

27th February, 2018, the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad admitted the application. The Appellants, Shareholders have challenged the same.

2. Learned Senior Counsel for the Appellants highlighted the following facts in support of the submissions.

3. 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') is a special purpose vehicle for the purpose of setting up and operating a Five Star Hotel at Madhapur, Telangana. For the construction of the said Hotel, from 2009 to 2016 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') availed various financial assistance and credit facilities from a consortium of banks, including the 1st Respondent, Dena Bank, Syndicate Bank, Corporation Bank, Punjab National Bank, Jammu and Kashmir Bank, Punjab and Sindh Bank and Bank of Maharashtra ('consortium'). The consortium executed various facilities agreements dated 2nd September, 2009, 2nd March, 2013, 13th September, 2014 and 29th March, 2016.

4. It was submitted that the said consortium advanced a total amount of Rs. 688.75/- Crores (Fund Based) and Rs. 30.84/- Crores (Non Fund Based) in terms of the facilities agreements. 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') has already paid over Rs. 350 Crores as interest to the consortium.

5. On 24th May, 2014, the said consortium formed a Joint Lenders Forum. During the course of these Joint Lenders Forum Meetings, the consortium and 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') entered into a restructuring agreement under a Corrective Action Plan in the following manner:

- a. **15th March, 2017**— 'Proposal'/ 'offer' made by 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') to restructure its debt and its 'in- principle' acceptance by consortium upon deliberation.
- b. **27th September, 2017**— Minutes record that 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') acted upon the restructuring agreement and disbursed payments of Rs. 33 Crores to the consortium.
- c. **25th January, 2018**— 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') circulated a revised 'offer/proposal'.
- d. **6th February, 2018**— Decision of the 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') to accept revised offer dated 25th January, 2018 which is binding on the consortium in terms of Reserve Bank of India circular dated 5th May, 2017. 75% lenders by number and 70.31% by value voted in favour of the same. As per this decision, first

repayment date for the debt stood deferred to 31st March, 2018.

6. Learned Senior Counsel appearing on behalf of the Appellants submits that the Adjudicating Authority (National Company Law Tribunal) without considering the above facts that there was no default as the debt stood restructured passed the impugned order dated 22nd February, 2018 initiating the 'Corporate Insolvency Resolution Process' against the 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor').

7. According to him, a petition under Section 7 of the 'I&B Code' cannot be admitted if there is no default on the date of the decision regardless of whether there was default at the time of filing.

8. Further, according to him, the issue of whether 'default' is to be assessed as on the date of filing or as on the date of admission was not raised or pleaded by the 1st Respondent either before the Adjudicating Authority or before this Appellate Tribunal.

9. It was further submitted that the Adjudicating Authority's duty to satisfy itself as to 'default' is a two-step process. At the first stage, the Adjudicating Authority satisfies itself as to whether there is a 'default' at the time of filing of Section 7 application by the 'Financial Creditor' to

assess whether the application is maintainable at all (Section 7(1) of the 'I&B Code'). If there is no default at this stage, the application will be dismissed as not maintainable. However, if there is a default as on the date of filing, the Adjudicating Authority then still has to satisfy itself that there is a default on the date of admission/rejection for the purpose of admitting the application (Section 7(5) of the 'I&B Code').

10. Section 7(5) and Section 7(6) of the 'I&B Code' make it clear that for the purposes of admitting an application under Section 7, 'default' has to be 'ascertained' as on the date of decision of the Adjudicating Authority and not at the time of filing the application.

11. It was further submitted that if interpreted otherwise, this would mean that even if all debts to all creditors are satisfied (either repaid, deferred, restructured or otherwise interdicted by law) after filing of Section 7 application but prior to admission, the Adjudicating Authority would still be mandated to initiate the insolvency process when no insolvency exists. The object of 'I&B Code' is not to send healthy companies into an 'Corporate Insolvency Resolution Process'. That this is not the object of 'I&B Code' is also borne out by the fact that the Hon'ble Supreme Court in a number of decisions has exercised its power under Article 142 of the Constitution of India to terminate insolvency proceedings when there has been a settlement/repayment of debts.

12. Reliance was placed on the decision of the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. v. ICICI Bank and Anr.— (2018) 1 SCC 407"*** .

13. Following plea has been taken to highlight that there was no 'default', in view of the binding decision of the Joint Lenders Forum which restructured the debt prior to date of admission of the application.

13.1. On 25th January, 2018, 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') proposed a revised Corrective Action Plan for restructuring of debt. Under the said proposal the first date of repayment was 31st March, 2018.

13.2. The same was put to vote in the Joint Lenders Forum Meeting held on 6th February, 2018. This meeting took place in the presence of 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') (represented by 2nd Appellant) and the Joint Lenders Forum, including the 1st Respondent. Out of eight Banks, five Banks holding 62.5% by number and 64.46% by value voted in favour of the said proposal. Bank of Maharashtra observed that if more than 60% are in favour of the restructuring proposal, they would fall in line with the majority decision of the Joint Lenders Forum. As such Bank of Maharashtra's vote is also

in favour of the restructuring as more than 60% voted in favour. The final voting mandate is set out below for ease of reference.

