

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-IV**

**Company Petition No. (IB)-571(PB)/2021**

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016]

**IN THE MATTER OF:**

JM Financial Asset Reconstruction Company Limited  
(acting in its capacity as trustee of Hotel II May, 2022 Trust)  
... Financial Creditor/ Petitioner

**Versus**

Asian Hotel (West) Limited  
... Corporate Debtor/ Respondent

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**Order Delivered on: 16.09.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

The instant Petition is originally filed on behalf of Yes Bank Limited 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 to trigger Corporate Insolvency Resolution Process in respect of respondent M/s. Asian Hotel (West) Limited ('Corporate Debtor') for default in repayment of financial debt of Rs.2,640,735,129/-. The Yes Bank Limited had assigned the debt to JM Financial Asset Reconstruction Company Limited vide registered Assignment Agreement dated 21.06.2022, consequent to which substitution of JM Financial Asset Reconstruction Company Limited in

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place of Yes Bank Limited was allowed by this Adjudicating Authority in I.A/3041/ND/2022.

2. The Respondent Company M/s. Asian Hotel (West) Limited ('corporate debtor) having CIN: L55101DL20007PLC157518 against whom initiation of Corporate Insolvency Resolution Process has been prayed for was incorporated on 08.01.2007 having its registered office situated at 6th Floor Aria Towers JW Marriot, Aerocity Asset Area 4 Hospitality District Near IGI Airport, New Delhi- 110037. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub- section (1) of Section 60 of the Code.
3. The averments made by the petitioner in its petition and argued by the Ld. Counsel for the petitioner are summarized hereunder:
  - a) The applicant submits that the corporate debtor approached the petitioner to meet its requirements and requested credit facilities upto Rs.2,15,00,00,000/-. The petitioner further submits that after due scrutiny and verification, the petitioner sanctioned and released the following credit facilities to the corporate debtor (1) Term Loan Rs.2,00,00,00,000/- (Indian Rupees Two Hundred Crores only), (2) Overdraft Facility Rs.10,00,00,000/ (Indian Rupees Ten Crores Only), (3) Letter of Credit of Rs.5,00,00,000/- (Indian Rupees Five Crores Only) (4) Letter of Undertaking For Buyer's Credit of Rs.5,00,00,000/- (Indian Rupees Five Crores Only) and (5) Financial/Performance Bank Guarantee of Rs.5,00,00,000/- (Indian Rupees Five Crores Only). The petitioner adds that the overall exposure under the non-fund based facilities as mentioned at Sr. No. 3, 4 & 5 above was capped at Rs. 5,00,00,000/- (Indian Rupees Five Crores Only) as mentioned In Facility Letter having reference No. YBL/DEL/FL/0032/2016-17 dated 15.04.2016 which were duly accepted by the corporate debtor.
  - b) The petitioner submits that on the request of the corporate debtor the petitioner further enhanced as well renewed the credit facilities vide addendum Facility Letter Ref No. YBL/DEL/FL/2434/2017 18 dated 30.03.2018 to Facility Letter Ref No. YBL/DEL/FL/0185/2016 17 dated 26.05.2016, Facility Letter Ref No. YBL/DEL/FL/0032/2016-17

dated 15.04.2016, Facility Letter Ref No. YBL/DEL/FL/0033/2016-17 dated 15.04.2016 and any Addendum thereto in relation to the facilities extended to Corporate Debtor. The petitioner further submits that vide the Facility Letter Ref No. YBL/DEL/FL/2434/2017-18 dated 30.03.2018, the Financial Creditor sanctioned Lease Rent Discounting ("LRD") Facility of Rs.35,00,00,000/- (Indian Rupees Thirty Five Crores Only) and enhanced the Overdraft limit from INR 10,00,00,000 (Indian Rupees Ten Crores Only) to INR 27,00,00,000/- (Indian Rupees Twenty Seven Crores Only).

