

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

C.P. (IB) No.137/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Indian Renewable Energy
Development Agency Limited
Regd. Off: 'India Habitat Centre',
East Court, Core 4-A, 1st Floor,
Lodhi Road,
New Delhi – 110 003.

- Petitioner/Financial Creditor

Versus

M/s. Noble Ispat & Energies Limited
Regd. Off: Behind Monsanto India Ltd.,
Moka Road, Sirivar Bellary,
Karnataka – 583 103.

- Respondent/Corporate Debtor

Date of Order: 26th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner/
Financial Creditor : Shri Pawan Sharma

For the Respondent/
Corporate Debtor : --

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.137/BB/2019 is filed by M/s. Indian Renewable Energy
Development Agency Limited (hereinafter referred to as 'Petitioner/



Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s.Noble Ispat & Energies Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for total Principal outstanding amount of Rs.14,02,00,000/- (Rupees Fourteen Crores and Two Lakhs Only) as on 30.04.2018.

2. Brief facts of the case leading to filing of the instant Company Petition are as follows:

(1) M/s. Indian Renewable Energy Development Agency Limited (IREDA) (hereinafter referred to as 'Petitioner/Financial Creditor') is a Union Government Company incorporated under the provisions of Companies Act on 11.03.1987 with CIN: U65100DL1987GOI027265, and a Public Financial Institution, being notified as such under Section 2(72) of the Companies Act, 2013 and having its registered office at Core 4-A, East Court, 1st Floor, 'India Habitat Centre' Lodhi Road, New Delhi-110003. Its Authorized Capital, as per master data, is Rs.6000,00,00,000/- and Paid-up Capital is Rs.784,60,00,000/-. The Company is engaged in the activity of lending financial assistance for renewable energy and energy efficiency projects. The present application is being filed by Shri Sushant Kumar Dey presently working as Assistant General Manager with the Financial Creditor, who is authorized to initiate appropriate actions to protect the interest of Financial Creditor and to file necessary application before Adjudicating Authority in the matter of M/s. Noble Ispat & Energies Limited

as per the Circular No.Sectt./DOP/87-MS/IREDA dated 21.05.2004 along with Authority letter dated 12.06.2018 issued by the Financial Creditor in favour of authorised person.

- (2) M/s. Noble Ispat & Energies Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Public Limited Company incorporated under the Companies Act, 1956 on 02.07.1999 with CIN: U45203KA1999PLC025407, and having its registered office at Behind Monsanto India Limited, Moka Road, Sirivar Bellary, Karnataka-583103. The Authorized Share Capital of the Company as per Memorandum of Association is Rs.20,00,00,000/- (Rupees Twenty Crores Only) divided into 20,00,000 Equity Shares of Rs.100/- each and the Paid-up Share Capital of the Company as reflected on the master data of MCA website is Rs.8,00,00,000/- (Rupees Eight Crores Only).
- (3) It is stated that the Corporate Debtor was previously known as M/s. Noble Distilleries & Powers Limited, however, vide SRN A66553637 dated 12.04.2010, the name of the Corporate Debtor was changed to M/s. Noble Ispat & Energies Limited. The Corporate Debtor has approached the Financial Creditor by submitting a loan proposal for grant of a term loan of Rs.21,30,00,000/- (Rupees Twenty One Crores and Thirty Lakhs Only) for setting up of 8MW Captive Power Plant utilizing Waste Heat Recovery boiler (WHRB) and Fluidized Bed Combustion Boiler at Sirivar Village, Bellary District, in the State of Karnataka, under Project Financing Scheme. Accordingly, the Financial Creditor originally sanctioned Term Loan of Rs.21,30,00,000/- in favour of the Corporate Debtor vide sanction letter dated 21.03.2007 bearing Number

221/2410/EEC/2006/IREDA/8043 in favour of Corporate Debtor for setting up 8 MW Captive Power Plant Utilizing Waste Heat Recovery Boiler and Fluidized Bed Combustion Boiler at Sirivar Village, Bellary District, Karnataka (Project No.1802). And the sanction was later given effect by way of entering into Loan Agreement dated 09.05.2007, and further Supplementary Agreement dated 31.07.2009 modifying the terms of the Loan Agreement. In pursuant to the Loan Agreement, the Corporate Debtor executed various securities in favour of the Financial Creditor.