S.No.	Name of Bank	Vote	Vote by % of Members	Vote by % of value
1	Punjab National Bank	Yes	12.5%	16.09%
2	Dena Bank	Yes	12.5%	15.99%
3	Corporation Bank	Yes	12.5%	13.26%
4	Jammu Kashmir Bank	Yes	12.5%	6.13%
5	Punjab & Sind Bank	Yes	12.5%	12.99%
	Sub Total in absolute favour of the Proposal		62.5%	64.46%
6	Bank of Maharashtra (submitted in the voting mandate that they would be in line with the majority decision i.e., more than 60% in the JLF)	Yes	12.5%	5.85%
	Sub Total in favour of Proposal		75%	70.31%
7	Syndicate Bank	Mandate Awaited	12.5%	9.8%
8	Bank of Baroda	No	12.5%	19.89%
	Total		100%	100%

13.3. According to learned Senior Counsel for the Appellants, the Reserve Bank of India notification dated 5th May, 2017 provides that

approval by a minimum of 60% creditors by value and 50% of the creditors by number in Joint Lenders Forum would be considered the basis for deciding the Corrective Action Plan, and the same will be binding on all lenders.

13.4. In view of the fact that more than 75% of the lenders by number and 70.31% by value approved the resolution proposal, the debt stood restructured and there was no default as on the date of admission i.e. 27th February, 2018.

14. Learned Counsel appearing on behalf of the 1st Respondent submitted that the decision of the Joint Lenders Forum that more than 75% lenders vote is not binding on all the 'Financial Creditors'. Bank of Baroda has not voted in its favour. Similarly, Syndicate Bank has also not mandated in favour of the decision of the Joint Lenders Forum.

15. According to learned counsel for the 1st Respondent- 'Bank of Baroda', it had already rejected the initial restructuring proposal as the same was not found viable and filed petition before the Adjudicating Authority, Hyderabad on 17th October, 2017. Since the matter was sub-judice before NCLT, Hyderabad, Bank of Baroda had not agreed to the restructuring proposal dated 25th January, 2018, hence the decision of the other lenders in Joint Lenders Forum was not binding for it.

16. It was further submitted that different kinds of proposals were being brought forward by 'M/s. Golden Jubilee Hotels Private Limited'- ('Corporate Debtor') so as to delay and defeat the objective of the Bank(s) and it resulted in erosion of the value of the business as the interest was mounting on the loans. Hence, in order to safeguard the economic value of the asset from eroding further, it was necessary to act in quick and expedient manner as provided in the 'I&B Code' and the Bank of Baroda deemed it expedient to proceed ahead with the proceedings filed on 17th October, 2017.

17. It was further submitted that the fresh proposal of restructuring was discussed in the Joint Lenders Forum initially called by Punjab National Bank on 6th February, 2018 and subsequently Bank of Baroda as a lead Bank called on 6th February, 2018 and chaired the meeting in which no final decision was arrived at as majority of lenders had not provided their final approval.

18. The Appellant has enclosed the copy of the meetings of the Joint Lenders Forum dated 15th March, 2017, 27th September, 2017 and 28th December, 2017. The 1st Respondent has taken specific plea that in the meeting dated 6th February, 2018, no final decision was taken by the Joint Lenders Forum. The Joint Lenders Forum meeting dated 6th February, 2018, as enclosed by the Appellants show that before the said

meeting the Bank of Baroda had already moved a petition before the Adjudicating Authority, Hyderabad on 17th October, 2017 for initiation of 'Corporate Insolvency Resolution Process'. It was taken into consideration by the other lenders in Joint Lenders Forum meetings held on August, 2017. The relevant portion of minutes of the Joint Lenders Forum meeting dated 6th February, 2018 is quoted below:

"Lenders who have not having mandate have been provided-1-week time from the date of JLF meeting i.e., upto 13.02.2018 to provide clear mandate to the JLF.

PNB informed that if the super majority agreed for restructuring they will be circulating the draft restructuring proposal to the other lenders.

BOB informed that forum that earlier company has submitted various resolution plans, however the same was not materialised. Accordingly, BOB has filed Insolvency petition before NCLT, Hyderabad on 17.10.2017 (Already informed BOB decision to the other lenders as well as the company in the JLF meetings held during Aug' 2017). Further BOB have already communicated that BOB is not evincing interest on the

restructuring proposal submitted by the company along with additional funding to the company and other lenders in the JLF meetings held during Aug' 17 and accordingly proceeded under IBC 2016. Since there are no major changes in the revised restructuring package, the decision of JLF will not bind on BOB's decision of NCLT.

As there are no other matters to discuss, the meeting ended with vote of thanks to the Forum.”

19. From the aforesaid proceeding dated 6th February, 2018, we find that the meeting of the Joint Lenders Forum held on 6th February, 2018 is not final as the Punjab National Bank has informed that if the super majority agreed for restructuring, they will be circulating the draft restructuring proposal to the other lenders and before the said date the Bank of Baroda has already preferred the insolvency petition before the Adjudicating Authority on 17th October, 2017 which was taken care and noted by the Joint Lenders Forum.

20. In view of the aforesaid proceeding, the Appellants cannot rely on decision of the Joint Lenders Forum in the meeting dated 6th February, 2018 to hold that restructuring has already been done by the Joint Lenders Forum.

21. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

6th September, 2018

/AR/