

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD.**

**FREE OF COST COPY**

CP(IB) No.248/7/HDB/2017

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

**In the matter of**

Bank of Baroda  
Baroda House, Mandvi  
Baroda-390006  
Gujarat and acting through its  
Corporate Financial Services branch  
1<sup>st</sup> Floor, 3-6-262/2, Thirumala  
Estates Building Himayatnagar,  
Hyderabad- 500029  
Telangana, India.

...Petitioner/  
Financial Creditor

**Versus**

M/s. Golden Jubilee Hotels Private Limited  
Survey No.64, Beside  
ShilpakalaVedikaShilparamam, Madhapur  
Hyderabad-500081  
Telangana, India

...Respondent/  
Corporate Debtor

**Order pronounced on: 27<sup>th</sup> February, 2018**

**C O R A M:**

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

**Parties / Counsels present:**

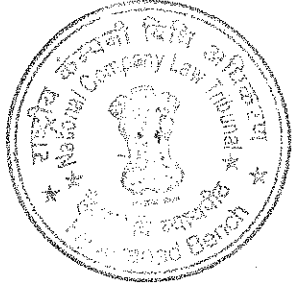
For the Petitioner:	Ms. Varalakshmi Tadepalli, Advocate
For the Respondent:	Shri Vikramjit Banarjee, Senior Advocate along with Shri P. Vikram, Advocate

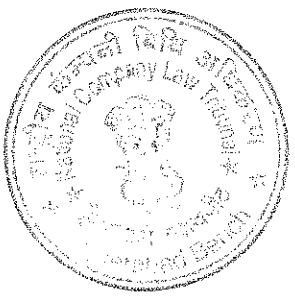


**Per: Rajeswara Rao Vittanala, Member (Judicial)**

**ORDER**

1. The present Company Petitioner bearing CP(IB) No.248/7/HDB/2017 is filed by Bank of Baroda (Financial Creditor herein) under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect M/s Golden Jubilee Hotels Private Limited under IBC, 2016.
2. Brief facts, leading to filing of the Company petition, are as follows:-
  - (1) Bank of Baroda (Petitioner), a corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with its head office at Baroda House Mandvi, Baroda-390006, Gujarat and acting through its Corporate Financial Services at Ist Floor, Thirumala Estates Building, Himayathnagar, Hyderabad. It was incorporated as "The Bank of Baroda Limited" on 20<sup>th</sup> July, 1908, which was subsequently constituted as a corresponding new bank on commencement of the Banking Companies Act.
  - (2) Originally, My Home Group through M/s. Maha Hotel Projects Private Limited, VBC Finance and Leasing Limited through Basil Infrastructure Projects Limited and EIH Limited formed a consortium (the "**Companies Consortium**"), so as to bid for the Development of a five-star hotel



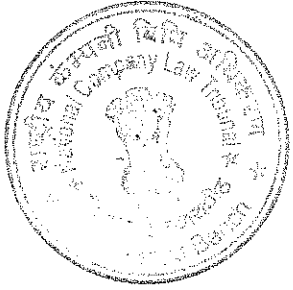


project over the land admeasuring Acres 04-33.7(equivalent to 17,551 square metres) forming part of Survey No. 64 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District, pursuant to their understanding under Memorandum of Understanding dated July 23, 2005. The Government of Andhra Pradesh through the Department of Youth Advancement Tourism and Culture ("**Department of YATC**") awarded, on leasehold basis for 33 years, land admeasuring Acres 04-33.7(equivalent to 17, 551 square metres) forming part of Survey No. 64 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District, for setting up the five star hotels comprising of 256 rooms with 26 studio apartments, 74 service apartments with mini bar, coffee/tea making internet connectivity half a dozen banquet options, health club and swimming pools, beauty salons and shopping corner, business centre, travel desk, ATM, half a dozen restaurant options and other required facilities for a five star hotel with an estimated project cost of 214,00,00,000/- (Rupees Two Hundred and Fourteen Crores), completion of which was to be achieved within 30 months from the date of granting the lease on Build, Operate and Transfer (BOT) basis initially vide LOA 29591/PMU/EO/2005 dated March 20, 2006. Later confirmed through its Order vide GOMS No. 06 dated March 30, 2007.

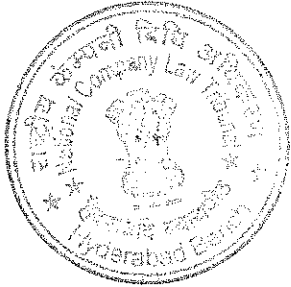
- (3) M/s. Golden Jubilee Hotels Private Limited (formerly M/s. Golden Jubilee Estates Limited and subsequently changed to M/s Golden Jubilee

Hotels Limited) was incorporated under the Companies Act, 1956 on 18.12.1996 for the purpose of completing the Hotel Project hereinafter referred to as the "**Company/Corporate Debtor**"). The Authorized Capital is Rs. 350,00,00,000/- and the Paid Up Share Capital is Rs. 261,61,57,000/-

- (4) Thereafter, the Company obtained Lease for 33 years for the purpose of Hotel Project (defined hereunder), from Department of YATC under the Lease Agreement dated May 9, 2007 (the "**Principal Lease Agreement**") and the Development and Management Agreement dated May 9, 2007 for the development, construction, operation and management of the Hotel Project ("**Development Agreement**") on the land admeasuring Acres 04-33.7 (equivalent to 17, 551 square metres) forming part of Survey No. 64 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District.
- (5) The Hotel Project as originally conceived was for setting up a five star hotel project branded as "The Trident" Hyderabad on the land admeasuring Acres 04-33.7 (equivalent to 17,551 square metres) forming part of Survey No. 64 of Madhapur Village, Serilingampally Mandal, Ranga Reddy and a License Agreement dated August 05, 2016 was executed between the Company and Oberoi Hotels Private Limited for use by the Company of the name "Trident" or "Trident Hotels" (which is the property of Oberoi Group of Hotels).
- (6) Meanwhile, all the participants of the Companies Consortium agreed inter-se that in the interest of better revenue generation on the Project Land,




instead of one hotel, they were desirous of establishing and operating, as part of the Project, two hotels and that the first would be branded "Trident" and the second would be branded "Oberoi" (both are hereinafter jointly referred to as the "**Hotel Project**"). Accordingly, a Royalty Agreement dated February 22, 2008 was executed by and between the Company and Oberoi Hotels Private Limited ("**OHP**") for use by the Company of the name "Oberoi". A Management Agreement incorporating Technical Assistance Services dated February 22, 2008 was also executed by and between EIH and the Company in connection with the setting up and operations of Oberoi, Hyderabad.



