

NATIONAL COMPANY LAW TRIBUNAL

GUWAHATI BENCH

GUWAHATI

C.P. (IB)/7/GB/2021

Coram: Hon'ble Shri H. V. Subba Rao, Member (J)

Hon'ble Shri Prasanta Kumar Mohanty, Member (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07/04/2021

Name of the Company: **Indian Bank [erstwhile Allahabad Bank]**

V/s

Cleanopolis Energy Systems India Private Limited

Section: {Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency
And Bankruptcy (Application to Adjudicating Authority) Rules, 2016}

S.No	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. S. CHAMARIA	Advocate	Petitioners	Present in
2.	MR. SIBANU SARMA	Advocate	Respondents	Video Conference

ORDER

The Parties are represented through their respective Counsel(s).

Today, the present matter is kept for pronouncement of order.

The present matter i.e. CP (IB) No. 7/GB/2021, is admitted.

The detailed order is recorded vide separate sheet.

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)
&
Adjudicating Authority**

Sd/-

**(H. V. SUBBA RAO)
MEMBER (JUDICIAL)
&
Adjudicating Authority**

Dated this the 07 day of April, 2021

NATIONAL COMPANY LAW TRIBUNAL

GUWAHATI BENCH

GUWAHATI

C.P. (IB)/7/2021

In the matter of:

Indian Bank (Erstwhile Allahabad Bank)
Having its Head Office at 254-260, Abbai
Shanmugham Salai, Royapettah,
Chennai- 600014 and one of its Branch
Office amongst other places at S.R.C.B
Road Branch, S.R.C.B Road, Guwahati,
781001, District- Kamrup (M), Assam.

..... **Financial Creditor**

Versus

M/S CLEANOPOLIS ENERGY SYSTEMS
INDIA PRIVATE LIMITED
A Company incorporated under the provisions
Of Companies Act, 1956 having its registered
Office at 51/343, Borpokhijhor, Halleshwar,
P.O: Depota, Sonitpur, PIN: 784150, Assam.

..... **Corporate Debtor**

Order delivered on 7th April, 2021

Coram: Hon'ble Shri H. V. Subba Rao, Member (J)

Hon'ble Shri Prasanta Kumar Mohanty, Member (T)

Appearance:

ORDER

[Per se: Shri Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor Indian Bank erstwhile Allahabad Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor namely, Cleanopolis Energy Systems India Private Limited for the default committed by the Corporate Debtor in making repayment of various credit facilities availed from the Bank. The application has been filed by the duly authorized officer, Sri Aditya Kumar Behera, Indian Bank erstwhile Allahabad Bank, S.R.C.B Road Branch, S.R.C.B Road, Guwahati, 781001, District- Kamrup (M), Assam.

2. The Petitioner Financial Creditor (FC), namely Indian Bank,(Erstwhile Allahabad Bank) was incorporated on 24.04.1865 with identification number AACCA8464F; registered address at Corporate Office at 254-260, Abbai Shanmugham Salai, Royattah, Chennai-600014". Branch Office at S.R.C.B Road, Guwahati, 781001, District- Kamrup (M), Assam.

3. The Respondent Corporate Debtor (CD) Company, namely Cleanopolis Energy Systems India Pvt. Ltd. was incorporated on 05.10.2009 with CIN: U40104AS2009PTC009278 ; GST No: 18AADCC8147N1Z5 and PAN No: AADCC8147N.

4. The authorized share capital of the Respondent (CD) Company is Rs.4,60,00,000.00 (Rupees Four Crores and Sixty Lacs only) divided into 46,00,000 (Forty Six Lacs) Equity Shares of Rs.10/- (Rupees Ten Only) each. The issued, subscribed and paid up share capital of the Company is Rs.3,86,69,600.00 (Rupees Three Crore Eighty Six lacs Sixty Nine Thousand and six hundred) comprising of 38,66,960 nos. of Equity Shares of Rs.10/- (Rupees Ten only) each. The Registered Office of the Corporate Debtor Company is situated at: 51/343, Borpokhiajhar, Halleshwar, P.O: Depota, Sonitpur,

Assam, India, PIN: 784001. The copy of Memorandum of Association and Articles of Association of Corporate Debtor reveals that the company was incorporated to generate, harness, develop, distribute and supply electricity by setting up a biomass power plant in the State of Assam.

