

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

C.P. NO. IB- 1527(PB)/2018

IN THE MATTER OF:

BANK OF BARODA Financial Creditor/Applicant

vs.

**M/s BRY'S HOTELS PRIVATE LIMITED
.....Corporate Debtor/Respondent**

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

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (J)**

**SHRI S.K. MOHAPATRA
HON'BLE MEMBER (T)**

PRESENTS:

For the Petitioner: Mr. Brijesh Tamber & Mr. Avirup Benjamin,
Advs

For the Respondent: Mr. Krishna Dutta, Mr. Sudeep Kumar,
Mr. Manish & Mr. Pradhan Singh, Advs.

MEMO OF PARTIES:

BANK OF BARODA

Having its Head office at:
Mandvi, Vadodara,
Gujarat.

Also at:

BANK OF BARODA

International Business Branch
First Floor, Bank of Baroda Building,
16 Sansad Marg,
New Delhi- 110001

...FINANCIAL CREDITOR/APPLICANT

Versus

M/s BRY'S HOTELS PRIVATE LIMITED

Having its registered office at:
305, Arunachal Building,
19- Barakhamba Road,
Connaught Place, New Delhi- 110001

.... CORPORATE DEBTOR/RESPONDENT

Judgment delivered on: 18.03.2019

JUDGMENT

DR. DEEPTI MUKESH

1. Bank of Baroda claiming to be 'financial creditor' has filed this application, through its authorised representative Mr. Ashwani Sharma vide Board resolution dated 14.07.2017 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 for initiation of Corporate Insolvency Resolution Process in respect of respondent company, M/s Brys Hotels Pvt. Ltd. , who is stated to be the corporate debtor.

2. Bank of Baroda (for brevity Applicant) was incorporated on 02.03.1911 as Bank under the Banking Regulations Act, 1949 and carrying on its business of banking in India under the regulations and guidelines issued by the Reserve Bank of India, having CIN U99999MH1911PLC007676. The office of the applicant company is situated at First Floor, Bank of Baroda Building, 16 Sansad Marg, New Delhi- 110001.


3. The Corporate Debtor namely M/s Brys Hotels Private Limited (CIN U55101DL2010PTC203992) was incorporated on 11.06.2010 under the provisions of the Companies Act, 1956. The registered office of the respondent company is situated at 305, Arunachal Building, 19- Barakhamba Road, Connaught Place, New Delhi-110001. Its authorized share capital is Rs. 11,00,00,000/- and paid up capital is Rs. 8,64,00,000/- which is based on the details given in master data obtained from the official website of Registrar of Companies. Since the registered office of the corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

4. The applicant states that the Corporate Debtor had requested for availing Term Loan and Cash Credit facility for construction of Hotel Project 'BRY'S FORT' at Jodhpur Road, Jaisalmer, Rajasthan. It is submitted that Corporate Debtor had availed two Term Loans at different times, details of which are briefed below:



DATES	EVENTS
02.09.2011 (Term Loan I)	Upon the request of the respondent, the applicant bank sanctioned Term loan of Rs. 31 Crores and Cash Credit facility of Rs. 1 crore and the documents in order to secure the same were executed on 12.09.2011 by Respondent company and other parties.
12.03.2012 (Term Loan II)	Upon the request of the respondent, the applicant bank sanctioned a fresh Term loan of Rs. 40 Crores and the documents in order to secure the same were executed on 20.03.2012 by Respondent company and other parties and on 04.02.2013 the mortgages were extended.

5. The Applicant further submitted that the Corporate Debtor had been from time to time availing the Term Loan and lastly availed Term loan was of Rs. 40 Crores on the basis of loan/security documents dated 04.02.2013. It is submitted that thereafter credit facilities granted to the Corporate Debtor were reviewed time and again by the Financial Creditor vide its Review Sanction letter bearing no.

