

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II)

CP (IB) 242/CHD/HRY/2020

IN THE MATTER OF:

INDIAN BANK (Erstwhile Allahabad Bank)

Office: Indian Bank, 254-260,
Avvai Shanmugham Salai, Royapettah,
Chennai- 600014

... Applicant/ Creditor

Versus

M/s POLO HOTELS LIMITED

Through its Director/Managing Director,
Hotel North Park,
Village Chowki, Near Ghaggar Bridge,
Sector -32, Panchkula
Haryana-134109

...Respondent

Order Delivered on: 01.05.2024

SECTION: Section 7 of IBC 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Aditya Grover, Advocate

For the Respondent : Mr. Vaibhav Gupta, Advocate

ORDER

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

Indian Bank (erstwhile Allahabad Bank; for brevity the **“Applicant”**) has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 and 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Polo Hotels Limited (for brevity, the **“Respondent”**).

2. The Respondent namely, M/s Polo Hotels Limited is a Company incorporated on 20.01.1994 under the provisions of the Companies Act, 1956 with CIN L55101HR1994PLC032355 having its registered office at Hotel North Park, Village Chowki, Near Ghaggar Bridge, Sector -32, Panchkula Haryana-134109, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 40,00,00,000/-, and the Paid-up Share Capital is Rs.22,37,42,530/-, as per the Master Data annexed with the application.

3. In its application, it is averred by the Applicant that the Respondent Company was sanctioned a Term Loan of Rs. 30 Crore on 01.01.2013 and an Additional Term Loan of Rs. 14 Crore on 14.08.2015, thus, financial exposure totalling to Rs. 44.00 Crore. The loan facility sought by the Respondent Company was secured by way of primary and collateral securities.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default as claimed by the applicant in Part IV of its application reads thus:

Part-IV

PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>The Corporate Debtor had been availing loan since 2013 and subsequently in 2015 when on 01.01.2013 and 14.08.2015 respectively following limits were sanctioned:</p> <p>Term Loan Rs.30 Crore</p> <p>Additional Term Loan Rs. 14 Crore, respectively.</p> <p>Total: Rs.44.00 Crore (Forty Four Crore).</p> <p>Extension of COD & shifting of Repayment on 07.05.2016.</p>
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF	<p>Rs. 60,09,83298/- with interest upto 24.02.2020.</p> <p>The default occurred on 17.07.2017</p> <p>The limit-wise amount due is given below:</p>

5. As per Part IV of the application reproduced above, the Applicant has claimed an outstanding “financial debt” of Rs. 60,09,83,298/- and relied on 17.07.2017 as the “date of default” when the Account of the Respondent Company was classified as NPA. It has been further submitted that on 18.07.2017, the Applicant Bank issued the Demand Notice under Section 13(2) of the SARFESI Act, 2002, calling upon the Respondent and other obligators to pay the defaulted amount.

6. In support of its contention, the Applicant has relied on the following documents:

- (i) Copy of OA no. 1740/2018 before DRT II, Chandigarh;
- (ii) Sanction Letter & Acknowledgement of Sanction Dated 01.01.2013, Sanction Letter dated 14.08.2015 & Acknowledgement of Sanction dated 17.08.2015;
- (iii) Demand Pronote dated 16.01.2013 & 17.08.2015;
- (iv) CIBIL Report (Page 170-207), dated 20.02.2020;
- (v) Demand Notice u/s 13(2), SARFESI Act 2002, dated 18.07.2017;
- (vi) Copy of Balance Sheet and Annual Return of the Company as on 31.03.2017 filed by the Respondent with RoC.

7. Based on the facts described above and the documents annexed, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On issuance of the notice, the Respondent filed its reply dated 31.03.2023 and Written Submissions dated 18.04.2023 stating mainly the following:

8.1 Pursuant to the order of this Court dated 26.08.2022 directing the applicant to file the complete amended petition, the Applicant filed the amended petition on 23.09.2022. However, the Amended petition (Form-1) without the annexures, could not be considered complete as per Section 7(3)(c) of the IBC, 2016. Additionally, the Applicant did not provide the necessary documents/evidence, to show how the amount of Rs. 44,00,00,000/- was disbursed to the Respondent.

