

C.P. NO.1729/IBC/NCLT/MAH/2017

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

C.P. NO.1729/IBC/NCLT/MAH/2017

**Under Section 7 of IBC, 2016**

**In the matter of**

JM Financial Asset Reconstruction Company Limited

...Applicant/Financial Creditor

**Vs.**

Yes Power & Infrastructure Limited

Respondent/ Corporate Debtor

Order delivered on:- 11.05.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Mr. Shyam Kapadia, Counsel a/w Ms. Rubina Khan i/b  
Fortis India Law

For the Respondent: None Present.

Per: Ravikumar Duraisamy, Member (Technical)



**ORDER**

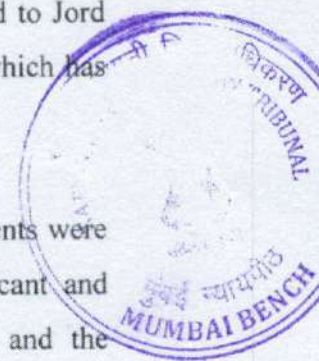
1. The Applicant/Financial Creditor sanctioned a loan of ₹ 10,00,00,000/- (Rupees Ten Crores only) on 13/09/2010 to the Principal Borrower Jord Engineers India Limited and Yes Power & Infrastructure Ltd. is the Corporate Debtor, in the present Company Petition has guaranteed the repayment to Financial Creditor.
2. The Corporate Debtor was incorporated on 08/02/1991, Authorized Share Capital is ₹ 2,00,00,000/- (Rupees Two Crores Only) and Paid Up Share Capital of the Corporate Debtor is ₹ 1,95,00,000/- (Rupees One Crore Ninety Five Lakhs Only) and address of the Registered Office of



C.P. NO.1729/IBC/NCLT/MAH/2017

the Corporate Debtor is Room No 173, Vijay Niwas, Near Old Water Tank, G. B. Road, Thane (West) Mumbai: 400606, Maharashtra, India.

3. Total Amount of debt is ₹ 10,00,00,000 (Rupees Ten Crores Only). On 25.09.2010, ₹ 3,25,00,000 (Three Crores Twenty Five Lakhs Only) was disbursed on 30/11/2010, ₹ 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs Only) was disbursed and on 04/12/2010 ₹ 5,00,00,000/- (Rupees Five Crores Only) was disbursed. Thus an aggregate amount of ₹ 10,00,00,000/ (Rupees Ten Crores Only) has been disbursed to Jord Engineers India Ltd (Principal Borrower), the repayment of which has been guaranteed by the Corporate Debtor herein.
4. On 24/09/2010, Loan Agreement and other transaction documents were executed by the Principal Borrower in favour of the Applicant and Financial Creditor to avail the said loan of ₹ 10 Crores, and the Corporate Debtor passed a Board Resolution on the same day resolving to execute Corporate Guarantee and also hypothecate and mortgage its properties in favour of the Applicant/Financial Creditor. The Corporate Debtor also Executed Corporate Guarantee on the same day Guaranteeing the repayment of the said loan of ₹ 10 Crores granted to and availed by the Principal Borrower Jord Engineers India Limited. The Corporate Debtor executed Deed of Hypothecation in favour of the Applicant thereby creating first exclusive charge in favour of the Applicant on the Hypothecated assets more particularly mentioned in the said Deed of Hypothecation on 24/09/2010.
5. The charge on hypothecated assets was registered with ROC, Mumbai under charge ID 10245605 and certificate of registration of charge was issued on 02/11/2010. On 18/11/2010, the Corporate Debtor executed Declarations with respect to mortgage and thereafter created first exclusive mortgage charge in favour of the Applicant in respect of its





C.P. NO.1729/IBC/NCLT/MAH/2017

properties (i.e. Non Agricultural land in R.S. No. 111/paiki, Vododara and Agricultural lands in R.S. No. 42/18 Paiki) by way of deposit of title deeds of the mortgaged properties with the Applicant. On 11/06/2012, the supplementary Agreement was executed between the principal borrower Jord Engineers India Limited and the Applicant whereby the principal borrower acknowledged the outstanding amounts and the Applicant granted extension in time for repayment of entire outstanding dues. Loan Recall Notice for claim amount of ₹ 15,56,70,926/- as on 30/09/2013 was issued to the Principal Borrower, a copy whereof was also sent to the Corporate Debtor on 24/10/2013.