- c) The petitioner submit that on the request of the corporate debtor petitioner had also extended a Bank Guarantee Facility aggregating to INR 9,805,000/- vide Facility Reference Number YBL/DEL/FL/0032/2016-17 dated April 15, 2016 and YBL/DEL/FL/0033/2016-17 dated April 21, 2016.
- d) The petitioner submits that the corporate debtor committed default in repaying i) Term Loan of Rs.200 crores on 28.04.2021, ii) Overdraft Facility of Rs.27 Crores on 31.05.2021 and iii) FITL-TL of Rs. 9.23 Crores on 28.04.2021. The petitioner further submits that due to these payment defaults, the account of the corporate debtor turned into a Non-Performing Asset on 27.07.2021.
- e) The petitioner submits that the petitioner issued a loan recall cum guarantee invocation notice to the corporate debtor and guarantor Mr. Sushil Gupta, demanding the outstanding amount due in the account of Corporate Debtor under the Term Loan (TL), Lease Rental Discounting (LRD), Overdraft (OD), Fund Interest Term Loan for TL facility (FITL- TL) and Funded Interest Term Loan for LRD facility (FITL-LRD) facilities. The petitioner adds that no payment has been made by the corporate debtor or the guarantor after issuance of the loan recalls and guarantees invocation till date.
- f) The petitioner in Part-IV of Form I of the petition had claimed an amount of Rs.2,640,735,129/- in default. The details of disbursement of credit facilities and date of default is summarised as below:-

Facility	Sanctioned Amount (INR)	Disbursement Date	Date of Default
TL (Tranche-1)	1,80,00,00,000	28-Apr-16	28-Apr-21
TL (Tranche-2)	15,00,00,000	19-Jul-16	
TL (Tranche-3)	1,00,00,000	3-Oct-16	
TL (Tranche-4)	4,00,00,000	31-Jul-19	
Overdraft	27,00,00,000	--	31-May-2021
LRD	35,00,00,000	16-Jul-18	08-Aug-2021
FITL LRD	1,63,63,744	1-Sep-20	08-Aug-2021
FITL-TL	9,04,27,592	1-Sep-20	28-April-2021

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4. The defence placed by the corporate debtor in the reply and submissions made and argued by the Ld. Counsel of the corporate debtor are summarized hereunder:

- a) The corporate debtor submits that the present application filed under Section 7 of the Code, 2016 is liable to be dismissed as the same has been filed by a person who has not been duly authorised vide a Board Resolution by the Petitioner to institute and file the present application. The corporate debtor further submits that an application under Section 7 of the Code, 2016 is to be instituted by a person duly authorised by a Board Resolution and Ministry of Corporate Affairs vide its Notification dated 27.02.2019 S.O. 1091 (E.) notified only certain persons who may file an application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, on behalf of the Financial Creditor.
- b) The corporate debtor submits that at s.no. (iv) of the said MCA notification provides that a person duly authorised by the Board of Directors of a Company is competent to file petition under Section 7 of the IBC on behalf of the financial Creditor. The corporate debtor further submits that in the present case, the application has been signed and instituted by one Mr. Ankit Jain in whose favour a purported Power of Attorney has been executed by one Mr. Prashant Kumar, the MD and CEO of the Petitioner, therefore, since Mr. Ankit Jain is not duly authorised by the Board of Directors of the Petitioner company to file the present application and the present application is not accompanied by a board resolution authorising him, therefore the same is liable to be dismissed.
- c) The corporate debtor submits that the petitioner is liable for action under Section 65 (1) of the IBC as the present proceeding has been instituted with malicious intention of recovery of the alleged debt, which as mentioned above, is not the object of the IBC.
- d) The corporate debtor submits that the petitioner is engaged in forum shopping and the petitioner prior to initiating the action under Section 7 of the IBC, has already proceeded to issue notice to the corporate debtor under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI"). The corporate debtor further submits that the secured immovable property which forms subject matter of the aforesaid notice under the SARFAESI Act is valued, as per petitioner's own assessment, more than the amount allegedly under default on which present petition is predicated.

