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

CP (IB)/107/2021

*(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 **Tirupur Plaza Hotel Limited***

Small Industries Development Bank of India

Head office at SIDBI Towers,
15, Ashok Marg,
Lucknow - 226001.

Regional Office at

SARB Chennai Office,
Overseas Towers, 756-L, Anna Salai,
Chennai- 600 002

... Applicant/Financial Creditor

-Vs-

Tirupur Plaza Hotel Private Limited

5/778, P. N. Road,
Pichampalayampudur,
Tirupur - 641603.
Tamil Nadu.

...Respondent/Corporate Debtor

*Order Pronounced on **25th April 2022***

CORAM:

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

*For Financial Creditor :Prapti Mehta,Advocate
For Corporate Debtor :Vidhya Shankar, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **Small Industries Development Bank of India** (hereinafter referred to as 'Financial Creditor') on 06.07.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **Tirupur Plaza Hotel Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that this application is a financial institution/corporation established by the Small Industries Development Bank of India Act, 1989. The Affidavit verifying the Application is placed at page No 12-13 of the Application typeset and the same authorizes Mr. Ajith Thankappan Nair Saraladevi Amma, Dy. General Manager as the Authorized signatory of the Financial Creditor.

3. Part II of the Application lays down the details of the Corporate Debtor from which it can be seen that the Corporate Debtor is a Private Limited company incorporated under the Companies Act, 1956 on 15.02.2006 with CIN:U55101TZ2006PTC012584. The registered office of the Corporate Debtor as per the Application is stated to be at 5/778, P.

N. Road, Pichampalayampudur, Tirupur-641603.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of Mr. A. R. Ramasubramania Raja as Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.4,62,28,000/-(Rupees Four Crore Sixty Two Lakh Six Lakh Twenty Eighty Thousand only) as total Financial Debt due and payable by the Corporate Debtor as on 30.09.2020. Further, it can be seen from Part IV, that the date of default is stated to be 09.05.2019.

6. Part V of the Application describes the particulars of Financial Debt, documents, records and evidence of default and the list of documents in order to prove the existence of the Financial Debt is enumerated hereunder:-

- i. Deed of Hypothecation dated 11.09.2015.
- ii. Memorandum of deposit of title deeds dated 14.09.2015.
- iii. Certificate of incorporation of Tirupur Plaza Hotel P. Ltd.
- iv. MSME Certificate.
- v. Special Resolution dated 10.09.2015 allowing borrowing uptill Rs. 10 Crores.
- vi. Letter of intent for Term Loan facility/financial assistance of Rs. 490 lakh.
- vii. Board Resolution for availing loan from SIDBI.
- viii. Board Resolution of Corporate Debtor allowing SIDBI to create first charge over all its movable and immovable assets.
- ix. Application for financial assistance.
- x. Loan Agreement between SIDBI and Corporate Debtor for Rs. 490 Lakh.

- xi. Request for disbursement dated 11.09.2015.
- xii. Deed of personal guarantee of Mr. DS Jagannathan and Mr R. Boopathirajan.
- xiii. Declaration and undertaking by Mr. DS Jagannathan.
- xiv. Undertaking for over run, non disposal of shareholding etc.
- xv. Undertaking for ensuring statutory compliances, obtaining SIDBI approval for changes in the company etc.
- xvi. Memorandum of deposit of title deeds registered with the District Registrar Office.
- xvii. Possession Notice issued under S. 13 (4) of SARFAESI Act, 2002.
- xviii. Demand Notice issued under S. 13 (2) of SARFAESI Act, 2002.
- xix. Notice from SIDBI to Corporate Debtor dated 1.9.2020 requesting handing over of physical possession of secured assets.
- xx. Notice issued by SIDBI to Corporate Debtor dated 8.10.2020 regarding initiation of IBC proceedings.

7. It was submitted by the Learned Counsel for the Financial Creditor that had granted Term Loan to the Corporate Debtor for Rs. 4,90,00,000/ and working capital limit of Rs. 36 Lakh through loan agreement dated 11.09.2015. These loans were sanctioned to set up a Vegetarian Restaurant in Tirupur. Various securities were obtained by the Financial Creditor such as hypothecation, mortgage and personal guarantees of Directors. It is submitted that the said loans were disbursed to the Corporate Debtors account on various dates between 23.09.2015 to 07.10.2016 as per the terms agreed between the parties. The Ld. Counsel further submits that, the said term loan of Rs. 490 Lakh was to be repaid over a period of 108 instalments.

8. Further the Ld. Counsel for the Financial Creditor submitted that the Loan agreements mentioned *supra* carries an interest on

floating rates which varied from 12.50% to 10.20% from time to time.

