

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**



C.P. (I.B) No. 178/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.11.2018**

Name of the Company: Small Industries Development Bank of India.
V/s.
ALPS Leisure Holidays Pvt Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NIPUN SINGHVI	} Advocate	Applicant	
2.	VISHAL S. DAVE			

ORDER

Advocate Mr. Vishal Dave with Advocate Mr. Nipun Singhvi is present for the applicant.

The Order is pronounced in the open court, vide separate sheet.


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 13th day of November, 2018.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 178/7/NCLT/AHM/2017

In the matter of:

Small Industries Development Bank of India,
Navjivan Amrit Jayanti Bhavan
Navjeevan Post Office
1st Floor, Post Box No. 10
Ahmedabad 380 014

... Petitioner
[Financial Creditor]

Versus

Alps Liesure Holidays Private Limited,
Ground Floor, Pushit Complex
Nr. IRTI Stambh Raj Mahel Road
BARODA 390 001, Gujarat State

... Respondent
[Corporate Debtor]

Order delivered on 13th November, 2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J).**

Appearance:

Advocate Mr. Vishal Dave with advocate Mr. Nipun Singhi present for the
Petitioner.

ORDER

[(Per : Ms. Manorama Kumari, Member (Judicial))]

1. The Small Industries Development Bank of India (hereinafter referred to as the 'SIDBI', is a financial institution incorporated on 02.04.1990 having its registered head office

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at SIDBI Tower, 15, Ashok Marg, Lucknow – 226 001 (U.P.) and among other places, having its regional office as mentioned above.

1. That the corporate debtor incorporated on 05th January, 2005, with authorised share capital of Rs. 3,00,00,000/- consisting of 3,00,000 equity share of Rs. 10/- each and paid up share capital of Rs. 3,00,00,000/- consisting of 30,00,000/- equity share of Rs. 10/- each.
2. That the respondent being a corporate debtor is a company registered under the provisions of the Companies Act, 1956 and doing its business in the name and style of Alps Liesure Holidays Private Limited, having its registered office at the address mentioned above.
3. That the respondent had approached the applicant for availing term loan facility/financial assistance for their business through its Directors/Guarantors, the applicant had extended the said financial assistances from time to time. The details of such financial assistance granted by the applicant to the respondent are as follows: -
 - (a) Pursuant to the request made by the respondent, the applicant vide its letter of intent dated 07.03.2014,

Answer

office at SIDBI Tower, 15, Ashok Marg, Lucknow – 226 001 (U.P.) and among other places, having its regional office as mentioned above.

2. That the corporate debtor incorporated on 05th January, 2005, with authorised share capital of Rs. 3,00,00,000/- consisting of 3,00,000 equity share of Rs. 10/- each and paid up share capital of Rs. 3,00,00,000/- consisting of 30,00,000/- equity share of Rs. 10/- each.
3. That the respondent being a corporate debtor is a company registered under the provisions of the Companies Act, 1956 and doing its business in the name and style of Alps Liesure Holidays Private Limited, having its registered office at the address mentioned above.
4. That the respondent had approached the applicant for availing term loan facility/financial assistance for their business through its Directors/Guarantors, the applicant had extended the said financial assistances from time to time. The details of such financial assistance granted by the applicant to the respondent are as follows: -
 - (a) Pursuant to the request made by the respondent, the applicant vide its letter of intent dated 07.03.2014,

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granted financial assistance of term loan of Rs. 7,80,00,000/- under secured business loan scheme to the respondent on the terms and conditions mentioned therein, which were duly accepted by the respondent. The Board of Directors of the respondent passed a resolution at their meeting held on 07.03.2014, resolving, inter alia, to avail the financial assistance from the applicant, on the terms and conditions set out in the aforesaid letter to intent dated 07.03.2014. Copy of the intent dated 07.03.2014 along with resolutions are annexed to the memo of appeal and marked as **Annexure-I and Annexure -I/2** respectively.