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- e) The corporate debtor submits that the Petitioner has claimed that the amount in default is Rs.264 crores approximately whereas the value of the land and building of the Hotel Hyatt Regency, Mumbai as assessed by the petitioner is Rs.479.7 crore. The corporate debtor further submits that the petitioner has deliberately not disclosed the said fact in the petition under reply, which is clearly a malicious act making the Petitioner and/or its erring officers liable for the severest consequences as enumerated in Section 65 (1) of the Code,2016
- f) The corporate debtor further submits that petitioner unlawfully refused to release the amount of Rs.38.5 cr. against the Emergency Credit Line Guarantee Scheme ("ECLGS") 2.0 to the Respondent by imposing illegal conditions for release of the said amount on the pretext of pending disputes between the promoters of the corporate debtor. The corporate debtor adds that if the amount was released against the ECLGS, the Respondent would not have been a defaulter, as alleged, in as much as the alleged default of the corporate debtor was for approx. less than Rs.12 crores as on the date of issue of loan recall notice dated 30.07.2021 by the Petitioner.
- g) The corporate debtor submits that the corporate debtor is self-sustained company and is commercially solvent and the reason that corporate debtor could not service the loan facility due to temporary phase most of which was the outcome of the spread of COVID -19 virus.
4. The applicant filed rejoinder to the reply submitted by the corporate debtor. The submissions of the applicant in the rejoinder are summarized here under: -
- a) The petitioner submits that Mr. Prashant Kumar has been duly authorized by the Board of Directors of the Petitioner (Yes Bank) to authorize Mr. Ankit Jain through Power of Attorney to file the present Petition.
- b) The petitioner submits that the present petition has been filed with a purpose of resolution of insolvency and /or liquidation (as the case may be) within the framework of the Code, 2016. The petitioner adds that the value of assets is mentioned in Part-V Section 1 of the Petition. The petitioner adds that the corporate debtor committed default from April, 2021 consequent to which the account was declared as non-performing assets on 27<sup>th</sup> July, 2021 and is therefore, outside the purview of moratorium as declared by the Reserve Bank of India on account of Covid-19.

- c) The Petitioner submits that the facilities were overdue since April, 2021 and despite repeated reminders/requests corporate debtor failed to pay the dues of the petitioner. The petitioner further submits that the documentation submitted by the petitioner with respect to the facilities have not been completed, therefore the petitioner was not able to sanction the amount of Rs.38.5 Crores against the emergency Credit Line Guarantee Scheme ('ECLGS').
- d) The petitioner submits that the petitioner is well within its rights to take possession of the mortgaged assets in the account under the provision of SARFAESI Act, 2002. The petitioner further submits that there is no bar in filing the present application during the subsistence of action under the SARFAESI Act, 2002 against the corporate debtor.

5. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions have been examined in detail.

6. Before considering the issues involved and going into the merits of the case, the corporate debtor had raised the question on the maintainability of the instant petition on the technical ground as to the authorisation of signatory of the petition and date of default mentioned in the petition.

7. As regard to the Corporate Debtor's contention that Mr. Ankit Jain is not authorised to file the petition as he is not duly authorised by a Board Resolution and is therefore, not in compliance of Ministry of Corporate Affairs vide its Notification dated 27.02.2019 S.O. 1091 (E.), we find that the 'Financial Creditor'-Yes Bank has placed on record the board resolution dated March 26,2020 as Annexure-A2 of the rejoinder wherein Mr. Prashant Kumar, the Managing Director & Chief Executive Officer is entrusted with the substantial powers of the management of the affairs of the Bank. The relevant part of the Board Resolution dated 26.03.2020 is reproduced herein verbatim :-

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*“RESOLVED THAT **Mr. Prashant Kumar**, the Managing Director & Chief Executive Officer (MD & CEO be and is hereby entrusted with the substantial powers of management of affairs the Bank and is further authorized for and on behalf of the Bank and to do and transget the following acts, deeds and things that is to say:*

