

BEFORE THE SPECIAL BENCH NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
& M'S. DEEPA KRISHAN, MEMBER (TECHNICAL)

COMPANY APPLICATION NO.78/ 2017

IN THE MATTER OF SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH
RULE 4 OF THE (INSOLVENCY AND BANKRUPTCY APPLICATION TO ADJUDICATING
AUTHORITIES), RULES, 2016.

AND

IN THE MATTER OF:

ALCHEMIST ASSET RECONSTRUCTION
COMPANY LIMITED
NEW DELHI-110001

.....Financial Creditor

M/S HOTEL GAUDAVAN PVT. LTD.,
REGD. OFFICE AT
C-22, VAISHALI NAGAR,
JAIPUR – 302021
RAJASTHAN.

..... Corporate Debtor

ADVOCATE FOR THE PETITIONERS:

Mr. Abhirup Dasgupta, Advocate,

ADVOCATE FOR RESPONDENT:

Mr. Abishek Singh, Advocate

ORDER

As a consequence to the order dated 31.03.2017 passed by the Hon'ble Principal Bench, NCLT, New Delhi by appointing Shri Arunava Sikdar as the Interim Resolution Professional (IRP), the IRP has made an effort to comply with the provisions of the Code as well as orders passed by the Hon'ble Principal Bench. In this connection, an application has been filed as CA No.87(PB)/2017 by the learned IRP dated 8.4.2017 and on 10.4.2017 the matter was listed and the learned IRP through his counsel stressed the need for certain directions to be issued in view of the recalcitrant attitude of the respondent company and the persons in-charge of the management namely its General Manager and Managing Director. It is further, submitted by the learned IRP that in compliance with the provisions of Section 15 of IBC a public notice has been issued calling for any claims from the Creditors of the Company in Times of India (English) Edition on 2.4.2017 and Dainik Bhaskar, Jaipur Edition as well as in Barmer Edition both dated 2.4.2017. Consequent to the publication the learned IRP states that efforts were made to take over the possession of assets of the 'Corporate Debtor' and in this regard the learned IRP had reached Hotel Fort Rajwada situated at Plot No.1, Hotel Complex, Jodhpur Barmer Link Road, Jaisalmer on 3.4.2017 at 9.30 AM after due intimation to the management of the 'Corporate Debtor' through email, speed post and courier duly intimating about his appointment. It is further represented as disclosed in the status report annexed as Annexure-2 to the application that a communication was also addressed to the auditors of the Company namely Shri U.S.Shekhawat & Co. (Auditors) wherein information about the bank accounts of the 'Corporate Debtor' were sought. The said communication was addressed to the Auditors on 1.4.2017 for which a reply had been received from the said Auditors dated 2.4.2017 wherein it has been disclosed that the following bank accounts are being operated by the 'Corporate Debtor'.

- a) Bank of Baroda, Shiv Road, Jaisalmer, C/Ac No./0850200000435.
- b) State Bank of Bikaner & Jaipur, Shiv Road, Jaisalmer, C/Ac No.51009201029.

- c) State Bank of Bikaner & Jaipur, IFB Branch, Gopal Bari, Jaipur, C/Ac No.51014052636.
- d) ICICI Bank, C Scheme, Jaipur, C/Ac No.001205004151.
- e) Axis Bank Ltd. Main Branch, Ashok Marg, Jaipur C/Ac No.311003901
- f) Punjab National Bank, Jaisalmer, C/Ac No.3905002100005148.
- g) ICICI Bank Ltd. Jaisalmer, C/Ac No.6822205110310.