Account number & Scheme	Purpose of loan/limit	Amount & Date of sanction	Total disbursement Rs. In lacs	Rate of interest
D0000KCG Term loan under Secured Business Loan (SBL) scheme for MSMEs in service sector	SBL for non - project specific purposes	30 th meeting of RCSC - ROAH dated 04.03.2014 Amount of Rs. 780.00 lacs	780.00	12.75%

(b) Pursuant to the said financial assistance granted by the applicant vide letter of intent dated 07.03.2014 on the terms and conditions contained in the letter of intent to the respondent, the respondent had entered into a loan agreement dated 20.03.2014 with the applicant (hereinafter collectively referred to as "the loan agreements") and the security documents including the

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guarantees and other securities, the respondent, inter alia agreed: -

- (i) to repay to the applicant, the said financial facility together with all interest, further interest, pre interest and other charges on the amounts outstanding from time to time under the said financial facility and all other monies, at the rate(s) and on the date(s) and in the manner specified in the letter of intent, loan agreements and any other security documents or at such other rate(s) as may be decided by the applicant from time to time, at its sole discretion;
- (ii) To pay all fees and other monies in accordance with the terms of the letter to intent and other security agreements;
- (iii) To repay the said financial assistance on demand to the applicant.

With respect to the financial assistance, personal guarantees of the following Directors were executed by way of deed of guarantee dated 20.03.2014 in favour of the applicant.

- (i) Shri Alpesh Vasudev Gandhi
- (ii) Shri Jigneshkumar H. Kachhiya
- (iii) Smt. Shilpaben Mukeshkumar Shah

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(iv) Shri Nikhilkumar Hasmukhlal Shah

5. The financial assistance was secured, inter alia, by creation of equitable mortgage by memorandum of deposit of title deeds by the respondent with the applicant. That, the amount of financial assistance was disbursed through Real Time Gross Settlement payment by the applicant on 24.03.2014 of Rs. 3,90,00,000/- and on 26.03.2014 of Rs. 3,90,00,000/-.
6. The respondent has accepted and acknowledged the debt and liability in favour of the applicant by balance confirmation certificate of financial assistance, dated 05.04.2016, marked **Annexure I/14.**
7. Ms. Sudha Padmanabhan, Deputy General Manager, SIDBI, Ahmedabad is a person authorised to file the present application pursuant to certificate of authorisation issued by General Manager, SIDBI, Ahmedabad in accordance with Section 34 of the Small Industries Development Bank of India Act, 1989 (Act No. 39 of 1989) and delegation of powers by Board of Directors of the Small Industries Development Bank of India dated 13.11.2017.
8. That it is stated that SIDBI had granted total amount of debts of Rs. 7,80,00,000.00 (Rupees seven crores eighty lacs only)

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on 07th March, 2014. Date on which default occurred is 08th February, 2017 (NPA date).

9. That Small Industries Development Bank of India Limited has entered into loan agreement on 20.03.2014 on certain terms and conditions as incorporated in the said loan agreement, for financial assistance of a sum to the extent of term loan of Rs. 780.00 lacs (Rupees seven hundred and eighty lacs only). That the said loan agreement dated 20.03.2014 attached as **annexure I/3** to the petition.

10. The aforesaid financial facilities were sanctioned on the following terms and conditions: -

(a) Repayment

The loan shall be repaid by the borrower to SIDBI in 174 monthly instalments after a moratorium of six months from the date of first disbursement of the loan as per the following repayment schedule: -

No. of instalments	Amount of each instalment	Total
173	448000	77504000
1	496000	496000
174	Total	78000000

Interest shall be payable on the 10th day of each month.

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11. That it is submitted by the applicant that Rs. 7,58,57,289/- is due and payable as on 10.11.2017. That, date of default as per Insolvency and Bankruptcy Code, 2016 is 10.11.2016, when the instalment of the loan repayment fell due on 10.11.2016 as per the loan agreement, which was not paid by the respondent. That, the date of NPA as per the RBI guidelines on Income Recognition and Asset classification is 08.02.2017. Since the corporate debtor failed to take any effective measure to regularise the account by remitting the overdue amount towards principal and interest accrued, the account became highly irregular and classified as Non-Performing Assets (NPA) on 08th February, 2017 with the petitioner with the then outstanding of Rs. 7,58,57,289/- That, the respondent committed serious breach and defaulted in honouring its repayment obligations towards the applicant and the account has been classified as NPA on 08.02.2017, in terms of guidelines issued by the Reserve Bank of India, the applicant issued statutory notice dated 07.07.2017 under Section 13 (2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 thereby calling upon the respondent to pay the entire outstanding dues within 60 days from the date of notice.
12. That, the respondent vide letter dated 13.07.2017 sought re-schedulement of the outstanding loan amount and vide letter