- (7) The Company has since submitted the "Revised Detailed Project Report" (**DPR**) on August 28, 2008 to the Department of YATC to seek its concurrence on the dual branding of the Hotel Project, the change in the Hotel Project cost, the change in shareholding pattern, assignment of role, responsibilities and rights of each entity in the Companies Consortium and investment in the Company directly or through Core (i.e., the holding company), and other related matters. The said DPR was approved by the Department of YATC vide their letter dated August 12, 2008. Financial closure of the Hotel Project achieved by the Company including equity holding pattern was approved and acknowledged vide the letter dated June 18, 2009 issued by the Department of YATC.
- (8) Subsequently, after certain deliberations and discussions, the Companies Consortium revised

their arrangement and by virtue of the revised arrangement, M/s Core Hotels Ventures Private Limited, M/s EIH Limited, M/s Maha Hotel Projects Private Limited, M/s Basil Infrastructure Projects Limited and M/s Golden Jubilee Hotels Private Limited (Erstwhile M/s Golden Jubilee Hotels Limited) Limited executed a Restated Shareholders Agreement dated August 28, 2009 restating in entirety, the constitution of the Companies Consortium, their understanding in respect of their mutual rights and obligations in relation to the operation, administration and management of the Company and certain matters related thereto.

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- (9) Subsequently, in view of the Hotel Project requirement the then Government of Andhra Pradesh through the Shilparamam Arts, Crafts and Culture Society executed an Agreement of Lease dated June 11, 2009 in favor of the Company granting on lease an additional extent of land admeasuring Acres 0-21.67 Guntas (equivalent to 2,913 square meters) forming part of Survey No. 64 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District to the Companies Consortium to be part and parcel of the Lease Agreement on similar terms and conditions for similar term.
- (10) Thus, the Company acquired leasehold rights over the land admeasuring Acres 05-5.37 Guntas or 20,464 square meters (comprising of 17, 551 square meters and 2,913 square meters) forming part of Survey No. 64 of Madhapur Village,

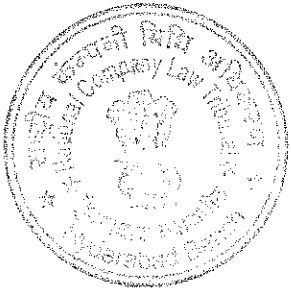
Serilingampally Mandal, Ranga Reddy District (the **"Project Land"**).

(11) To meet the cost for implementing the Hotel Project, which was estimated at Rs. 583,49,00,000 (Rupees Five Hundred Eighty-Three Crores and Forty-Nine Lakhs Only), the Company approached the Banks which formed a consortium for granting the loan facility to the Company. The said consortium of Lenders comprised of Bank of Baroda (**"Lead Lender"**), Dena Bank, Jammu and Kashmir Bank Ltd., Syndicate Bank, Punjab National Bank, Punjab and Sind Bank and Corporation Bank (the **"Lenders Consortium"**). Accordingly, separate sanction letters with specific terms and conditions were issued by each of the banks. Thereafter, the Lenders Consortium executed a Facilities Agreement on September 02, 2009 sanctioning the credit facility of Rs.350,00,00,000/- (Rupees Three Hundred and Fifty Crores only), the Non-fund based facility of Rs.70,00,00,000/- (Rupees Seventy Crores only) by way of the Letters of Credit(as Sub Limit to Term Loan Facility) and Rs.35,00,00,000/- (Rupees Thirty-Five Crores only) by way of Bank Guarantees (hereinafter the **"Term Loan-1"**).

(12) The Company, the Lenders Consortium and the Bank of Baroda entered into an escrow arrangement for routing the Loan disbursements made by the Lenders Consortium where after the Escrow account no. 25210200000052 was opened with Bank of Baroda, Corporate Financial services branch, Himayatnagar on February 12, 2009 and the loan facilities were disbursed through the said



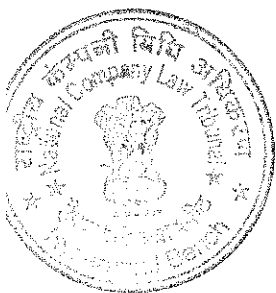
escrow account. Pursuant to the terms of the Letters of Sanction and the Facilities Agreement, the Company executed Deed of Hypothecation on February 02, 2009 on pari passu basis on all its movable and immovable assets both present and future (excluding current assets) (the "**Principal DOH**", which expression shall include all amendments made thereto from time to time) in favour of the Lenders Consortium. The Lenders Consortium agreed to grant and/or to make available and/or continue to make available to the Company the Fund Based and Non-Fund Based Facilities up to an aggregate principal sum of limit of Rs. 480,00,00,000/- (Rupees Four Hundred and Eighty Crores only) out of which the Company herein availed a loan of Rs. 385,00,00,000 (Rupees Three Hundred and Eighty-Five Crores only) against the securities of the Hypothecated Assets as defined therein and on the terms and conditions and in the manner therein provided. In view of certain modifications and understandings, the Lenders Consortium and the Company executed First Supplemental Agreement dated February 02, 2013 and again Second Supplemental Agreement dated September 13, 2014. As agreed by the Company and the Lenders Consortium, the Trust and Retention Account (the "**TRA Account**") bearing no. 25210200000109 was opened with Bank of Baroda, the Lead Lender, of the Lenders Consortium Corporate Financial services branch, Himayatnagar on May 06, 2014 for insulating the cash flows/receipts of the



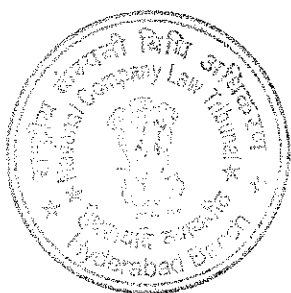


Company, which was expected to become operational from January 2015.

