

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301 - **CP(IB)/30(AHM)2023**

With

ITEM No.302 - **IA/1155(AHM)2023**

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Small Industries Development Bank of India

.....Applicant

V/s

.....Respondent

Hotel Netra Palace Private Limited

**Order delivered on: 09/05/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of the order.

The common order is pronounced in the open court, vide separate sheet.

Sd/-  
**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-  
**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE ADJUDICATING AUTHORITY  
THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT - 2**

**CP (IB) No. 30/ NCLT / AHM / 2023  
And  
IA No. 1155/NCLT/AHM /2023**

(Application under Section 7 of the Insolvency & Bankruptcy Code, 2016)

Small Industries Development Bank of India  
... Applicant/Financial Creditor

**Versus**

Hotel Netra Palace Private Limited  
... Respondent/Corporate Debtor

**MEMO OF PARTIES:**

Small Industries Development Bank of India  
having its Head Office at: Sidbi Tower,  
15, Ashok Marg, Lucknow, Uttar  
Pradesh- 226001, and having its  
Specialized Asset Recovery Branch  
(SARB) office situated at; 2<sup>nd</sup> Floor,  
Swavalamban Bhavan, C-11, G Block,  
Bandra Kurla Complex (BKC), Bandra  
East, Mumbai, Maharashtra 400051  
and also at, Navjeevan Amrit Jayanti  
Bhavan, 1<sup>st</sup> Floor, Behind Gujarat  
Vidhyapith, P.B. No, Navjeevan P.O.,  
Ahmedabad – 380014

...Applicant/Financial Creditor

Versus

Hotel Netra Palace Private Limited  
(CIN:U55101GJ2003PTC042092)  
“Dharmadev House” Shyamal Cross  
Road, Satellite, Ahmedabad, Gujarat -  
380015.

...Respondent/Corporate Debtor

**Order pronounced on: 09.05.2024**

**Coram: Mrs. Chitra Hankare, Member(J)  
Dr. Velamur G Venkata Chalapathy, Member(T)**

Appearance:

For the Applicant : Mr. Harshil Patel, Adv. i/b Mr. Lalit M  
Patel, Adv. in CP(IB)/30(AHM)2023  
Mr. Navin Pahwa, Sr. Adv. a.w  
Mr., Dhruvin N. Dossani, Adv.  
in IA/1155(AHM)2023

For the Respondent : Mr. Navin Pahwa, Sr. Adv. a.w  
Mr., Dhruvin N. Dossani, Adv. in  
CP(IB)/30(AHM)2023  
Mr. Baiju Bhagat, Adv. in  
IA/1155(AHM)2023

**JUDGMENT**

1. The Present application is filed by the SIDBI - Financial Creditor for initiating CIRP against M/s. Hotel Netra Palace Private Limited- Corporate Debtor under section 7 of the IB Code, 2016.
2. The brief facts of the case are that the Corporate Debtor had availed financial assistance by way of secured loan from Small Industries Development Bank of India. The said loan account had become irregular on account of defaults on the part of the Corporate Debtor.

3. It is submitted that Corporate Debtor, approached and applied to the Petitioner for availing financial assistance by way of Term Loan of Rs. 800 Lakhs under Secured Business Loan Scheme. After considering the request of the Corporate Debtor, the Petitioner (SIDBI) sanctioned an amount of Rs. 800 Lakhs as loan to the corporate debtor as per the terms and conditions mentioned in Letter of Intent dated 13.03.2015, to meet the requirement of capex, servicing new orders, renovation of property/assets, reimbursement against self-financed assets acquired in last one year from the date of sanction, funding of intangibles, brand building/marketing, R&D, inorganic business growth or any other bonafide business needs, etc.
4. It is submitted that the Corporate Debtor had accepted all the terms and conditions of the Letter of Intent dated 13.03.2015 by passing a Board resolution in the meeting of its Board of Directors held on 14.03.2015, wherein it resolved to accept the offer of the Petitioner / Financial Creditor to grant credit facility of Rs. 800 Lakhs as per the terms and conditions contained in Letter of Intent dated 13.03.2015 and authorized its director to convey the acceptance of the terms and conditions of Letter of Intent and to execute the Loan

