IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. 5, MUMBAI BENCH

CP (IB) 2564/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Corporation Bank,

Stressed Asset Management Vertical 3rd Floor, 301-302, The Eagle's flight, Suren Road.
Off. Andheri Kurla Road, Andheri (East) Mumbai-400093.

... Petitioner

v/s

Ideal Energy Projects Limited,

Wing-B, 1203/1204, Building No. 6 lake Lucerne, sub plot No. 4, phase 3 Lake Homes Chandivali Farm Rd. off A S Marg Powai Mumbai-400076

... Corporate Debtor

Order delivered on: 28.01.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (J)
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Vinita Hombalkal Adv., Ms. Sushila M. Vichale Adv.
For the Corporate Debtor: Mr. Rajiv Shankar Dwevedi Adv., Mr. Shyam Sunder Solanki Adv.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. Corporation Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against M/s Ideal Energy Projects Limited (hereinafter called the 'Corporate Debtor') on the

ground that the Corporate Debtor committed default to the extent of ₹492,30,91,507/-, as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the petitioner has sanctioned/renewed the following facilities to the Corporate Debtor and the due thereon:

Particulars	Date of Loan/ Renewal	Amount of the loan	Outstanding as on 31.05.2019
Term Loan I & II	25.06.2015	235,66,00,000/-	369,78,00,781/-
Term Loan – III	25.06.2015	13,81,00,000/-	20,49,02,109/-
FITL	25.06.2015	70,01,00,000/-	102,03,88,617/-
Total Amount		319,48,00,000/-	492,30,91,507/-

3. The Petitioner enclosed the following documents in support of the facilities granted to the Corporate Debtor:

a) Copy of the Common loan agreement dated 29.09.2009;
b) Copy of the Sanction Letter dated 17.07.2009;
c) Copy of the 1st Indenture dated 01.10.2009;
d) Copy of the 2nd Indenture dated 12.05.2010;
e) Copy of the Sanction dated 28.09.2010;
f) Copy of Deed of hypothecation dated 14.01.2013;
g) Copy of Deed of Pledge of shares dated 14.01.2013;
h) Copy of Joint Deed of hypothecation dated 15.04.2013;
i) Copy of Working Capital Consortium Agreement dated 15.04.2013;
j) Copy of 3rd Indenture of Mortgage dated 22.04.2013;

k) 4th Indenture of Mortgage dated 23.10.2013;

l) Copy of Master Restructuring Agreement dated 30.12.2013;

m) Copy of Pledge Agreement dated 14.02.2014;

n) Copy of 5th indenture of Mortgage dated 29.03.2014;

o) Copy of Sanction Letter dated 25.06.2015;

p) Copy of latest search report from SVP Associates, Cs report dated 29.09.2017;

q) Copy of CIBIL report dated 24.06.2019;

r) Copy of Certificate of Registration for Modification of Charge;

s) Copy od the Demand Notice dated 17.05.2018.

4. The Petitioner enclosed the Statements of accounts of the Corporate Debtor. The Petitioner has also annexed Commercial Credit Information Report of TransUnion (CIBIL) dated 24.06.2019 to further show the default of Corporate Debtor.

5. The Petitioner submits that the Corporate Debtor's account was declared as non-performing assets (NPA) on 28.12.2013. The Petitioner issued demand notice on 17.05.2018 to the Corporate Debtor.

6. The Corporate Debtor in its reply submitted the followings:

a. The amended Form 1 filed by the Petitioner as per the direction of the Adjudicating Authority is not valid and cannot be taken on record.

b. The amended Form 1 filed after seven days' time is time barred.

c. Due to change in coal policy by the government the coal India ltd refused to supply the coal to the Corporate Debtor impacted the project adversely to the extent of entire equity erosion.

d. Due to policy constraints which plagued the power and infrastructure sector the Corporate debtor could not commence their regular operations, etc.

e. The Petitioner scuttled the efforts of the Corporate debtor to sell the business of the Corporate Debtor to strategic investors.

f. The OTS offer submitted by the Corporate Debtor was accepted by the Union Bank of India, Bank of Baroda and Punjab National Bank, the other financial creditors the corporate debtor.

g. The Corporate Debtor was declared as an NPA way back on 28.12.2013, the date of default mentioned in amended form 1 is 26.06.2015 and petition filed on 29.06.2019 is hopelessly time barred.