2. However, the efforts to contact the persons in the management of the Company for taking over assets and management proved futile. The General Manager of the 'Corporate Debtor' namely Mr. Prakash Topa being the key person running the management of the hotel even though apprised of the order dated 31.03.2017 passed by the Hon'ble Principal Bench refused to cooperate with the IRP and also did not divulge any details nor provide any cooperation to the IRP and stated that he would not do so without getting any instructions from the Managing Director of the 'Corporate Debtor'. Further he also refused to call the Managing Director on the plea that he was not authorized to do so. However, on 3.4.2017 an email was received from one Mr. Lokendra Singh Rathore stated to be the Managing Director, who informed that he was travelling on 1.4.2017 and will be out of station for another week from Jaisalmer. Thus, it is evident that the management of the 'Corporate Debtor' is not cooperating in relation to the discharge of the functions of IRP as contemplated under IBC that too not in an expeditious manner. It is also brought to the notice of this Tribunal by the Status Report that the 'Corporate Debtor' in the meanwhile has approached the Hon'ble High Court of Rajasthan at Jaipur in WP© No.4760 of 2017 in which Civil Misc. application No.4523 of 2017 had also been filed praying for stay of the order dated 31.3.2017 passed by the Hon'ble Principal Bench, NCLT, New Delhi initiating the Corporate Insolvency Process. However, in order passed in stay application No.4523 of 2017 dated 6.4.2017 is annexed as Annexure-N (Colly), the Hon'ble High Court seems to have refused to grant any interim relief prayed for and thereby rejected the stay Application. The 'Financial Creditor' who had initiated the Corporate Insolvency Resolution Process through its Counsel submits that till the date of hearing on 10.4.2017 as well as subsequently on 11.4.2017 before this Tribunal, no notice has been

received in relation to any appeal having been filed under Section 61 of the IBC before the Appellate Authority and it is further represented that the 'Financial Creditor' has also filed caveat which makes it incumbent on the 'Corporate Debtor' to serve advance notice of moving the Appellate Forum for any interim direction. In the circumstances, it is evident that there is no legal impediment for this Tribunal to proceed with the disposal of the present application as filed by the learned IRP in furtherance of its order dated 31.3.2017 initiating the Corporate Insolvency Resolution Process. Section 17 of the IBC mandates as follows:

17. (1) From the date of appointment of the interim resolution professional,—

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional ;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

3. In relation to duties of the IRP, Section 18(1)(d) mandates the IRP to monitor the assets of the 'Corporate Debtor' and manage its operations until a Resolution Professional is appointed by the committee of creditors and as per the provisions of Section 18(1)(f), the Interim Resolution Professional is duty bound to take over the control of any assets of the 'Corporate Debtor' has ownership rights, as recorded in the balance sheet of the 'Corporate Debtor' including all tangible assets whether movable or immovable. Further, as per the provisions of Section 19 of IBC, the personnel of the 'Corporate Debtor' its promoters or any other person associated with the management of the 'Corporate Debtor' is required to extend all assistance and cooperation to the IRP as may be required by him in managing the affairs of the 'Corporate Debtor'. Further, Section 19(3) empowers this Tribunal on receiving an application of the IRP, to order and direct such personnel or other persons who are found to be not cooperating to comply with the instructions of the Resolution Professional as well as to cooperate with him in collection of information.

4. Considering all the above provisions, it is evident that the management of the 'Corporate Debtor' including the promoters of the Company are required to fully cooperate with IRP in the collection of information and managing the affairs of the Company. Any failure to do so obviously attracts the exercise of contempt powers vested in this Tribunal which this Tribunal will not hesitate to exercise in the present instance if the promoters, management or any other person associated with corporate debtor is restraining in any manner the functioning of the IRP and by not co-operating with IRP. It is also made clear that the banks of the 'Corporate Debtor' where the above said accounts detailed are being operated are also required to fully cooperate with the instructions issued from time to time by the IRP including that of freezing debit transactions for the accounts of the 'Corporate Debtor'. It is further made clear that if the learned IRP confronts any obstructions or violence, the Director General of Police /SP as applicable and stationed at Jaipur/ Jaisalmer shall be contacted by the IRP and request the DGP/SP to depute sufficient police force to enable the Insolvency Resolution Professional to function in accordance with the directions issued as per order dated 31.3.2017

and the provisions of the IBC, 2016. A copy of this order be also sent to the DGP/SP as may be having office, at Jaipur/Jaisalmer by electronic devices by FAX/email forthwith.

5. In relation to the bank accounts, this Tribunal directs that further operations of the accounts will be carried out only under the signatures of the learned IRP and the said learned IRP will be authorized to operate the said bank accounts.

List the matter again on 26.04.2017.



(DEEPA KRISHAN)
MEMBER(TECHNICAL)



(R.VARADHARAJAN)
MEMBER(JUDICIAL)

(u.d.mehta)
13.4.2017