Agreement and other facility/security documents. Accordingly, pursuant thereto Loan Agreement dated 16.03.2015 was entered into between the Borrower and SIDBI at Ahmedabad. As per the said agreement, the loan was repayable in 114 monthly instalments comprising of 113 equated monthly instalments of Rs.7,01,754/- and last instalment of Rs.7,01,798/- commencing after a moratorium of 6 months from the date of first disbursement of the loan. In terms of the said agreement, the Corporate Debtor was required to pay interest, further interest, on the principal amount of the said loan outstanding from time to time with monthly rest on or before 10th of every month. The first of such instalment/interest fell due on 10.04.2015 and instalment of principal amount of the loan on 10.10.2015.

5. It is further submitted that the Corporate Debtor and its directors, in consideration of the sanction of the said loan of Rs.800 Lakhs and as security for the repayment and due discharge of all its liabilities arising out of the said loan, executed the Agreement/documents in favour of the Petitioner Financial Creditor enumerated inter-alia as under;
  - a. Board Resolution passed in the meeting of Board of Directors of the Respondent Company, held on 14.03.2015;

- b. Loan Agreement dated 16.03.2015 along with General Conditions;
- C. Deed of Guarantee dated 16.03.2015 executed by (1) Shri Umang Hiralal Thakkar; and (2) Smt. Kantalata Umang Thakkar;
- d. Deed of Hypothecation dated 16.03.2015 for hypothecating all the movable assets pertaining to its project;
- e. Indenture of Mortgage dated 16.03.2015;
- f. Deed of Confirmation of Indenture of Mortgage dated 23.03.2015;

The hypothecation charge created by the Corporate Debtor in favour of the Petitioner Financial Creditor was duly registered with the Registrar of Companies on 17.03.2015 and also with CERSAI on 18.03.2015.

6. It is submitted that the Corporate Debtor was granted relief and concession of Rs.9,41,585/- (Rupees Nine Lakh Forty-One Thousand Five Hundred and Eighty-Five only) (FITL I) by deferring the payment of interest payable on the said loan during the period from 10/03/2020 to 10/04/2020 and was granted further relief and concession of Rs. 9,74,386/- (Rupees Nine Lakhs Seventy-Four Thousand Three Hundred and Eighty-Six only) (FITL II) by deferring the payment of interest payable during the period from 10/05/2020 to

10/06/2020 in the form of Funded Interest Term Loan Scheme as part of Covid relief.

7. The Petitioner further submits that under the terms of the sanction. and legal/security documents, the Corporate Debtor agreed to repay the aforesaid credit facilities along with contractual rate of interest @12.50% p.a. with monthly rests on the amount of the loan outstanding from time to time more particularly described in Clause 4 of Letter of Intent dated 13.03.2015 and Clause 5 of the Loan Agreement dated 16.03.2015. That the Respondent was liable to pay the Funded Interest Terms Loans also at the same rate of interest as applicable to the main loan.
8. That the borrower has repaid 61 full instalments with delay and one partial instalment amount of Rs.6,07,105/-, total aggregating to Rs.4,34,14,099/- (Rupees Four Crore Thirty-Four Lakh Fourteen Thousand and Ninety-Nine Only lakh) and interest due thereon till 10.05.2021. Accordingly, account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 09.12.2020 due to default/delay committed by the Corporate Debtor in payment of the loan.

9. That a Letter of acknowledgment of debt dated 07.04.2021, was duly signed and acknowledged by the corporate debtor showing acknowledgement of debt due as on 31.03.2021.
  
