



SL. No.136

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Special Bench (Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA-MEMBER (J)
CORAM: HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.08.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/88/2022
NAME OF THE COMPANY	Viceroy Bangalore Hotels Pvt Ltd
NAME OF THE PETITIONER(S)	Edelweiss Assets Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Viceroy Bangalore Hotels Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Learned Counsel for the Financial Creditor and Learned Counsel for the Corporate Debtor appeared via video conference.

Order pronounced vide separate sheets. Hence, CP(IB)/88/2022 is hereby allowed.

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MEMBER (T)

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MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) NO.88/7/HDB/2022

Under section 7 of the IB code, 2016

Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016

In the matter of

VICEROY BANGALORE HOTELS PVT LTD

Between:

Edelweiss Assets Reconstruction Company Limited
Edelweiss House,
Off C.S.T. Road, Kalina, Mumbai,
Maharashtra-400098.

....Petitioner/
Financial Creditor

And

Viceroy Bangalore Hotels Private Limited
Plot No.258, Road No.18, Jubilee Hills,
Hyderabad,
Telangana-500034.

....Respondent/
Corporate Debtor

Date of Order: 05.08.2022

Coram:

HON'BLE DR.VENKATA RAMAKRISHNA BADARINATH NANDULA, Member (J)
HON'BLE VEERA BRAHMA RAO AREKAPUDI, Member (T)

Parties/Counsels Present:

For the Financial Creditor : Mrs. Ekta Bahl, Advocate

For the Corporate Debtor : Mr. Kushagra Pandit, Advocate

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Per:Bench

ORDER

- 1) Under consideration is a Company Application filed by Edelweiss Assets Reconstruction Company Limited (in Short “Petitioner /Financial Creditor”) under section 7 of the Insolvency and Bankruptcy Code, 2016 (in Short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against Viceroy Bangalore Hotels Private Limited (in Short, “Respondent /Corporate Debtor”).
- 2) Brief facts of the case as submitted by the Financial Creditors are as follows:
 - a) The consortium of banks consisting of (a) Punjab National Bank, (b) IDBI Bank, (c) Union Bank of India and (d) Jammu and Kashmir Bank (herein after collectively referred as ‘Original Lenders’) had sanctioned and disbursed various loans to the corporate Debtor as per the details mentioned below:
 - i. **Term Loan:** Term loan of Rs.206,00,00,000/-for construction of five –star hotel at Bangalore and by and Under a Common Loan Agreement dated 29.03.2012executed inter-alia between the original Lenders and the Corporate Debtor.
 - ii. At the request of the Corporate Debtor, the Original Lender sanctioned and disbursed Additional Term Loans and Bank Guarantees totalling to Rs. 70.31crores for time and cost overrun and for completion of the hotel project vide Common Loan Agreement dated 20.03.2014, read with the supplementary Loan Agreement dated 26.06.2014, entered into between inter-alia the original Lenders and the Corporate Debtor.
 - iii. At request of the Corporate Debtor , the Original Lenders renewed the terms and conditions of the existing Term Loans and Bank Guarantees, vide Supplementary Common Loan Agreement dated 26.03.2015 and Union Bank Guarantee of Rs. 1.70 Crore only.
 - b) The original Lenders have assigned their respective portion of the Loans to the Financial Creditor through valid deeds of assignments, detailed hereunder

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- (i) Punjab National Bank has assigned its term loan and bank guarantee (Which has been devolved) to the Financial Creditor acting in its capacity as trustee of EARC Trust-SC-236, vide Assignment dated 29.12.2016.
 - (ii) Jammu and Kashmir Bank has assigned its term loan to the Financial Creditor acting in its capacity as trustee of EARC Trust-SC-246 vide Assignment Agreement dated 29.03.2017.
 - (iii) IDBI Bank has assigned its term loan to the Financial Creditor acting in its capacity as trustee of EARC Trust-SC-249 vide Assignment Agreement dated 22.03.2017.
 - (iv) Union Bank of India has assigned its term loan to the Financial Creditor acting in its capacity as trustee of EARC Trust-SC-253 vide Assignment Agreement dated 31.03.2017.
 - (v) Copies of the Assignment Agreements Mentioned above, are annexed herewith as Annexure 1/5 (Colly)
- c) The Loans amounting to a total of Rs. 361,94,75,105/- which was assigned to Financial Creditor by the Original Lenders was restructured and reduced to Rs. 317,00,00,000/- Vide the Master Restructuring Agreement (MRA) dated 19.06.2017 thereby reducing the debt of the Corporate Debtor as a restructuring benefit. The restructuring package was mutually agreed to be effective from 31.03.2017.
- d) The Corporate Debtor could not adhere to the terms and conditions of the Restructuring package and committed defaults in repayments of dues to the Financial Creditors.
- e) The total amount due and Claimed as on 31.01.2022 is Rs.755,26,61,289/- which includes the interest and penal interest on the Loans (restructured amounts as per the MRA).
- f) The Corporate Debtor had defaulted in payment of interest due on 15.09.2019, the entire debt as per the MRA was recalled by the Financial Creditor in terms of Clause 702 of the MRA vide Default cum Recall Notice dated 06.12.2019.
- g) All the necessary documents relating to the disbursal assignment restricting and recall of the loan amounts has been filed by the Financial Creditor.

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- 3) Learned counsel for the Respondent filed Reply Stating that :-
- a) That the Corporate Debtor as such admits that it is in default of the Financial Debt. Moreover, the Corporate Debtor does not object to the initiation of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016.
- 4) Heard and perused the record.
- 5) It is the case of the Financial Creditor that originally various term loans were accorded to the Corporate Debtor by various Banks and subsequently the said loans were assigned to the Financial Creditor herein. Now that the Corporate Debtor herein has failed in making payments towards interest due on 15.09.2019 the entire debt is recalled and thus there is a default of Rs.755,26,61,289/- which includes the interest and penal interest on the Loans (restructured amounts as per the MRA).
- 6) The Corporate Debtor herein has filed a reply affidavit dated 01.05.2022 where in it is stated as under:

That the Corporate Debtor as such admits that it is in default of the Financial Debt. Moreover, the Corporate Debtor does not object to the initiation of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016.

- 7) That the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

".....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 subsection (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."

- 8) After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt and there has been a default in repayment of the same. Further the Financial Creditor has fulfilled all the

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conditions as stipulated under the provisions of Section 7 of IB Code, 2016. In this circumstances, we are inclined to admit the instant Application.

- 9) Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) in the case of the Corporate Debtor namely M/S Viceroy Bangalore Hotels Pvt Ltd , which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order.
- 10) This Adjudicating Authority hereby appoints Mr. Kuresh Hatim Khambati having his Regn. No. IBBI/IPA-001/IP-P01521/2018-2019/12454 and email ID Kuresh.khambati.IP@outlook.com as IRP as proposed by the Financial Creditor. He has also filed his written consent. He is directed to file his valid Authorization for Assignment within three days from date of this order.
- 11) The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
- 12) We direct the Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP, which shall be ratified later on by CoC.
- 13) The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP in terms of Section 14 of the IB Code, 2016. It is hereby ordered to prohibit 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 judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

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- 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.*
- e. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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, concessions, clearances or a similar grant or right during the moratorium period.*
- 14) The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any 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. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to 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.
- 15) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
- 16) The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.



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- 17) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
- 18) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- 19) Accordingly, CP (IB) No.88/7/HDB/2022 is hereby admitted.

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Veera Brahma Rao Arekapudi
Member Technical

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Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sunita/SKRathi