Date: 24.03.2018

VICEROY

To
Department General Manager,
Bombay Stock Exchange Limited,
Phiroze Jeejabhoy Towers, Dalal Street,
Fort, Mumbai – 400001

To
Listing Department,
The National Stock Exchange of India Limited,
Exchange Plaza, 5th Floor, Plot No. C/1
G Block, Bandra – Kurla Complex,
Bandra (East), Mumbai 400051

Dear Sir/Madam,

Sub: - Intimation of initiation of Corporate Interim Resolution Process (CIRP) and appointment of Interim Resolution Professional (IRP) in the matter of M/s. Viceroy Hotels Limited

Ref: Stock Code: BSE: 523796; NSE: VICEROY

Dear Sir,

This is to inform you that CIRP has been initiated in respect of M/s. Viceroy Hotels Limited, Hyderabad under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code") by an order of National Company Law Tribunal ("NCLT") with effect from 12th March,2018.

As per Section 17 of the Code, the powers of the Board of Directors of the above company stands suspended and such powers shall be vested with Karuchola Koteswara Rao, having IP Registration No. IBBI/IPA-003/IP-N00039/2017-18/10301, appointed as the Interim Resolution Professional. A mail has been sent for your information on 17.03.2018 for the intimation of the same.

The order for initiation of CIRP and appointment of Interim Resolution Professional is attached herewith for your information and record.

Kindly acknowledge the receipt of mail.

Thanking you,

Yours faithfully,
For Viceroy Hotels Limited

Sonam Jaiswal
Company Secretary and Compliance Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

CP (IB) No.219/7/HDB/2017

U/s 7 of IBC,2016
R/w Rule 4 of I & B (AAA) Rules, 2016

In the matter of

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED
(ARCIL)
The Ruby, 10th Floor 29,
SenapatiBapat Marg, Dadar(W),
Mumbai – 400028 ...Petitioner/
Financial Creditor

Versus

Viceroy Hotels Limited
Plot No. 20, Sector 1,
Survey No.64, 4th Floor, HUDA Techno Enclave, Madhapur,
Hyderabad – 5000081
Telangana State ...Respondent /
Corporate Debtor

Order pronounced on 12th March, 2018

Coram:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Counsels / Parties present:

For the Petitioner: Shri R.Raghunandan Rao, Senior Advocate along with Shri Shabeer Ahmed Advocate

For the Respondent: Shri L. Ravi Chander, Senior Advocate along with Shri D.V.A.S. Ravi Prasad and Shraddha Gupta, Advocates

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing CP (IB) No, 219/7/HDB/2017 is filed by Asset Reconstruction Company (India) Limited (Petitioner / Financial Creditor) under Section 7 of Insolvency & Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Viceroy Hotels Limited (Respondent / Corporate Debtor).

2. Brief facts, as mentioned in the Company petition, are as follows:-

   (a) Asset Reconstruction Company (India) Limited (ARCIL) (*acting in the capacity as trustee of Arcil – Viceroy Hotels Limited – I Trust Arcil – Viceroy Hotels Limited – II Trust*) (herein referred to as Financial Creditor) having acquired the secured dues of Axis Bank, and IDFC Ltd. vide Assignment Deed dated 26.03.2013 and 28.03.2013 respectively.

   (b) M/s Krishna Cold Drinks Private Limited was incorporated on 25 February 1965 under the Companies Act, 1956, and subsequently the name was changed to M/s Krishna Bottlers Private Limited on 23 November 1966. In the year 1988, the said Company was bought by the management of the Corporate Debtor and subsequently, the name was changed to M/s Palace Heights Hotels Private Limited on 25 September 1990. Subsequently, the Company was converted to a public company under the name M/s Palace Heights Limited on 28 September 1990. Thereafter, the name of the

company was changed to present name M/s Viceroy Hotels Limited (which is referred to as Company herein after) with effect from 21 September 2001. As such, the Company has been in the hotel / restaurant business for over 50 years and under the present management for over the past 30 years with successful and popular restaurant and hotel chains in India.

(c) The nominal share capital of the Company is Rs. 55,00,00,000/-, 5,50,00,000 Equity Shares of Rs. 10/- each and Paid-up Share Capital is Rs. 42,40,52,240/-, 4,24,05,224 Equity shares of Rs. 10/- each.

(d) Axis Bank Ltd has subscribed 500 secured redeemable NCDs of Rs. 10,000/- each of Corporate Debtor aggregating to Rs. 50,00,00,000/- (Rupees Fifty Crores only) vide Sanction Letter dated 31.01.2007 and Debenture Trust Deed dated 17.12.2007. The then outstanding portion of NCDs was subsequently restructured by Axis Bank for a sum of Rs. 42,50,00,000/- (Rupees Forty Two Crores Fifty Lakhs only) vide Modified Sanction Letter dated 18.05.2011 and Supplemental Debenture Trust Deed dated 30.06.2011. Therefore, the dates of disbursal are 17.12.2007 and 30.06.2011. The debentures shall be redeemed in 13 unequal installments commencing from 31.03.2012 till 31.03.2015.

(e) The Corporate Debtor also availed Term Loan of Rs. 20.00 crores availed from Axis Bank Ltd, vide Sanction Letter dated 23.12.2009 and Term Loan Agreement dated 29.12.2009. Subsequently, the

terms and conditions of the Term Loan were modified vide letter dated 18.05.2011.The date of disbursal of the amount is 29.12.2009, which was supposed to be repaid in quarterly unequal (step up) installments from March 2011 to December 2012.

(f) Further to the above NCD's and Term Loan, the Corporate Debtor had availed a Term Loan of Rs. 76,00,00,000/- from IDFC Ltd vide Term Loan Agreement dated 22.03.2007 for the purpose of expansion and renovation of Marriott Hotel, Hyderabad. The date of disbursal of the loan amount is 22.03.2007and the same was to be repaid along with interest in 36 unequal quarterly installments commencing from 15.4.2009 as per Amortization Schedule to the Loan Agreement.

(g) The total outstanding as on 22.08.2017 in respect of above loans is Rs. 321,73,78,312/- (Rupees Three Hundred and Twenty one Crores Seventy Three Lakhs Seventy Eight Thousand Three Hundred and Twelve Only) as on 22.08.2017 along with interest.

(1) Date of default in r/o NCDs subscribed by Axis Bank – 29.01.2012.

(2) Date of default in respect of Term Loan by Axis Bank – 29.01.2012.

(3) Date of default in respect of Term Loan by IDFC Ltd – 31.12.2011.

(h) The Corporate Debtor/Company failed to repay the loan amounts borrowed from the Financial Creditor and also failed to comply with the terms of in-principal settlement offer and therefore Financial Creditor had revoked the same on 25.07.2017.

