

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/749/(IB)/CB/2018

Under Section 7 rule 4 of the IBC, 2016

In the matter of M/s. Chandra Royal Inn Private Limited

M/s. Small Industrial Development Bank of India

---Financial Creditor

V/s

M/s. Chandra Royal Inn Private Limited

(CIN: U55101TN2009PTC072949)

---Corporate Debtor

Order delivered on: 06.09.2018

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioners/FC: *Shri. Edward James, Advocate
for Cyril Amarchand Mangaldas*

For the Respondent/CD: *Shri. K. Moorthy, Advocate*

Shri. S.R Sundar, Advocate

Ms. P. Stella Mary, Advocate

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under Consideration is a Company Petition filed by M/s. Small Industrial Development Bank of India (hereafter referred to as "SIDBI"/"Financial Creditor") against M/s. Chandra Royal Inn Private Limited (in short, 'Respondent/Corporate Debtor') under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, 'IB Code 2016') r/w Rule 4 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 (for brevity, 'IB Rules 2016').

2. The petitioner is a corporation established by the M/s. Small Industrial Development Bank of India Act, 1989 (in short "SIDBI"), having its Head office at SIDBI Towers, 15, Ashok Marg, Lucknow-226001 and acting through its Chennai Branch office at Overseas Towers, 756-L, Anna Salai, Chennai-600002. Whereas the Respondent/Corporate Debtor is a Private Limited Company registered under the Companies Act, 1956, having its registered office at No. 52, Main Road, Kilvelur Taluc, Velankanni, Nagapattinam, Tamil Nadu-611111. The Respondent engaged in the business to purchase, establish, contract, manage, takeover, acquire, lease, promote, develop and to carry on the business of running hotels, boarding and lodging houses with facilities such as restaurant, café, shop, departmental stores etc.
3. The learned counsel appearing on behalf of the Petitioners/FC submitted that pursuant to an application for sanction of loan dated 26.09.2011 ("**Loan Application-1**"), made by the Corporate Debtor, the Financial Creditor issued a letter of intent dated 23.01.2012 ("**Lol-I**") agreeing in principle to sanction a term loan ("**Facility-1/Term Loan-1**") to the tune of Rs. 2,75,00,000/- under the Direct Credit Scheme at a rate of interest of 0.5% (Zero Point Five Percent) above the financial creditors prime lending rate (with

12.75% being the prime lending rate at the time of concluding the Lol-1) and the same was unconditionally accepted by the Corporate Debtor. It has further been submitted that the said Term Loan-I was sanctioned for the purpose of setting up a 2 Star hotel with 36 (Thirty Six) air conditioned rooms and 2 (Two) suits along with restaurant and other related facilities such as car parking, drive-in garden restaurant, among others at R.S No. 62, 3B ECR Main Road, Velankanni Village, Keevalur Taulk, Nagapattinam District-611111 at a total project cost of Rs. 4,36,00,000/- (Rupees Four Crores Thirty Six Lakhs Only) and the project was to commence its commercial operations by December, 2012. The copy of the loan Application-1 & Lol-1 has been annexed with the application as **“Exhibit-5” & “Exhibit-6”**.

4. It has further been submitted that, as per loan Agreement-1 r/w Lol-I, the Corporate Debtor was to repay the loan in 72 (Seventy Two) monthly instalments, in the manner more elaborately laid down in clause 6 of the Lol-1, after an initial moratorium of 12 months from the date of 1st disbursement of Term Loan-1. A copy of Loan Agreement-I along with the copy of the General Conditions-I are collectively annexed with the application as **“Exhibit-7”**.
5. It is further submitted that the Financial Creditor had given said loan to Corporate Debtor by way of primary security held by way of Hypothecation and Mortgage in favour of the Financial Creditor

of the leasehold rights held by the Corporate Debtor, overall the movable and immovable Properties and collateral security held by way of mortgage (Immovable properties) in favour of the Financial Creditor all the free hold right of Mr. Joseph Selvakumar and also an unconditional and irrevocable personal Guarantee from Mr. Joseph Selvakumar and Mr. V Stalin, promoter-directors of the Corporate Debtor.