*1. To carry on, manage and conduct the day to day business activities and affairs in which the Bank is now or may hereafter be engaged and to do and perform all acts, deeds, matters and things in the discharge of the official work, duties and responsibilities attached, delegated or assigned to MD&CEO, and which MD&CEO may consider necessary, proper or expedient in or for the establishment, development and management of the business and affairs of the Bank, to exercise all powers, authority and discretions of the Bank and without in any way affecting or limiting the generality of what is stated hereinabove, MD &CEO shall have the following **powers (including power to delegate to the officials of the Bank) discretions and authority namely to comply with and/or cause to be complied with all statutory requirements affecting or relating to the Bank either under the Banking Regulation Act, 1949, Companies Act, 2013, Income Tax Act, 1961 or under any other Central or State Act, Ordinance, Rules, Regulations Notifications, Guidelines, Directions or Orders whatsoever having the force of law.”***

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8. In the present case, we observe that Mr. Ankit Jain duly authorised on behalf of Yes Bank Limited has signed Form 1 i.e., the petition under Section 7 of the Code, 2016 and also in point 5 (Name and Address of the Person Authorised to submit application on its behalf) of Part I(Particulars of Applicant) of Form-1, name of Mr. Ankit Jain , duly constituted Attorney and empowered by Yes Bank Limited to sign, verify and file the present application along with the other correlated acts. We further observe that Mr. Prashant Kumar had executed a Power of Attorney dated 29.07.2021 in favour of Mr. Ankit Jain. The relevant part of the Power of Attorney dated 29.07.2021 in favour of Mr. Ankit Jain is reproduced herein in verbatim:-

*“NOW KNOW YE AND THESE PRESENTS WITNESSETH that I, **the MD & CEO**, in exercise and in pursuance of the powers in that behalf vested in me do hereby nominate, constitute and appoint Mr. Paresh Mehtani (Employee ID: PME4749047) - Regional Business Head, Stressed Asset Management, Ms. Garima Kothari (Employee ID:*

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GKE3561008) - President, Stressed Asset Management, **Mr. Ankit Jain (Employee ID: AJE4839001) - Senior Vice President, Stressed Asset Management** and Mr. Deepak Gupta (Employee ID: DGE4666022) Vice President, Stressed Asset Management; employees of the Bank as authorized representatives, severally, to be the true and lawful attorney of the Bank (hereinafter referred to as "the Attorney") and confer upon them the following powers and authorities and to act on behalf of the Bank and in the name of the Bank, to execute and perform all or any of the following acts, **deeds, matters and this jointly or severally in relation to credit facilities/securities of M/s. Asian Hotel West Limited ("Borrower") and its security providers and guarantors** being Mr. Sushil Kumar Gupta (collectively with the Borrower are referred as "Obligors"):

1. To **file application/petition under Insolvency and Bankruptcy Code 2016 and rules thereunder and initiate corporate insolvency process against all or any of the Obligors;**"

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9. The Hon'ble NCLAT in **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited [Company Appeal (AT) (Insol.) No. 30 of 2017, judgment dated 20th September, 2017]** held as follows:

"37. As per Entry 5 & 6 (Part I) of Form No.1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.

38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate."

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10. On a cojoint reading of the Board resolution dated 26.03.2020 and the Power of Attorney dated 29.07.2021, we are of the considered view that Mr. Prashant Kumar, MD &CEO of the Yes Bank Limited was authorised to do needful in the legal proceedings by and against the Bank and was further authorised to delegate any of such powers to the officials of the Bank. Consequently, Mr. Prashant Kumar had vide the Power of Attorney authorised Mr. Ankit Jain to execute and perform the matters in relation to credit facilities of M/s. Asian Hotel West Limited including but not limited to filing application under the Insolvency and Bankruptcy Code, 2016. Therefore, we are of the considered view that mere use of 'Power of Attorney' while delegating such power will not be in violation of the MCA Notification dated 27.02.2019 S.O. 1091 (E.) and nor will it take away the authority of such officer and for all purposes it is to be treated as a valid 'authorization' by the 'Financial Creditor' in favour of its officer, which can be delegated even by designation. Consequently, Mr. Ankit Jain, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 the Code, 2016. We find no force in the corporate debtor's contention as to the authorisation of Mr. Ankit Jain for filing the instant petition.