5. The Petitioner i.e. (Financial Creditor) have also proposed the Interim Resolution Professional for the CIRP process. Mr. Amit Pareek bearing Registration Number: IBBI/IPA-002/IP-N00413/2017-18/11205. The address of the IRP is 4th Floor, K.C. Choudhury Road, Ram Prasad Complex, Chatribari, Guwahati-01, Kamrup (M), Assam and his e-mail address: amitpareek99@yahoo.com.

6. The Financial Creditor has submitted the particulars of the Financial Debt provided to the Corporate Debtor on various dates. The particulars are provided as given below:

A. Total Amount of Debt Granted :

- a. The Sanctioned Amount for Term Loan I is Rs.4, 74, 00,000.00 and the Account No. is 50149791057. The Outstanding debt is Rs.6, 71, 78,312.00 (with interest up to 01.01.2020).
- b. The Sanctioned Amount for Term Loan II is Rs.1,26,00,000.00 and the Account No. is 50201046842. The Outstanding debt is Rs.1,77,60,738.00 (with interest up to 01.01.2020).
- c. The Sanctioned Amount for the Term Loan III is Rs.68,15,000.00 and the Account No. is 50261528496. The Outstanding debt is Rs.88,47,255.00 (with interest up to 01.01.2020).
- d. The Sanctioned Amount for the Cash Credit Loan is Rs.75,00,000.00 and the Account No. 50201081399. The Outstanding debt is Rs.2,50,46,033.00 (with interest up to 01.01.2020).
- e. The **Total Amount of Debt** claimed by the FC is Rs.7,43,15,000.00.00 (Rupees Seven Crore Forty Three Lakhs and Fifteen Thousand Only.)

B. Total Claimed Amount:

The total claimed amount is Rs.11,88,32,383.00 (Rupees Eleven Crores, Eighty-Eight Lakhs Thirty Two Thousand Three Hundred and Eighty Three Only) which includes interest up to 01.01.2020.

C. The Date of Default is 30.03.2018.

7. The Financial Creditor has in his application submitted the (Documents, Records and Evidence of Default) particulars of the Financial Debt in Part V of the application. The same have been provided as under:

a. **Primary Security:** Exclusive charge upon the entire fixed assets of the unit (both present and future).

b. **Collateral Security:**

i. All the part and parcel of the land in the name of M/S Cleanopolis Energy Systems India Private Limited acquired vide Sale Deed No. 286 dated 30.03.2011, (measuring 4 Bighas 4 Kathas 7 Lechas, covered by Dag No. 354, K.P. Patta No. 153), at Village- Borpokiajhar, Mauza- Haleswar, District- Sonitpur, Assam, bounded by North: Land of M/S Cleanopolis Energy Systems India Pvt. Ltd., South: Land of Sri Gadadhar Koch, East: Drain and West: land of Netra Hazarika.

ii. All the part and parcel of the land in the name of M/S. Cleanopolis Energy Systems India Private Limited acquired vide Sale Deed No. 913 dated 03.06.2010, (measuring 03 Bighas 3 Katha 6 Lechas, covered by Dag no. 341, Patta No. 107 (O)/51 (N) and measuring 4 Bighas 1Katha 2 Lechas covered by Dag No. 343, Periodic Patta No. 77 old/29 New) at Village- Borpokiajhar, Mauza- Haleswar, Dist- Sonitpur, Assam, bounded by North: Land of Sri Bhola Saikia, South: Land of Sri Gopal Baruah, Sri Dul Baruah and Sri Indra Saikia, East: PWD Road, West: Drain.

- iii. All the part and parcel of the flat in the name of S/o Late Abdul Majit, S/O Late Abdul Majid, acquired vide Sale Deed No. 8570 dated 11.08.2006, (measuring 1250 sq ft on 2nd Floor, Unit No. "C" in the building Nilanchal Housing Complex, Star Enclave, standing over a plot measuring 0 Bigha 2 Katha 12 Lechas covered by Dag No. 288- New, 3050- Old, K.M Patta No. 222- New 871-Old) at Village- Panbazar, (5th Part), under Mauza- Ulubari, District- Kamrup (Metro), Assam, bounded by North: Drain and land of Ramendra Ch. Saraswati, South: G N B Road, East: Land of Sahi Bhuyan Dutta and West: Land of Mr. Bireswar Rai.
- iv. All that part and parcel of the land in the name of Sri Deshraj Bapanas, S/o Late Lalit Kumar Bapanas, acquired vide Sale Deed No. 1367 dated 02.07.2012, having land No. H-6, HIG, (measuring 01 Katha 11 Lechas (416.30 Sq. Mtr), Covered by Dag No. 1224, Patta No. 666) at Village- Mazgoan, Mauza- Bhairappad, Dist- Sonitpur, Assam, bounded by North: Plot No. H-7, South: 9m wide Road, East: 12m wide road and West: Plot No. H-13.