6. On 18/11/2013 the demand notice under section 13(2) of the SARFAESI Act was issued to the Principal Borrower and the Guarantors including the Corporate Debtor herein. On 07/03/2014, the Corporate Debtor addressed a letter to the Applicant thereby stating its representation to the above said demand notice. On 07/03/2014 the Corporate Debtor although replied to the demand notice issued by the Applicant but failed to and committed default in making payment of the claim amount of the Applicant and the Applicant replied to the representation of the Corporate Debtor. On an application made by Applicant, the District Magistrate, Vadodara ordered for physical possession of the mortgaged properties U/s 14 of the SARFAESI Act on 28/07/2014.

7. In a Special Civil Application No. 11437 of 2014 filed by the Corporate Debtor against the Applicant challenging the SARFAESI steps of the Applicant, the Hon'ble High Court of Gujarat on 17.09.2014 upheld the right of the Applicant to initiate recovery proceedings against the Corporate Debtor. Further in Note 21 of the Annual Report, the Corporate Debtor itself has admitted to have given corporate guarantee (to the extent of ₹ 10,00,00,000/-) in respect of borrowing by another company. It has also been admitted that the lender has initiated action against the company u/s 13(2) and section 13(4) of the SARFAESI Act,





C.P. NO.1729/IBC/NCLT/MAH/2017

2002 on 31/03/2015. On 17/05/2017 the Applicant filed recovery proceedings before the Hon'ble DRT-II, Ahmedabad viz. OA No. 618/2017 against the Corporate Debtor and others for claim of ₹ 32,51,17,610/- well within the limitation period. The Hon'ble DRT-II, Ahmedabad took prima facie cognizance of the claim of the Applicant against the Corporate Debtor and appointed an Advocate Commissioner in the matter on 19/06/2017. Since the Corporate Debtor has failed and committed default in repayment of the claim amount of the Applicant, the Applicant has filed the present application under the provisions of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on 13.12.2017.

8. The financial Creditor has also recommended Ms. Snehal A Kamdar, Registration Number:- IBBI/PA-001/IP-P00415/2017-18/10738 Add:- 302, Poonam Pearl, Juhu Lane, Andheri (W), Mumbai: 400058, and Email Id:- [jjk@jjkandco.com](mailto:jjk@jjkandco.com) as Interim Resolution Professional (IRP).

9. No reply is filed by the Corporate Debtor and the Respondent did not present for any of the hearings before the Adjudication Authority.

10. Upon perusal of the documents of the financial creditor, we are satisfied that the Corporate Debtor has failed to fulfil its obligation to the financial creditor inspite of execution of corporate guarantee, Guaranteeing the repayment of the said loan of ₹ 10 Crores granted to and availed by the Principal Borrower i.e. Jord Engineers India Limited on 24/09/2010. Further in Note 21 of the Annual Report, the Corporate Debtor itself had admitted to have given corporate guarantee (to the extent of ₹ 10,00,00,000/-) in respect of borrowing by another company, the Corporate Debtor also executed the deed of hypothecation in favour of the applicant thereby creating first exclusive charge on the properties in favour of the Applicant as stated above.





11. In view of the reasons mentioned above, we are satisfied that debt & default exists and it is a fit case for admission U/s 9 of I & B Code, therefore we admit this case by declaring moratorium U/s 14 of the Code with the following directions:

I(a) that this Bench hereby prohibits 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 Securitization 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) 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 11.05.2018 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of





C.P. NO.1729/IBC/NCLT/MAH/2017

section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

12. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.

13. That this bench hereby appoints Ms. Snehal A Kamdar, Insolvency Professional, Reg No is IBBI/IPA-001/IP-P00415/2017-18/10738. to carry out the functions of IRP as mentioned under I & B code 2016. The IRP/RP is also directed to strictly comply with the provisions of I & B code, circulars, directions issued by IBBI in this regard.

14. Accordingly, this Petition is admitted

15. The Registry is hereby directed to communicate this order to both the parties.

Sd/-

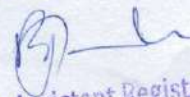
RAVIKUMAR DURAISAMY  
MEMBER (TECHNICAL)

Sd/-

B.S.V. PRAKASH KUMAR  
MEMBER (JUDICIAL)



Certified True Copy  
Copy Issued "free of cost"  
On 22/5/2018



Assistant Registrar  
National Company Law Tribunal Mumbai Bench

Sec (PS)