(i) In respect of default in redemption of NCDs of Axis Bank, the Debt Recovery Tribunal (DRT), Pune vide

its order dated 26.07.2016 directed the Corporate Debtor to pay Rs. 63.25 crores within 30 days failing which interim recovery certificate was to be issued. As the Corporate Debtor failed to comply with the same, DRT Pune vide order dated 26.07.2016 has directed to issue the recovery certificate against the Corporate Debtor. The original applications filed in respect of the other two loans originally availed from Axis Bank and IDFC (Now acquired by ARCIL) are pending before the DRT, Hyderabad and New Delhi respectively.

(j) When the Corporate Debtor failed to clear the debt / loan, the Financial Creditor initiated proceedings under the provisions of SARFAESI Act, 2002 and gave notice to the Corporate Debtor in terms of Section 13 (2) of the Act and directed to clear the outstanding debt within a period of 60 days from the date of notice and also intimated that if they fail to do so, the Financial Creditor will be constrained to initiate further measures under the provisions of Section 13 (4) of the SARFAESI Act, 2002 for enforcement of the said security interest in the moveable assets, lands and other immoveable properties without the intervention of any court or Tribunal.

(k) The Company failed to pay the loans availed by it and thus the present application has been preferred seeking the relief as mentioned supra.

3. The Corporate Debtor/Company has filed a reply affidavit dated 03.11.2017 by inter-alia contending as follows :-

(1) The Corporate Debtor has been in the business of running hotels / restaurants since 1965 and has

availed facilities from different banks and financial institutions for its operations. The present petition arises out of credit facilities/financial assistance availed by Corporate Debtor from Axis Bank and IDFC Bank, for the project "***Marriott Hotel, Hyderabad***"**(Marriott)**, which was taken over by the present petitioner i.e. Financial Creditor by virtue of assignment. The Financial Creditor has conveniently avoided presenting the material fact in its petition that the subject facility was availed by Corporate Debtor only for Marriott and not for other projects / businesses of the Corporate Debtor and its fully-owned subsidiaries. The security/charge was created on the movable and immovable assets of Marriott further exemplifies that the subject loan is availed only for Marriott. Therefore, it is contended that initiation of the present proceedings against the Corporate Debtor will have an impending impact on all holdings of the Corporate Debtor and it is premature and unwarranted.



(2) During the course of its business for the past thirty years, Corporate Debtor has availed facilities from financial institutions and serviced the same regularly. Inopportunely, from the year 2010, due to various factors such as ongoing political unrest in the State, agitation for separate Telangana State, downfall in the real estate sector, down-turn in the economy, etc., the market conditions deteriorated and like other players in the hospitality and restaurant business, Corporate Debtor faced innumerable problems in their business and financial situation. So the Corporate Debtor expressed its inability to the Axis Bank and the

IDFC in repayment of the loan amount by the due date. As such Axis Bank recalled its credit facilities sanctioned to the Corporate Debtor by way of letter dated 17thDecember 2012. Copy of the said letter which is enclosed by the Financial Creditor apparently states that, as on 31 March 2012, the Corporate Debtor was allegedly due for a total sum of Rs. 67,23,33,738/- to the Bank. Further, IDFC recalled its loan by way of letter dated 29 January 2013.

(3) It is stated that the subject loans along with the underlying security therein have been acquired by the Financial Creditor as the trustee of ARCIL Viceroy Hotels Limited - I Trust and ARCIL Viceroy Hotels Limited - II Trust under registered assignment deeds dated 26 March 2013 and 28 March 2013.

(4) By virtue of the said assignment, the entire outstanding loan of Axis Bank and IDFC was transferred to the Financial Creditor in consideration for payment of Rs. 94,50,00,000 by the Financial Creditor (i.e. Rs. 49,50,00,000 towards the facility from Axis Bank and Rs. 45,00,00,000 towards the facility of IDFC) out of which the amount of Rs.6,50,00,000 was payable by the Corporate Debtor, and the Corporate Debtor had made the payment of the same. Thereafter, the Corporate Debtor continued servicing the facilities to the Financial Creditor from time to time. Details of the payments made to the Financial Creditor from the date of assignment till date are provided hereunder:

DETAILS OF PAYMENTS MADE TO ARCIL			
S.No.	**Date**	**Amount**	**Description**
1	18.01.2013	2,50,000	Paid by VHL
2	28.03.2013	3,50,00,000	Paid to Axis Bank
3	03.05.2013	7,00,000	Paid by VHL
4	17.07.2013	2,00,00,000	Paid by VHL
5	15.09.2014	25,00,000	Paid by VHL
6	09.12.2014	80,00,000	Paid by VHL
7	04.01.2017	20,00,000	Paid by Marriott
8	25.01.2017	80,51,349	Paid by Marriott
9	01.03.2017	37,77,447	Paid by Marriott
10	22.03.2017	21,13,109	Paid by Marriott
11	25.04.2017	29,96,560	Paid by Marriott
12	29.05.2017	59,11,389	Paid by Marriott
13	17.06.2017	2,19,912	Paid by Marriott
14	27.07.2017	12,67,430	Paid by Marriott
15	08.08.2017	20,39,850	Paid by Marriott
16	13.09.2017	76,55,841	Paid by Marriott
17	17.10.2017	32,98,254	Paid by Marriott
	Total	**10,57,81,141**	

National Company Law Tribunal Hyderabad Bench

(5) It is further stated that in spite of consistent efforts on part of the Corporate Debtor in servicing its facility, the Financial Creditor is presently pursuing three independent DRT proceedings under O.A. No. 6 of 2016 in respect of the credit facility issued by the Axis Bank before Pune bench of DRT, under O.A. No. 5 of 2013 in respect of the credit facility issued by IDFC before DRT, Delhi. In addition, thereto, the Financial Creditor has also initiated recovery proceedings against the Corporate Debtor for the entire facility before the DRT, Hyderabad under O. A. No. 964 of 2016.

(6) In the year 2015, with an aim of restructuring its business, the Corporate Debtor after detailed analysis of its business operations and considering expert opinion on the market trajectory of the Hospitality Sector decided to enter into negotiations with its creditors to arrive at an amicable and viable way to service the facility. As such, the Corporate Debtor approached the Financial Creditor to restructure the facility by way of a one-time settlement. In view thereof, the Corporate Debtor submitted a letter dated 30 July 2015 to the Financial Creditor.

(7) Since then, the Corporate Debtor has made considerable attempts to close the facility in a mutually beneficial arrangement by consistently calling upon the Financial Creditor to table discussions on the proposed onetime settlement. In the ongoing discussion, the Corporate Debtor was made to believe that the Financial Creditors understand the precarious market situation of Hotel

Industry in Telangana and the bona fide efforts of the Corporate Debtor to keep its business ongoing and are willing to restructure the facility.

(8) As such, in line with the ongoing negotiations, the Corporate Debtor submitted another letter dated 3th November 2016 reiterating the onetime settlement (OTS) proposal. The Financial Creditor participated in negotiations on the OTS and being aware of the market conditions in the hospitality industry in Telangana, proposed amendments which were further made by way of letters dated 5thNovember 2016 and 24thDecember 2016 based on the discussions with the Financial Creditor. In pursuance of the proposal for the OTS, and all the oral deliberations with the Financial Creditor, the Corporate Debtor was in constant follow-up for finalizing the OTS, however, the Corporate Debtor did not receive any response in writing from Financial Creditor for more than a year.