7. The above submissions of the Corporate debtor from 7(a) to 7(f) cannot come in the way of the admission, in view of the fact that there is debt above ₹1 lakh and the Corporate Debtor committed default in repayment of the debt and the limitation issue referred in 7(g) is dealt with separately.

8. It is appropriate to mention the decision of the Hon'ble Supreme Court in *Innoventive Industries Ltd. Vs. ICICI Bank and Ors.* - (2018) 1 SCC 407, wherein it was held as below:

> "*28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in*

Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

In view of the categorical ruling of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, cited supra, the contentions raised by the Corporate Debtor in the reply does not hold water and has to be rejected *in limine*.

9. In respect of the limitation issue raised by the Corporate debtor at para 7 (g) supra, to have a better understanding of the date of

default, the extract of Part-IV of amended Form-1 filed by the Petitioner is extracted below:

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACHED THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	:	NPA Date : 28.12.2013 Number of Days:

Amount in Rupees

S.No.	Facility/ Loan A/c No.	Date of Loan (last renewal)	NPA Date	Number of Days as on 31.05.2019
1	Term Loan-I and –II	25.06.2015	28.12.2013	1247
2	Term Loan-III	25.06.2015	28.12.2013	1247
3	FITL	25.06.2015	28.12.2013	1187
	TOTAL		319,48,00,000	492,30,91,507

Date of Corporate Debt Restructuring on 30.12.2013.
As the Corporate Debtor committed default in payment as Restructured terms in 44 structured quarterly installments due date starting from 30.06.216 to 31.03.2027.
Therefore, as per the guidelines of RBI, Date of classification of accoun as a Non Performing Asset -28.12.2013

a. Even though, the date of NPA as referred in the Form-1 is 28.12.2013, subsequently on 30.12.2013, the debt of the Corporate Debtor was restructured, and Master Restructuring Agreement was executed between the Corporate Debtor, Canara Bank as monitoring institution and also the Petitioner Bank, wherein the Corporate Debtor was allowed to make the payment in 44 structured quarterly instalments commencing from 30.06.2016 to 31.03.2027. The Petitioner Bank on 25.06.2015 addressed a credit sanction intimation in respect of credit facility to the Corporate Debtor wherein the following facilities were reviewed:

Nature of Loan	Amount	Repayment Schedule
Facility 1 - Term Loan - Review	₹235.66 crores	Repayable in 44 structured quarterly instalments after a moratorium of 34 months commencing from quarter ended on 30.06.2016 and ending on 31.03.2027
Facility 2 - Term Loan - Review	₹13.81 crores	Repayable in 24 structured quarterly instalments commencing from quarter 1 in 2017
Facility 3 – Funded Interest Term Loan - Review	₹70.01 crores	Repayable in 20 structured quarterly instalments commencing from quarter ended on 30.06.2016 and ending on 31.03.2021

However, the Corporate Debtor defaulted in making payment of the first quarter due on 30.06.2016 and the subsequent quarterly instalments also. Hence, the date of default is 30.06.2016, which the Petitioner failed to mention in the amended Form-1. The Corporate Debtor in the reply submitted that the Petitioner mentioned 25.06.2015 as date of default, but in view of the restructuring of loan and issue of sanction letter by the Petitioner on 25.06.2015 and the first default of the restructured loan taken place on 30.06.2016, the date of default is 30.06.2016 only.

b. The Corporate Debtor acknowledged the liability by a letter dated 17.07.2018, after the default on 30.06.2016, which extends the limitation and the same is extracted below:

Dear Sir,

We refer to the following agreements:

Nature of Documents	Date of Documents
Common Loan Agreement	22-09-2009
Other documents relating to loan and security and various undertakings	29-09-2009
1st Indenture of Mortgage	01-10-2009
2nd Indenture of Mortgage	12-05-2010
Letter of revival	20-07-2012
Amendatory Common Loan Agreement	14-01-2013
Supplemental Security Trustee Appointment Agreement	14-01-2013
Deed of Hypothecation	14-01-2013
other documents relating to loan and security and various undertakings	14-01-2013
Working Capital Consortium Agreement	15-04-2013
Joint deed of Hypothecation	15-04-2013
Other documents relating to loan and security and various undertakings	15-04-2013
3rd Indenture of Mortgage	22-04-2013
4th Indenture of Mortgage	23-10-2013
Master Restructuring Agreement	30-12-2013
Security Trustee Agreement	14-02-2014
Share Pledge Agreement	14-02-2014
other documents relating to loan and security and various undertakings	14-02-2014
5th Indenture of Mortgage	29-03-2014
Letter of Revival	24-02-2016

The above agreements or thereabouts in respect of financial assistance aggregating to Rs. 1822.49 Crores sanctioned to us by the consortium of lenders, which were executed by us with yourselves as Lenders' Agent and Security Trustee and other Banks of the consortium of lenders namely (i) ANDHRA BANK, Fort Branch, Nanavati Mahalaya, Fort, Mumbai (ii) UNION BANK OF INDIA, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai, (iii) CORPORATION BANK, Corporate Banking Branch, 104 Bharat House, Mumbai Samachar Marg, Mumbai, (iv) PUNJAB NATIONAL BANK, Large Corporate Branch, Maker Tower "E" Wing, Ground Floor, 85 Cuffe Parade, Mumbai and (v) BANK OF BARODA, Fort Corporate Financial Services Branch, Mumbai Samachar Marg, Mumbai and the charge by way of hypothecation, mortgage and assignment thereby created by us on our assets and rights as mentioned therein to secure all sums standing at the foot of the Term Loan Account(s) and / or other accounts with your Bank and other Banks of the Consortium of Lenders in respect of such facilities.

We do hereby confirm that all security documents executed by us in favour of the consortium of lenders with yourselves as the Lenders' Agent and the Security Trustee in respect of the financial assistance stated above, are subsisting, valid and effective and are fully enforceable against us.

We do hereby acknowledge, for the purposes of Section 18 of the Indian Limitation Act 1963 and in order to preclude any question being raised on limitation regarding our liability to your Bank and other Banks of the consortium of lenders for the payment of the outstanding amounts in respect of the present as well as future indebtedness and liabilities under the said Term Loan Account(s) and / or other accounts together with interest, compound interest, additional interest, liquidated damages, costs, charges, expenses and other moneys in terms of the above mentioned documents that our liability shall remain in full force and with all relative securities, agreements and obligations as mentioned therein.

For IDEAL ENERGY PROJECTS LTD.

J. D. MHAISKAR
CHAIRMAN & MANAGING DIRECTOR

c. In view of the above acknowledgement of liability dated 17.07.18, the limitation to file this preceding got extended by the action of the corporate debtor as provided under Section 18 of the Limitation Act,1963 and this petition filed on 04.07.2019, within 3 years from 17.07.18, is well within the period of limitation.

10. This Adjudicating Authority, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, 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 (SARFAESI Act);

(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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 28.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

VI. That this Bench hereby appoints, Mr. Anil Goel, having his address at, 10A, Kailash Colony, Greater Kailash-I, New Delhi, National Capital Territory of Delhi-110048, having Registration No. IBBI/IPA-001/IP-P00118/2017-18/10253, having email id anilgoel@aaainsolvency.com as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Suchitra Kanuparthi
Member (J)