- (4) It is further stated that with respect to Corporate Debtor's project moveable and immoveable assets as specified in Part IV and Part V of the present application, first charge was created in favour of Financial Creditor herein on pari-passu basis with Canara Bank to secure the loan of Rs.21,30,00,000/- (Rupees Twenty One Crores and Thirty Lakhs Only) of Financial Creditor and Rs.12,00,00,000/- (Rupees Twelve Crores Only) of Canara Bank.
- (5) It is stated that pursuant to the creation of securities as specified in Part IV(1) (paragraph 2) and Part V (1) of the Application below out of the sanctioned loan, an amount to the tune of Rs.14,02,00,000/- (Rupees Fourteen Crores and Two Lakhs Only) was disbursed into the credit of the Corporate Debtor's account in three tranches. Accordingly, various postdated cheques were issued by the Corporate Debtor, in order to discharge its liability. On depositing those cheques with the Bank account of the Financial Creditor, those cheques were returned unpaid by the Bankers of the Corporate Debtor for the reason "Fund Insufficient". Therefore, the Financial Creditor has

filed suits under Section 138 of the Negotiable Instruments Act, 1981 in the Competent Court and the same are pending.

- (6) It is stated that various written communications were also sent since the default took place, calling for the outstanding loan amount along with interest from the Corporate Debtor. However, despite of all efforts, the Corporate Debtor have miserably failed, avoided and neglected to make payment of the outstanding loan amount and interest thereupon and the account of Corporate Debtor was classified as Non-Performing Asset (NPA) by the Financial Creditor on 31.03.2012. The Corporate Debtor even failed to take serious efforts to implement the project in question. The Corporate Debtor had even defaulted the secured loan availed from Canara Bank and the Bank subsequently proceeded for the recovery of the default amount by issuing a Notice under Section 13(2) of the Chapter III of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act, 2002') on 28.04.2012 and also moved an appropriate Petition before Hon'ble Debt Recovery Tribunal, Bangalore vide OA-No.30/2013.
- (7) It is stated that the Financial Creditor, thereafter issued notice under Section 13(2) of the Chapter III of the SARFAESI Act, 2002 dated 24.09.2012 in order to exercise its right against the Corporate Debtor for recovering the outstanding amount. The Corporate Debtor acknowledged its inability to pay the outstanding amount and offered for one time settlement, however, being the settlement condition unfavorable to the Financial Creditor, the request was not conceded. Subsequently, the Financial Creditor issued a notice to the Guarantors on



09.09.2015 and invoked the said Guarantees and sought the repayment of loan dues jointly and severally. The Financial Creditor even proceeded for the recovery of the default amount and moved appropriate Petition before Hon'ble Debts Recovery Tribunal, New Delhi vide OA-No. 443/2015 on 23.09.2015. The Hon'ble DRT, New Delhi passed an interim order dated 11.02.2016 by directing and restraining defendants from transferring, alienating or otherwise dealing with or disposing off in any manner the properties of defendant no.1 (Corporate Debtor) further, directing and restraining defendants no.2 to 4 (Promoters/Directors) from transferring, alienating or otherwise dealing with or disposing off in any manner all the hypothecated movable properties and assets belonging to them till the further orders of the Tribunal. The matter is pending for exhibition of documents before Registrar, Hon'ble DRT, New Delhi.

(8) It is stated that as on 30.04.2018, the following amount is due:

Sr. No.	Particulars	As on 30.04.2018 (Rs.)
1.	Principal amount	14,02,00,000
2.	Interest Amount	25,78,18,541
3.	LD Amount	4,00,59,978
4.	IC Amount	3,57,326
<i>Total</i>		43,84,35,845

(9) In view of facts and circumstances narrated above, the Financial Creditor prays the Adjudicating Authority to initiate the CIRP against the Corporate Debtor to do substantive justice to the Financial Creditors and other creditors of the Corporate Debtor.

3. The case is listed for admission on various dates viz. 18.01.2019, 23.01.2019, 30.01.2019, 20.02.2019, 18.03.2019, 15.04.2019, 08.05.2019, 03.06.2019, 14.06.2019, 26.06.2019, 28.06.2019,



26.07.2019, 19.08.2019 and 26.08.2019, and it is adjourned on those dates at the request of the learned Counsel for the Petitioner to comply with the office objections, to serve notice on the Respondent etc. The Tribunal ordered notice on 15.04.2019 to the Corporate Debtor. In accordance with that notice, the Petitioner has sent a copy of the notice along with the entire Company Petition by Speed Post on 26.04.2019. However, the above notice was returned back with remarks 'Addressee Moved'. However, the cover which was returned is in mutilated condition.