(9) In pursuant to the aforesaid discussions and deliberations for more than a year, in-principal approval of Corporate Debtor's proposal of OTS was issued by a letter, as late as, 16 February 2017 which was received by Corporate Debtor on 22 February 2017. The OTS agreed between the parties is a payment of principal amount of Rs. 155 crores over a period of 5 years along with interest thereon working out to approximately Rs. 88 crores, thereby totaling an amount payable of Rs.243.71 crores over a period of five (5) years as set out in the said letter. The OTS also prescribed for a condition of payment of Rs. 6 crores by 31st March 2017 for issuance of

final sanction. The Corporate Debtor had been pursuing the Financial Creditor for over a year with the bonafide proposal for the OTS, and despite the Financial Creditor being fully aware of the incoming revenues from the ongoing business operations of the Corporate Debtor, the Financial Creditor issued the said letter giving Corporate Debtor only a period of 38 days to pay the amount of Rs. 6 crores, despite knowing fully well that the said period is unreasonable and the Corporate Debtor would be unable to meet the same. Further, the Financial Creditor is well aware that by virtue of the order dated 28 September 2016 of the DRT Delhi, Marriott Hotel has been making monthly payments to the Financial Creditor on behalf of the Corporate Debtor and despite thus being aware that the Corporate Debtor would require reasonable time for payment of Rs. 6 crores, proceeded to issue the above letter providing only 38 days for payment. Nevertheless the Corporate Debtor made all attempts to pay the said amount and had made the payment of Rs. 2,92,79,792 from February 2017 onwards. Further, during the negotiation of the OTS amount in the month of January 2017, the Corporate Debtor had made a payment of Rs. 1,00,51,349 which the Financial Creditor failed to consider as payment towards the amount of Rs. 6 crores. The total amount paid by the Corporate Debtor thus works out to Rs. 3,93,31,141, with a balance amount payable of about Rs.2 crores.

(10) Subsequently, without any response to the Corporate Debtor's request for extension of time, the

Financial Creditor has sought to revoke the OTS for the delay in the payment of the balance amount of Rs. 2 crores. The OTS was carefully negotiated and agreed on by the parties, with a viable mechanism of payment of the OTS amount over a period of 5 years keeping in view the projections and revenues of the company over the coming five years. Despite the same, the Financial Creditor with undue haste and causing extreme hardship to the Corporate Debtor, provided only 38 days to make a huge payment of Rs. 6 crores. On account only of delay in making payment of balance Rs. 2 crores, the Financial Creditor has sought to cancel the OTS and has initiated these untimely and unwarranted proceedings seeking to liquidate the company in arbitrary exercise of rights available to it under the IBC. Admittedly, if the Corporate Debtor had been given the opportunity to pay the Rs. 6 crores within a reasonable time, these proceedings could not have been initiated.

(11) The Corporate Debtor contents that, in an effort to run the business as a going concern, to safeguard the interest of its shareholders and other investors, keeping in mind the various hotels and restaurants run by the Corporate Debtor, and the subsidiaries, time and again the Corporate Debtor has been making bona fide attempts at regular servicing of its facilities. One such attempt on its part is appointment of Avendus Capital Private Limited as its strategic and financial advisor by way of agreement dated 03rdMay 2017 and with the help of Avendus, the Corporate Debtor aims at channelizing,

restructuring and servicing its debts, to ensure that a situation of liquidation does not arise and that the Corporate Debtor continues to run as a going concern. Avendus has already begun due diligence of the operations of Corporate Debtor. Avendus is simultaneously scouting for investors for Marriott and Courtyard, Hyderabad. By way of this exercise, Avendus has already reached out to Proprium Capital Partners. Proprium Capital Partners have agreed to invest in Corporate Debtor's projects Marriot and Courtyard. The Corporate Debtor and Proprium Capital Partners have finalized the terms of investment only on 1 November 2017.

(12) It is stated that by virtue of its consistent efforts in stabilizing restructuring its business operations, the Corporate Debtor is progressing towards a more financially stable business. As such, the Corporate Debtor has recently been able to close one of its facilities due with International Asset Reconstruction Company Pvt. Ltd. (**IARC**). The Corporate Debtor entered into a one-time settlement with IARC to close the facility on payment of Rs. 19 crores, of which the Corporate Debtor has paid the amount of Rs. 17 crores by selling one of its assets to Secunderabad Hotels Pvt. Ltd. By virtue of the said settlement, the recovery proceedings initiated before DRT, Hyderabad, by IARC against the Corporate Debtor have also been withdrawn. The Corporate Debtor has also moved such settlement terms with its other creditors and hence, in due course of time, without prejudice to the interests of any of the

creditors, the Corporate Debtor is likely to close these facilities.

(13) It is stated that the Corporate Debtor further followed up the Financial Creditor and was able to meet the Financial Creditor at their office in Mumbai on 30 October 2017, and submitted its proposal by way a letter, wherein the Corporate Debtor agreed to pay an amount of Rs. 50,00,000/- (Fifty Lakhs) within seven days of acceptance of the proposal and balance of Rs.1,50,00,000/- (One Crore Fifty Lakhs) within a period of thirty days thereafter. The Corporate Debtor also undertook to comply with the repayment schedule mentioned in the OTS.

(14) The Corporate Debtor places reliance on the decision of the High Court of Kerala in *Dennis Steel Pvt. Ltd. v. State Bank of India and Ors.in W.P. No. 39218 of 2015 (B)* and the decision of this Hon'ble Tribunal in *Asset Advisory Services India Pvt. Ltd. v. VSS Projects Pvt. Ltd. dated 8th September 2017 in CP (IB) No. 96/7/HDB/2017.*

(15) In view of the foregoing, the Corporate Debtor asserted that it is not the case of the Financial Creditor that the Corporate Debtor is unable to pay its debt or it is insolvent for the same. When in the present circumstances, where the Corporate Debtor is making bona fide efforts to service and close its facilities, there is no question of insolvency involved in this case, and hence, there cannot be a resolution of insolvency process. The present petition therefore, is filed, for purposes other than the resolution of insolvency i.e. to harass the Corporate Debtor must

be held to be malicious and is liable to be dismissed with cost. Without prejudice, it is further submitted that, the Financial Creditors herein are making an inflated claim so as to raise the alleged debt to 350 Crores which is absurd. The Hon'ble DRT has directed Marriott Hotels to deposit with the Registrar of the Tribunal all the amounts which are payable by it to the Corporate Debtor as per the operating agreement dated 2nd January 2006. Thus, the Financial Creditor has been receiving regular monthly payments which the Financial Creditor has suppressed this fact.