8.2 The Applicant Bank at page no. 3 of the original application has stated that the applicant Bank has already taken the possession of the mortgaged properties and put the properties on e-auction. The applicant has approached the Hon'ble High Court of Punjab & Haryana by filing CWP-9716-2022 titled as "Indian Bank Vs State of Haryana and Others" for taking over the possession of mortgaged properties. The said CWP is pending before the Hon'ble High Court.

8.3 The applicant at page no. 3 of the original application has mentioned that a Demand notice dated 18.07.2017 under section 13(2) of the SARFESI Act, 2002 was served upon the Respondent. The applicant has also placed a copy of the said demand notice at page 274 to 276 of the original application. Whereas, there has been no such demand notice ever issued/served upon the Respondent on 18.07.2017. The Respondent has approached the Hon'ble High Court of Punjab & Haryana for issue of a writ in certiorari for quashing of impugned Notice dated 18.07.2017 purportedly issued under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of securities Act, 2002.

8.4 It is admitted that the Applicant sanctioned a total of Rs. 44,00,00,000/- (Rs. 30 Cr plus Rs. 14 Cr). Whereas, the applicant vide the original petition at page no. 4 has claimed the principal sum of Rs. 45,51,52,170/- as on 24.02.2020. The Bank, therefore, cannot claim the amount higher than it has disbursed. The total amount disbursed to the Corporate Debtor amounted Rs. 38,22,06,668/- only. It is pertinent to mention here that there has been no loan amounting to Rs. 1,51,52,170/- ever sanctioned/released to the Corporate Debtor on and after 14.08.2015.

8.5 The Applicant at page no. 70 of the original petition vide para 4 (f) has mentioned that the cause of action further arose on 19.05.2017. The Applicant at page no. 7 of the original petition and at page no. 8 of the amended petition has mentioned that the date of default as 17.07.2017, the date on which the Applicant Bank has alleged that the accounts of the Respondent were declared as NPA. However, there is no documentary evidence placed on record as to show how the account became NPA before the expiry of 90 days from the date of receipt of repayment which continued till 19.05.2017.

8.6 The Applicant bank at Page no. 21 of the Original Application and at Page No. 14 of the Amended Petition mentioned that there is no record of default available with the Information Utility. Whereas, the provisions of Section 7(3)(a) of the IBC, 2016, provides for furnishing of records of default with the Information Utility or such records or evidence of default as specified.

9. In rebuttal, the Applicant Bank has filed a Rejoinder dated 09.06.2023 to the reply filed by the Respondent and written submissions dated 01.09.2023 stating mainly the following:

9.1 At the time of filing the instant application, the provision regarding information utility were not applicable and became applicable later. Accordingly, the default of the Respondent duly stands recorded with the Information Utility, which has been placed on record by way of affidavit dated 15.03.2023 filed by the Applicant bank on 16.03.2023 vide diary no. 02255/2.

9.2 Sh. Amardeep Singh Dahiya, Managing Director of the Respondent by whom the entire pleading has been filed by the Respondent stood duly served upon a notice under section 13(2) of the SARFAESI Act, 2002 along with others namely, Sh. A.R Dahiya and Sh. Pankaj Dahiya. Even otherwise, the Bank had already filed an original application number 1740 of 2018 before the Ld. DRT-II Chandigarh seeking recovery of Rs. 51,27,62,021/- along with pendent lite and future interest from 17.07.2017 till the date of actual realization and the Respondent is well aware as to the pendency of the same. The Respondent purportedly filed a CWP vide diary no 8598855 on 29.03.2023 which is also appended with its reply, however, it is pertinent here to mention that the status of the said CWP has been showing "Objection". The Respondent did not press the petition and remove objections to the CWP filed by the Respondent till date, which clearly shows the malicious intention and attempt to misuse the process of law causing unwarranted delay in the proceedings.