8. The Financial Creditor has submitted that the Respondent Company has violated the terms and conditions of the sanction letters and as such also made the accounts irregular, consequence thereof the said accounts were classified as Non Performing Asset w. e. f. 30.03.2018.

9. The Financial Creditor has submitted that Demand Notice dated 06.01.2020 was issued in respect of unpaid debts, due from the CD i. e. M/s Cleanopolis Energy Systems India Private Limited under the Insolvency and Bankruptcy Code, 2016.

10. The Financial Creditor have submitted a list of documents supporting its claim. The list is produced here in a tubular form (page 16-309 of the Application book):

SI.No.	ANNEXURE	DOCUMENTS	PAGE NO.
1.	Annexure-1	Application for Loan dated 28.01.2013	16-48
2.	Annexure-2	Sanction Letter dated 25.03.2013	49-64
3.	Annexure-3	Acknowledgement of Sanction letter dated 28.03.2013	65
4.	Annexure-4	Application for Loan	66-73
5.	Annexure-5	Sanction Letter dated 19.04.2014	74-82
6.	Annexure-6	Acknowledgement of Sanction letter dated 21.04.2014	83
7.	Annexure-7	Term Loan Agreement dated 25.03.2013	84-96
8.	Annexure-8	Term Loan Agreement dated 21.04.2014	97-112
9.	Annexure-9	Term Loan Agreement dated 27.01.2015	113-122
10.	Annexure-10	Limit Pronote dated 28.03.2013	123
11.	Annexure-11	Limit Pronote dated 19.04.2014	124
12.	Annexure-12	Limit Pronote dated 19.04.2014	125
13.	Annexure-13	Undertaking dated 19.04.2014	126
14.	Annexure-14	Limit Pronote dated 21.05.2014	127
15.	Annexure-15	Limit Pronote dated 14.07.2014	128
16.	Annexure-16	Limit Pronote dated 27.01.2015	129
17.	Annexure-17	Limit Pronote dated 27.01.2015	130
18.	Annexure-18	General Letter of Hypothecation 21.04.2014	131-139
19.	Annexure-19	Guarantee Letter dated 25.03.2013	140-143
20.	Annexure-20	Guarantee Letter dated 19.04.2014	144-148
21.	Annexure-21	Supplement Letter of Mortgage confirming deposit of Title Deed dated 19.04.2014	149-151
22.	Annexure-22	Supplement Letter of Mortgage confirming deposit of title Deed dated 19.04.2014	152-154
23.	Annexure-23	Supplement Letter of Mortgage confirming deposit of Title deed dated 21.04.2014	155-157
24.	Annexure-24	Supplement Letter of Mortgage confirming deposit of Title deed dated 21.04.2014	158-160
25.	Annexure-25	Undertaking dated 21.04.2014	161-162
26.	Annexure-26	Letter of Mortgage confirming deposit of Title Deed dated 02.04.2014	163-165
27.	Annexure-27	Letter of Mortgage confirming deposit of Title Deed dated 02.04.2014	166-168
28.	Annexure-28	Letter of Mortgage confirming deposit of Title deed dated 02.04.2014	169-171