(16) The Corporate Debtor is a public listed company with a public holding of approximately at 76% and in such circumstances, initiating the corporate resolution process would not only effect the promoter but also public at large. The other stakeholders of the Corporate Debtor including the employees, shareholders, investors and other operational creditors will also be severely impacted. It is contended that IBC is enacted to facilitate a systematic and time bound resolution process for the Companies. The intent of the code is to push stakeholders towards formulation of a resolution plan that would enable the industry to survive but not push industries into liquidation. Further, the jurisprudence circumscribing dispute resolution in India, vouches for enabling parties to amicably resolve the disputes outside the Court, and only after all the reasonable efforts in pursuance thereof fail, the parties would be at liberty to invoke the remedies available under applicable laws. Whereas,

in the present case, the Financial Creditor has arbitrarily and unilaterally turned down the OTS entered into by the Corporate Debtor in spite of making a payment of Rs. 4 crores as a result of which the Financial Creditor has initiated these proceedings on the basis of its own actions and not for reasons of default attributable to the Corporate Debtor.In such circumstances, the revocation of the OTS being bad in law, the Corporate Debtor should beallowed to settle the alleged debts in terms thereof, the subject issue can be resolved expeditiously and the same would be beneficial to the lenders also.

(17) The contention of Financial Creditor that Axis Bank has subscribed 500 secured redeemable NCDs of Rs. 10,000/- each of Corporate Debtor aggregating to Rs. 50,00,00,000/- by sanction letter dated 31st January 2007 and Debenture Trust Deed dated 17 December 2007 and that the outstanding portion of NCD's was subsequently restructured to Rs. 42,50,00,000/- by a modified sanction letter and supplemental debenture trust deed is not denied. The Corporate Debtor had availed a term loan of Rs.20,00,00,000/- from Axis Bank. However, Corporate Debtor does not admit to the alleged debt as the quantum of the debt due on part of Corporate Debtor has not been crystallized.

(18) The Corporate Debtor specifically denies the alleged outstanding liability of Rs.321,73,78,312/-and this bloated figure has been arrived at by Financial Creditor erroneously by adding simple interest, compound interest and penal interest on the alleged

dues, only with an intention to unjustly enrich itself at the cost of Corporate Debtor. It is denied that Corporate Debtor failed to repay the loan amounts borrowed from the financial creditors. As on date Corporate Debtor has paid a total of Rs.10,57,81,141/- to Financial Creditor.

(19) Hence, the Tribunal is urged to dismiss the presentCompany petition and pass such other order or orders as deemed fit in the circumstances of the case.

4. The case is listed for admission before the Adjudicating Authority on various dates viz. 29.09.2017, 10.10.2017, 23.10.2017, 27.10.2017, 03.11.2017, 07.11.2017, 08.11.2017, 29.11.2017, 12.12.2017, 18.12.2017 and finally heard and reserved the case for orders on 08.01.2018. Since the Hon'ble Member (T) is transferred and due to paucity of time, the case could not be decided by the same Bench and thus the case is reopened on 23.02.2018 and posted it to 05.03.2018 for re-hearing. After hearing the case afresh, the case was reserved for orders on 05.03.2018. The case has been adjourned on those dates, at the request of one party or the other, in order to follow principles of natural justice and to afford adequate opportunity to both the parties especially the Corporate Debtor.

5. Heard Shri R. Raghunandan Rao, Learned Senior Counsel along with Shri Shabbeer Ahmed, Learned Counsel for the Petitioner; Shri L. Ravi Chander, Learned Senior Counsel, with Shri D.V.A.S. Ravi Prasad and Ms. Shraddha Gupta, Learned Counsels for the Respondent. I

have carefully perused all the pleadings of both the parties along with extant provisions of IBC,2016.

6. On the hearing held on 27.10.2017, the Learned Senior Counsel for the Petitioner submits that the total amount in default is Rs. 321,73,78,312/- along with interest and after discussing the issue with the Corporate Debtor, there is a tentative settlement of the issue with several conditions mentioned therein and the Corporate Debtor is free to fulfil the conditions mentioned in the tentative proposal. Shri D.V.A.S. Ravi Prasad, Learned Counsel for the Corporate Debtor however, requested some more time to resolve the issue and hence, the case was adjourned to 03.11.2017, 07.11.2017, 08.11.2017, 29.11.2017, 23.12.2017, 18.12.2017 and 08.01.2018.

7. After arguing the case, Sri R.Raghunandan Rao, the learned Senior Counsel for the petitioner/Financial Creditor has filed written submissions dated 16.01.2018, by inter alia stating as follows:

(1) As per the details of security held by Financial Creditor, the total estimated value of the security (exclusively mortgaged to Financial Creditor only) is approximately Rs.160.00 Crore, which is much lesser than the current exposure. Further, the Financial Creditor, after assignment of debt has initiated the Securitization proceedings by issuing a notice under Section 13(2) of the SARFAESI Act, 2002 on 05.03.2015. The schedule to the said Section 13(2) Notice envisages the details of debt and secured assets in detail. The Corporate Debtor has misled the Hon'ble DRT, Hyderabad and obtained a

stay on the said securitization proceedings which are pending before the said Tribunal.

(2) In respect of default in redemption of NCDs of Axis Bank, the Hon'ble Debts Recovery Tribunal (DRT), Pune vide its Order dated July 26, 2016 directed the Corporate Debtor to pay Rs. 63.25 crores within 30 days failing which interim recovery certificate will be issued. As the Corporate Debtor failed to comply with the same, the Hon'ble DRT, Pune vide order dated 26.07.2016 has directed to issue the recovery certificate against the Corporate Debtor and hence this is an adjudicated debt. .

(3) The Original Applications filed in respect of the other two loans originally availed from Axis Bank and IDFC (now acquired by ARCIL) are pending before the Hon'ble DRT, Hyderabad and New Delhi respectively. Further, the Hon'ble DRT-I, New Delhi vide its order dated 28.09.2016 in O.A. No. 05 of 2013 has directed the Marriott India Pvt. Ltd who is operating a Hotel in the premises of Corporate Debtor under an Operation & Management Agreement dated 02.01.2006 to deposit the revenue share of Financial Creditor with the Registrar, DRT-I, New Delhi. All other creditors (i.e. SBI, Canara Bank and Lakshmi Vilas Bank) have also classified the accounts of Corporate Debtors as NPA and initiated recovery proceedings before the DRT.

(4) It is stated at the request of Corporate Debtor, the Financial Creditor had considered to approve the in-principle settlement offer dated 16.02.2017 wherein the parties have in-principle agreed to settle the outstanding dues of Rs. 290.04 crores as on 01.12.2016 at **Rs. 243.71 crores** payable till 2021

in accordance with the schedule annexed thereto subject to fulfillment of certain precedent by the Corporate Debtor. One of such conditions is that the Corporate Debtor shall pay an upfront amount of Rs. 6.00 crores by 31.03.2017. However, the Corporate Debtor failed to comply with the terms of in-principle settlement offer and therefore Financial Creditor after issuing several reminders was constrained to revoke OTS on 25.07.2017.