10. The Corporate Debtor did not pay instalments of the loan due from 10.05.2021 onwards and the terms of the loan agreement were not complied with and as a result of default of the said condition and repayment of the loan, the entire loan amount was recalled by issuing Loan Recall Notice dated 13.04.2022 upon the Corporate Debtor and called upon them to pay an amount of Rs.4,51,97,298/- due as on 10.04.2022. However, the Respondent Company has failed to make payment of the said amount due under FITL I and FITL II even after issue of notice recalling the loan. The total amount outstanding due and payable against the corporate debtor under the Term Loan Account till 10<sup>th</sup> December, 2022 is Rs.4,93,92,066/- (Rupees Four Crore Ninety-Three Lakh Ninety-Two Thousand and Sixty-Six only) which comprise of Rs. 3,65,85,901/- (Rupees Three Crore Sixty-Five Lakh Eighty-Five Thousand Nine Hundred and One only) as principal and Rs. 1,02,49,716/- (Rupees One Crore Two Lakh Forty-Nine Thousand Seven Hundred Sixteen Only) as interest, and Rs. 25,56,449/-



(Rupees Twenty-Five Lakh Fifty-Six Thousand Four Hundred and Forty-Nine Only) as Penal Interest and Further Interest.

11. It is submitted that due to default on the part of the Corporate Debtor and classification of account as NPA, the Petitioner was constrained to exercise the powers conferred under the SARFAESI Act by issuing Notice u/s. 13 (2) of the Act dated 22.12.2022, calling upon the Corporate Debtor that is the Respondent herein to make payment of sum of Rs.4,97,27,452/- due as on 10.12.2022. That thereafter the Corporate Debtor submitted an OTS proposal letter dated 03.01.2023 requesting waiver of Additional Interest, Penal Interest and Other charges. However, the same was rejected by the petitioner vide Email dated 10.01.2023.
12. The applicant submitted necessary documents to prove debt and default and it falls within the definition of "financial debt" as provided under clause (i) of sub-section (8) of section 5 of the Insolvency and Bankruptcy Code, 2016.
13. It is further submitted that the Record of Financial Information in Form-C as on 12.12.2022 issued by National E-Governance Services Ltd.

14. The Respondent/CD filed the IA No.1155 of 2023 challenging the maintainability of CP(IB) No. 30 of 2023 on preliminary ground being barred by Section 10 (A) of the IB Code, 2016 filed by SIDBI. The reply is filed by the SIDBI/FC in this IA wherein it is submitted that since its committed continuing default and have not paid instalment of principal amount w.e.f. 10.05.201 even after 25.03.2021, the bank was constrained to file section 7 application to be within limitation period.. In the instant case date of default is 10.05.2021, the provision of section 10 A cannot be applicable above the logic that even if the CD continue to default after March 2021 and still don't pay that the Bank cannot be prohibited from filing Section 7 application.
15. The respondent submitted detailed reply affidavit. The reply raises frivolous issues seems deliberately sought to reject the insolvency application from consideration. His points regarding the application procedure on submission, signature and powers of authority who has submitted the application, format of application as per IBC, date of default and limitation which are observed to be not sustainable. He has further questioned the loan agreements which are either not stamped properly or the date of NPA is not necessarily the date of

default. He has further stated that the CD is a going concern, running a hotel and has been incurring losses which appears to be huge during the year of Rs. 3,62,34,357 which is a substantial portion of the debt to be repaid which he states not done due to financial constraints.

16. That from the above facts and circumstances, it becomes clear that the respondent company has made default by not complying with the Demand Notice dated 13.04.2022 and it is unable to pay the amount which is due and payable. In the present case, despite repeated requests and reminders, the respondent company has not paid the amount due and payable to the petitioner.
17. It is observed that Petitioner's claim is within Limitation, as the CD has executed Letter of Acknowledgment of Debt dated 07.04.2021,. Furthermore, the CD had submitted various Settlement proposals dated 06.10.2023, 25.10.2023, and 26.12.2023, during the pendency of the present petition, which came to be rejected by the Petitioner, details of which are placed on record by the CD vide their Pursis dated 16.01.2024
18. It is submitted that as per the statement of accounts annexed from Page No. 130-140, it is evident that the CD has made the

following payment to the Petitioner, after classification of account as NPA on 09.12.2020, but before Loan Recall Notice dated 13.04.2022 was issued:

