

**NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.122/Chd/HP/2019**

**Under Section 7 of the Insolvency  
and Bankruptcy Code, 2016.**

**In the matter of:**

**Central Bank of India,**  
having its Central office at  
Harsha Bhawan, E-Block,  
Chandermukhi, Nariman Point,  
Mumbai – 400021.

**And**

Branch Office at 10,  
Camac Street, Kolkata – 700017  
through its attorney and Principal  
Officer, Shri Niranjana Biswal,  
Assistant General Manager,  
Camac Street Branch,  
Industry House, 10 Camac Street,  
Kolkata – 700017.

....Applicant/Financial Creditor

Versus

**M/s Luni Power Company Pvt.Ltd.,**  
Having its registered office at  
House No.04, Ward No.01,  
Bandla Tea Estate, Near T-Bud Hotel,  
Palampur, Himachal Pradesh – 176061.

...Respondent/Corporate Debtor

**Judgement delivered on: 23.12.2019**

**Coram: HON'BLE CHIEF JUSTICE M.M.KUMAR, PRESIDENT  
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. R.S.Bhatia, Advocate

For the Respondent : Mr. Rahul Bisht, Advocate

**Per: Pradeep R. Sethi, Member (Technical)**

**JUDGEMENT**

The application in the prescribed Form No.1 is filed by Central Bank of India (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Luni Power Company Private Limited (hereinafter referred to as **Corporate Debtor**). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Shri Niranjana Biswal, Assistant General Manager, Central Bank of India, Camac Street Branch, Industry House, 10 Camac Street, Kolkata. His affidavit verifying the contents of the application is at page 22-23 of the petition. The Power of Attorney and Authority Letter in favour of Shri Niranjana Biswal as constituted attorney for the Bank is at Annexure-A/1 and A/2 of the petition.

2. The master data of the Corporate Debtor is stated to be filed at page 75 of the petition. The Corporate Debtor is stated to be incorporated on 18.05.2001 and the registered address is stated to be at *House No.04, Ward No.01, Bandla Tea Estate, Near T-Bud Hotel, Palampur, Himachal Pradesh – 176061*. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Part-IV of Form No.1 that the Corporate Debtor has been availing loan since year 2012 from the Financial Creditor. It is also stated that the Corporate Debtor was sanctioned term loan of Rs.15 crores in order to set up 4.5 MW Hydro Power Project at village Doel, Tehsil Baijnath, District Kangra, Himachal Pradesh. As per the initial sanction, the loan was stated to be repaid in 28 quarterly instalments starting from 30.09.2014. It is also stated

that vide letter dated 05.03.2016 COD of the project was envisaged on 31.03.2017 and therefore, the repayment of the loan was allowed to commence from June, 2017. The details of the present outstanding is given as under:-

Facilities	Amount due as on NPA 07.06.2017 as per statement of account (in ₹)	Interest from 07.06.2017 to 31.12.2018 (in ₹)	Penal Interest from 07.06.2017 to 31.12.2018 (in ₹)	Total ((in ₹)
Term Loan	11,44,87,206.00	5,99,85,375.00	12,987.00	17,44,85,568.00

As per Part IV of Form 1, the total amount due towards the Corporate Debtor is Rs.17,44,85,568.00 with interest upto 31.12.2018. The date of default is stated to be 07.06.2017.

4. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are secured by way of equitable mortgage on the entire project, movable and immovable assets both present and future; exclusive charge by way of hypothecation of the entire project, movable assets of the company present and future; assignment of all revenues and receivables of the company; equitable mortgage of land bearing 1.01 hectare; assignment of development rights over 4.06 hectares of forest Government land. It is also stated that the loan was collectively secured by way of DSRA of Rs.0.40 crore to be maintained by way of Bank Fixed Deposit and earlier to the Bank and pledge of shares in the name of Subhash Kabini Power Corporation Limited worth Rs.48.89 lacs representing 36.23% shareholding in Corporate Debtor. The value of the mortgaged property is stated to be Rs.44.43 crores. Copy of the details of security is attached as Annexure A / 6

of the petition. Also, certificate of charge with the ROC is appended with the petition as Annexure A / 7 of the petition. It is further stated that the loan is secured by personal guarantee of Shri Subhash Chand Sethi and corporate guarantee of Subhash Kabini Power Corporation Limited. Annexure A / 16 is the copy of Credit Information Bureau India Limited (CIBIL) dated 04.12.2018, Annexure A / 14 and Annexure A / 15 are the copies of guarantee deeds (dated 28.06.2013), Annexure A / 12 is the copy of debit balance confirmation dated 31.03.2016, Annexure A / 9 is the copy of sanction (dated 16.11.2012), Annexure A/10 is the copy of resolution (dated 11.06.2013) and Annexure A/11 is the copy of agreement (dated 28.06.2013). Annexure A/17 is the statement of Term Loan Account No.3266267620 of the Corporate Debtor showing amount due from the Corporate Debtor of Rs.11,44,87,206/- on 19.09.2018. The statement of account is accompanied by certificate under Banker's Book of Evidence Act.