9.3 During the pendency of captioned petition, the Allahabad Bank/ Applicant got amalgamated into the Indian Bank vide official gazette notification dated 04.03.2020, upon which, the Applicant categorically demonstrated that the entire rights of Allahabad Bank stood transferred/vested in the transferee-Indian Bank. However, to cause delay in the proceedings, the respondent filed a frivolous reply containing baseless

objections for filing amended Form-1 by the Applicant. Consequently, to avoid any controversy/delay on account of the unwarranted objections raised by the Respondent, the Applicant filed the part 1 of form 1 particulars of the applicant bank in the form of a tabulation, contained in an additional affidavit dated 10.05.2022.

9.4 It is a matter of fact, which the Respondent has not been able to refute/deny that the Respondent had sought financial assistance from the Applicant and there has been a default in the repayment thereof due to non-maintaining financial discipline by the Respondent. In the instant matter, it is a matter of undisputed fact that there has been a default on the part of the respondent resulting to financial debt being due and payable to the applicant, which has led the applicant to filing of the present petition.

10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by parties. The Respondent in its defence has contended that (a) the present Amended petition (Form-1) is filed without the annexures, hence, could not be considered complete as per Section 7(3)(c) of the IBC, 2016 and the Applicant did not provide the necessary evidence to show how the amount of Rs. 44 Crore was disbursed to the Respondent; (b) The Applicant bank at Page no. 21 of the Original and at Page No. 14 of the Amended Petition has mentioned that there is no record of default available with the Information Utility; (c) No Demand notice u/s 13(2) of SARFESI, 2002 was ever issued/served upon the Respondent on 18.07.2017; and (d) There is no documentary evidence placed on record as to show how the account became NPA before the expiry of 90 days from the date of receipt of repayment which continued till 19.05.2017.

Per Contra, the Applicant has annexed various documents to prove the existence of debt and default as mentioned in Para 6 of this order. During the hearing, in support of its case, the Ld. Counsel for the Applicant referred to the Sanction Letter & Acknowledgement of Sanction Dated 01.01.2013, Sanction Letter dated 14.08.2015 & Acknowledgement of Sanction dated 17.08.2015, Demand Notice u/s 13(2), SARFESI Act 2002, dated 18.07.2017, and Balance Sheet & Annual Return of the Company as on 31.03.2017 filed by the Respondent with RoC.

11. However, first, we would like to examine whether the present Application is filed within limitation period. In the instant case, since the Application has been filed on 27.02.2020, and the date of default relied by the applicant is 17.07.2017, therefore, we find the application well within the limitation period. Now, we would like to examine contentions of the respondent.

12. Now, we examine the Respondent's first contention that the present Amended petition (Form-1) is filed without the annexures, hence, could not be considered complete as per Section 7(3)(c) of the IBC, 2016 and the Applicant did not provide the necessary evidence to show how the amount of Rs. 44 Crore was disbursed to the Respondent. Here, we refer to the reply of the Respondent, which reads thus:

"It is admitted that the Applicant sanctioned a total of Rs. 44,00,00,000/- (Rs. 30 Cr plus Rs. 14 Cr). Whereas, the applicant vide the original petition at page no. 4 has claimed the principal sum of Rs. 45,51,52,170/- as on 24.02.2020. The Bank, therefore, cannot claim the amount higher than it has disbursed. The total amount disbursed to the Corporate Debtor amounted Rs. 38,22,06,668/- only. It is pertinent to mention here that there has been no loan

amounting to Rs. 1,51,52,170/- ever sanctioned/released to the Corporate Debtor on and after 14.08.2015.”

(Emphasis supplied)

Thus, we find that the respondent itself has admitted that (a) the Applicant sanctioned a total of Rs. 44,00,00,000/- (Rs. 30 Cr plus Rs. 14 Cr); and (b) the total amount disbursed to the Corporate Debtor amounted Rs. 38,22,06,668/- only.

