

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB)2208/MB/C-IV/2019

Under section 7 of the I&B Code, 2016

In the matter of

Bank of India

...Financial Creditor

v/s.

Tara Hospitality Private Limited

...Corporate Debtor

Order Delivered on: 25.11.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Mr. B. Gopalakrishnan a/w Ms Ishita Merchant a/w Mr.
Reuben Masrao i/b M/s S. K. Singh & Co.

For the Respondent: None

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Bank of India** ("the Financial Creditor"), a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, duly represented by its Chief Manager Mr. Sanjeev Kumar, through Power of Attorney dated 28.03.2018 (**Exhibit 'A'** to the petition at pp.24-43), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against **Tara Hospitality Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a Private Company limited by shares and incorporated on 23.09.2013 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U55101MH2013PTC248461. Its registered office is at A-112, Plot No. 53, Sector-15, CBD Belapur, Navi Mumbai, Thane-400614. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 12.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 10,32,54,380.43 (Rupees ten Crore thirty-two lakh fifty-four thousand three hundred eighty and forty-three paise only) as the total claim amount i.e. Rs.9,07,34,289/- (Rupees nine crore seven lakh thirty-four thousand two hundred eighty-nine only) as principal and Rs. 1,25,20,091/- (Rupees one crore twenty-five lakh twenty thousand ninety-one only) as total interest inclusive of Rs. 1,18,57,209/- (Rupees one crore eighteen lakh fifty-seven thousand two hundred nine only) as normal interest @ 14% as per the then prevailing bank rate. The Financial Creditor has claimed a further sum of Rs. 6,62,882/- (Rupees six lakh sixty-two thousand eight hundred and eighty-two only) as penal interest at the rate of 2% p.a. as stated at p.6 of the Petition. Date of default is 30.06.2018, as stated at p.5 of the petition.
4. The Financial Creditor has granted various credit facilities to the Corporate Debtor aggregating to an amount of Rs. 11,55,00,000/- (Rupees eleven crore and fifty-five lakh only) (at page 4 of the Petition).

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Details of credit facilities as per part-IV of Form-1 are as follows:

Sr. No	Nature of Credit Facility	Principal Outstanding as on 17.05.2019	Normal Interest from 30.06.2018 to 17.05.2019 p.a.	Penal Interest from 30.06.2018 to 17.05.2019 @ 2% simple	Total Claim amount
1.	Cash Credit (A/c No. 011665410000047)	51,38,256/-	3,07,834/-	92,644/-	55,38,734/-
2.	Term Loan (A/c No. 011665410000002)	8,55,96,033.43	1,15,49,375/-	5,70,238/-	9,77,15,646.43
	Grand Total	9,07,34,289.43	1,18,57,209/-	6,62,882/-	10,32,54,380.43

5. The Financial Creditor also submitted the particulars of Financial Debt at page 7 of Petition as follows:

- i) The Corporate Debtor executed an Equitable Mortgage deed dated 05.07.2016 for creation and extension of equitable mortgage/deposit in respect of the Corporate Debtor's immovable property situated near CBD Belapur, Nerul Node, Kalamboli (Taluka Panvel), Mumbai. (para A page 7 of the Petition).
- ii) The Corporate Debtor vide a Supplemental Deed of Hypothecation (Plant Machinery, Stocks and Book Debts) dated 29.03.2014 hypothecated and charged to the Financial Creditor (Bank) by way of first charge, all the Corporate Debtor's machinery and/or book assets and/or stocks and other assets in consideration for

aggregating the credit facility of Rs. 11,55,00,000/- (Rupees eleven crore fifty-five lakh only) (para **B** page 8 of the Petition).

- iii) The Corporate Debtor issued two Acknowledgement of Debt to the Financial Creditor dated 21.03.2017 and 09.03.2018, acknowledging its dues for an amount of Rs. 9,95,75,565.51/- (Rupees nine crore ninety-five lakh seventy-five thousand five hundred sixty-five and fifty-one paise only) and Rs. 51,31,454.50/- (Rupees fifty-one lakh thirty-one thousand four hundred fifty-four and fifty paise only) (para **E** p. 11 of the Petition, Document is at p. 137 and p. 141 of the Petition)
6. The Financial Creditor has submitted that the Corporate Debtor's account was classified as Non-performing Assets on 30.06.2018 as the Corporate Debtor failed to pay the amount due to the Financial Creditor. (**Exhibit 'B'** of the Petition at p. 44)
7. The Financial Creditor issued Notice dated 02.07.2018 to Corporate Debtor under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. (**Exhibit 'K'** of the Petition at pp. 143-163).
8. Further the Financial Creditor issued Loan Recall Notice dated 26.11.2018 to the Corporate Debtor for recall of loan sanctioned and copy thereof has been placed at pp. 259-261 of Petition.
9. Copy of the Petition has been served on the Corporate Debtor by hand delivery on 11.06.2017 as per original acknowledgment placed at p. 327 of the Petition. Court Notice dated 21.08.2019 has also been served by

hand delivery on the Corporate Debtor on 23.08.2019. Necessary affidavits of service filed by the Financial Creditor are placed on record.

10. On 30.08.2019, the Corporate Debtor addressed a letter dated 23.08.2019 to the NCLT Registry, requesting for a new date in the matter on or after 02.09.2019 since the directors of the Corporate Debtor were all proceeding to Mangalore in view of a bereavement in the family of one of the directors. Thereafter, on 01.10.2019, when the matter was listed on board, Mr. Jagdish Chowdhari, Advocate appeared on behalf of the Corporate Debtor and sought time to file vakalatnama, board resolution and reply in the matter. At request, the Corporate Debtor was given seven days to file vakalatnama, board resolution and reply. It was made clear that no further opportunity would be given to file reply, and that if reply is not filed within that period, the right to file reply shall stand forfeited.
11. However, in spite of these clear directions, no vakalatnama was filed on behalf of the Corporate Debtor, and there was no appearance from the side of the Corporate Debtor when the matter was called on 16.10.2019. Since the IBC procedure is time bound process, it was not possible to wait indefinitely for the appearance and reply of the Corporate Debtor. Hence, the matter was taken up for admission on that date, i.e., 16.10.2019.
12. We have heard the arguments of the Learned Counsel for the Financial Creditor and perused the records.
13. It is noticed from the petition that-

- a) There is unequivocal admission of liability on the part of the Corporate Debtor in its Acknowledgements dated 21.03.2017 and 09.03.2018 (**Exhibit 'I-1 & I-2'** of the petition at p.26).
- b) The date of default is 30.06.2018;
14. The Financial Creditor has proposed Mr. Rakesh Kumar Tulsyan, Registration No. **IBBI/IPA-001/IP-P01144/2018-19/11970** as Interim Resolution Professional (IRP) in the matter.
15. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the application of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.
16. The application made by the Financial Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues, and this has also been confirmed by the Corporate Debtor.
17. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB) 2208/MB-IV/2019** filed by **Bank of India**, the Financial Creditor, under section 7 of the IBC of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Tara Hospitality Private Limited [CIN: U55101MH2013PTC248461]**, the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Financial Creditor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Financial Creditor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Financial Creditor in respect of its property including any action under the Securitisation and Reconstruction of Operational Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the Financial Creditor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the

Central Government in consultation with any sectoral regulator;

- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Financial Creditor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Rakesh Kumar Tulsyan, registration No. IBBI/IPA-001/IP-P01144/2018-19/11970, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Financial Creditor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- (h) The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

25.11.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)