- (13) Later, on account of revision of the cost of the Hotel Project from Rs.583,49,00,000 (Rupees Five Hundred Eighty-Three Crores and Forty-Nine Lakhs only) to Rs.827,96,00,000 (Rupees Eight Hundred Twenty-Seven Crores and Ninety-Six Lakhs only), the Company had approached the aforementioned Lenders Consortium. It is pertinent to mention here that Bank of Maharashtra joined the Lenders Consortium for grant of additional credit facilities. An Additional credit facility of Rs. 145,00,00,000/- (Rupees One Hundred and Forty-Five Crores Only) and Non-fund based facility of Rs.25,00,00,000/- (Rupees Twenty-Five Crores only) in the form of Letter of Credit (Sub limit to Term Loans) and Rs.15,00,00,000/- (Rupees Fifteen Crores only) in the form of Bank Guarantee was granted Additional Facilities Agreement executed on February 02, 2013 and separate Letters of Sanction issued by each of the Banks of the Lenders Consortium with specific terms and conditions (hereinafter the "**Term Loan-2**"). In view of certain modifications and understandings, the Lenders Consortium and the Company executed First Supplemental Additional Facilities Agreement dated September 13, 2014. The completion of the Tower-I of the Hotel Project was achieved before the Term Loan-3 was sanctioned and disbursed as its expected Commercial Operation Date (**COD**) was in 2013.



(14) Upon a revision in the cost of the Hotel Project from Rs.827,96,00,000/- (Rupees Eight Hundred Twenty-Seven Crores and Ninety-Six Lakhs only) to Rs.1087,81,00,000 (Rupees One Thousand and Eighty-Seven Crores and Eighty-One Lakhs only), the Company had approached the aforementioned Lenders Consortium for grant of additional credit facilities. The Lenders Consortium sanctioned an amount of Rs. 155,00,00,000/-(Rupees One Hundred and Fifty-Five Crores only) the Non-fund based facility of Rs.20,00,00,000/- (Rupees Twenty Crores only) by way of the Letters of Credit (as Sub Limit to Term Loans) under Second Additional Facilities Agreement executed on September 13, 2014 and separate Letters of Sanction with various terms and conditions contained therein (hereinafter the "**Term Loan-3**").



(15) The lender banks under the Lenders Consortium formed the Joint Lenders Forum (JLF) on January 24, 2015 as required under the provisions of the Reserve Bank of India Notification on Framework for Revitalizing Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum (**JLF**) and Corrective Action Plan (**CAP**) issued on February 26, 2014 vide Notification bearing no. RBI/2013-14/503 DBOD.BP.BC.No.97/21.04.132/2013-14. In the interregnum period, the Company has requested for extension of Date of Commencement of Commercial Operations ("**DCCO**") from September 14, 2014 to September 01, 2015 along with Interest During Construction ("**IDC**") funding up to September 01, 2015 for completing Tower-II of the Hotel Project agreeing inter alia to bring in

an amount of Rs.120,00,00,000/- (Rupees One Hundred and Twenty Crores) as would be required to complete the Tower-II of the Hotel Project towards the additional margin, allegedly from an overseas investor for which the Company has requested the Lenders Consortium for provision of a subservient charge on the project assets.

(16) The JLF decided the Corrective Action Plan on January 30, 2015 as rectification whereby the Hotel Project was classified as Infra Project and accordingly, the Lenders Consortium/JLF sanctioned an extension of DCCO to September 01, 2015 with subservient charge on the project assets.

(17) The Company was converted from limited Company to private limited Company with effect from May 12, 2015 vide fresh certificate of incorporation dated May 12, 2015.

(18) On account of Corrective Action Plan (Rectification Note with Viability Study, CAP), the cost of the Hotel Project got further revised from Rs.1087,81,00,000 (Rupees One Thousand and Eighty-Seven Crores and Eighty-One Lakhs only) to Rs. 1148,59,00,000/- (Rupees One Thousand One Hundred Forty-Eight Crores and Fifty-Nine Lakhs only), the Company approached the Lenders Consortium for grant of additional credit facilities. An Additional funding towards IDC funding was approved by all the Lenders Consortium except Syndicate Bank and Punjab and Sind Bank. Thus, the Lenders Consortium excepting Punjab and Sind Bank and Syndicate bank sanctioned Rs.28,79,00,000/- (Rupees Twenty- Eight Crore



Seventy- Nine Lakh only) under Third Additional Facilities Agreement executed on March 29, 2016 and separate Letters of Sanction with various terms and conditions contained therein (hereinafter "**Term Loan-4**").

- (19) The total credit facility of Rs.728,79,00,000/- (Rupees Seven Hundred and Twenty-Eight Crore and Seventy-Nine Lakhs Only) comprising of Fund Based facility of Rs.678,79,00,000/- (Rupees Six Hundred Seventy-Eight Crore and Seventy-Nine Lakhs Only) and Non- Fund Based facility of Rs. 50,00,00,000/- (Rupees Fifty Crore Only) provided by the Lenders Consortium under the Facilities Agreement and Additional Facilities Agreements.
- (20) To secure its performance under the Facilities Agreement and Additional Facilities Agreements the Company executed equitable mortgage of the Lease hold rights of the Project Land. Further the Lenders Consortium has secured a collateral security by way of Corporate Guarantee from the holding company i.e., M/s. Core Hotels Ventures Private Limited in favour of the Lenders.
- (21) The Company created first charge in favour of the Lenders Consortium on the Profits of the Company, after provision for taxation and dividends (if any). The Company created a second charge on all its present and future, movable and immovable assets relating to the Hotel Project in favour of the working capital lender i.e., Punjab and Sind bank. Further, the Company created second charge on its current assets created out of any working capital facilities (that may be availed

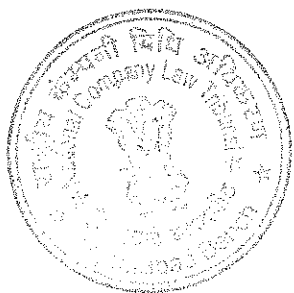


by the Company) in favour of the Consortium of Lenders.

(22) The Company failed to bring in the projected additional margin amount of Rs.120,00,00,000/- (Rupees One Hundred and Twenty Crores) as required to complete the Tower II of the Hotel Project owing to some internal dispute between the Company and its operator i.e., M/s EIH Limited.

(23) As per the sanction, the Company is obligated to route the entire sales turnover of the Company through the TRA account maintained with Bank of Baroda. Accordingly, major sales turnover of the Tower-I (since the construction of the Tower-II was yet to be completed) was being routed through the TRA account up to September 30, 2015. As informed by the Company, their operator i.e., M/s EIH Limited deviated from the terms and conditions of the sanction and has opened separate current account with United Bank of India without the consent of the Company whereby the entire sales turnover of the Company was being remitted to the said current account with United Bank of India from October 01, 2015. The Company had apparently challenged this action in the court of law and the matter is Sub-judice.

