

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-79(PB)/2019

IN THE MATTER OF:

Central Bank of India LtdPetitioner

Vs.

Harvest Hotels and Serviced
Apartments Pvt Ltd.Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy
Code, 2016**

Order delivered on: 01.03.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Ms. Neha Malik, Mr.Sahil Malik,Advs.
For Respondent : Mr. Anjani Kumar Singh, Ms. Saroj Kumar
Singh, Advs.

ORDER
M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Harvest Hotels and Serviced Apartments Pvt Ltd (for brevity the 'corporate debtor').

2. The Corporate Debtor – Harvest Hotels and Serviced Apartments Pvt Ltd was incorporated on 17.11.2009 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U55101DL2009PTC196079.

3. It is submitted by the Petitioner that it had sanctioned a term loan amounting to Rs. 22,45,00,000/- in favour of the Respondent – corporate debtor vide sanction letter dated 11.01.2013 (**Annexure-7**) and pursuant to the same executed Articles of Agreement and Supplementary Agreement dated 18.01.2013 (**Annexure -9(Colly)**). Further an amount of Rs. 5,66,00,000/- was disbursed by the petitioner – financial creditor to the respondent – corporate debtor as Funded Interest Term Loan (for brevity 'FITL') as per the request made by the corporate debtor for restructuring. A copy of the letter



dated 27.12.2014 for restructuring has been placed on record **(Annexure – 12)**.

4. The above mentioned facilities were secured by creating a First pari passu charge on all the movable fixed assets and on the entire immovable fixed assets of the Respondent – Corporate Debtor (to be shared with the State Bank of India – the then State Bank of Patiala) **(Annexure 21(Colly))**. Further personal and corporate guarantees were also executed by the directors/ promoters of the Respondent- corporate debtor and the same have been placed on record **(Annexure-10(Colly) & Annexure – 11)**.

5. The respondent- corporate debtor defaulted in the repayment of the instalments and the account of the corporate debtor as maintained by the financial creditor was declared as a Non-Performing Asset on 30.10.2017. Subsequently, the petitioner – financial creditor issued a statutory notice under Section 13(2) of the SARFESI Act, 2002 to the guarantors of the corporate debtor **(Annexure- 15(Colly))**. A reply to the notice by the



respondent – corporate debtor is placed on record (**Annexure-16**).

6. Petitioner- financial creditor has also placed on record the copies of the entries and statements of the corporate debtor as maintained by the financial creditor regarding the outstanding amount pertaining to the abovementioned financial facilities in accordance with the Bankers Books Evidence Act, 1891 (**Annexure- 26**).

7. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor as on 18.12.2018 is Rs. 31,09,18,669/- inclusive of outstanding dues to the tune of Rs. 27,30,29,110/- towards Term loan and Rs. 5,46,58,663/- towards the FITL facility. A tabular computation of the amount in default for respective facilities is placed on record (**Annexure- 14**).

8. The Financial Creditor has proposed the name of Mr. Navneet Kumar Gupta as the Insolvency Professional with the address House No. 1598, First floor, Sector 22-B, Chandigarh- 160022



and Mobile No. 9814333213. His email id given is navguptaca@gmail.com His registration number is IBBI/IPA-001/IP-P00361/2017-18/10619. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Annexure – 6)**.

9. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.

10. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate the amount disbursed which includes the Personal and Corporate Guarantees for securing the facilities, certificate of registration of charge, latest valuation report as obtained by State Bank of India and other relevant documents



that show the default on part of the respondent- corporate debtor.

11. A reply to the petition has been filed by one Mr. Chander Mohan, being the Director and the Authorized representative of the Respondent- Corporate Debtor, who has been given authority vide Board Resolution dated 07.01.2019. In the Reply the Respondent-Corporate Debtor has admitted the disbursement of the loan but has questioned the power of attorney dated 19.09.2015 authorising Ms. Kavita S. Thakur to file the present petition

12. On behalf of the Respondent- Corporate Debtor it has been argued that nowhere it is mentioned that the said power of attorney was executed pursuant to the Board resolution. In support of the same the Respondent – Corporate Debtor has placed reliance on para 32 and 33 of the Judgment of NCLAT in the case of **Plaogix Infrastructure Pvt Ltd vs ICICI Bank Ltd (Company Appeal (AT)(Insol.) No. 30 of 2017)** decided on 20.09.2017.