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MIDCORP/DMR-1/ADV/2013-14/300(1) dated 09.09.2013,
 and further reviewed vide its Review Sanction letter bearing
 no. BR/MIDDEL/ADV/2014-15/1504 dated 24.02.2015.
 The review of the facilities was briefly summarised
 hereunder: -

Nature of Facility	Purpose	Existing limit (In Crores)	Renewed Limit (In Crores)
Term Loan I	Construction of Hotel project- "Hotel BRY'S FORT" at Jaisalmer, Rajasthan.	30.25	25.75
Term Loan II	Construction of Hotel project- "Hotel BRY'S FORT" at Jaisalmer, Rajasthan.	40.00	40.00
Cash Credit	Working Capital	1.00	1.00
FB- Total		71.25	66.75
Total Exposure		71.25	66.75

6. In order to secure the above facilities, the Corporate Debtor had created hypothecation of Current Assets and Fixed Assets, as well as personal guarantees of Shri Rahul Gaur and Smt. Navneet Bhadla were also submitted. The said facilities were also secured by mortgage of immovable properties belonging to the Corporate Debtor situated at Plot No. 7, Khasra No. 401, 402/981, 414 and 415, super structure of "Hotel Brys Fort", Jodhpur Road, Jaisalmer, Rajasthan and another property situated at Plot. No. 41/7, super structure of "Hotel Brys Elan", Site-4, Industrial Area, Sahibabad, U.P. The applicant has placed on record the following documents in support of loan and credit facilities sanctioned to the Corporate Debtor:

- a) Copy of the Term Loan Agreement;
- b) Copies of the Sanction letters;
- c) Copies of the Deed of Hypothecation;
- d) Copies of letters for confirming the demand promissory note and for honouring the demand and payment under the same;

- e) Copy of Power of Attorney in respect of book debts facility executed by the Corporate Debtor in favour of the Financial Creditor;
- f) Copies of Personal Guarantee executed by Sh. Rahul Gaur and Smt. Navneet Bhadla with respect to the credit facility;
- g) Copies of declaration in the matter of deposit of title deeds dated 12.09.2011 and 16.05.2012.

7. It is further submitted by the applicant that the Corporate Debtor failed to adhere to the repayment schedule of credit facilities, repeated reminders were sent by the applicant for repayment of loan amount but Corporate Debtor failed to maintain the financial discipline. Consequently, the account of the Corporate Debtor was declared Non-Performing Assets on 26.12.2015.

8. Further the applicant bank issued a notice dated 04.04.2016 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of



Security Interest Act, 2002 to the Corporate Debtor and its guarantors.

9. It is further submitted by the applicant that the Corporate Debtor had approached the applicant with a proposal that for an immovable property situated at Jaisalmer, belonging to the Corporate Debtor which is mortgaged with applicant, an investor M/s Damont Group is interested in taking over the said property and shall be repaying the outstanding debt of the financial creditor. Thereafter the understanding between the Corporate Debtor and M/s Damont Developers Pvt. Ltd collapsed and M/s Damont Group filed a petition against the Corporate Debtor before the Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996.

10. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt and the transactions on account of which the debt fell due.

PARTICULARS OF FINANCIAL DEBT	
1. TOTAL AMOUNT OF	The Applicant Bank/ Financial

DEBT GRANTED AND DATE (S) OF DISBURSEMENT	Creditor had granted various credit facilities to the Respondent Company/ Corporate Debtor at its Registered Office at Delhi.
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED	Rs.71,94,60,210.63/- (Rupees Seventy-One Crore Ninety-four Lakhs Sixty Thousand Two Hundred Ten and paisa sixty- three only) as on 30.09.2018 as per the contractual rate/ commercial agreements.

11. The defence adopted by the Corporate Debtor is that applicant has failed to approach this Hon'ble Tribunal with clean hands and has deliberately suppressed several material facts, notably about the payment of outstanding loans and cash credit through an investor M/s Damont Developers Pvt. Ltd to the total tune of Rs. 9,50,00,000/- (Rupees Nine Crores and Fifty Lakhs only) and the applicant accepting the said proposal of the Corporate Debtor vide letter dated 23.03.2017. However, the investor defaulted in making the subsequent payments as per the terms of the

proposal, hence the applicant withdrew and terminated the sanction of fresh loan vide letter dated 01.08.2018.