(5) It is stated the case is listed for admission before the Bench on numerous occasions' viz., 10.10.2017, 23.10.2017, 27.10.2017, 03.11.2017, 07.11.2017, 08.11.2017, 29.11.2017, 12.12.2017, and 18.12.2017. The Corporate Debtor has deliberately delayed the proceedings by seeking various adjournments on one pretext or the other. On several dates of hearing, the Corporate Debtor has sought adjournments on the ground that it would be either settling the entire dues of the Financial Creditor or submit a proposal for settling the dues. Accordingly, the Tribunal has granted numerous opportunities to the Corporate Debtor to resolve the issues with the Financial Creditor, however, the Corporate Debtor has neither cleared the outstanding dues nor submitted concrete proposals till date.

(6) It is submitted that the Corporate Debtor under the guise of submitting a feasible proposal to the Financial Creditor has been time and again requesting the Financial Creditor to revive the OTS of 16.02.2017 which was revoked in July 2017 itself for non-compliance of terms and conditions by the Corporate Debtor. During the pendency of the

present Company Petition, the Corporate Debtor has submitted various frivolous proposals to the Financial Creditor just to delay the proceedings before this Hon'ble Tribunal vide its letters dated 30.10.2017, 20.11.2017 and 15.12.2017 and the Financial Creditor has rejected all such proposals of the Corporate Debtor with reasons vide letters dated 02.11.2017, 24.11.2017 and 16.12.2017. The letter dated 16.12.2017 makes it abundantly clear that all the proposals put forth by Corporate Debtor were very vague, uncertain and not feasible and hence the Financial Creditor has no other option but to reject such proposals with adequate reasons. The Corporate Debtor's actions of submitting such unworkable and unacceptable proposals further imply that it is not genuinely interested in resolving the issues but merely buying time as it has been doing for the last several years.

(7) While the current outstanding dues payable by Corporate Debtor to Financial Creditor as on date is approximately Rs. 330.00 crores, the Corporate Debtor in the last eight years has paid a meager sum of approximately Rs. 12.00 crores. Similarly, it has huge outstanding dues payable to other creditors as well. Therefore, it is crystal clear that the Corporate Debtor is not in a position to pay its debts to the creditors including to the Financial Creditor herein and hence an order of admission of Company Petition and appointment of Interim Resolution Professional (IRP) is warranted in the given circumstances. As it is an admitted position that Corporate Debtor does not have adequate net worth to clear the dues of its creditors, it is free to submit

its proposals before the IRP during meetings of Committee of Creditors (CoC). Since the Financial Creditor herein holds more than 50% of the total exposure of the Corporate Debtor among secured creditors, it along with other secured creditors can see if the Company can be restructured and revived once the IRP is appointed and also call for submission of resolution plans by external fund agencies and / or investors.

(8) It is further submitted that since the Corporate Debtor has admitted that there is no dispute pertaining to the quantum of debt and also the default committed by it before this Hon'ble Tribunal, the Company Petition ought to be admitted under Section 7 of the IBC. It is also pertinent to note that the Corporate Debtor at paragraph 13 of its reply to the Company Petition had admitted that it has paid a sum of Rs. 10.57 crores only in the last seven years which is a clear cut admission of liability necessitating admission of the insolvency petition filed by Financial Creditor. The Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd.*** v. ***ICICI Bank Ltd. & Another***, Civil Appeal Nos. 8337-8338 of 2017 decided on 31.08.2017, while discussing the scope of the Hon'ble NCLT while adjudicating an application filed under Section 7 of the IBC and upholding the Orders of Hon'ble NCLT and NCLAT in admitting the application filed by financial creditor, has observed as under:

> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to*

the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority."

(9) During the course of the hearing dated 08.01.2018, this Hon'ble Tribunal has asked the Financial Creditor to submit the tentative details of the debt owed by the Corporate Debtor to various secured

lenders and the details are as under which it could gather from the Approved Standalone Unaudited Financial Statements of the Corporate Debtor for the period ending 30th September 2017 (as available on the portals of the Company and also BSE) and also as per the confirmations received from few creditors:

Sl No.	Name of the Creditor	Dues as per the Approved Standalone Un-audited Financial Statement for the period ending 30.09.2017	Actual Dues of the Corporate Debtor as confirmed by the creditors
1.	ARCIL (having acquired the debts from Axis Bank and IDFC Ltd.)	Rs. 224.61 crores	Rs. 321.73 crores[1]
2.	IARC Ltd. (having acquired the debt from Laxmi Vilas Bank)	Rs. 32.81 crores	Rs. 32.81 crores[2]
3.	State Bank of India	Rs. 107.31 crores	Rs. 107.31 crores[3]
4.	Canara Bank	Rs. 59.11 crores	Rs. 64.03 crores[4]
Total Dues as on 30.09.2017		**Rs. 423.84 crores**	**Rs. 525.88 crores**

(10) It is submitted that the difference in total outstanding dues between Company's financial statements and the calculations made by the creditors is due to the difference in method of calculation of interest by the two organizations whereas the principal outstanding dues are one and the same. In view of the above stated facts and circumstances of the case.Therefore, it is asserted

that it is a fit case to admit the Company petition bearing CP (IB) No. 219 of 2017 and consequently appoint the Insolvency Resolution Professional as proposed in the Memo filed before this Hon'ble Tribunal on 05.10.2017 and pass such other orders as this Hon'ble Tribunal may deem fit and proper in the interests of justice, equity and good conscience.

8. Shri L. Ravichander, the Learned Senior counsel for the Respondent/Corporate Debtor, after arguing the case, has also filed a gist of his arguments by way written submissions dated 16.01.2018, by inter-alia reiterating and contending as follows:

(1) The Financial Creditor is presently pursuing three independent DRT proceedings i.e.

(i) O.A. No. 6 of 2016 in respect of the credit facility issued by the Axis Bank before Pune bench of DRT,

(ii) O.A. No. 5 of 2013 in respect of the credit facility issued by IDFC before DRT, Delhi.

(iii) O. A. No. 964 of 2016 for the total amount due to both Axis and IDFC facility before the DRT, Hyderabad.

Amongst which, by virtue of order dated 28th September 2016 passed by DRT, Delhi, the Financial Creditor is in receipt of monthly payments from the revenue of Marriott Hotel which directly go to service the facility of the Financial Creditor.

(2) The Corporate Debtor is in parallel talks with various other investors and high net-worth

individuals, who have evinced lot of interest in replacing the facility of the Financial Creditor. All the necessary information is shared with these international fund-raising institutions, which is being evaluated by them as part of their due diligence and the parties will be able to arrive at a closure by end of January 2018. As such, the Corporate Debtor is hopeful that amidst all the efforts, the Corporate Debtor will soon be able to service the entire facility of the Financial Creditor even before 2021 i.e. the time frame agreed under the OTS.