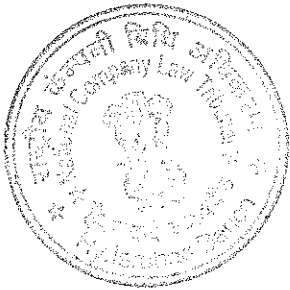
(24) As per the sanction, IDC funding was allowed in the account only up to September 01, 2015, however at the request of the Company to disburse IDC funding from September 2015 onwards due to their internal dispute, the Company was allowed to utilize Term Loan-4 for IDC funding up to December 2015. As the company failed to remit



the Interest from January 2016 onwards, the loan account got classified as non-performing (NPA) with the Applicant Bank since May 02, 2016. However, the Auditors of the Reserve Bank of India classified the account as NPA with effect from December 31, 2015.

(25) Pursuant thereto, the Company submitted One Time Settlement (OTS) proposal to all the Lenders in the JLF meeting held on September 03, 2016 for Rs.500,00,00,000 (Rupees Five Hundred Crores) and upon in-principal approval sanctioned by Bank of Baroda the Lead Lender subject to negotiation, the Company had expressed its inability to settle under OTS. Subsequently, the Company submitted Debt Resolution proposal with additional funding of about Rs.200,00,00,000/- (Rupees Two Hundred Crores) from prospective investor/priority debt from the existing Lenders Consortium in the JLF meeting held on March 15, 2017. The said proposal with additional funding is not considered favorable by Bank of Baroda the Lead Lender. Thereafter, the Company submitted fresh OTS proposal of Rs.450,00,00,000/- (Rupees Four Hundred and Fifty Crores), the Lenders Consortium did not find it satisfactory, in the JLF Meeting held on August 17, 2017 since the said OTS was less than the earlier indicated OTS amount of Rs.500,00,00,000/- (Rupees Five Hundred Crores); hence did not approve the same.

(26) Subsequently, the Company submitted another OTS proposal of Rs.475,00,00,000/- (Rupees Four Hundred and Seventy-Five Crores) with certain



terms and condition, which taken up for consideration in the last JLF meeting held on September 27, 2017 called by Punjab National Bank, which is the 2nd highest lender and advised the Company for a revised OTS. However, Bank of Baroda, the Lead Lender informed the JLF and the Company that Bank of Baroda is proceeding to prefer the proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 on the file of the National Company Law Tribunal and recommended that the resolution plan may be routed through the said process since the Company has not settled the Lenders dues for more than a year and is deemed to be not in a position to resolve the existing concerns in a time bound manner.



(27) On October 07, 2017 the Company had again submitted a revised OTS proposal for Rs.505,00,00,000/- (Rupees Five Hundred and Five Crores) to the Lenders. As Lead Lender, Bank of Baroda, so as to ensure the performance of its obligations under the Facility Agreement and the Additional Facilities Agreements and the ancillary deeds by the Company and an effective resolution, has chosen to invoke the provisions under Insolvency and Bankruptcy Code, 2016.

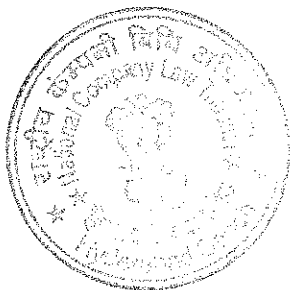
(28) The account being categorized as NPA, the Lenders initiated the process of recovery as provided under the SARFAESI Act, 2002; to appease the lenders the Corporate Debtor then proposed "Restructuring" in the year 2016 i.e., whereby the Corporate Debtor would convert the unsecured debt of Rs.81 crores into equity within

3 months from implementation of the CAP; this proposal was subjected to the outcome of the Special Audit and Techno Economic Viability (TEV); this however did not materialize leaving the JLF to look for alternative resolution. Bank of Baroda chose to invoke the provisions of IBC before this honourable National Corporate Debtor Law Tribunal (NCLT) in view of the reasons of increasing debt and the litigation for liquidation initiated by the other creditors by way of Company Petitions and internal disputes; among others.

(29) The petitioner has proved the Debt and the Default. The Respondent had not denied both.

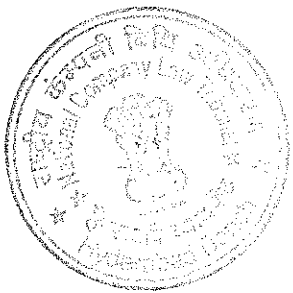
**Invoking the Writ Jurisdiction vide W.P.No.36982 of 2017 and Dismissal of the**

**same:** Upon the Applicant Bank filing the present application, the Respondent filed W.P.No. 36982 of 2017 before the Hon'ble High Court at Hyderabad and obtained an interim stay against the Applicant Bank in WP.MP.No. 45917 of 2017 from initiating any coercive steps subject to the Respondent depositing an amount of Rs.100 Crores to non-lien account of Punjab National Bank. No vested right of the Respondent has been infringed so as to invoke the writ jurisdiction of the Court much less the alleged voting mechanism in the JLF prescribed under the RBI guidelines. Thus, the Petitioner is not entitled to any remedy. There was no acceptance by majority of the banks in the consortium, excepting Bank of Baroda by voting or otherwise, the OTI proposed by the Respondent in the JLF held on 27.09.2017 as alleged by the Respondent in Para No.22 of the Affidavit filed in





support of the Writ Petition The Hon'ble High court vide its orders dated December 21, 2017 dismissed the aforementioned writ with several findings including the one that the Petitioner by referring to circulars cannot restrict effective and efficacious statutory remedy or right of the Applicant Bank under the code. An Asset, including a debt or a leased asset, becomes non-performing when it ceases to generate income for the bank. The Respondent's account was classified as NPA as at 31.12.2015. A system of early recognition of a stressed account before their slippage to NPAs is "Special Mention Accounts". Special mention assets are not classified as NPAs thus, the guidelines relating to the SMAs are not applicable to the case on hand as the Respondent/Corporate Debtor's Account has already been classified as NPA. The JLF may explore various options to resolve the stress in the account by using the Corrective Action Plans like "Rectification" to the loan account and "Restructuring" the account if both are not feasible, the JLF can choose to proceed with the third option of recovery. In the present case even after availing the CAP the Respondent/Corporate Debtor continued to Default. Hence the Applicant bank has chosen to proceed with the recovery.