Sr. No.	Date of Payment	Repayment
1.	10.12.2020	5,00,000/-
2.	21.01.2021	1,00,000/-
3.	24.05.2021	18,043/-
4.	04.10.2021	83,771/-
5.	28.10.2021	4,93,769/-
6.	02.11.2021	9,09,739/-
7.	10.11.2021	9,50,461/-
8.	17.11.2021	10,55,100/-
9.	23.11.2021	8,60,314/-
10.	21.12.2021	12,50,000/-
Total Repayment after NPA Classification and before Loan Recall Notice		62,21,197/-

19. It is submitted that as per the Sanction dated 13.03.2015, monthly EMI payable was Rs. 7,01,754/-, and the CD subsequent to classification of account as NPA, had made repayment of Rs. 62,21,197/-, i.e., roughly 8.8 EMIs. Hence, as on the date of filing of the Petition, after adjusting the aforesaid recoveries against the EMIs due and payable from September, 2020 to April, 2021 (8 EMIs), the first actual date of default committed by the Corporate Debtor was 10.05.2021. Accordingly, the CD has repaid 61 full instalments and one partial instalment till April, 2021 with delay.

20. That, as per Sub-Section (12) of Section 3 of the Code, 'Default' is defined as: "non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable is not paid by the debtor or the CD, as the case may be.

Accordingly, as on date of filing of the Petition, the CD had subsequent to classification of account as NPA, paid 8 EMIs which were due and payable. Hence, first date of default as on the filing of the Petition, was 10.05.2021.

21. In the present case, date of default as per NESL is the date of NPA. However, the CD subsequent to NPA classification, had made repayment of Rs. 62,21,197/-i.e., roughly 8.8 EMIs. Hence, as on the date of filing of the Petition, after adjusting the aforesaid recoveries against the EMIs due and payable chronologically from September, 2020 to April, 2021 (8 EMIs), the first actual date of default committed by the CD was 10.05.2021, as per Section 3 (12) of the Code. Accordingly, the CD has repaid 61 full instalments and one partial instalment till April, 2021 with delay.

22. In *Saraswat Vs. Majkai Lab*, CP (IB) 1243 of 2022; it was observed that NPA date was 02.11.2020 and no repayment was made by the CD thereafter. In the present case, subsequent to NPA date, the CD has made part- payment of 8

EMIs till April, 2021 with delay. Hence, account was not upgraded out of NPA and default as per Section 3 (12) of the Code was 10.05.2021. Thereafter, Loan Recall Notice was issued on 13.04.2022 and Demand Notice u/s 13 (2) of SARFAESI was issued on 22.12.2022.

23. That a default has occurred and the accompanying application under Section 7 of the Code is complete and there is no disciplinary proceedings pending against the proposed IRP Mr. Rishabh Chand Lodha and therefore the application deserves to be admitted as per the provisions of sub-section (5) (a) of Section 7 of the Code. Furthermore, CD has admitted that it is currently not operating vide Email dated 14.03.2024 annexed at Page 9 of Pursis dated 31.03.2024 filed by CD. It is also observed that the CD is incurring huge losses and has not paid the OTS offered which was rejected.
24. Hence, the application can be allowed to initiate CIRP and appoint an IRP. Hence, we pass the following orders:

### **ORDER**

1. The Application being CP (IB) No. 30 of 2023 is allowed and IA No. 1155 of 2023 is rejected.
2. The CIRP is ordered to be initiated against the corporate debtor - M/s. Hotel Netra Palace Private Limited.

3. The applicant has proposed the name of Mr. Rishabh Chand Lodha as Insolvency Resolution Professional, who is hereby appointed as IRP of the corporate debtor having registration number IBBI/IPA-001/IP-01075 /2017-2018/11766 having an address at E-5, Basant Vihar, Bhilwara – 311001, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.
4. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Rishabh Chand Lodha to meet the expenses for performing 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 one week 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.

5. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
6. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of the order along with a complete copy of the application be served to IRP by the applicant within 7 days of the order. In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

R.S.