11. During the course of arguments, Ld. Senior Counsel for the corporate debtor relied on the Hon'ble NCLAT judgement in **M Sai Eswara Swamy v. Siti Vision Digital Media Private Limited [ Company Appeal (AT)(Ins) No. 706 of 2021, judgement dated 09.09.2021]** to support the . On a perusal of the given citation, we find that the facts of the cited case are totally different from the facts of present case, as in the cited case the Hon'ble NCLAT deals with the issue of the applicability of the 'doctrine of derivative action' in Petition under Section 7 of the Code, 2016 which is not the issue in the present case, therefore, the said citation is not helpful to the respondent.

12. As regard to the Corporate Debtor's contention that the proceedings under SARFAESI Act are also initiated by the petitioner and therefore parallel proceedings cannot be allowed, we are of the considered view that it is a trite

law that the Insolvency and Bankruptcy Code, 2016 have an overriding effect over other laws for the time being in force and therefore the SARFAESI proceedings pending before the DRT, or otherwise, does not bar the initiation of CIRP against a Corporate Debtor under Section 7 of the Code, 2016

13. At this stage, it is desirable to refer Section 65 of 'I&B Code' which relates to 'fraudulent and malicious initiation of proceedings', by a person who initiates the Insolvency Resolution Process or Liquidation proceeding fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be. In such case, the Adjudicating Authority is empowered under sub section (2) of Section 65 to impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

14. The Hon'ble NCLAT , Chennai Bench in **Amar Vora v. City Union Bank Ltd [Company Appeal (AT) (CH) (Ins) No. 130 of 2022, judgement dated 11.05.2022]** held as follow:

*"9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant"*

15. In so far as the present case is concerned, in our view, the fact remains that the corporate debtor had availed the credit facilities from Yes Bank Limited (original petitioner) somewhere in 2016 and admittedly, the Account became NPA on 27<sup>th</sup> June, 2021. The present petition under Section 7 has been filed on 19.08.2021 by the Yes Bank Limited. There is no dispute that Yes Bank assigned its debts of Corporate Debtor in favour of present petitioner JM

Financial Asset Reconstruction Company Limited as per the registered Assignment Agreement dated 21.06.2022. When this is so as far as the factual matrix is concerned, this Adjudicating Authority do not see any element of fraudulent and malicious initiation of CIRP Proceedings. Therefore, the contention of the corporate debtor is untenable.

16. The Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, held as follows :-

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. 30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.**"

"30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due** in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise." We note that that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which cannot be cured.

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17. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of detailed discussion in the aforesaid paragraphs, we are satisfied that the present petition is complete in all respect. The petitioner financial creditor is entitled to move the petition against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition ***IB/571/PB/2021 stands admitted*** and CIRP of M/s. Asian Hotel (West) Limited shall be initiated.

18. The petitioner in amended Part-III of the petition has proposed the name of Mr. Sapan Mohan Garg as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00315/2017-2018/10903. Mr. Sapan Mohan Garg, having registration number IBBI/IPA-002/IP-N00315/2017-2018/10903 and email – id [sapan01@yahoo.com](mailto:sapan01@yahoo.com) is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of this order.

19. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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 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 corporate debtor.”

(e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*”

20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.


21. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

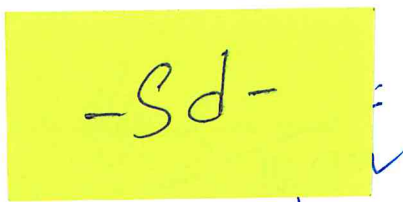
22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Sapan Mohan Garg to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency 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 said amount however is subject to adjustment towards Resolution Process cost as per applicable rules

23. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code

and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

24. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
25. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
26. 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, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Interlocutory Application No.4021/2022  
IN  
Company Petition No. (IB)-571/PB/2021**

**IN THE MATTER OF:**

JM Financial Asset Reconstruction Company Limited

(acting in its capacity as trustee of Hotel II May, 2022 Trust)

... Financial Creditor/ Petitioner

**Versus**

Asian Hotels (West) Limited

... Corporate Debtor

**AND IN THE MATTER OF:**

Asian Hotels (West) Limited

... Applicants

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**Order Delivered on: 16.09.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

The instant interlocutory application is filed on behalf of M/s. Asian Hotels (West) Limited with a prayer to:

- a) *'pass an order clarifying/modifying Paras 1 and 8 of the order dated 05.08.2022 that the Application has been filed by the Applicants claiming themselves to be the shareholders of the Respondent which assertion has been seriously disputed by the Respondent referring to the pending proceeding before the Hon'ble Delhi High Court in RFA (OS) No. 88/2018; and*
- b) *pass an order to expunge the observations made in Paras 4 and 8 of the order dated 05.08.2022 to the extent as highlighted in Paras 5 and 6 above; and/or*
- c) *pass such other/orders(s) as this Hon'ble Tribunal deems fit.'*


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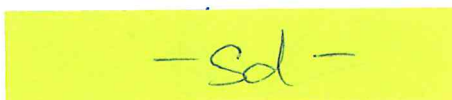
I.A.4021/ND/2022  
IN  
C.P. No. IB-571/ND/2021  
Order delivered on:16.09.2022

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2. Briefly stated the facts of the present case as stated by the applicant are that this Adjudicating Authority had made observations in its order dated 05.08.2022 by ignoring all the contentions raised by the applicant and the observations so made may severely prejudice the applicant in future. The applicant further submits that the observations made in the said order may be used against the applicant in any other proceedings presently pending, or initiated in future which can seriously prejudice/ impact the interest of respondent.
3. Taking into consideration the aforesaid facts and circumstances, this Adjudicating Authority observes that the issue in the order dated 05.08.2022 in I.A. No. 5699/PB/2021 was only limited to the prayer of M/s. Asian Hotels (East) Limited, Mr. Radhe Shyam Saraf and Mr. Ratana Saraf (applicants therein) seeking impleadment as party as respondent in C.P.(IB)/ 571/PB/2019 and this Adjudicating Authority had not gone into the merits of the averments of the parties.
4. Further the Hon'ble NCLAT **in Agarwal Coal Corporation (P.) Ltd. v. Sun Paper Mill Ltd - [2022] 134 taxmann.com 181 (NCL-AT)** observed that it was the well laid down proposition of law that 'in the absence of any power of 'Review' or 'Recall' vested with the 'Adjudicating Authority' - 'Appellate Authority, an order/judgment passed by it cannot be either reviewed or recalled as opined by the Tribunal.
5. Accordingly, the instant application i.e., **I.A./4021/2022 being devoid of merits, stands dismissed as to no orders to costs.**

  
**(DR.BINOD KUMAR SINHA)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-IV**

**I.A./3041/2022**

**IN**

**Company Petition No. (IB)-571(PB)/2021**

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

**In the matter of:**

JM Financial Asset Reconstruction Company Ltd.