13. Furthermore, when we examine the second contention raised by the Respondent regarding no record of default available with the Information Utility, we find the same placed by the Applicant on record vide Diary no. 02255/2 dated 15.03.2023, which reads thus:

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
राष्ट्रीय ई-गवर्नेंस सर्विसेज लिमिटेड

PART A
Record of Default for Party M/s POLO HOTELS LIMITED (Debtor)

Unique Debt Identifier : AAACI1607G_50142735952
Information as of 20-06-2022
Received by NeSL on 22-06-2022 20:41:46
Status of Authentication (DEBTOR) : DEEMED TO BE AUTHENTICATED (as on :09-07-2022 09:37:20)
Registered in IU : NO
Registration Date : N.A.
Last Login : N.A.

Submitter Information	
UIN	AAACI1607G
Name	M/s INDIAN BANK
Relationship to the Debt	Financial Creditor
Communication address	ROYAPETTAH CHENNAI
PIN code	600001
Telephone number	04428134300
Email ID	holegal@indianbank.co.in

Other Party Information	
Relationship to the Debt	Debtor
Party name	M/s POLO HOTELS LIMITED
Address for Communication	PLOT NO 67 INDUSTRIAL AREA PHASE 1 PANCHKULA Panchkula M CI
PIN code	134109
Legal Constitution	30
PAN No. / Other ID	AABCP0940L
Email ID	polohotel@gmail.com

Debt Information	
Type of Debt	Financial
Debt Reference No.	50142735952
Debt Contract Date	12-03-2013
Debt Start Date	12-03-2013
Debt Currency	INR
Sanctioned Debt Amount	30,00,00,000.00
Installation Amount	14000000
Facility Name	COMM TL-Com Real Estate

Registered Office : Gresham Assurance House,4th Floor,Sir P.M. Road,Fort,Mumbai-400001.
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PART A

Record of Default for Party M/s POLO HOTELS LIMITED (Debtor)

Unique Debt Identifier :AAACH1607G_50296073909
 Information as of 20-08-2022
 Received by NeSL on 22-08-2022 20:58:20
 Status of Authentication (DEBTOR) : DEEMED TO BE AUTHENTICATED (as on :09-07-2022 09:36:54)
 Registered in IU : NO
 Registration Date : N.A.
 Last Login : N.A.

Submitter Information	
UIN	AAACH1607G
Name	M/s INDIAN BANK
Relationship to the Debt	Financial Creditor
Communication address	ROYAPETTAH CHENNAI
PIN code	600001
Telephone number	04428134300
Email ID	holegal@indianbank.co.in

Other Party Information	
Relationship to the Debt	Debtor
Party name	M/s POLO HOTELS LIMITED
Address for Communication	PLOT NO 67 INDUSTRIAL AREA PHASE 1 PANCHKULA Panchkula M CI
PIN code	134109
Legal Constitution	30
PAN No. / Other ID	AABCP0940L
Email ID	polohotel@gmail.com

Debt Information	
Type of Debt	Financial
Debt Reference No.	50296073909
Debt Contract Date	27-08-2015
Debt Start Date	27-08-2015
Debt Currency	INR
Sanctioned Debt Amount	14,00,00,000.00
Installment Amount	8000000
Facility Name	COMM TL-Com Real Estate

Registered Office : Gresham Assurance House,4th Floor,Sir P M. Road,Fort,Mumbai-400001.
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Total Outstanding Amount	14,10,14,320.00
Amount Overdue	8,20,08,302.00
Days past due (DPD)	61
Account Closed Flag	No
Rate of Interest	0
Repayment frequency	Monthly
Lending arrangement	Sole Banking

Default Information	
Date of default	31-03-2022
Total Outstanding	14,10,14,320.00
Default amount	8,20,08,302.00
Days past due	61