(3) The Corporate Debtor is a public listed company and presently has more than 25,000 shareholders. Corporate Debtor in Hyderabad has generated employment to thousands of people in the city and as on date it houses about 3000 employees across their various entities. In the event any insolvency resolution process is initiated against the Corporate Debtor, it will prejudice the interest of it's all the stakeholders of the Corporate Debtor having a bearing on the credibility and stability of the Company. The Financial Creditor has filed the present petition with an oblique motive of harassing the Corporate Debtor and it is a going concern and is moving towards more financially solvent Company and is ready and willing to service the facility pending with the Financial Creditor.

(4) The IBC vests discretion with the Adjudicating Authority in respect of admitting an application under Section 7 of IBC unlike other provisions of the IBC, Section 7 which deals with the applications filed by a financial creditor vests discretion with the

adjudicating authority either to admit the application for initiation of insolvency resolution process or reject the same.

(5) It is stated that from a plain reading of Section 7(5) of IBC, which deals with the power of the adjudicating authority in admitting an application filed by a financial creditor for initiating corporate insolvency resolution process, the intention of the legislature in vesting a discretionary power in the adjudicating authority is amply clear. For ready reference Section 7 of IBC is extracted hereunder:

*7. (1) A financial creditor either by itself or jointly with other financial creditors **may file an application** for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

7(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

*7(3) The financial creditor **shall**, along with the application furnish—*

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

7(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default

from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

7(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, ***it may, by order****, admit such application; or*

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

7(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

7(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

On bare perusal of the provision, it appears that legislature has sparingly used the phrases 'shall' and 'may'. Use of the word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute leads to the

conclusion that the word 'shall' pelts out mandatory directions, whereas the word 'may' confers a discretionary power.

6) It is further averred that where Section 7(5)(a) of the IBC deals with admission of application filed by a financial creditor, Section 9(5) deals with admission of application filed by an operational creditor and Section 10(4) deals with admission of application filed by the corporate debtor. From a plain reading of these provisions, it can be deduced that, the Legislature in its wisdom used the word 'may' in Section 7(5)(a), whereas in the same Code in Section 9(5) and 10(4), used the word 'shall' in respect of admission of Applications for initiation of Corporate Insolvency Resolution Process. This clearly elucidates that by using the word 'may' the adjudicating authority is rendered discretion to pass judicial orders under Section 7(5) unlike other provisions of the Code.

7) They have placed reliance on the judgment of Hon'ble Supreme Court in ***Innoventive Industries Ltd. vs. ICICI Bank and Ors. AIR 2017 SC 4084*** wherein , it is clearly held as follows: -

....to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

The primary concern of the IBC is availability of credit and balancing the interest of all stakeholders, and if all the applications filed under Section 7 of the IBC are admitted in a routine manner, the same will be in palpable violation of the objective of the Code. It is therefore the specific submission of the Corporate Debtor that, by use of the word 'may' in Section 7 (5) of IBC, the adjudicating authority has been vested with guided discretion and not a mechanical power to admit an application. It is contended that as the language of the statute is unambiguous and clear in relation to the use of the phrase 'may' and 'shall', both the words shall be interpreted in plain language. To supplement the above, the Corporate Debtor places further reliance on decisions of the apex court in ***Allenbury Engineers P. Ltd. v. Ram Krishna Dalmia [1973] 1 SCC 7***, wherein it is observed,



The language is presumed to be used in its primary and ordinary sense, unless this stultifies the purpose of the statute or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly or contradiction, or to fulfil the purpose of the statute

Therefore, unless the context provides otherwise, the phrase 'may' in Section 7(5) of IBC cannot be substituted for word 'shall'.

In support of the above, the Corporate Debtor also places reliance on ***Col. D.D. Joshi and Ors. vs. Union of India (UOI) and Ors. (1983) 2 SCC 235,*** wherein the Supreme Court has held that,

If the language of a provision is clear, unambiguous and intelligible, and does not admit of two meanings, the Court is bound to construe it in its ordinary sense because it is well recognized that language used speaks the mind and reveals the intention of the framers. If the language of the statute is clear and unambiguous, and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice.

This principal has been followed and affirmed by the Supreme Court in various subsequent decisions such as ***Satendra Prasad Jain and Ors. v. State of U.P. and Ors AIR 1993 SC 2517, Delhi Airtech Services Pvt. Ltd. and Anr. vs. State of U.P. and Anr. (2011) 9 SCC 354.***



Therefore, by looking at the plain meaning of the words used in Section 7(5) of the IBC, the objective of IBC and the well settled canons of statutory interpretation, it is submitted that by use of the word 'may', the legislative intention is clear that an application filed by Financial Creditor cannot be admitted automatically in a routine manner.

THE HON'BLE HIGH COURT OF GUJARAT IN ESSAR STEEL INDIA LIMITED AND ORS. V. RESERVE BANK OF INDIA AND ORS. [2017] 143 SCL 580(GUJ), WHEN SEIZED WITH THE ISSUE, WHETHER OR NOT THE ADJUDICATING AUTHORITY IS REQUIRED TO LOOK INTO THE FACTS OF THE CASE WHILE ADMITTING AN APPLICATION UNDER SECTION 7, OBSERVED THAT, FACTUAL DETAILS AND ON-GOING PROCESS OF RESTRUCTURING PLAN AND OTHER DETAILS SHALL BE TAKEN CARE OF BY THE ADJUDICATING AUTHORITY BEFORE TAKING ANY DECISION ON MERITS.

9. The learned Senior Counsel for the Corporate Debtor vide reply dated 22.01.2018, has further furnished his reply to the written submissions made by the Financial

Creditor on 16.01.2018 by inter alia contending as follows: :-

(a) As per directions of this Tribunal dated 8thJanuary 2018, the Financial Creditor filed their written submissions before this Hon'ble Tribunal on 16 January 2018. In the written statement, the Financial Creditor has furnished certain additional information and contentions which are incorrect, misleading and prejudicial to the interest of the Corporate Debtor.

(b) It is reiterated at the cost of repetition that a whooping sum of Rs. 321,73,78,312/- has been quantified without taking into consideration the payments made by the Corporate Debtor and by computing both the simple interest and compound interest as opposed to the terms of the facility. All of which clearly elucidates Financial Creditors intention to mislead this Hon'ble Tribunal on the quantum of debt due on part of the Corporate Debtor.

(c) Further it is submitted that the contention of the Financial Creditor that the total estimated value of the security exclusively mortgaged to the Financial Creditor is Rs. 160.00 Crores, which is much lesser than the current exposure is false and specifically denied. In 2015, the Corporate Debtor had engaged services of CBRE South Asia Pvt. Ltd., in order to determine the valuation of the mortgaged property. After a detailed survey and analysis of the mortgaged property, the CBRE South Asia Pvt. Ltd. valued the property at about Rs. 278 Crores, which is much

more than the total outstanding dues payable to the Financial Creditor.