13. The same point was argued by the learned counsel for the respondent – corporate debtor when the matter came up for hearing on 06.02.2019 and the petitioner- financial creditor was granted 7 days to file the requisite document to meet the objection with regard to power of attorney. In compliance of the Order dated 06.02.2019 the petitioner- financial creditor filed an application bearing no. CA- 251(PB)/2019 and placed on record a copy of the Board Resolution dated 17.12.1994 (**Annexure – B** with the application).

14. The said Board Resolution makes it evident that the power of attorney was executed pursuant to the resolution and it also delegates power to the Directors to grant and revoke the Power of Attorney to various officials of the Bank. The objection of the Respondent – Corporate Debtor is sufficiently met. It also satisfies the requirements of the judgement of the Learned Appellate Tribunal as Ms. Kavita S. Thakur, an officer of the Financial Creditor is duly authorised to do so. It is explicit from the following observations made in the judgement of NCLAT in the case of **Plaogix Infrastructure Pvt Ltd (supra)** at para 40 which reads thus:



“In view of reasons as recorded above, while we hold that a ‘Power of Attorney Holder’ is not empowered to file application under section 7 of the I&B Code”, we further hold that a authorised person has power to do so.”

As per the terms of the Board Resolution Ms. Kavita S. Thakur, who is working as Assistant General Manager with the Bank is the authorised person to file the present petition under Section 7 of the Code. The objection raised would not survive and stands fully answered.

15. Further the objection concerning the efforts for restructuring is in the realm of conjectures & surmises. The account of the corporate debtor had become NPA on 30.01.2017 and there is huge amount due and payable within the meaning of Section 3(12) which is over Rs. 31 Crores as on 18.12.2018.

16. It would also be appropriate to place reliance on para 30 of the Judgement of Hon’ble Supreme Court ***in M/s Innoventive Industries Limited v. ICICI Bank Limited and Ors reported***



in 2018 (1) SCC 407 where it was held that the only pre-requisite for admission of an Application filed under Section 7 of the Code is a default exists and the debt is due within the meaning of Section 3(12) of the Code. The other requisite is that the petition is complete in all other respects. The claim made by the financial creditor satisfies the requirement of law as laid down in *M/s Innoventive Industries Limited (supra)*. The petition is complete in all respects as it complies with Rule 4 of the IBBI (Application to Adjudicatory) Rules, 2016 and also all other conditions. The IRP has made all proper declarations in accordance with Rule 9 of the IBBI (Application to Adjudicatory) Rules, 2016.

17. Under sub-section 5(a) of section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.



18. As a sequel to the aforesaid discussion and the material placed on record it is confirmed that the petitioner-financial creditor had disbursed money to the respondent-corporate debtor. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of Rupees One Lakh. Thus, the petition warrants admission as it is complete in all respects. Accordingly the petition is admitted.

19. The provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (**IB- 1039(PB)/2018**).

20. As a sequel to the above discussion, this petition is admitted and Mr. Navneet Kumar Gupta is appointed as the Interim Resolution Professional (Details stated in para 8 above).

21. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.



22. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Navneet Kumar Gupta to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount



however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. Petitioner is also directed to provide copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

**(M.M.KUMAR)
PRESIDENT**

Sd/-

**(S.K. MOHAPATRA)
MEMBER (TECHNICAL)**

Pronounced under Rule 151 of the NCLT Rules as CHIEF JUSTICE (RTD.) M.M. KUMAR, Hon'ble President is not holding the Court today.


**(Nirmala Vincent)
Court Officer**
01/03/19

01.03.2019
(VIDYA)