

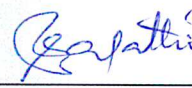
**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATHI BENCH**

**PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 30.10.2019 AT 10.30 AM**

TRANSFER PETITION NO.	TCP NO. 71/7/AMR/TP/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 699/7/HDB/2018
NAME OF THE COMPANY	Costal Oil & Gas Infrastructure Pvt Ltd
NAME OF THE PETITIONER(S)	Bank Of India & Anothers
NAME OF THE RESPONDENT(S)	Costal Oil & Gas Infrastructure Pvt Ltd
UNDER SECTION	7 OF IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
JVL Bharati	Adv	9958601847	

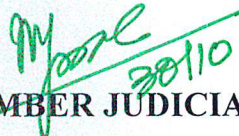
**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Counsel for the Petitioner is present. Orders pronounced vide separate sheets.

The Petition is rejected.

  
MEMBER JUDICIAL

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**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

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**TCP (IB) No. 71/7/AMR/TP/2019  
CP (IB) No. 699/7/HDB/2018**

**In the matter of Coastal Oil Gas Infrastructure Private Limited**

&

*In the matter of a Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

Between:

1. Bank of India,  
Chennai Large Corporate Branch,  
4<sup>th</sup> floor, Tarapore Towers,  
826 Anna Salai,  
Chennai - 600 002.

2. Central Bank of India,  
Corporate Finance Branch,  
Bank Street, Koti,  
Hyderabad - 500 095.

... **Petitioners**

and

Coastal Oil Gas Infrastructure Private Limited,  
9-13-45/3/5/4 CMB Compound,  
VIP Road, Sripuram,  
Visakhapatnam - 530 003.

... **Respondent**

**Date of Order: 30.10.2019**

**C O R A M:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

*M. Ajmal*  
*30/10/19*



**Appearance:**

**For the Petitioner** : Mr. T. Ravi chandran & Mr. D. Sai  
Kumar, Advocates.

**For Respondent** : Mr. G. Bhupesh & Mr. G. Nagesh Reddy,  
Advocates.

**O R D E R**

This is an Application by Financial Creditors under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent (Corporate Debtor) alleging default in repayment of a Financial Debt.

2. Briefly stated the following are the facts leading to the Petition. The Respondent Company (CIN: U40108AP2010PTC068559) incorporated on 24.05.2010 under Companies Act, 1956 has its Registered Office in Visakhapatnam, Andhra Pradesh. The Company was established *inter alia* with the object to develop, construct, own, hire, lease or otherwise two facilities for storage of gas, petroleum etc. One Nagarjuna Oil Corporation Limited (NOCL) decided to establish a 6 Million Tonnes per Annum (MTA) oil refinery at the Cuddalore, Tamil Nadu.
3. A Storage Facility consisting of tanks for storing crude oil, intermediate products and the final product namely petrol, diesel etc. is integral to a refinery. The raw material i.e. crude oil procured from within the country and abroad were to be stored in the storage facility.
4. The Respondent entered into a Terminal Service Agreement (TSA) with NOCL for developing and for putting up the storage facility on 'Build, Own,

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Operate, Transfer (BOOT) arrangement for a period of 20 years. The Respondent therefore sought financial arrangement from the Consortium banks to fund the project of putting up the storage facility. The present Petitioners as members of the consortium of banks respectively sanctioned a loan of Rs. 198 Crs and Rs. 98.85 Crs on execution of various loan agreements and mortgage deeds. The Respondent defaulted in repayment of the Financial Debt respectively to the tune of Rs. 251,20,90,427/- and Rs.119,11,78,336/- with effect from 16.03.2015. The Petitioners accordingly came up with the present Petition on 25.09.2018 before the NCLT, Hyderabad Bench with the prayer afford indicated.

5. The Respondent contested the claim by filing a counter. It altogether denies the claim and disputes the same as false, frivolous and baseless. The Petition itself is not maintainable and the Petitioners have no *locus standi* to bring the Application under section 7 of the Code. The lenders including the Petitioners owe certain amounts to the Respondent. Thus, there is no question of the Respondent being a defaulter. It is further contended that the consortium of lenders had sanctioned the loans on the strength of the TSA with NOCL upon satisfying themselves about the viability of the project. The lenders including the Petitioners were conscious of the implications and the interdependency of the viability of the storage facility with the establishment of the refinery. But the refinery proposed be set up by NOCL did not take off. The Respondent as early as 2012 put NOCL on notice that the delay on its part was likely to result in cost escalation. To it NOCL had agreed. The Petitioners and other lenders were also aware of these developments and had asked the Respondent not to move forward with the implementation of the project, as the NOCL project had been put on hold. The claim amount is disputed and the burden is on the

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Petitioners to clarify us to how the amount has been arrived at. The conduct of the Petitioners has been arbitrary and immature. The Petitioners have failed to address the genuine grievances and concerns of the Respondent. Instead they have come up with the present Petition which is not maintainable and is an abuse of process of law and against the spirit of the Code.

6. The Petitioners in their rejoinder have refuted the averments made in the counter. It is submitted that the Petition deserves to be admitted. The Company Petition was transferred to this Tribunal upon its establishment.
7. Basing on the rival pleadings the following issues emerge for determination.
  - I. Whether the Respondent owes a Financial Debt to the Petitioners?
  - II. Whether the Respondent has defaulted in repayment of the Debt?
  - III. Whether the Petition merits admission?

**Issue Nos. I & II:**

8. Admittedly the Respondent had entered into an Agreement (TSA) with NOCL for setting up the storage facility for the proposed refinery project. It had availed credit facility from the consortium of lenders including the Petitioners, respectively the Bank of India and Central Bank of India. It is not disputed that the Petitioner banks have advanced credit facility respectively to the tune of Rs. 198 Crs and Rs. 98.85 Crs. The Respondent availed the credit facility upon execution of loan agreements and mortgage by deposit of title deeds. Financial Debt defined in section 5 (8) of the Code *inter alia* includes money borrowed against payment of interest. Admittedly credit facility carried an

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interest on money advanced. The credit was advanced against the consideration for time value of money. The plea raised by the Respondent that the project could not be completed due to the NOCL's inability to set up the refinery and the reasons for the Respondent's inability to repay the loan as defence would be irrelevant

9. in a proceedings under the Code. Admittedly the Respondent has not repaid the loan. Both the issues are accordingly answered in the affirmative.

**Issue No. III:**

10. According to the Petitioners the date of default is 16.03.2015 (Part-IV of the Company Petition). The Company Petition was filed on 25.09.2018 more than 3 years after the default. In this connection reference may be made to the decision of the Hon'ble Apex Court in Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (Civil Appeal No. 4952 of 2019 decided on 18.09.2019). The Hon'ble Apex Court held as follows.

“Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being an application which is filed under section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run of 21.07.2011, as a result of which the application filed under section 7 would clearly be time-barred. So far as Mr. Banerjees reliance on para 7 of B. K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.”

In view of the law thus settled the present Application being barred by limitation cannot be admitted. Issue No. III is answered in the negative. In view of the finding in the present issue the Application cannot be admitted. Hence ordered.

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**ORDER**

The Company Petition be and the same is rejected on contest. The rejection of this Application however shall not be a bar for the Financial Creditors to recover the debt under law in any other Forum. There would however be no order as to costs.

  
MOHAMMED AJMAL  
MEMBER JUDICIAL