(d) Therefore, when the interests of the Financial Creditor is secured by way of the mortgaged assets and as the Financial Creditor is already pursuing DRT Proceedings at three different forums, invoking Section 7 of the IBC against the Corporate Debtor speaks volumes of the malafide intention of the Financial Debtor to harass the Corporate Debtor.

(e) In response to paragraph 9, the Corporate Debtor denies that the outstanding dues as on 1st December 2016, on part of the Corporate Debtor was Rs. 290.04 Crores. It is submitted that the Financial Creditor is trying to mislead this Hon'ble Tribunal by placing unsubstantiated bloated figures to show the Corporate Debtor in bad light. It is relevant to note that the entire outstanding loan of Axis Bank and IDFC was transferred to the Financial Creditor in consideration for payment of Rs. 94.50 Crores. It is relevant to note that, from the period of the assignment of the loan in favour of the Financial Creditor till the execution of the OTS, the Corporate Debtor had paid the Financial Creditor about Rs. 7.6 Crores.

(f) In this background, the Financial Creditor, after taking into consideration the money of Rs 94.50 Crores invested by them and the payment of Rs. 7.60 Crores received by them, by applying interest at the rate of 18% per annum from the beginning till 31 March 17 arrived at the OTS amount of Rs. 155 Crores. On this OTS amount of Rs. 155 Crores, the Financial Creditor had further applied interest at the rate of 18% per annum for 5 years i. e from 31

March 2016 to 31 March 2021 and arrived at Rs. 243.71 Crores payable in 5 yearly instalments as specified in the in-principal sanction letter. Therefore, the contention of the Financial Creditor that the outstanding dues of Rs. 290.04 crores was settled at Rs. 243.71 is false and specifically denied.

(g) Further, from a bare perusal of the terms of the OTS dated 16 February 2017, it would be apparent that nothing in the OTS indicates that the amount of Rs. 13 Crores which stands payable by 31 March 2018 was to be paid in equal monthly installments. As such, the allegation of the Financial Creditor that as the second installment of Rs. 13 Crores was payable in equal monthly installments and as on date, the Corporate Debtor is in default of Rs. 9.75 Crores is false and specifically denied. It is surprising to note that in spite of drawing the terms of settlement in black and white, the Financial Creditor is making a deliberate attempt to mislead this Hon'ble Tribunal in respect of the total outstanding due payable either under the entire facility or the OTS.

(h) The contention of the Financial Creditor that even after being given numerous opportunities, the Corporate Debtor has not cleared the outstanding dues is a clear distortion of the existing facts. Further, the contention that the Corporate Debtor had submitted vague and unworkable proposals is false and specifically denied. In fact, in spite of repeated efforts of the Corporate Debtor, and in spite of having willingly entered into the OTS, it is the Financial Creditor who has been unwilling to

amicably settle the matter, the present proceedings got prolonged.

(i) From the written submissions it has also surfaced that, Financial Creditor has made bald allegations that Corporate Debtor does not have adequate net-worth when in fact it has been submitted before this Hon'ble Tribunal with cogent evidence, how the Corporate Debtor is working towards restructuring its business and has already cleared the credit facility of IARC in September 2017. The fact that Proprium Capital Partners has agreed to invest in the Corporate Debtor, which will enable the Corporate Debtor to clear the outstanding dues of the Financial Creditor, clearly indicate the Corporate Debtor is growing towards a more commercially solvent and financially stable undertaking. In such circumstances, by appointment of an IRP the day-to-day affairs of the Corporate Debtor will come to a stand-still and the Company will cease to be a going concern.

(j) It is most submitted that details of the debt owed to the secured creditors as submitted by the Financial Creditor in the present written submissions, is also incorrect, misleading and denied. In support of its contentions the Financial Creditor has filed unaudited financial statement of the Corporate Debtor for the period ending 30 September 2017.

10. In the light of above facts and circumstances of the case, which are supported by law, the Learned Senior Counsel for the Corporate Debtor further prays that the Company petition may not be admitted without taking into consideration the peculiar facts of the case such as -

[i] The Corporate Debtor is commercially solvent and is working towards restricting its business operations.

[ii] The Corporate Debtor is ready and willing to honour its dues to the Financial Creditor even before the timelines agreed in the OTS.

[iii] The Corporate Debtor has approached international investors such as Proprium Capital Partners to invest in the facility of the Financial Creditor and the discussions are nearing closure. In addition to this the Corporate Debtor is also in talks with various other high-net worth individuals with the sole aim and agenda to restructure all its debts.

[iv] Financial Creditor is already pursuing three cases before the DRT against the subject facility.

[v] Pursuant to the order passed by DRT Delhi in O.A. No. 5 of 2013 on 28 September 2016, the Financial Creditor is in receipt of monthly payments from the revenues of Marriott Hotel which go directly to service the facility of the Financial Creditor.

[vi] The Financial Creditor willingly agreed to the terms of OTS on 16 February 2017.

[vii] In spite of making constant efforts to re-negotiate the terms of settlement and the Financial Creditor is consciously and deliberately not willing to revive the terms of settlement arrived at under the OTS only to harass the Corporate Debtor.

[viii] By declaring a bloated figure of Rs. 321,73,78,312/- as the financial debt due and

payable by the Corporate Debtor, when in fact the principal amount due as on 31 March 2017 was only Rs. 155 Crores, the Financial Creditor is only attempting to mislead this Tribunal to suit their cause.

[ix] The proceedings under IBC are like that of winding up. In winding up proceedings once enquiry is done liquidator will directly be appointed for liquidation, the better part in IB Code is there will be a resolution process to find out as to whether a distressed company can survive if further funds are infused, if at that juncture also, the Company fails, then only action for liquidation will trigger. Therefore, it would be relevant to place reliance on decisions of the Hon'ble High Court of Andhra Pradesh in ***Koteswara Raju Dantuluri v. Garvee Granites Limited and Ors.2002 (3) ALD 131*** wherein it was held -

What emerges from these decisions is that the Company Court in order to stay the winding up order under Section 466 should satisfy itself from the materials placed before it, that the applicant is bona fide and the proposal placed before the Court for revival of the company is not only for the benefit of the creditors, but it will be conducive to commercial morality and it will be in the interest of the public at large. The power vested in the company Court under Section 466 is a discretionary power and that power is required to be exercised judiciously and should be brought to bear on facts and circumstances of each case. While winding up may be stayed where the company became the victim of some temporary embarrassment but not when the

company continues to be in a state of commercial insolvency. This is so because, the Court cannot hand over commercially insolvent company to its shareholders.

X) The Corporate Debtor has expressed its readiness and willingness to pay and has undertaken to compensate the Financial Creditor by way on interest on delayed payments, the fact that the Financial Creditor is not agreeing to revive the terms of the OTS speaks volumes of their intention to harass the Corporate Debtor.

