

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT II

**C.P. (IB) 393/MB/C-II/2023**

Under Section 10 of the Insolvency &  
Bankruptcy Code, 2016 r.w. Rule 7 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016

*In the matter of*

**M/s. V H Aparadh Hotel Pvt. Ltd.**

**[CIN: U55101MH1993PTC073682]**

Registered office No. Hotel Victor Palace E  
Ward Rukmini Nagar Old Pune Tal  
Karveer Kolhapur 416005.

...Corporate Debtor

**Order Pronounced on 31.07.2024**

***Coram:***

**Anil Raj Chellan**

**Member (Technical)**

**Kuldip Kumar Kareer**

**Member (Judicial)**

***Appearances:***

For the Applicant/Corporate Debtor : Adv. Rahul Sarda i/b

Adv. Abhishek Adke

For Canara Bank

: Adv. Srihari Saranathan




**ORDER**

*Per: Mr. Kuldip Kumar Kareer, Member (Judicial)*

1. This Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") read with Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by V H Aparadh Hotels Pvt Ltd (in short, "**the Corporate Debtor**") for initiation of Corporate Insolvency Resolution Process (**CIRP**) following a default in meeting the financial obligations amounting to Rs. 1,27,03,774/-.
2. It is submitted that the Corporate Debtor was incorporated on 27.08.1993 and is engaged in the business of running the hotels, motels, inns holiday homes, guest houses, restaurants, canteen, caters, cafes taverns, etc. As per the Memorandum of Association, the Corporate Debtor has been engaged in the business of providing various kind of services also.
3. As per section 49 of Central Goods and Service Tax Act 2017 any firm, company or individual who provides services which are not included in the list of negative things, is liable to pay service tax under this section. It is further submitted that the Corporate Debtor is holder of service tax registration number (AAACV5907GST001) for providing various taxable services. However, it failed to pay service taxes during the periods of 2011-2012 (Rs. 41,86,635), 2012-2013 (Rs. 31,93,828), and 2013-2014 (Rs. 28,55,101). Consequently, a demand notices 23.10.2013, May 2014 and 21.04.2016 for the payment of the service tax amounts have been served on the Corporate Debtor by the Office of the Commissioner of Central Excise & Service Tax for payment of service tax.



4. Despite the issuance of show cause notices, the Corporate Debtor could not discharge its service tax liability on taxable services. The Corporate Debtor provided taxable services during the period from April 2014 to March 2015 and but failed to remit the service tax for that period. Therefore, a Statement of Demand for the recovery of the service tax amounting to Rs. 24,68,210/- was issued to the Corporate Debtor on 21.04.2016.
5. The Corporate Debtor acknowledges that an amount of Rs. 1,27,03,774 (Rupees One Crore Twenty-Seven Lakh Three Thousand Seven Hundred and Seventy-Four Only) is due and payable. This amount is exclusive of any interest and penalty that may be applicable. The acknowledgement of this liability is also reflected in the financial statements of the corporate debtor, which explicitly indicate that this amount is shown as “Service Tax Payable.”
6. Furthermore, the Corporate Debtor submitted replies to the Assistant Commissioner dated May 27, 2021, and June 16, 2021, acknowledging the debt and requested additional time for payment. However, the Corporate Debtor could not pay the amount towards the outstanding amount till date.
7. As per the Demand Notices served, the Corporate Debtor has failed to pay the sum of Rs. 127,03,774 (Rupees One Crore Twenty-Seven Lakh Three Thousand Seven Hundred and Seventy-Four Only), excluding interest and penalties. Consequently, the existence of the debt and the default stands established on record.
8. The shareholders of the Corporate Debtor at the Extra Ordinary General Meeting (EGM) held on 02.12.2022 approved initiation of Corporate Insolvency Resolution Process (CIRP). Therefore, the Corporate Debtor



filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016. Hence the Petition.

**Analysis and Findings:-**

9. We have heard the Counsel for the Petitioner and gone through the record.
10. The instant Petition under Section 10 has been filed by the Applicant/Corporate Debtor i.e. V.H. Aparadh Hotels Private Limited, inter alia, on the ground of outstanding statutory dues of service tax of Rs. 1,25,39,050/-. The Applicant/Corporate Debtor has relied the audited balance sheet for the year 2021-22 which also reflect the outstanding dues of Rs. 1.25 crores of service tax. Apart from that, there are certain other liabilities, which are also outstanding on account of non-payment of taxes to different departments. The Petitioner has relied upon demand notices dated 21.04.2016 and 23.10.2023 issued by the Office of Commissioner of Central Excise & Service Tax. The date of default has also been stated to be as 21.04.2016 which is the date of the demand notice. In this regard, it has been argued by the Counsel for the Petitioner that in an application under Section 10 of the Insolvency and Bankruptcy Code, 2016, the Limitation Act is not applicable. In support of his contention, ld. Counsel for the Petitioner has relied upon *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates*, ( Civil Appeal No. 23988/2017) AIR 2018 SC 5601 whereby it was held that since in an application under Section 10 of the Insolvency and Bankruptcy Code 2016, the Corporate Debtor is not claiming any money but prays for initiation of Corporate Insolvency Resolution Process against itself having defaulted to pay the dues of the creditors, provisions of the Limitation Act would not be applicable. In this connection, we can also refer to an order passed by *NCLT, New Delhi*,



***Bench-V in Worldview Tours Private Limited in C.P. (IB) No. 865/ND/2020***

whereby also it has also been held that the provisions of the Limitation Act are not applicable in Section 10 of the Insolvency and Bankruptcy Code in view of the findings recorded by the Hon'ble NCLAT in Civil Appeal No. 2398/2017.


11. From the facts and circumstances of the instant case, it is evident that the Applicant/Corporate Debtor is in default of service tax liability of more than Rs. 1 crore. Notices were issued to the concerned creditors of the Corporate Debtor including Canara Bank, but no objections have been filed by any of the Operational or the Financial Creditors of the Corporate Debtor. As per the balance sheet also, it is evident that the Corporate Debtor has been incurring business losses continuously and has also not been able to clear the dues of the statutory Authorities and thus has become commercially insolvent.
12. As a result of the above brief discussion, we are of the considered view that the Applicant/Corporate Debtor has been able to establish the existence of debt and its default and, therefore, we deem it appropriate to admit the Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 in the following terms:-

**ORDER**

- a. **The above Company Petition No. (IB) 393/(MB)/2023 is hereby admitted** and initiation of the Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. V H Aparadh Hotel Pvt. Ltd.**




- b. This Bench hereby appoints **Mr. Jitendra Palande;**  
**Registration No: IBBI/IPA-003/IP-N00028/2017-18/10188** as the **Interim Resolution Professional** having his address at 38,5-3/D, New Ajanta Avenue, Paud Road, Kothrud, Pune City, Ex. Serviceman Colony, Pin Code- 411038 **Email :- [jitendra@7circles.co.in](mailto:jitendra@7circles.co.in)** ; to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Debtor shall deposit an amount of Rs. 3,00,000/- (Rupees three lakhs only) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel, or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. 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.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of the corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made



immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

13. The Registry is hereby directed to communicate this order to Applicant and IRP immediately.

**Sd/-**  
**Anil Raj Chellan**  
**Member (Technical)**

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**