(Acting in its capacity as trustee of Hotel II May 2022 Trust)

..... Applicant

**And In the matter of:**

Yes Bank Limited

.... Financial Creditor / Petitioner

**versus**

Asian Hotels (West) Limited

.... Corporate Debtor / Respondent

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**Order Delivered on: 16.09.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

The instant interlocutory application is filed on behalf of JM Financial Asset Reconstruction Company Limited ('applicant') seeking the following prayer(s) from this Adjudicating Authority:-

- a. *"permit the applicant to be substituted as Petitioner in the main petition i.e., IB/571(PB)/2021 in stand and place of the original petitioner (Yes Bank Limited) and take on record the amended memo of parties.*

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*b. to allow the substitution of proposed resolution professional as proposed in the original petition to Mr. Sapan Garg having IBBI Registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.”*

2. Brief facts of the case, as averred by the applicant in the instant application, leading to filing of this present interlocutory application are as follows:-

- a. The applicant submits that the main petition is filed by Yes Bank Limited under Section 7 of the Code, 2016 against M/s. Asian Hotels (West) Limited seeking initiation of the corporate insolvency resolution process. The applicant adds that the captioned petition is pending before this Adjudicating Authority for admission.
- b. The applicant submits that a registered Assignment Agreement dated 21.06.2022 was executed between the applicant and petitioner wherein the petitioner unconditionally and irrevocably sold, assigned, transferred and released unto the applicant all loans to which the petitioner was entitled to recover from the corporate debtor including the right to file suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of loans granted to the corporate debtor. The applicant further submits that the said assignment agreement has been executed as per the provisions of the SARFAESI Act.
- c. The applicant further submits that applicant proposes to nominate a new Interim Resolution Professional in place and stead of Mr. Amit Jain originally proposed by the Petitioner in the main petition with Mr. Sapan Garg having registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.
- d. The applicant has placed on record the following documents in support of the submissions made:-
  - i. copy of the Assignment Agreement dated 21.06.2022
  - ii. copy of the letter dated 22.06.2022 sent by the applicant to the corporate debtor intimating the assignment agreement.
  - iii. copy of letter dated 22.06.2022 sent by Yes Bank Ltd to the corporate debtor intimating the execution of assignment agreement.
  - iv. amended memo of parties
  - v. consent form in Form-2 executed by Mr. Sapan Garg registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.

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3. The corporate debtor had filed its reply cum objection to the substitution and the objections of the corporate debtor in the reply are summarized below:-
- a. The corporate debtor submits that the purported Assignment Agreement dated 21.06.2022 does not bear any stamp duty and is not registered.
  - b. The corporate debtor submits that the substitution of assignee in place of the original financial creditor cannot take place once proceedings have been initiated under Section 7 of the Code, 2016. The corporate debtor further submits that there is no provision under Code, 2016 that allow substitution of an assignee in place of the original financial creditor after initiation of proceedings under Section 7 of the Code, 2016.
  - c. The corporate debtor submits that the applicant has failed to file supporting documents including the trust deed explaining its composition and status. The corporate debtor further submits that in terms of the Reserve Bank of India's Master Circular-Asset Reconstruction dated 10.02.2022, any ARC is prohibited from acquiring financial assets from sponsors and lenders, therefore, it is necessary for the applicant to clarify the relationship between the Yes Bank Limited and the applicant.
4. The applicant filed the rejoinder to the reply submitted by the corporate debtor. The submissions of the applicant in the rejoinder are stated in brief:-
- a. The applicant submits that a stamp duty of Rs.1,01,500/- has already been paid on the registered assignment agreement dated 21.06.2022 executed between the Yes Bank Limited and the applicant. The applicant further submits that Section 5(1-A) of the SARFAESI Act exempts documents executed between a bank and an asset reconstruction company from stamp duty.
  - b. The applicant submits that there is no bar in the Code, 2016 to assign the debt before CIRP is initiated by admitting a petition under Section 7 of the Code, 2016 or even after initiation of the Corporate Insolvency Resolution Process. The applicant further submits that there is no bar in law to amendment of pleadings in an application under Section 7 of the Code, 2016 or filing of the additional documents. To support the contention, the applicant placed reliance on citation **Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and Anr . [Civil Appeal No. 1650 of 2020]**.
  - c. The applicant submits that the debt was assigned by Yes Bank Limited to the applicant in accordance with RBI Master Circular on Transfer of Stressed Assets dated 24.09.2021. The applicant further

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submits that Yes Bank Limited is not a sponsor or a lender or a related party to the applicant or its operations. The applicant adds that Yes Bank had issued an advertisement on 01.06.2022 inviting counter bids for sale of Financial Assets/ Loan Account of the corporate debtor under Swiss challenge method.

5. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions have been examined meticulously.
6. During the course of hearing, the Ld. Senior Advocate on behalf of the applicant had stated that the purchase consideration of the loans was INR 284,06,02,102/-, clause 2.2.5 of the said Assignment Agreement provides the provision to notify to the Borrower, Guarantor, Advocate, other Lenders, Statutory Authorities, DRT/DRAT/High Court, Resolution Professional, Liquidator/Official Liquidator, NCLT/NCLAT and any other entity related to the Borrower of the assignment of the Loans, the underlying Security Interests, pledges and/or guarantees and all its right, title and interests in the Financing Documents to the Assignee, and sufficient disclosure of the pendency of the company petition IB/571/ND/2021 in schedule 2 of the said Assignment Agreement.
7. Coming to the factual matrix, it is an undisputed fact that the loan was assigned by the Yes Bank to the applicant during the pendency of the IB/571/ND/2021 filed under Section 7 of the Code, 2016 for a purchase consideration of INR 284,06,02,102/-. The corporate debtor was duly informed by the Yes Bank as well as by the JM Financial Asset Reconstruction Company by letter dated 22.06.2022. Be that as it may, this does not dilute the liability of Corporate Debtor who is under an obligation to discharge the outstanding debt in full. The consideration for assignment of debt is of no relevance in so far as the liability and obligation on the part of Corporate Debtor is concerned. The assignment only changes the hands of the creditor clothing the assignee with authority to enforce the claim. The

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liability in regard to claim as regards the Corporate Debtor remains intact and does not get diluted in any manner whatsoever, therefore, the Adjudicating Authority has the jurisdiction to initiate Corporate Insolvency Resolution Process by passing order of admission on an application filed by the Financial Creditor which was later substituted by the Assignment on account of assignment of debt subject to the conditions of establishment of debt and default as envisaged under Section 7 of the Code, 2016.

8. At this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim:-

**5. Definitions: -**

**(7) “financial creditor” means any person to whom a financial debt is owed and include a person to *whom such debt has been legally assigned or transferred to;***

9. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of transfer of right across the ambit of Section 5(7) of the code, the said assignment of debt squarely falls within the fold of ‘Financial Creditor’. It is pertinent to mention that the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein i.e., JM Financial Asset Reconstruction Company would step into the shoes of Yes Bank Limited (original petitioner) with the Assignment Deed executed in its favour. The contentions raised by the corporate debtor are accordingly overruled.

10. The Hon’ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC (P) Ltd., 2018 SCC OnLine NCLAT 835, dated 20-12-2018** reiterating the objectives of the Code, 2016 held that ***“the assignment cannot be challenged in the petition under Section 7 and that too by a party who had the knowledge of Assignment Deed.”*** Since, the corporate debtor was duly notified of the Assignment Deed both by yes bank limited as well as by the

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applicant herein. Therefore, in this background the assignment cannot be challenged in the petition under Section 7 of the Code, 2016 as such issue cannot be decided by the Adjudicating Authority.

11. Accordingly in view of the discussions as made above and the reasons as shown, the instant application i.e., **I.A/3041/ND/2022 stands allowed as to no order to costs.** The amended memo of the parties placed by the applicant is taken on record. The name of the proposed interim resolution professional stands substituted to Mr. Sapan Mohan Garg having registration no. IBBI/IPA-002/IP-N00315/2017-2018/10903.

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(DR.BINOD KUMAR SINHA)  
MEMBER (T)

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(DHARMINDER SINGH)  
MEMBER (J)