- (30) The provisions of the IBC are in Pari Materia with RBI Guidelines and no conflicting provisions are perceived. As the IBC code has prescribed non-obstante clause under section 238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any

other law for the time being in force or any instrument having effect by virtue of any such law. Thus, this Hon'ble Tribunal has the unfettered power, jurisdiction and authority to admit this application. They have relied upon the following judgements in support of their case:

a) **Innoventive Industries Limited. Vs. ICICI**

**Bank & another the Supreme Court of India**

(MANU/SC/1063/2017; AIR 2017 SC 4084)

b) **Indian Bank Ltd.Vs. Varun Resources Ltd.**

c) **Bank of Baroda Vs. Rotomac Global Pvt.**

**Ltd. and Ors. [MANU/NC/1141/2017]**

d) **IDBI Bank vs. Lanco Infratech Limited CP**

**(IB)/111 /7/ HDB/2017**

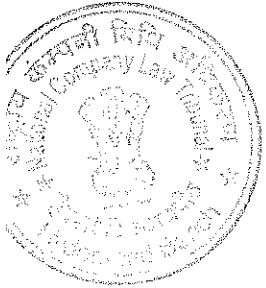
3. The Corporate Debtor/ vide their counter dated 17.01.2018, by inter-alia contending as follows:-

- (1) It is contended that the petitioner has suppressed the material facts that the Joint Lenders Forum is still in place and the petitioner has been participating in the same and the fact that the corrective action plan as per the RBI guidelines is being positively considered by the majority of the JLF/consortium members and the second largest lender i.e Punjab National Bank had in principal agreed for additional funding. This petitioner also in the month of July 2017 had proposed the resolution plan to the JLF/consortium members and as such on this ground alone the present company petition is liable to be dismissed.



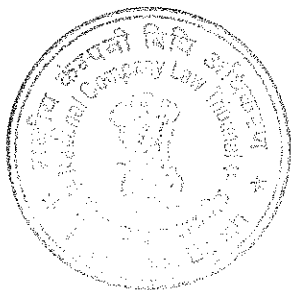
(2) Golden Jubilee Hotels Private Limited /Corporate debtor is the owner of a Five Star Hotel situated at Madhapur, Ranga Reddy District. For the construction of the said Hotel, the respondent has availed various financial assistance and credit facility total amounting Rs.688.75 Crores from Consortium of banks (i.e., Dena Bank, Syndicate Bank, Corporation Bank, Punjab National Bank(PNB), The Jammu and Kashmir Bank, Punjab and Sind Bank and Bank of Maharashtra) including Petitioner i.e., Bank of Baroda (herein after referred to as "BOB") and the credit facility availed by Company from BOB amount to Rs. 149.04 (i.e., Rs. 140.79 Crores of Fund Based and Rs. 8.25 Crores of Non Fund based credit) which come to 20.15% entire debt. The Respondent's Hotel has become operational in the month of September, 2013 and it has acquired substantial recognition and reputation. The respondent has so far paid an amount of Rs.350Crores to the lenders Banks.

(3) In terms of the RBI guidelines, the consortium of Bankers formed the Joint Lender's Forum (JLF) on 24.05.2014, with a sole intention to speed up decisions when an asset (loan) of more Rs 100 crores or more turns into a stressed asset. In compliance of the same, a JLF was formed by the Consortium of banks (i.e., financial creditor (BOB) and Dena Bank, Syndicate Bank, Corporation Bank, Punjab National Bank, The Jammu and Kashmir Bank, Punjab and Sind Bank and Bank of Maharashtra). As per the RBI guidelines, the JLFcan come up with any plan which is best



suited and feasible for reviving the Company/asset.

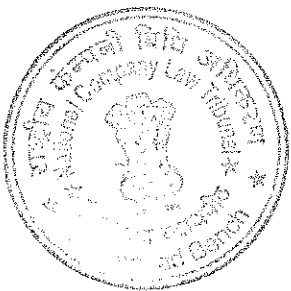
- (4) It is further submitted that in the said JLF meeting held on 15.03.2017 the following points came up for discussion:
- (a) Edelweiss presented the Comprehensive Debt Resolution as circulated to the Consortium Lenders which includes induction of Rs. 150 Crores as Priority Debt from Priority Lenders.
  - (b) JLF Lenders deliberated the proposal of the Company and informed that they are "In-principle Agreement" for the proposal of the Company under Corrective Action Plan (CAP) and further agreed to take the proposal to their respective authorities for their approval subject to Satisfactory Report of Audit and Techno Economic Viability (TEV) Report.
  - (c) Lead Bank was authorized to appoint Special Auditor and D&B as TEV Consultant.
  - (d) Further the Bank of Baroda informed to the JLF that any Bank can come forward for additional funding with expected return of 15% which will be beneficial to the Company and other Bankers will offer same terms to the Bank who is taking additional exposure including Priority Debt Structure. Bank of Baroda also requested all members' banks to discuss/deliberate this issue with their higher-ups and can come back if any member bank is interested in Priority Funding.
- (5) BOB circulated a proposal to all the lenders in July 2017 showing interest in the proposal given by the respondent. Even though as early as March



2017 the proposal was put in the JLF and the BOB being the lead banker was supposed to act quickly but it failed to do so and also circulated the MOM almost after few months. BOB handled the said proposal in a very casual and slow manner. The resolution proposal given by the Company circulated by BOB to all other lenders was based on the factual information and reports of agencies appointed by BOB and was under active consideration and all the lenders.

- (6) In the JFL meeting held on 27.09.2017, after discussion with the joint lenders, respondent offered Rs.505 Crores under the resolution which was positively being considered by the Consortium members i.e., Dena Bank, Syndicate Bank, Corporation Bank, Punjab National Bank, The Jammu and Kashmir Bank, Punjab and Sind Bank and Bank of Maharashtra except the petitioner Bank i.e., Bank of Baroda which wanted to approach NCLT.
- (7) On dismissal of Writ petition , once again on 28.12.2017 i.e., held another JLF meeting wherein the following was decided by the consortium:

S.No.	Consortium Banks	Proposal Rs.505 Crores
1.	Dena Bank	Restructuring with Additional funding on pro rata basis. PNB in principal agreed for additional funding of
2.	Syndicate Bank	
3.	Corporation Bank	
4.	Punjab National Bank	
5.	Corporation Bank	
6.	Punjab and Sind Bank	



		Rs.160 Crores.
7.	The Jammu and Kashmir Bank	One Time Settlement
8.	Bank of Maharashtra	
9.	Bank of Baroda	Resolution through NCLT

(8) **RBI Regulations:**

It is submitted that the Reserve bank of India vide RBI/2013-14/503 DBOD.BP.BC.No. 97/21.04.132/2013-14 dated 26-02-2014 passed guidelines which were subsequently amended vide RBI/2016-17/299.DBR.BP.BC.No.