29.	Annexure-29	Letter of Mortgage confirming deposit of Title Deed dated 02.04.2014	172-174
30.	Annexure-30	Sale Deed No. 286/2011 dated 30.03.2011	175-190
31.	Annexure-31	Sale Deed No. 913/2010 dated 03.06.2010	191-204
32.	Annexure-32	Sale Deed No. 8570/2006 dated 11.08.2006	205-214
33.	Annexure-33	Sale Deed No. 1367/2012 dated 02.07.2012	215-221
34.	Annexure-34	Remainder letter dated 02.01.2015	222
35.	Annexure-35	Reminder Letter dated 13.04.2015	223
36.	Annexure-36	Reminder Letter dated 09.05.2015	224
37.	Annexure-37	Reminder Letter dated 18.05.2017	225
38.	Annexure-38	Reminder Letter dated 15.12.2017	226
39.	Annexure-39	Acknowledgement Letter dated 27.01.2015	227
40.	Annexure-40	Acknowledgement Letter dated 28.06.2017	228
41.	Annexure-41	Acknowledgement Letter dated 19.07.2019	229
42.	Annexure-42	Letter from the borrower dated 29.12.2017	230
43.	Annexure-43	Letter from the borrower dated 27.02.2018	231-233
44.	Annexure-44	SARFAESI Notice u/s 13(2) dated /-.03.2018	234-236
45.	Annexure-45	SARFAESI Notice u/s 13(2) dated 31.03.2018	237-239
46.	Annexure-46	Possession Notice u/s 13(2) dated 21.08.2018	240-241
47.	Annexure-47	Possession Notice u/s 13(4) dated 21.08.2018	242-243
48.	Annexure-48	Statement of A/C in TL No. 50149791057	244-258
49.	Annexure-49	Statement of A/C in TL No. 50201046842	259-271
50.	Annexure-50	Statement of A/C in TL No. 50261528496	272-277
51.	Annexure-51	Statement of A/C in TL No. 50201081399	278-289
52.	Annexure-52	Certificate of banker's book of evidence Act dated 18.12.2020	290
53.	Annexure-54	Copy of the letter dated 12.10.2020	291
54.	Annexure-55	Copy of the company Master Data of the Corporate Debtor	292
55.	Annexure-56	Copy of Registration of Charges	293

56.	Annexure-57	Copy of the letter dated 16.12.2019 for initiation of action under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor	294-295
57.	Annexure-58	Copy of the Notice u/s 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor dated 06.01.2020	296-301
58.	Annexure-59	Copy of the Authorization Letter dated 17.11.2020 of the authorized person representing the Financial Creditors.	302
59.	Annexure-60	Copy of the written Communication by Insolvency Professional dated 09.11.2020	303-309

11. It is observed that:

- 1.1 The Petitioner has submitted the documents duly executed by the Corporate Debtor and guarantors along with the statement of Accounts with Certificate under Banker's Book of Evidence Act,1891, in support of their IB Petition for initiation of C.I.R.P.**
- 1.2 The Fund Based and Non Fund Based credit facilities were sanctioned and released by the Petitioner Bank along with other consortium lenders and the same were availed by CD, Cleanopolis Energy Systems India Private Limited. The Charges have been registered by the CD with the ROC in favour of the Petitioner Bank on 25/03/2013 and modified on 21/04/2014 for Rs.6,75,00,000.00 vide charge ID No.10420694.**
- 1.3 The CD has defaulted in making repayment of credit facilities to the Petitioner Bank and the date of default is 30.03.2018. The statement of accounts as on 19.12.2019 along with the Banker's Book Evidence Certificate annexed with the Petition confirms the default is Rs.11,88,32,338.00 (including interest up to 01.01.2020).**
- 1.4 The petitioner Bank has filed the petition within the period of limitation, as the default has occurred as on 30.03.2018 and the**

application has been filed on 08.01.2021. The acknowledgment of debts have been submitted by the CD to the FC on 27/01/2015, 28/06/2017 and 19/07/2019 (Page 227-229 of the Application Book). Charges have been filed with ROC on 25/03/2013 and thereafter charges have been modified on 21/04/2014.

The date of mortgage of the property is on 02-04-2013, SARFAESI proceeding has been initiated by the Financial Creditor and notice dated has been served on the CD.