6. It is further submitted that in pursuant to the Loan Agreement-1, the loan amount to tune of Rs. 2,75,00,000/- was disbursed on various dates, commencing on 09.03.2012. Thereafter, the Financial Creditor modified the Loan Agreement-1 as well as the Lol-I by way of its letters dated 20.03.2012 and 26.04.2012 respectively and also advised the rescheduling of the payment schedule and certain changes to the Loan Agreement-I. A copy of letter are annexed with the application as “**Exhibit-9**”.

7. It is further submitted that the date of Commencement of Commercial Operations (in short “**DCCO**”) of the project as per the sanctioned terms of Financial Creditor was December, 2012. The Corporate Debtor vide letter dated 07.05.2013 requested for extension of DCCO by further one year viz., till December, 2013. Since the project had not commenced and generation of income from the project was delayed, the corporate debtor has requested for additional moratorium of 6 months from May 2013 to till October,

2013. The request was examined by the Financial Creditor and the term loan account was rescheduled by providing additional moratorium period of 6 months from March, 2013 onwards without change in terminal date. The revised repayment schedule was advised by the Financial Creditor to the Corporate Debtor vide its letter dated 10.07.2013. A copy of letters are annexed with the application as **“Exhibit-10”**.

8. It has further been submitted by the learned counsel, subsequent to the above, that the Corporate Debtor has made a second Loan Application dated 18.09.2013 (**“Loan Application-II”**), requesting the Financial Creditor to sanction further financial assistance to it, on the account of project cost over-run. A copy of loan application-II has been annexed with an application as **“Exhibit-11”**. The Financial Creditor having examined the best interest of the Corporate Debtor and progress of the project, released another term loan to a tune of Rs. 1,34,00,000/- (Rupees One Crore Thirty Four lakhs Only) (**“Facility-II/Term Loan-II”**) for the cost over-run due to increase in the cost of building materials for the Project. The letter of intent dated 22.11.2013 (**“LoI-II”**) and the Loan Agreement dated 22.11.2013 (**“Loan Agreement-II”**) a copies of Term Loan-I and Term Loan-II along with General Conditions Loan-GC-2006 (**“General Conditions-II”**) laying down the terms of Term Loan-II are annexed with the application

as “**Exhibit-12**”. The terms of loan Agreement-II read with General Conditions- II and LoI-II were unequivocally accepted by the Corporate Debtor by way of its Board Resolution dated 22.11.2013 and the same has been annexed with an application as “**Exhibit-13**”. It is further submitted that the Term-II was secured in a similar manner as Term Loan-I. Pursuant to the Loan Agreement-1, the loan amount was disbursed on various dates, commencing on 02.12.2013 with the disbursement of the Term Loan-II, the total amount of loan disbursed to the Corporate Debtor under the Term Loans aggregated to a sum of Rs. 4,09,00,000/- (Rupees Four Crores Nine Lakhs Only).

9. The Financial Creditor has also preferred a petition under section 14 of the SARFAESI Act, 2002 before the District Magistrate, Nagapattinam for obtaining physical possession of the Scheduled properties and same is pending adjudication.
10. The learned counsel finally submitted that when the Corporate Debtor was unable to pay its Financial Debt which became due and payable on 10.04.2018, then petitioner, having been left with no other option approached this Adjudicating Authority claiming (including default amount) the payment of Rs. 6,54,34,903/- (Rupees Six Crore Fifty Four Lakhs Thirty Four Thousand Nine Hundred Three Only) towards the Corporate Debtor in the capacity of Financial Creditor under the provisions of the IB Code 2016 and

prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

11. The Respondent/Corporate Debtor filed counter, wherein it is sated that the petitioner had sanctioned credit facilities during the year of 2012 aggregating a sum of Rs. 409 Lakhs (Term Loan-1 for Rs. 257 lakhs and Term Loan-2 for Rs. 134 lakhs) for setting up of a 2 star hotel, in the landed property belonging to one of the shareholder/Managing Director Mr. Joseph Selvakumar situated at Velankanni Village, Keevalur Taulk, Nagapattinam District. The Respondent denies the security charges alleged to have been credited in favour of the petitioner against various Immovable properties, hypothecation, personal guarantee etc. It is further submitted that the petitioner did not comply the mandate registration of record of default with the Information Utility as per the I & B Code, 2016.
12. It has further been submitted that the Managing Director of the Corporate Debtor herein who is also the Promotor-Director, initiated a Company petition under section 397, 398, 247 & 402 of the Companies Act, 1956 before this Tribunal *inter alia* alleging Oppression and Mismanagement on the part of the other Director. In this said proceedings, the Petitioner herein (Financial Creditor) was also shown as one of the party. In relation to valuation of Corporate Debtor by a Chartered Accountant and purchase of

shares, the order passed by NCLT Chennai Bench, there is an appeal pending before Hon'ble NCLAT. It has further been submitted that the Petitioner had initiated recovery proceeding under the SARFEASI Act, and the respondent had approached the DRT challenging that substantial payment was made to the petitioner. The counsel for respondent finally submitted that, in spite of the best efforts, the respondent was not able to clear the exorbitant amount claimed by the petitioner. The petitioner is also guilty of levying exorbitant penal interest which is not permitted under law. The learned counsel finally prayed to **dismiss the CP.**

13. Heard both sides. As per the submission of the counsel for the petitioner, the Petitioners have complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules formed thereunder.

14. After hearing submissions of the counsel for the Petitioner/FC and perused the records. It is observed from Pg. No.408 at the application that the Petitioner/Financial Creditor has called upon the respondent to make a payment of Rs. 4,25,39,736/- to which the respondent has given a reply dated 12.02.2015 (page No. 420 of the application) stating that they have decided to settle the dues by selling one of its properties. This clearly shows the respondent has admitted its liability to pay the Petitioner/FC. In view of this Adjudicating Authority is satisfied that the Petitioner/FC has

clearly made out his case by establishing that the Corporate Debtor has defaulted the repayment of loan on various occasions to the Petitioner/FC. Also, the petitioner has proved its claim by placing the documents showing that default has occurred, which the Respondent is responsible to pay. In view of this we are of the opinion that the Petitioner/FC has clearly established that the loan amount in default committed by the corporate debtor is genuine and is supported by the documentary evidence placed before this Adjudicating Authority. In the circumstances, we are satisfied with the submissions put forth by the learned counsel for the petitioner/FC, and hence we hereby admit the instant petition.

15. Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process (**in short CIRP**) which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.
16. We appoint Shri. Tharuvai Ramachandran Ravichandran as Interim Resolution Professional (**IRP**) proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I &B Code, 2016 within three

days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

17. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016 and order to prohibit all of the following, namely :

- (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 (54 of 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.*

18. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section

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14 shall not apply to such transactions, as notified by the Central Government.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
20. The Petitioner/FC as well as the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
21. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
22. The address details of the IRP are as follows: -

Shri. Tharuvai Ramachandran Ravichandran
Regn. No: (IBBI/IPA-002/IP-N00241/2017-18/10692)
23, Lake Area, Opp. Corporation Zonal Office,
3rd Cross Street, Rear Entrance,
Nugambakkam, Chennai-600034.
E-mail: srial1@gmail.com
Mobile No: 9884070424

S. Vijayaraghavan

(S. Vijayaraghavan)
Member (Technical)


(K. Anantha Padmanabha Swamy)
Member (Judicial)

TJS