67/21.04.048/2016-17 dated 05.05.2017 wherein it was resolved that when a minimum of 60% creditors by value and 50% of the creditors by number in JLF would be considered as the basis for deciding the CAP, and the same will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. The RBI circulars further provide an exit mechanism wherein, if any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF. The relevant portion of the regulation is extracted herewith:

**RBI/2016-17/299 DBR.BP.BC.No. 67/21.04.048/2016-17 dated 05.05.2017:**

*“4. In this context, it is reiterated that lenders must scrupulously adhere to the timelines prescribed in the Framework for finalizing and implementing the CAP. To facilitate timely decision making, it has been decided that, henceforth, the decisions agreed upon by a minimum of 60 percent of creditors by*



value and 50 percent of creditors by number in the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at the JLF are implemented by the lenders within the timelines.

5. It shall be noted that

(i) the stand of the participating banks while voting on the final proposal before the JLF shall be unambiguous and unconditional;

(ii) any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF;

(iii) the bank shall implement the JLF decision without any additional conditionalities; and

(iv) the Boards shall empower their executives to implement the JLF decision without requiring further approval from the Board"



- (9) It is further submitted that the Reserve Bank of India has issued guidelines (Dt.13.06.2016 bearing Reference number RBI/2015-16/422) even with respect to the assets which have turned into an NPA under the corrective action plan. The relevant portion of the same is extracted herewith:

"Reference number RBI/2015-16/422, Dt. 13.06.2016:

9(B)(viii) If Part A subsequently slips into **NPA** category, the account will beclassified with slippage in category with reference to the classificationobtaining on the reference date and necessary provisions should be made immediately."

**(10) RBI Guidelines are binding on the Petitioner :**

That the guidelines issued by RBI are statutory in nature and issued under Section 35A, Section 35AA& Section 35AB of Banking Regulation Act 1949. The Apex court has also held that the guidelines issued by Reserve Bank of India are statutory in nature are binding on the banks. (Please refer i) ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited [(2010) 10 SCC 1], Para 35 and 39; ii) Sardar Associations and Others v. Punjab & Sind Bank and Other [(2009) 8 SCC 57], Para 15 and 38; iii) BOI Financial Ltd v. Custodian and Others [(1997) 10 SCC 488], Para 27).



(11) That RBI for a very specific purpose of safeguarding the Stressed Assets in the interest of economic viability issued the Guidelines vide RBI/2013-14/503 DBOD.BP.BC.No. 97/21.04.132/2013-14 dated 26-02-2014 (subsequently amended vide RBI/2016-17/299, DBR. B.P. BC. No. 67/21.04.048/2016-17 dated 05-05-2017).

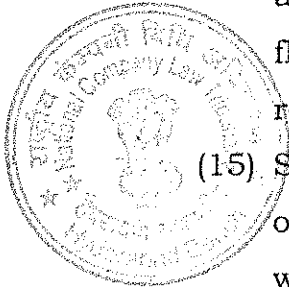
(12) Further RBI issued guidelines vide RBI/2015-16/422, DBR. B.P. BC. No. 103/21.04.132/2015-16 dated 13.06.2016 (subsequently amended vide RBI/2016-17/121, DBR. B.P. BC. No. 33/21.04.132/2016-17) states that the Corrective Action Plan can also be applied to the accounts which have been declared as NPA/Substandard.

(13) In the facts of the present case, all the lenders/banks formed a JLF on 24.05.2014 and thereafter from time to time have taken all



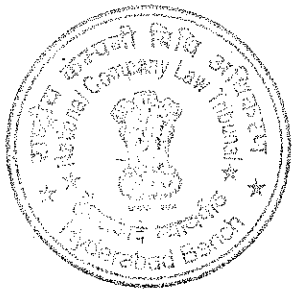
decisions in terms of the guidelines issued by RBI. The JLF in its meeting held on 15.03.2017 has jointly agreed to obtain a techno economic viability of the Respondent hotel to revise the enterprise value in terms of the RBI guidelines and therefore entrusted BOB to take necessary steps. In view of the same BOB appointed Dun & Bradstreet and Khandelwal Jain & Co.

- (14) Thereafter, BOB informed other banks vide letter dated 29.06.2017 that the enterprise value of Respondents as per valuation carried out by M/s. Colliers International (India) Property Services Private Limited the value of the Hotel would be around Rs. 475 Crores as per discounted cash flow approach and Rs. 584 Crores as per replacement cost approach.



- (15) Subsequently, in the JLF meeting held on 27.09.2012, wherein under the CAP a proposal was put forth by the for resolution of the debt under the CAP and all the banks except the Petitioner bank have agreed in principal to the said proposal (Subject to Approval of the higher Authorities). The Petitioner expressed its opinion that it will be approaching NCLT. RBI mandates that once a JLF is formed all the members have to collectively take a decision (any decision taken by 60% of the creditors is binding on all the banks) and independently the banks cannot take any action against the creditor. As per the guidelines issued by the RBI if a company / bank want to withdraw the same can be done by substituting its self. Under the RBI guidelines, the JLF is free to examine deferent options for resolution of debts

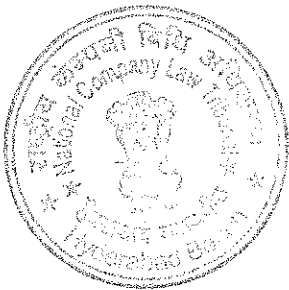
under CAP which includes rectification, restructuring & recovery. The JLF under the CAP can consider the proposals including OTS which is a part of restructuring. Since the JLF is formed as per the RBI guidelines; the guidelines issued by the RBI are also binding on the Petitioner. Petitioner in violation of the guidelines passed by RBI and when the JLF is in the process of deciding the debt resolution of the Respondent, filing the present petition is arbitrary, illegal and violated the guidelines passed by RBI. Therefore there is no cause of action for filing the present petition and the petitioner came with unclean hands.