Record of communication with respect to the default filing

Communication details in respect of M/s POLO HOTELS LIMITED (Debtor)
POLO HOTELS LIMITED (Debtor)

Email category	Mail Type	Requested On	To Address	Mail Status	Acknowledgment Date/Time
Form C-Primary	Initial	23 June 2022 Thursday 13:01:57 PM	polohotel@gmail.com	Mail Delivered and Opened by Addressee	25 June 2022 Saturday 10:03:43 AM
Form C-Primary	Reminder - 1	27 June 2022 Monday 10:06:36 AM	polohotel@gmail.com	Mail Delivered and Opened by Addressee	27 June 2022 Monday 16:22:58 PM
Form C-Primary	Reminder - 2	01 July 2022 Friday 09:52:54 AM	polohotel@gmail.com	Mail Delivered and Opened by Addressee	02 July 2022 Saturday 12:18:59 PM
Form C-Primary	Reminder - 3	05 July 2022 Tuesday 09:35:39 AM	polohotel@gmail.com	Mail Delivered and Opened by Addressee	05 July 2022 Tuesday 14:25:53 PM

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On perusal of the aforesaid NeSL Record, we find that the record of default is available with the information utility. Thus, this contention regarding the absence of any record of default available with the information utility, is devoid of merit. Further, there is enough material on record to show that the account of the respondent became NPA on 18.07.2017 and thereafter, the applicant bank had initiated action u/s 13(2), SARFAESI Act 2002. The Bank had also filed an OA No. 1740 of 2018 before the DRT-II Chandigarh seeking recovery of Rs. 51,27,62,021/- along with interest from 17.07.2017 till the date of actual realization. Furthermore, the order of this Adjudicating Authority dated 07.11.2023 records that the Ld. Counsel for the Respondent submitted that they had submitted an OTS proposal to the Applicant Bank and in furtherance thereof, an amount of Rs. 7.43 Crore had been paid. A one-time settlement (OTS) proposal in terms of the judgment of the Hon'ble Supreme Court in **“Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.”** is an acknowledgment of debt. The relevant para of the judgment dated 04.08.2021 reads thus:

*“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”.

(Emphasis placed)

14. As regards the date of NPA i.e., 17.07.2017 as the “date of default” whereas it should have been prior to 18.07.2017, we refer to the recent judgement dated 25.04.2024 of Hon’ble NCLAT’s in **Company Appeal (AT) (Ins) No. 1589 of 2023 Milind Kashiram Jadhav vs State Bank of India & Anr.**, the conclusions of which are reproduced below:

“Conclusions:

*74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. **Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.** Even after the NPA classification, the borrower remained in default. **Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.** The Adjudicating Authority's decision to admit the Bank's application for initiating Corporate Insolvency Resolution Process (CIRP) against the Company was apt and in accordance with*

the provisions of the IBC. There are no discernible flaws in the orders issued by the Adjudicating Authority; hence, they are upheld without any alteration. Appeal is dismissed. No costs are imposed in this matter.”

Thus, in terms of the judgement (supra), *the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.*, and the Respondent's contention in this regard is devoid of merit.

15. In view of the discussion foregoing, the debt and default of the Respondent is established by the Applicant Bank beyond doubt. Since in a section 7 application this Adjudicating authority is required to see only existence of debt and default, which are otherwise established in this case, the need to go into other objections raised by the respondent is obviated.

16. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(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.”

17. As proposed by the Applicant, this Bench appoints Mr. Hemanshu Jetley as IRP having Registration No. IBBI/IPA-001/IP-P00219/2017-18/10457 Email ID: hejetley@gmail.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Hemanshu Jetley, as an IRP having Registration No IBBI/IPA-001 /IP-P00219/2017-18/10457, Email ID: hejetley@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

18. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

19. A copy of this judgement shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI, and the IRP named above, by the Court Officer/Registry of this Tribunal.

20. **The present Application is admitted and disposed of accordingly.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)