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dated 20.07.2017 sought deferment of the SARFEASI action initiated by the applicant. That, the applicant vide letter dated 24.07.2017 rejected the restructuring proposal and conveyed that SARFEASI action initiated would continue.

13. The applicant issued possession notice dated 25.09.2017 under the provisions of the Securitization Act for taking physical possession of the secured assets of the respondent.
14. The respondent filed a Securitization Application being S.A. No. 298/2017 before the Debt Recovery Tribunal II, at Ahmedabad against the applicant against the measures taken by the applicant under the provisions of Securitization Act. The applicant filed reply before DRT on 11.10.2017. DRT stayed the further action of applicant under the provisions of the SARFAESI Act and the said proceedings are pending for adjudication before the DRT.
15. That it is further submitted that the petitioner being financial creditor has to recover an amount of Rs. 7,58,57,289/- which is still remaining unpaid by the corporate debtor as on 10.11.2017, as per ledger accounts for the period from 24.03.2014 to 10.11.2017 and computation of interest, penal charges and other charges.

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16. It is further stated that in the above facts and circumstances, it is clear that the corporate debtor is unable to pay the amount which is due and payable, despite repeated requests and reminders corporate debtor has not paid the amount due and payable to the petitioner. Further, the corporate debtor has evidently lost its substratum and has become commercially insolvent as it is unable to pay its debts. The petitioner also states that, the corporate debtor owes huge amounts of monies not only to the petitioner but to various other financial and operational creditors and the corporate debtor has been making huge losses and it is not in a stable position to clear its debts and liabilities. Under these circumstances, when the corporate debtor has become insolvent and is unable to pay its outstanding debt to a large body of creditors, it would be in the fitness of things to initiate Insolvency Proceedings against the corporate debtor forthwith failing which the creditors will be left entirely high and dry.

17. That the applicant served a copy of the application on the Corporate Debtor/respondent. This application is filed before this tribunal on 15TH November, 2018. This application is listed before this Tribunal for the first time on 22.11.2017, wherein respondent was directed to file its objections within a week.

Answer

The matter was again listed on 30.11.2017, wherein learned advocate Mr. Sandeep Bhatt filed vakalatnama and remained present for the respondent. Respondent was again directed to file its objections. The matter was again listed on 08.12.2017 on which date respondent filed objections. Since some of the documents annexed with the reply were in vernacular language, on request from the learned lawyer appearing on behalf of the applicant to get it translated into English, respondent was directed to supply translated copy before the date of next hearing to the petitioner as well as to the Adjudicating Authority. When the matter was listed on 22.12.2017, proxy of respondent counsel remained present and requested for time. The matter was again listed on 16.01.2018, wherein learned advocate Mr. Sandeep Bhatt remained present, submitted translated copies of documents and stated that steps are being taken to convince Kotak Mahindra Bank to take over all the debts of the corporate debtor including the debt of petitioner. The matter was again listed on 09.02.2018 on which date counsels appearing on behalf of both the sides represented that they will file purshis along with settlement terms within two weeks. The matter was again listed on 28.02.2018, counsels appearing for both the sides represented that process of settlement is going on and prayed for more time. This Authority observing that the matter is long pending, as a last chance, the matter was


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adjourned to 22.03.2018. When the matter was listed on 22.03.2018, none remained present on behalf of the respondent and the matter was adjourned to 06.04.2018. On 06.04.2018 also none remained present for the respondent and prayer of the counsel for the petitioner for adjournment was considered. When the matter was listed on 08.05.2018, advocate representing the respondent requested for time which was though objected by the counsel appearing on behalf of the petitioner, as a last chance the matter was adjourned to 13.06.2018. On 13.06.2018, again, at the request of the lawyer appearing for respondent and in the interest of justice, a last chance was granted for hearing and the matter was adjourned to 10.07.2018. On 10.07.2018, when the matter was called out, the lawyer for respondent did not turn up, though the attendance sheet bears his signature. The matter was again listed on 31.07.2018. None remained present for respondent. The matter was adjourned to 24.08.2018 for ex-parte hearing on which date the matter was heard ex-parte.