- (16) The guidelines relied by the Petitioner are general guidelines issued by RBI. The particular guidelines i.e., RBI/2013-14/503 DBOD. BP.BC.No. 97/21.04.132/2013-14 dated 26-02-2014 (subsequently amended vide RBI/2016-17/299, DBR. B.P. BC. No. 67/21.04.048/2016-17 dated 05-05-2017) read with RBI/2015-16/422, DBR. B.P. BC. No. 103/21.04.132/2015-16 dated 13.06.2016 (subsequently amended vide RBI/2016-17/121, DBR. B.P. BC. No. 33/21.04.132/2016-17) relied by the Respondent are binding on all the banks in relation of JLF and as such the present guidelines prevail over all other guidelines in case of any inconsistency. The contention of the petitioner that the once an account has become NPA, the RBI guidelines for restructure are not applicable are not true and correct. The RBI guidelines for restructuring the stressed assets are applicable to the respondent as a matter of fact the guidelines also mandate that

the banks to identify the account even before it slips into NPA. The very fact that the petitioner called the meetings of JLF all throughout and also circulated a proposal in July 2017 to the JLF/lenders under the CAP (Corrective Action Plan) as per the RBI guidelines would leave no manner of doubt that the petitioner knowing very well that the RBI guidelines are binding on the petitioner and also the guidelines for CAP are applicable to NPA. As such the petitioner cannot contend today that since respondent account has become NPA the CAP is not applicable to respondent.

- (17) It is stated that the petitioner is acting in a manner against the interest of the respondent and other lenders. On 04.10.2015, the Company has informed the Bank of Baroda and the other Consortium banks about the unauthorized current account by the operator of Company. The Bank of Baroda on 17.10.2015 addressed a letter to UBI informing them that no NOC has been taken from Lenders for opening the bank account on behalf of the Company and asked UBI to close the current account. Then Joint Lenders' Forum was scheduled for 23.11.2015 and one of the agenda was to discuss the status of closure of UBI current account. BOB without respondent or any of its officers being privy to such meeting met the officials of Company agents on 21.11.2015. Thereafter, the Petitioner Bank cancelled the meeting for Joint Lenders' Forum scheduled for 23.11.2015. The petitioners again met with Respondent's agent on 15.12.2015 and scheduled



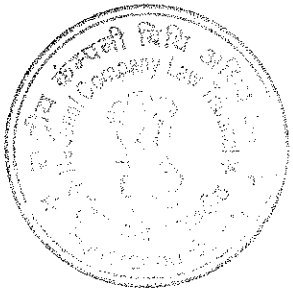
Joint Lenders' Forum on 23.12.2015. Wherein on the morning of 23.12.2015, officials of the Bank of Baroda once again held meeting with the Hotel Operator and without the consent of either Company or the other lenders, the BOB issued a NOC to the Hotel Operator to open a bank account outside the existing arrangement. Thereafter, the Bank of Baroda attended the Joint Lenders' Forum meeting with the Company and other Lenders'. In the Joint Lenders' Forum, all the other lenders opposed the proposal to issue any NOC to the current account with UBI. BOB without informing Company and other consortium lenders issued NOC to the current account with UBI on 23.12.2015. Subsequently on 24.12.2015 BOB has withdrew its NOC but the same was marked solely to the Hotel Operator and was not marked/sent to other lenders, Company or UBI and the same was informed to Company and other consortium members only around July 2016. It is alleged that the said UBI current account was used illegally and without any authority and against the instructions of all the lenders for almost 10 months Company had no control on the bank operations nor did it have any way to know the action revenue/income of hotel. This action of BOB financially crippled the Respondent and is reason which made the Respondent NPA. The Petitioner bank shows that it was acting against the interest of the Respondent Company and other consortium members.

- (18) It is the respondent, who has been taking all necessary steps to regularize the banking



operations for opening of TRA account and all monies generated by the hotel to be deposited in the said TRA account in terms of the agreements entered with the lenders and in the interest of the lenders.

- (19) It is alleged that the present petition is filed by the petitioner in bad faith and scuttle the entire process of resolution/restructuring the debt of the respondent. Strangely, the petitioner has till date neither rejected the proposal of the respondent nor has made any other offer. The very fact that the RBI has come with the guidelines to be followed by the banks in particular the JLF is to avoid this kind of situation where all the banks agree for a restructuring and only bank can spoil the entire process and scuttle the efforts. This is a case where there is an economic value to the asset and the respondent has made a proposal, which is being considered by all the banks positively and PNB has also in principle agreed to fund additionally. The sole motive of the petitioner is to cripple the respondent financially and to arm-twist the majority decision (other lenders) taken in the JLF meeting and is being done in utter bad faith and is abusing its position as a lender. The petitioner by suppressing the material facts with regard to the Correction Action Plan being taken by the JLF for reviving the asset filed the present Company petition, and on this ground alone, the present company petition is liable to be dismissed. One of the objects of the IBC Code is to revive/restructure the companies which are being



done in the present case by all the banks as per the RBI guidelines through the JLF.

(20) It is stated that the Respondent is devoted to make payment of the installments for clearing the credit facilities/loans availed by it from the consortium of the bankers. However, due to certain operational difficulties which are experienced by Company and because of the interference of BOB in the operation of the Hotel and actions of BOB without the consent of JLF led to financial difficulties of the respondent. However, the respondent has been making its best efforts to adhere to the repayment schedule of the credit facilities/loans which were availed from the consortium of bankers and is making all efforts to restructure and repay all banks including BOB. The petition is liable to be rejected as not in accordance under the IBC Code. The respondent being a nationalized bank, as per law declared by Apex court on many occasions, that the guidelines issued by RBI under Section 35A, Section 35AA& Section 35AB of Banking Regulation Act 1949 are statutory in nature and are binding on the banks. They have relied upon the following judgements in support of their case: :

- (i) **ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited [(2010) 10 SCC 1] ;**
- (ii) **Sardar Associations and Others v. Punjab & Sind Bank and Other [(2009) 8 SCC 257],**
- (iii) **BOI Financial Ltd v. Custodian and Others [(1997) 10 SCC 488],**
- (vi) **K. Sashidhar v. Kamineni Steel & Power India Pvt. Ltd.(27 November 2017) in CP (IB) No. 11/10/HDB/2017 by National Company Law Tribunal, Hyderabad:**



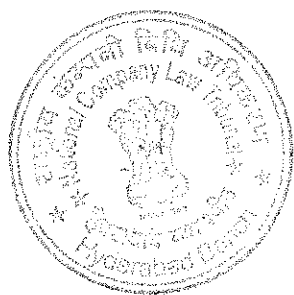
(21) Therefore, it is prayed that Tribunal may be pleased to dismiss the Company Petition with exemplary costs and pass necessary orders as it may deem fit and proper in the interest of Justice.

