S.No.1

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSCIAL (HYBRID) MODE

ATTENDANCE CUM ORDER SHEET OF HE HEARING HELD ON
04-03-2025 AT **11:00 AM**

CP (IB) IB/153/7/HDB/2021
AND
IA (IBC) 250/2024 in CP (IB) IB/153/7/HDB/2021
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Pridhvi Asset Reconstruction and Securitisation Company Ltd **…Financial Creditor**

AND

Sri Pavana Keerthi Hotels India Pvt Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 250/2024

Order pronounced. In the result, **this application is disposed** subject to the directions mentioned in the order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD

I.A. No. 250 of 2024
In
C.P. (IB) No.153/7/HDB/2021

(Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF SRI PAVANA KEERTHI HOTELS INDIA PRIVATE LIMITED:

BETWEEN:

M/s. Sri Pavana Keerthi Hotels India Private Limited
Rep by its Resolution Professional Gunturu Raghu Babu,
1st Floor, Golden Heights, Plot No.9,
Opp: Raheja IT Mindspace, HUDA Techno Enclave,
Madhapur, Hyderabad-500081 (Telangana) …Applicant

Versus

The Commissioner,
Greater Hyderabad Municipal corporation,
CC Complex, Tank Bund Road,
Lower Tank Bund, Hyderabad - 500 063 …Respondent

Date of Order: 04.03.2025

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Mr. Ch. Srinivasulu, Ld. Counsel
Mr. Raghu Babu Gunturu, Resolution Professional

For Respondent : NA

PER: BENCH

ORDER

This is an application filed by Resolution Professional (Applicant) of M/s. Sri Pavana Keerthi Hotels India Private Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs against Greater Hyderabad Municipal Corporation represented by its Commissioner (Respondent):

a) *Grant Ad-interim injunction or stay against the coercive steps that the Respondent Authority proposed to initiate including seize/seal of the Hotel premises situated at H.No.3-6-552 to 558, 558/1, Himayathnagar, Hyderabad.*
b) *Direct the Respondent Authority to lodge the claim for Rs.12,24,704/- with Resolution Professional towards arrears of taxes for the period up to CIRP Admission order dated 11.04.2022 payable by Corporate Debtor.*
c) *Direct the Respondent to permit the Resolution Professional/Applicant to accept the arrears of Tax subsequent to passing of CIRP Admission Order dated 11.04.2022 in monthly instalments.*

1) <u>Brief of averments in the Application:</u>

1.1. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated 11.04.2022 in a Petition vide C.P. No. IB/153/7/2021 filed by M/s. Pridhvi Asset Reconstruction and Securitisation Company Limited (Financial Creditor) and appointed the Applicant herein as Interim Resolution Professional (IRP) of the Corporate Debtor. The Applicant was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) of the Corporate Debtor on 11.05.2022. Accordingly, the Applicant took control of the functioning of a hotel belonging to the Corporate Debtor situated at H.No.3-6-552 to 558, 558/1, Himayathnagar, Hyderabad.

1.2. During the CIRP, the Respondent Authority through their jurisdictional bill collector of Amberpet Circle No.16 issued a demand notice dated 10.11.2022 to the Corporate Debtor and asked for various documents. The Respondent Authority also informed the Corporate Debtor that the hotel is being run without obtaining/renewing the trade license for the past five years which is in violation of the rules and Regulations of GHMC as per section 521 of GHMC Act. That in case of default of payment of arrears and non-providing of information, appropriate action would be taken under Section 622 of the GHMC Act.

1.3. It is stated that on pursuits by the resolution professional the earlier notices issued by the Respondent Authority in regard to the Hotel were provided and ascertained the details of the arrears of tax to be paid by the Corporate Debtor. As per the calculations made by the resolution professional, the total arrears of tax to be paid by the Corporate Debtor to the Respondent Authority stands at Rs.38,54,691/-. Out of the same, the arrears of Rs.12,24,704/- pertains to CIRP period and arrears of Rs.26,29,987/- pertains to pre-CIRP period.

1.4. It is further stated that on 26.12.2022 the resolution professional informed the Respondent Authority to lodge their claim as per IBC. But the Respondent Authority failed to lodge the claim regarding the arrears of tax to be paid by the Corporate Debtor pertaining to the pre-CIRP period of Corporate Debtor i.e. prior to 11.04.2022. With respect to the payment of arrears during CIRP period, the resolution professional on 30.12.2023 sought permission from the Respondent Authority to make partial payments/payment in instalments, as the occupancy of the Hotel is not in full. Additionally, the Respondent Authority informed the resolution professional that unless the old arrears of tax are not cleared, the taxes for the CIRP period will not be accepted by the software of the Respondent Authority. Furthermore, the Respondent Authority indicated their intention to cease and seal the Hotel if the arrears are not fully paid within the stipulated period.

2) The respondent remained ex-parte.