- 1.5 It is settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P, because the nature of remedy being sought for under the provisions of the I.B Code is " Remedy in Rem" in respect of the CD.**
- 1.6 The Financial creditor had sanctioned a total limit of Rs.7,43,15,000.00 (Rupees Seven Crore Forty Three Lakhs and Fifteen Thousand only.) to the CD. The FC has claimed an amount of Rs.11,88,32,383.00 (Rupees Eleven Crores Eighty Eight Lakhs Thirty Two Thousand Tree Hundred and Eighty Three only) which includes interest of Rs.4,45,17,338.00 up to 01.01.2020.**
- 1.7 The Respondent Company has violated the terms and conditions of the sanction letters and as such also made the accounts irregular, consequence thereof the said accounts were classified as Non Performing Asset w.e.f. 30.03.2018.**
- 1.8 The Financial Creditor has issued Demand Notice dated 06.01.2020 in respect of unpaid debts, due from the CD i.e. M/s Cleanopolis Energy Systems India Private Limited under the Insolvency and Bankruptcy Code, 2016.**

- 1.9 The present I.B Petition is filed by the duly authorized official of the Applicant Bank in a prescribed format under section 7 of the I.B Code annexing copies of loan documents confirming the existence of debt due, payable and defaulted and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).**

ORDER

- 2. Considering the material papers filed by the Applicant Bank, arguments of both the parties and the facts mentioned in the Para 11 to 11.8, this Adjudicating Authority is satisfied that,**
- 3.**
- a) The Corporate Debtor availed the loan/credit facilities from the Financial Creditor Bank (Indian Bank [erstwhile Allahabad Bank]).**
 - b) Existence of Debt is above Rs. One Lac, due and payable**
 - c) Default has occurred on 30.03.2018**
 - d) Petition has been filed within the limitation period, as the date of default is 30/03/2018, when this petition under Section 7 has been filed on 08.01.2021 along with the copy of acknowledgement of debts dated 27/01/2015, 28/06/2017 and 19/07/2019.**
 - e) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the Petitioner Bank under section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.**

Hence, the present I.B application is admitted with the following Directions/observations. The date of admission of this petition is 07/04/2021

4. As per the Provisions of Section 13 and 14 of the I.B Code on the date of Commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today prohibiting all of the following namely: -

I. (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

III. The provisions of sub-section (1) shall not apply to-(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; b) a surety in a contract of guarantee to a corporate debtor.

IV. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process.

- 5. This Adjudicating Authority hereby appoints as proposed, Mr Amit Pareek, having Insolvency Professional Registration No.– IBBI/IPA-002/IP-N00413/2017-18/11205, EmailID: amitpareek99@yahoo.com , Address ; 4th Floor, K.C Choudhary Road, Ram Prasad Complex, Chatribari, Guwahati-)1, Kamrup (M), Assam, as an Interim – Resolution Professional (IRP). The IRP is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/ direction issued by this Adjudicating Authority and to follow the provisions under section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP is advised to file declaration disclosure statement within two days from today before the Registry.**
- 6. The Special Officer Mr. Jay Prakash Gupta appointed by this Bench for the CD on 18/11/2019 at the request of the Petitioner in the case No. CP/15/241-242/GB/2019 stands relieved today and he is directed to handover all the documents, papers, book of accounts etc. of the CD immediately to the IRP.**
- 7. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process (“CIRP” in short) and Perform the duties as specified under section 17,18,20 and 21 of I.B Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia , in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with the provisions of the ‘Code’, Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal**

obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

8. It is observed that the Petitioner Bank has claimed an aggregate amount Rs.11,88,32,383.00 which includes undebited interest of Rs.4,72,17,383.00 i.e around 40% of the total claimed amount.
9. **The CD is an MSME unit which is yet to start operation. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan viable, feasible and implementation successful, in the era of Minimum Cost of Funds-based Lending Rate ("MCLR" in short)/ Repo Linked Interest rate/Interest rate falling regime and Competitive market condition, the Committee of Creditor(s) (CoC) may explore, while finalizing the Resolution Plan for the Corporate Debtor, the possibility of loading maximum interest at the rate of Applicant Bank's One Year MCLR or One year MCLR + 1% till the date of approval of the Resolution Plan without any penal/overdue interest.**
10. **The CD is an MSME Unit (unit is yet to start). The IRP and CoC must not loose the sight of the section 240A of IBC,2016 which is read below:**

"1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29-A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises."

11. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the registrar of Companies, Guwahati immediately through speed post/ registered post.

12. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

Thus the present I.B petition filed under section 7 of the IBC stands admitted on 07.04.2021 with the above observation and Directions.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)**

&

Adjudicating Authority

Sd/-

**(H.V. Subba Rao)
Member (Judicial)**

&

Adjudicating Authority

/KY/Deka/