of the suspended board have no locus to challenge/question the aspects of a resolution plan which is in the domain of the Committee of Creditors.
 - iv. It is averred that the Applicant preferred an Appeal CA (AT)(INS) 438/2020 before the Hon'ble NCLAT. When the Applicant is challenging the Resolution Plan before the Hon'ble NCLAT, the Applicant cannot seek impleadment in the Application filed by the Successful Resolution Applicant before this Adjudicating Authority.
 - v. It is averred that the Applicant herein is a disgruntled litigant who has filed several frivolous applications before this Adjudicating Authority and has time and again attempted to stifle the smooth process of CIRP of the Corporate Debtor. The detailed list of applications filed by the Applicant herein are furnished at page nos. 3 & 4 of the counter.
- IV. The Applicant / Proposed Respondent in IA 293/2021 has filed his written submissions.



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V. The point that emerges for our consideration is –

Whether the Applicant is necessary and proper party for the just and proper disposal of IA 56/2022?

VI. We have heard the Learned Counsel for Applicant, Mr.Suraj Prakash and Learned Counsel for Respondent, Mr.Y.Suryanarayana, perused the record and case law.

VII. At the outset, it is to be stated that the present application filed by the Director of the Suspended Board of the Corporate Debtor is in the backdrop of the Resolution Plan submitted by the Applicant in IA 293/2021 having been approved, is on the premise of the “self-drawn conclusion” of the Applicant that the Resolution Plan approved by this Adjudicating Authority will expire automatically if the condition precedents are not satisfied within one year from the date of approval of the Resolution Plan, as so far, no such finding has been made by this Adjudicating Authority. Infact, various contentions that are raised in IA 293/2021 are yet to be heard and decided.

VIII. Needless to say that after the admission of the Corporate Debtor into CIRP, the Board of Directors of the Corporate Debtor are suspended and their powers are transferred to the Interim Resolution Professional as envisaged in Section 17(1)(b) of the Code. Thereafter, the Interim Resolution Professional/Resolution Professional takes over the reins of the



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Corporate Debtor and manages the Corporate Debtor for its benefit. The function of the Suspended Board of Directors is limited to assisting and co-operating with the Interim Resolution Professional/Resolution Professional for the smooth resolution of the Corporate Debtor. Moreover, the concerns raised in IA 293/2021 are the matters concerning to the Successful Resolution Applicant and the COC and the Applicant has no locus standi, to intervene. Thus, the Applicant is neither necessary nor a proper party in IA 293/2021.

- IX. In the light of the factual matrix of this case and the law which as referred supra, the present IA is devoid of any merit or substance. Hence, liable to be dismissed. Accordingly, **IA 56/2022 is dismissed.**

Sd/-

**SATYA RANJAN PRASAD
MEMBER (TECHNICAL)**

Sd/-

**DR.N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)**

Syamala