11. The Learned Counsels representing both the parties have reiterated various averments made in their pleadings and also relied upon Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited in Civil Appeal No. 9405 of 2017. Shri L. Ravi Chander, Senior Advocate has also filed a letter dated 16.12.2017 issued by Arcil by inter-alia rejecting the proposals submitted by the Corporate Debtor and it was called upon to pay the current outstanding dues of approximately Rs. 330.00 crores. Due to the reasons stated in the letter and also continuous tactics of delaying the repayment of dues and also prolonging the litigation pending before various forums by VHL, it is reiterated by Arcil that they are neither interested in reviving the OTS of 16.02.2017 which was revoked almost six months ago nor would like to indulge in any discussions with Propium Capital or any other fund agency.

12. The present Company Petition is filed under Section 7 of IBC, 2016 to initiate CIRP against the Respondents and

the main ingredients of this Section, for the purpose of admission of the case are as follows:-

(a) Default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order admit such application; or

(b) Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution profession, it may, by order, reject such application.



7(1) The Financial Creditor either by itself or jointly with other financial creditors may file an application for initiating CIRP against a Corporate Debtor before the Adjudicating Authority when a default as occurred.

7(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7(3) The financial creditor shall along with application furnish-

(a) Record of default recorded with the information utility or such other record or evidence of default as may be specified;

(b) The name of the resolution professional proposed to act as an interim resolution professional;

13. The Petition can be admitted if the Adjudicating Authority is satisfied that there is an existence of debt and a default has occured, petition filed is complete and there is no

disciplinary proceedings pending against the proposed IRP.

14. In the instant case, as stated supra, the Petition is filed in prescribed form and IRP (namely Shri Koteswara Rao Karuchola,) was also suggested and total amount claim to be in default in all the three accounts is Rs. 321,73,78,312/- (Rupees Three Hundred and Twenty one Crores Seventy Three Lakhs Seventy Eight Thousand Three Hundred and Twelve only) as on 22.08.2017. There are no disciplinary proceedings stated to be pending against the proposed IRP. As per Section 3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the Corporate Debtor, as the case may be; "debt" has been defined under Section 3 (11) means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

15. It is not in dispute that the loans in question were extended to the Corporate Debtor as stated supra, However, contentions of the Corporate Debtor that they are trying to settle the outstanding amount and explained various problems, which are beyond the control of the Respondent etc, are not much relevant to the issue in question. The Respondent also claimed to have explored various alternatives to find a solution to the indebtness of the Company including OTS. But the fact remains that based on various documents filed by the parties, they could not succeed in their efforts to find a solution to the issue.

16. The contention of the Respondent is that the claim made by the Petitioner is an exaggerated one. However, they did not deny the Principle amount. It is not in dispute that there is a default committed by the Corporate Debtor and they could not find a solution to the issue even though sufficient opportunity afforded to them. As per Section 3 (12) default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and is not repaid by the debtor or the Corporate Debtor, as the case may be. Even if the contention of the Corporate Debtor is taken into consideration, there is an exaggeration of the default, even default with respect to Principle amount and the nominal interest is not in dispute. The Learned Senior Counsel also did not dispute the debt in question except raising several difficulties being faced by the Respondent Company. The parameters and scope of adjudication in cases filed under the provisions of IBC, 2016 are no longer res integra in view of various judgments rendered by the Hon'ble Supreme Court and Hon'ble NCLAT as quoted supra. Viz Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited etc.

राष्ट्रीय कंपनी विधि अधिकरण
National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

17. The facts and circumstances as stated supra would clearly indicate that initiating CIRP against the Corporate Debtor is the only solution permissible under the provisions of the IBC, by admitting the case. All the issues being faced by the Corporate Debtor can be placed before the Committee of Creditors to be constituted after admission of case. The Adjudicating Authority has already extended sufficient opportunity to the Corporate Debtor as dates of adjournments mentioned above would indicate the same and the petition was filed in the

Registry of this Tribunal on 29.09.2017. However, the Corporate Debtor could not come with a proposal for settlement accepted by the Financial Creditors of the Respondent Company, except suggesting various one sided options like OTS etc, which are not all accepted by Financial Creditors of Corporate Debtor. Therefore, there is no other alternative for the Adjudicating Authority except to initiate CIRP, in order to find a solution to the issue under the provisions of IBC, 2016.

17. The Insolvency Bankruptcy Code, 2016 is enacted to facilitate a systematic and time bound resolution process for the Companies. The intent of the code is to push stakeholders towards formulation of a resolution plan that would enable the industry to survive but not push industries into liquidation. Further, the jurisprudence circumscribing dispute resolution in India, vouches for enabling parties to amicably resolve the disputes outside the Court, and only after all the reasonable efforts in pursuance thereof fail, the parties would be at liberty to invoke the remedies available under applicable laws. In the instant case, the above facts clearly disclose that there is hardly any possibility to settle the debt and default in question outside the purview of provisions IBC, 2016. And the issue has to be resolved under the provisions of IBC only.

18. In view of the above facts and circumstances of the case, I am satisfied that instant case/ Company Petition is filed in accordance with law, duly complying with all the provisions and there is admittedly debt and default in question as elaborated in the preceding paras . The IRP named is also not undergoing any disciplinary proceedings as per his declaration. Therefore, it is fit case

to admit the instant company petition duly initiating CIRP in respect of Corporate Debtor.

19. By invoking powers conferred on this Adjudicating Authority, under Section 7(5) of IBC, 2016, the Company Petition bearing CP (IB) No. 219/7/HDB/2017 is hereby admittedwith following consequential orders under the extant provisions of Bankruptcy Code, 2016

(a) I hereby appointed Shri Koteswara Rao Karuchola, KK Rao & Associates, 2-B Samrat Residential Complex, 5-9-12, Opp. A.G's office, Saifabad, Hyderabad – 500004. (Certificate No. IBBI/IPA-003/IP-N00039/2017-18/10301), as Interim Resolution Professional, by exercising powers under section 16 of IBC, 2016.

(b) I hereby declared the following Moratorium by prohibiting the following actions:-

(i) 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:

(ii) Transferring , encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 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;

(v) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016 and on www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in, in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in their Official website.

(vi) I direct the Interim Resolution Professional to constitute a Committee of Creditors, after collation of all claims received against the Corporate Debtor and determination of financial position of Corporate Debtor, as per Section 21 of IBC. The First meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of the IBC.

(vii) Direct the personnel of M/s Viceroy Hotels Limited, its promoters or any other person associated with the management of M/s Viceroy

Hotels Limited to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.

(viii) I direct the Interim Resolution Professional to strictly adhere to all extant provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and shall report his actions promptly to this Tribunal by way of sworn affidavit.

(ix) Post the case on 16th April,2018 for report of IRP

Sd/-

(RAJESWARA RAO VITTANALA)
MEMBER (JUDICIAL)

Hyderabad
12.03.2018

FOR Dy. Regr./Asst. Regr/Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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निर्णय का तारीख
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