18. Applicant proposed Mr. George Samuel, 401, Ashwamegh Avenue, Mayur Colony, Near Mithakhali Circle, Navrangpura, Ahmedabad, Gujarat 380 009 as interim resolution professional.



19. Heard the arguments of Learned Counsel appearing for the applicant.
20. Small Industries Development Bank of India triggered the insolvency resolution process against the Corporate Debtor. In order to trigger the insolvency resolution process, Financial Creditor shall place on record material which is sufficient for this Adjudicating Authority to ascertain the debt and to satisfy that a default had occurred; application is complete; and there are no disciplinary proceedings pending against the proposed Interim Insolvency Resolution Professional.
21. Now, this Authority proceeds to consider whether there is sufficient material on record to satisfy that a default had occurred in payment of financial debt.
22. 'Financial Debt' is defined in Section 5(8) of the Code. In the case on hand, Financial Creditor placed on record sanction letter given by the Small Industries Development Bank of India for various Term Loan. Financial Creditor also placed on record, the "Term Loan Agreements" entered into between Small Industries Development Bank of India on one hand, and the Corporate Debtor on the other hand dated 20.03.2018. The letter of intent was entered into on 07.03.2014. The petitioner also filed statement of accounts from date of default



of Alps Leisure Holidays Pvt. Ltd. Therefore, this Adjudicating Authority basing on the material available on record, conclude that there exists default and a default has occurred in repayment of the financial debt.

23. That on perusal of the application filed by the Financial Creditor shows that the same is complete in all respects. Financial Creditor also filed the Written Communication given by the proposed Interim Insolvency Resolution Professional in Form No. II. Financial Creditor also filed various copies of the accounts, Certificate under the Bank's Book Evidence Act and the copies of the ledger accounts of Corporate Debtor. Therefore, the application is complete in all respects. Hence, the Application is admitted under sub-section (5)(a) of Section 7 of the Code. This Adjudicating Authority is also appointing Mr. George Samuel, 401, Ashwamegh Avenue, Mayur Colony, Near Mithakhali Circle, Navrangpura, Ahmedabad, Gujarat 380 009 having Regn. No. IBBI/IPA-003/IP-N00043/ 2017-2018/10319 as "Interim Resolution Professional" under Section 13(1)(c) of the Code.

24. Section 13 of the Code says that after admission of the application under Section 7, the Adjudicating Authority shall pass an order declaring a moratorium for the purposes referred to in Section 14. Therefore, in view of the

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commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby pass the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;

- (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 the Securitisation 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 the possession of the corporate debtor.

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(a) The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

(b) The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.

25. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

26. This Petition is ordered accordingly.

27. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority



Harihar Prakash Chaturvedi
Member (Judicial)
Adjudicating Authority

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**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 178/7/NCLT/AHM/2017

In the matter of:

Small Industries Development Bank of India,
Ahmedabad 380 014

... Petitioner
[Financial Creditor]

Versus

Alps Liesure Holidays Private Limited,
BARODA 390 001, Gujarat State


... Respondent
[Corporate Debtor]


Order delivered on 16th November, 2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J).**

ORDER

Pursuant to speaking to minutes received from learned lawyers Mr. Vishal Dave and Mr. Nipun Singhvi appearing for the applicant herein above, seeking for rectification, it is to rectify the typographical error in the date written in para No. 17 of the order dated 14th November, 2018. Accordingly, in para No. 17 "This application is filed before this Tribunal on 15th November, 2018" which may be read as "**This application is filed on 15th November, 2017**".


**Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority**


**Harihar Prakash Chaturvedi
Member (Judicial)
Adjudicating Authority**