3) **<u>Brief of written submission of the resolution professional:</u>**

3.1. The written submission is filed by the resolution professional Govada Subba Rao who was replaced with the erstwhile resolution professional who filed the present application. The erstwhile resolution professional was replaced vide order dated: 08.04.2024 in IA. No. 824 of 2024.

3.2. Reiterating the averments in the application, it is stated that the resolution professional has complied with the interim order of this Tribunal dated 12.02.2024. In compliance, the resolution professional has paid a sum of Rs. 12,24,704/- in two tranches i.e. Rs. 6,13,000/- was paid on 06.06.2024 and Rs.6,11,704/- on 20.09.2024.

3.3. Despite service of notices through email, RPAD, and personal delivery, the Respondent failed to appear on the subsequent hearing date, 13.03.2024. Consequently, this Tribunal declared the Respondent ex parte and extended the interim orders until further notice. It is stated that after a delay of five months, the Respondent filed I.A. Nos. 1369 and 1370 of 2024 to vacate the interim order and to set aside the ex parte order. However, due to repeated non-appearance, including on 17.09.2024, these applications were dismissed for default.

3.4. It is argued by the applicant that the Respondent has failed to comprehend the jurisdiction of this Tribunal and the overriding effect of the Insolvency and Bankruptcy Code, 2016 (IBC), as per Section 238. The Respondent has erroneously argued that jurisdiction lies with the Chief Judge, City Small Causes Court, for appeals against valuation and taxes. The application filed by the RP merely seeks directions to the Respondent to lodge their claim for Rs.26,29,987/- towards pre-CIRP property tax arrears and permission to pay Rs. 12,24,704/- claim pertaining to CIRP period in installments during the CIRP. Furthermore, the Respondent has now claimed dues of Rs. 46,20,131/- but has failed to lodge their claim for Rs. 26,29,987/-.

4) On perusal of the facts and circumstances of the case, following point arises for consideration of this tribunal:

Point:

Whether Greater Hyderabad Municipal Corporation can initiate recovery proceedings of property tax against the Corporate Debtor under the provisions of the GHMC act, post initiation of CIRP process and declaration of 'Moratorium' against the corporate debtor?

5) We have heard Mr. Ch. Srinivasulu learned counsel for the resolution professional, perused the record.

Point:

Whether Greater Hyderabad Municipal Corporation can initiate recovery proceedings of property tax against the Corporate Debtor

under the provisions of the GHMC act, post initiation of CIRP process and declaration of 'Moratorium' against the corporate debtor?

<u>The submissions:</u>

6) Learned Counsel for applicant briefly submitted that this Tribunal after hearing the matter in IA no 250/2024 passed an order on 12.02.2024, granting ad-interim injunction restraining the respondent from sealing the premises and directed the respondent to lodge their claim for tax dues of pre-CIRP period and further allowed RP to pay current tax dues of Rs 12,24,704.00 in six equal instalments by September 2024.

7) Learned counsel further submitted that in compliance of the said order, RP has paid a sum of Rs 12,24,704.00 in two trenches. Learned counsel further submitted that keeping in view the legal position under IBC and the compliance of order dated 12.02.2024 of this Tribunal, GHMC authorities may be directed not to attach the property of Corporate Debtor under Sections 210,211, and 212 of GHMC Act as IBC overrides GHMC Act.

8) Learned counsel further clarified that though as per records, the tax demand receipts issued by the Respondent Authority are in the name of M/s. Maheshwari Megaventures Ltd and not in the name of the corporate debtor, but it is because the name of the Corporate Debtor was not updated on the tax bills and is still continuing in the name of Company from whom the hotel was acquired by the Corporate Debtor through a sale deed (Document No. 1184 of 2014 dated 31.10.2014) filed with the Sub-Registrar, Bowenpally.

9) Learned Counsel further submitted that Corporate Debtor was admitted into CIRP on 11.04.2022, and a moratorium under Section 14 of the Code was

declared. The demand putforth by the respondent includes tax arrears from the pre-CIRP period as well as during the CIRP period. However, under the Code, the Respondent Authority cannot issue a demand for pre-CIRP dues by way of a demand notice. The IBC provides remedies by allowing creditors to lodge claims against the Corporate Debtor before the Resolution Professional. Respondent being a statutory creditor has the right to claim these dues by lodging its claim with the resolution professional but Respondent has failed to do so despite being informed by the resolution professional.

10) Learned Counsel further submitted that respondent is authorized to raise demands for property tax accrued during the CIRP period even when a moratorium is in place, and it is the duty of the resolution professional to remit these taxes and resolution professional does not deny the liability to pay taxes accrued during the CIRP period.

<u>Our observations and findings:</u>

11) As soon as a company is admitted under CIRP, moratorium under Section 14 of IBC, 2016 triggers in and on perusal of records we find that in the extant case also the moratorium has been declared in view of Section 14 of the IBC, 2016 on admission of Corporate Debtor in CIRP on 11.04.2022. In view of the same any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property is specifically prohibited under Section 14 of the Code.