4. The case is listed for admission on various dates viz., 07.11.2017, 15.11.2017, 15.12.2017, 01.01.2018, 10.01.2018, 18.01.2018, 13.02.2018 and 20.02.2018.
5. Heard Ms. Varalakshmi Tadepalli along with Ms. Preethi Agarwal, Learned Counsels for the Petitioner; Shri Vikramjit Banerjee, and Shri D. Srinivas Learned Senior Counsels along with Shri P. Vikram for the Respondents. We have carefully perused all pleadings of both the parties along with extant provisions of IBC, 2016.
6. The learned counsels for both the parties have reiterated their respective pleadings as briefly stated supra, and they may not necessarily reiterate again here.
7. As stated supra, the Company Petition is filed under Section 7 of IBC R/w 4 of I & B (AAA) Rules, 2016 by seeking to initiate CIRP in respect of Corporate Debtor under IBC, 2016. As per provision 5(a) of Section 7, IBC, 2016, the Adjudicating Authority is empowered to pass an order to admit the application /petition if 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, and it can also reject it under Section 7(5)(b) if the application is incomplete or disciplinary proceedings against proposed resolution professional is pending etc.



As stated supra, the respondent was afforded sufficient opportunity by adjourning the case on several dates as mentioned above before initiating CIRP, to come forward with any viable solution to the issue acceptable to the petitioner. But it could not availed it except raising so many issues in their counter as briefly stated supra and those contentions are hardly have any bearing on issued raised in the instant Company petition. . The petitioner, being lead Bank has legal right to take recourse to legal action and it is not the case of respondent that other lenders have ultimately accepted any OTS or other alternative mechanism. Moreover, as stated supra, law on the issue is well settled by catena of judgements leading to a conclusion that once debt and default as defined under section 2(11) & (12) of Code are not in dispute, the Adjudicating Authority is bound to initiate CIRP. The Respondent has already taken recourse to writ jurisdiction by raising all pleas, which have raised here, and the Hon'ble High court of AP, after taking into consideration of all pleas of the petitioner, has ultimately dismissed the Writ petition No. 36982 of 2017 by a comprehensive order dated 21<sup>st</sup> December, 2017. It is relevant to quote one para of judgement here under:

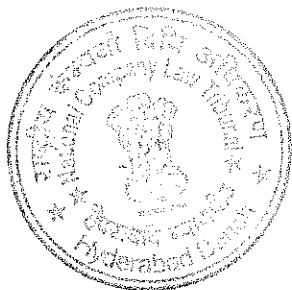
***“From the details given both the parties, this court is of the view that the invocation of statutory remedy by the Ist respondent is legal in the interest of Ist Respondent. The Ist respondent is taking steps for maximisation of value of assets of petitioner through statutory mode. On the other hand, if timely***





***action at the instance of petitioner or any another intervention is taken, the first respondent is prevented from realizing the amount and ultimately the value of asset diminishes and the 1<sup>st</sup> respondent suffer financial hardship.”***

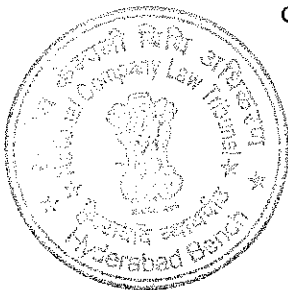
8. On perusal of various documents filed in support of the petitioner, it is un-disputably proved beyond doubt that there is no dispute about default in question. Moreover, the contentions of the respondent with regard to other lenders are not substantiated by other Banks by filing any supporting affidavits except participating in JLF meetings as averred by the respondents. In fact, the respondent has a right to bring to the notice of Reserve Bank of India about the alleged violations of petitioner in not adhering to its guidelines. However, the respondent did not appear to have taken such course of action. On the contrary, the petitioner has time and again reiterated that it has every mandate to initiate the instant CIRP, and it has initiated the instant proceedings strictly in accordance with law. As several contentions raised by the respondent hardly have any relevance to the issue in question, they are not being adverted here, and they are deemed to have rejected. Moreover, the respondent has already availed alternative remedy of filing writ petition. There cannot be any prejudice likely to cause to the respondent by initiating the instant CIRP and whatever, grievances/contentions of the respondent can very well be placed before the Interim Resolution professional and all the Financial Creditors will be formed Committee of Creditors to decide the CIRP. The other lenders of respondent can also place their stated



acceptance of One time Settlement etc. before the Committee of Creditors.

9. In view of the above facts and circumstances of the case, we are of considered view that default in question has occurred and the instant petition/application is complete as per sub-section 2 and there is no disciplinary proceedings pending against the proposed resolution professional so as to admit the case under section 7(5)(a) of IBC,2016. The proposed Interim professional has also filed Form No.2 on 16.09.2017.

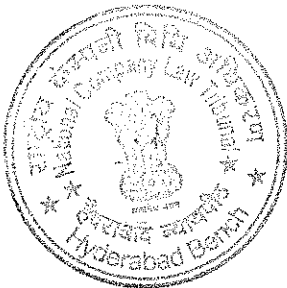
By invoking powers conferred on the Adjudicating Authority U/ss 7, ~~10~~, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, the Company Petition bearing CP (IB) No. 248/7/HDB/2017 is hereby admitted with the following consequential directions :



- 1) We hereby appointed Shri Subodh Kumar Agrawal C/o Agrawal Subodh & Co., 301, Victory House, 1, Ganesh Chandra Avenue, Kolkata-700013(Certificate No. IBBI/IPA-001/IP-P00087/2017-18/10183), as Interim Resolution Professional, by exercising powers under section 16 of IBC, 2016.
- 2) We 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](http://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](mailto: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) We direct the Interim Resolution Professional to constitute a Committee of Creditors, after collation of all claims received against the

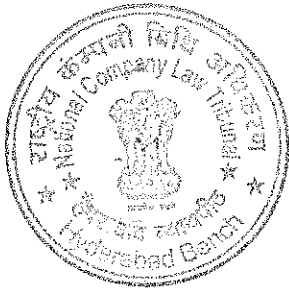


Corporate Debtor and determination of financial position of Corporate Debtor, as per Section 21 of IBC. The First meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of the IBC.

(vii) Direct the personnel of M/s Golden Jubilee Hotels Private Limited, its promoters or any other person associated with the management of M/s Golden Jubilee Hotels Private 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) We 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 26<sup>th</sup> March, 2018.



*Sd/-*  
**RAVIKUMAR DURAISAMY**  
MEMBER (TECHNICAL)

*Sd/-*  
**RAJESWARA RAO VITTANALA**  
MEMBER (JUDICIAL)

*for* *Dr. Ananthan*  
**Dy. Regr./Asst. Regr./Court Officer**  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER. *CP(IB) No. 248/7/HDB/2017*  
निर्णय का तारीख  
DATE OF JUDGEMENT. *27.2.2018*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON. *27.2.2018*