5. It is stated that no repayment of loan has been made after 06.03.2017 and there has been default in the payment of instalments and interest since 06.03.2017 and the account was classified as NPA on 07.06.2017. Further, demand notice dated 06.12.2018 was issued upon the Corporate Debtor to discharge all the liabilities towards the Bank within a period of fifteen days and it is stated in the notice that in the event of failure to discharge the liability, the Bank would be constrained to initiate proceedings under Section 7 of the Code. It is contended that no amount has been paid by the Corporate Debtor even after successful service of this demand notice. Hence, this petition. Copy of the demand notice is marked as Annexure A / 8 of the petition.

6. In Part-III of Form No.1 Mr. Sanjay Kumar Agarwal, Registration No.IBBI/IPA-001/IP-00062/2017-2018/10140 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 dated 11.02.2018 submitted by the proposed IRP is stated to be attached as Annexure A/5 of the petition.

7. Vide order dated 29.03.2019, notice of the petition was directed to be issued to the Corporate Debtor.

8. The Corporate Debtor filed reply vide diary No.4455, dated 30.08.2019. It is submitted that a proposal for One Time Settlement (OTS) for the term loan account has been pending with the Financial Creditor. It is further submitted that the Financial Creditor instead of approving the OTS proposal, has chosen to initiate proceedings for recovery of its alleged dues. It is also stated that the proceedings for insolvency resolution process cannot be initiated prior to approval or rejection of the OTS proposal lying with the Bank.

9. It is further submitted that the Corporate Debtor has made all possible efforts to regularise the loan account and have requested the Bank for restructuring of the repayment schedule and also has attached the correspondence in relation to it as Annexure B (copies of letters dated 05.01.2018 and 29.01.2018). It is also stated that the Bank has also acknowledged the receipt of Rs.25,00,000/- made by the Corporate Debtor for regularisation of the loan account and the copy of the letter dated 02.02.2018 has been attached as Annexure C with the reply (Diary No.4455, dated 30.08.2019). It is also submitted that the market value of the immovable properties as mortgaged towards security for the loan far exceeds the claim of the Bank as stated in the petition.

10. We have carefully heard and considered the arguments of the learned counsel for the Bank and the Corporate Debtor and have also perused the record carefully.

11. Section 7(5)(a) of the Code is as follows:-

*“(5) Where the Adjudicating Authority is satisfied that—  
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

12. In the present case, the occurrence of default is evidenced by the details furnished by the bank including report of CIBIL and the copies of statement of accounts duly certified under the Bankers Books Evidence Act 1891 placed at Annexures A/16 and A/17 of the petition respectively.

13. It is evident from the contents of the petition that the Corporate Debtor has defaulted in the repayment of loan of the Bank. It is also observed that despite the service of demand notice dated 06.12.2018 (Annexure A/8) calling upon the Corporate Debtor to discharge in full its liabilities due within a period of 15 days from the date of receipt of the notice, the payment was not received by the Bank. It is stated in the reply of the Corporate Debtor that an OTS proposal dated 19.11.2018 has been pending with the Bank and it is contended that the Bank cannot prior to its decision of either rejecting or approving the OTS, commence proceedings under the Code against the Corporate Debtor. We note that the demand notice dated 06.12.2018 was sent by the Bank after the date of 19.11.2018 of the OTS proposal. Therefore, the OTS proposal is to be taken to be rejected by the Bank. Moreover, the issue involved is whether a default has occurred and pendency, if any, of OTS proposal would be irrelevant. Similarly, the contention of the Corporate Debtor

that the market value of the mortgaged immovable properties is more than the outstanding loan is not a bar to the initiation of proceedings under Section 7 of the Code, when occurrence of default is proved. Thus, this petition deserves to be admitted as it is clear that both 'debt' and 'default' are proved beyond doubt here.

14. The application filed in the prescribed Form No. I is found to be complete.

15. The proposed Interim Resolution Professional, Mr. Sanjay Kumar Agarwal, Registration No.IBBI/IPA-001/IP-00062/2017-2018/10140 has filed Form No.2 (Annexure A/4 of the petition) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also stated that he is currently serving as a Resolution Professional in two proceedings and Liquidator in one proceeding.

16. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Luni Power Company Private Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

17. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (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 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.

18. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sanjay Kumar Agarwal and there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Kumar Agarwal, resident of

Draupadi Mansion, 3<sup>rd</sup> Floor, 11, Brabourne Road, Kolkata, West Bengal - 700001 having Registration No.IBBI/IPA-001/IP-00062/2017-2018/10140 and email address sanjaycal@hotmail.com, Mobile No. 9830946380, 9903167554 as an Interim Resolution Professional with the following directions:

- i) The term of appointment of Mr. Sanjay Kumar Agarwal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;
- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate

debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.
- viii) The Ministry of Corporate Affairs is directed to update the status of Corporate Debtor in its master data (Website) to apprise the public at large and compliance be sent to the Adjudicating Authority within two weeks from today.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Pronounced in open Court.  
President, NCLT is not sitting  
in the Bench today.

Sd/-  
(Chief Justice M.M. Kumar, Retd.)  
President, NCLT,  
Camp at Chandigarh

December 23, 2019  
Ashwani