12) At this stage, it will be relevant to look into the provisions of Section 14 of IBC, 2016, which is reproduced below:

*"**14. Moratorium.** - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: - (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. [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 license, 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]
(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.
(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."

13) From the perusal of above section, *Supra,* it is very clear that as per Section 14(1)(c), there is prohibition for any action to foreclose, recover or enforce any security interest created by the Corporate Debtor. Subsection (2) further envisages that the Corporate Debtor will continue to run as a going concern and that supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the CIRP, whereas Sub-section (2A) provides that the supply of essential goods or services shall continue except where Corporate Debtor does not pay the dues arising from such supply during the moratorium period.

14) At this stage, it is also relevant to peruse Section 238 of IBC, 2016, which lays down as under:

> *"**238. Provisions of this Code to override other laws. -** The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

15) In further deciding the issue, we are guided by the judgment in ***ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472***, wherein the Hon'ble Supreme Court has held as under:

> *"**38**. Section 14 of the IBC prescribes a moratorium on the initiation of CIRP proceedings and its effects. One of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process. In this context, it is relevant to quote the February 2020 Report of the Insolvency Law Committee, which notes as under:*
> *"8.2. The moratorium under Section 14 is intended to keep "the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default." Keeping the corporate debtor running as a going concern during the CIRP helps in achieving resolution as a going concern as well, which is likely to maximize value for all stakeholders.* ---."

From the above, it can be seen that one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor. This is done in order to provide the Corporate Debtor with breathing space, to allow it to continue as a going concern and rehabilitate itself. Any contrary interpretation would crack this shield and would have adverse consequences on the objective sought to be achieved.

***44.** At the cost of repetition, we may note that the demand notices issued by the respondent are plainly in the teeth of Section 14 of the IBC as they were issued after the initiation of the CIRP proceedings. Moratorium under Section 14 of the IBC was imposed when insolvency proceedings were initiated on 01.08.2017. The first notice sent by the respondent authority was on 29.03.2019. Further, when insolvency resolution failed and the liquidation process began, the NCLT passed an order on 25.04.2019 imposing moratorium under Section 33(5) of the IBC. It is only after this order that the respondent issued a notice under Section 72 of the Customs Act against the Corporate Debtor. The various demand notices have therefore clearly been issued by the respondent after the initiation of the insolvency proceedings, with some notices issued even after the liquidation moratorium was imposed.*

45**. We are of the clear opinion that the demand notices to seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the case may be. **This is because the demand notices are an initiation of legal proceedings against the Corporate Debtor. However, the above analysis would not be complete unless this Court examines the extent of powers which the respondent authority can exercise during the moratorium period under the IBC.

***57.** On the basis of the above discussions, following are our conclusions:*

***57.1**. Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*

***57.2**. After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.*

***57.3**. In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC."*

16) Thus, by placing reliance on the above judgement, it is very clear that the respondent authority only has a limited jurisdiction to assess/determine the quantum of property tax but the respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation etc, as provided under the GHMC Act. The respondent authority has to submit its claims in terms of the procedure laid down, under the IBC.

17) In the above backdrop, we are of the firm opinion that in the scheme of the IBC, 2016 once a Corporate Debtor is admitted into CIRP, all recovery action for past dues come to a standstill. During CIRP period, the Corporate Debtor has to be kept as a going concern and all essential supplies of goods or services have to be continued, subject to payment of dues "arising from such supply during the moratorium period", that is, on payment of current dues. Recovery of past dues is specifically prohibited and the specified procedure envisages that the creditor will file claim, in proper form, before IRP/RP, which has not been done in the present case.

18) Thus, in the light of the provisions of IBC, 2016 and the guidance provided by the judgments cited above, we decide that Greater Hyderabad Municipal Corporation cannot initiate recovery proceedings of property tax against the Corporate Debtor under the provisions of the GHMC act, post initiation of CIRP process and declaration of 'Moratorium' against the corporate debtor. Accordingly, the point is decided.

19) In view of answer to the point before us, we pass following order:

i. The Respondent Authority is directed not to take any action against the hotel premises of corporate debtor situated at H.No. 3-6-552 to 558, 558/1 Himayathnagar, Hyderabad in pursuance of the notice issued by respondent.

ii. The Applicant is directed to pay the arrears of CIRP period if any and shall continue to pay the current tax on due dates.

iii. The Respondent is further given a liberty to lodge its claim of arrears of tax pertaining to pre-CIRP period within 15 days of the date of receipt of this order and delay if any in lodgement of claim is condoned hereby and applicant is directed to receive the claim and deal with it as per law.

20) The application, IA no 250/2024, is allowed and disposed of. No order to costs.

Sd/-	Sd/-
Charan Singh	**Dr. Venkata Ramakrishna Badarinath Nandula**
Member Technical	**Member Judicial**

Bhargavi Kinhalkar