12. It is further argued by the respondent that again a proposal to settle the outstanding loan amounts was discussed between the Applicant and the Corporate Debtor wherein a new investor namely M/s Sikka Hotels and Resorts Pvt. Ltd. is ready and willing to resolve all the issues amicably and after deliberations and negotiations, the said investor and the applicant agreed upon certain conditions. Inspite of going ahead with mutually agreed terms, the Financial Creditor had filed the present application.

13. In this regard the applicant in Rejoinder stated that there was continuous default on the part of the Corporate Debtor and though the account was declared NPA on 26.12.2015. Various opportunities were granted to Corporate Debtor for repayment but all in vain. Moreover, the reply filed by the Corporate Debtor is an admission of the default wherein the Corporate Debtor has repeatedly filed Settlement proposals and admittedly even after acceptance of the Settlement

proposals, the Corporate Debtor defaulted in compliance of the same as well. It is further claimed that the applicant has never acceded to the introduction of any new investor and there was no correspondence with respect to payment of said dues by a new investor.

14. Facts which are material to the controversy raised may first be noticed. The Applicant has provided a loan/ credit facility to the Corporate Debtor sanctioning credit facility of Rs. 31,00,00,000/- (Rupees Thirty-One Crores only) and cash credit of Rs. 1,00,00,000/- (Rupees One Crore only) as per the Term Loan Agreement dated 12.09.2011. Thereafter, again a fresh term loan of Rs. 40,00,00,000/- (Rupees Forty Crores only) was sought by the Corporate Debtor and it was granted on 20.03.2012. On 26.12.2015, the account of Corporate Debtor was declared as NPA and proceedings under SARFAESI Act, 2002 has also been initiated. As on 30.06.2017, a total sum of Rs. 65,98,49,757.04 (Rupees Sixty- Five Crores Ninety- Eight Lakhs Forty-Nine Thousand Seven Hundred Fifty-seven and four paisa only) became due and payable by the Corporate Debtor to the Applicant in



respect of various facilities sanctioned for the period of 2011 to 2012.

15. Having heard learned counsels for the parties we are of the considered view that the Financial Creditor has succeeded to make out a case for triggering the Corporate Insolvency Resolution Process. The material on record clearly goes to show that the Corporate Debtor had availed the loan and credit facilities for construction of project 'Hotel Brys Fort' at Jodhpur Road, Rajasthan and has committed default in the payment of the said debt amount. The applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default. The Corporate Debtor tried to settle and bring in investors for making payment of dues of applicant which further proves the existence of financial debt. Merely because applicant had given various opportunities of settlement and repayment, it does not bar Financial Creditor from proceedings under the provisions of Code, all the more when the Corporate Debtor has failed till date in honouring the settlement terms through the investor. There is no

document placed on record by Corporate Debtor to show that payment of debt as claimed by the applicant is made or is not due and payable.

16. 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.

17. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default has occurred and debt has remained unpaid. Thus, the application warrants admission as it is complete in all respects and is admitted initiating CIRP as prescribed under the Code.



18. The 'Financial Creditor'- applicant has proposed the name of Resolution Professional, Sh. Sandeep Goel, address at LD 30, SFS, Flat Pitampura, Delhi- 110034 and email id- cmasandeepgoel@gmail.com, having registration No. IBBI/IPA-003/IP- N00073/2017-18/10583.

A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICAI. In addition, further necessary disclosures have been made by Sh. Sandeep Goel, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

19. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by

Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.”

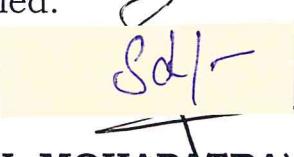
21. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or 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.

22. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Sh. Sandeep Goel 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.

23. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.


(SH. S.K. MOHAPATRA)

MEMBER (TECHNICAL)


—> 18/13/2019
(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)