9. Ld. Counsel for the Financial Creditor submitted that pursuant to the said sanction letters mentioned above Hypothecation Agreement dated 11.09.2015 and mortgage was executed on same date between the Financial Creditor and the Corporate Debtor for securing a total value of loan.

10. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor had completely stopped making payments towards the interest and principal repayment and the account of the Corporate Debtor was declared as NPA on 09.05.2019 in terms of the extant guidelines of Reserve Bank of India. The Applicant finally recalled the entire loan facility on 14.10.2019.

11. Ld. Counsel for the Financial Creditor submitted that a demand notice dated 03.01.2020 under S. 13 (2) of SARFAESI Act, 2002 was issued demanding Corporate Debtor to pay a sum of Rs. 4,18,10,551 as on 03.01.2020. The Corporate Debtor failed to pay the amount. Subsequently on 01.09.2020, Applicant issued a notice requesting the representatives of the Corporate Debtor to be present at the premises of the mortgaged property to hand over peaceful possession of secured assets of the Corporate Debtor. Notice as



required u/s 13 (4) of SARFAESI Act, 2002 was also issued pursuant to which the Applicant has taken possession of the secured assets. However, despite all this the Corporate Debtor has not paid. The Financial Creditor is left with no other remedy, hence present Application under Section 7 of the IBC, has been filed before this Tribunal.

12. The Respondent in this said matter filed reply dated 29.07.2021 which was filed online only on 05.08.2021. In the reply, the Respondent raised issues regarding release of some security consequent to payment, non reflection of certain payments made in November 2019 etc. Under Para 6 of the reply the Respondent admits that its account turned NPA in May, 2019, however it further says that no opportunity for restructuring of the loan was allowed by the Financial Creditor.

13. Respondent under Para 7 of the reply narrated the reasons for delay in implementation of the project and the difficulties faced by them. Under Para 8 the Respondent admits that they have paid interest showing their bonafide.



14. Para 10 of the reply is reproduced below :-

"Even on 29.07.2021, the Corporate Debtor has submitted a detailed representation to the Applicant inter alia giving a proposal for either restructuring or alternatively, at the discretion of the Applicant, to permit release of specific collateral linked to payment which would facilitate discharge of the facility to the Applicant"

15. Written arguments were filed by the Applicant on 1.4.2022, reliance was placed on Alpine Wineries Pvt. Ltd. Vs Pridhvi Asset Reconstruction and Securitisation Company Ltd., 2020 (6) KarLJ311 and Edelweiss Asset Reconstruction Company Ltd. Vs. CLC Industries Ltd. (2020) 151 SCL125.

16. Written Arguments were also filed by the Respondent on 19.4.2022. Under Para 9 of the same the Respondent admits his inability to repay the debt but for force majeure.

17. Heard the submissions made by the Learned Counsels of both sides and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the existence of a 'debt' and 'default' had been proven beyond reasonable doubt by the Financial Creditor based upon the documents presented before us.

18. It is seen from the record that the application was filed on 06.07.2021 and at that point of time the pecuniary jurisdiction of this

Tribunal was Rs. 1.00 Crore. The present application satisfies the criteria. Further the present default is prior to advent of Covid-19 and introduction of Section 10A of the IBC. The amount of default is more than Rs. One Crore, it is left to IRP to determine the exact amount of claim of Financial Creditor post commencement of CIRP.

19. Further, 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.

20. The respondent in his reply and written arguments has admitted the default, however he states that the same was due to unavoidable reasons beyond his control. The matter was listed on 22.11.2021, 16.12.2021 and on 1.2.2022 and was adjourned on request of both sides since settlement talks were going on. It is clear that OTS proposition was made by the Respondent, which in our view is admission of debt in this regard reliance is placed on judgment by Hon'ble Supreme Court in the matter of Dena Bank (Now Bank of Baroda) vs C. Shivakumar Reddy, Civil Appeal No. 1650 of 2020. Para 141 and 142 are reproduced below :-

141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of

the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years”

21. 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.


22. 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;



23. 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.



24. 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.

25. The Financial Creditor has proposed the name of **Mr. A. R. Ramasubramania Raja** (E-mail id: *arrsraja@yahoo.com*) with Registration No: IBBI/IPA-002/IP-N00635/2018-10/11982 (AFA valid till 15.11.2022) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2.

26. 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.

27. 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.

28. 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.

29. 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.



30. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to 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 and to the Interim Resolution Professional above named forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

31. 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.

32. Post this CP/IB/107/CHE/2021 for hearing on **09.06.2022**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)
MEMBER (JUDICIAL)