4. Heard Shri Pawan Sharma, learned Counsel for the Petitioner. None appeared for the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code.
5. Shri Pawan Sharma, learned Counsel for the Petitioner asserted that the Corporate Debtor is still active and they have intentionally avoided the notice of CP sent by Regd. Post. They have also filed a Memo dated 20.05.2019 by enclosing the copies of the speed post and track record. It is contended that service sent by Regd. post may be deemed to have completed as they are intentionally avoiding it. The Petitioner being a Public Financial Institution notified as such under Section 2(72) of the Companies Act, 2013, it is the responsibility of the Corporate Debtor to repay the loan taken. The instant Company Petition is filed in accordance with law, and the debt and default in question are not in dispute, and admittedly, the Respondent is facing cases before DRT and a qualified Resolution Professional namely Shri Rajendra Prasad Tak having Regn. No.IBBI/IPA-001/IP-P00526/2017-18/10951, who has filed his written consent in Form-2 dated 15.11.2018 and Affidavit dated 15.11.2018 by inter alia declaring that he is a qualified Resolution Professional and expressed his willingness to take up the



appointment of the IRP in respect of the Corporate Debtor if the Adjudicating Authority admits the CP and that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. Therefore, the learned Counsel urged the Tribunal to admit the case by initiating CIRP, appoint IRP, etc.

6. It is not in dispute that the loan in question was extended to the Respondent and the Respondent has executed all the necessary documents and mortgaged the property of the Company and Shri S. Basavaraj, Shri S. Linganna, Shri Murali Krishna have given personal guarantee to the loan availed by the Respondent. The Petitioner has also given a notice dated 09.09.2015 to the Guarantors by demanding to repay the loan taken by the Corporate Debtor. The Respondent also given postdated cheques for due payment of the loan they have taken. On dishonor of the cheques, the Respondent also initiated criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881. It is also not in dispute that account of the Corporate Debtor was declared as NPA as early as 01.07.2011/ 31.03.2012. The Petitioner also issued notice dated 24.09.2012 under Section 13(2) of the SARFAESI Act, 2002 by calling upon the Respondent as well as the Guarantors to pay a sum of Rs.17,83,36,276/- (Rupees Seventeen Crore Eighty Three Lakhs Thirty Six Thousand Two Hundred and Seventy Six Only) along with compound interest @ 14% from 01.04.2012 and additional interest by way of liquidated damages thereon with effect from 01.07.2012.
7. When the Respondent failed to pay the outstanding amount, they have filed OA No.443/2015 before Debts Recovery Tribunal-1, New Delhi, against the Respondent as well as other Directors by claiming



Rs.28,30,95,625/-, which consists of Rs.14,02,00,000/- towards the Principal outstanding amount, Rs.12,80,21,634/- towards interest amount, Rs.1,47,57,385/- towards liquidated damages and Rs.1,16,606/- towards incidental charges, along with further interest. Accordingly, after considering the matter, the DRT-1, New Delhi vide interim order dated 11.02.2016 has inter alia *restrained the Company and its Directors (Defendants No.2 to 4 therein) from transferring, alienating or otherwise dealing with, or disposing off, in any manner, in the mortgaged properties till further orders of this Tribunal.* Apart from the said case filed by the Petitioner, Canara Bank has also filed a case before the DRT, Bengaluru and the case filed before the DRT, New Delhi is stated to be pending disposal. The default accumulated as of 30.04.2018 is Rs.43,84,35,845/-.

8. So far as the service of notice on the Respondent is concerned, the Respondent is well aware of the proceedings initiated by the Petitioner before the DRT, Criminal Court, etc. The website of the NCLT also displays on its website that the case is being listed. The Petitioner also has sent a copy of the notice ordered by the Adjudicating Authority to the Respondent by speed post and proof was also submitted. The Respondent though having the knowledge about the case, is avoiding to appear before the Adjudicating Authority. Therefore, we declare deemed service of the petition on the Respondent and thus deciding the case of admission as per merits of the case and the law on the issue.
9. As per law, requisite conditions/parameters to consider for an Application/Petition, filed under Section 7 of the Code are enumerated by the Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of



M/s. Innoventive Industries Ltd Vs. ICICI Bank & Anr., has dealt with the issue of admission of a case, filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

“55) Process of initiation of Insolvency Resolution Process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B, the trigger for filing of an application by a Financial Creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the Financial Creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. “record of the default” recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

56) The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

“(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the Financial Creditor under sub-section (3)”.

57) Sub-Section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a Financial Creditors. Where the Adjudicating Authority is satisfied that the documents are complete or incomplete.



58) The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the Financial Creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the Financial Creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'.

The Hon'ble Supreme Court has upheld the above judgment in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon'ble Supreme Court has adverted to the Section 7, at para 28, which reads as under:

"28) When it comes to 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 I&B (AAA), 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 Poster 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 the 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 the 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 also 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 97), 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."

10. In the light of the extant provisions of the Code, and the law as mentioned above, the point for consideration for an application filed under Section 7 of the Code is whether debt and default is established or not. In the instant case, as mentioned supra, the debt and default is admittedly are not in dispute. The Respondent is admittedly facing DRT proceedings as stated supra, for the same cause of action and thus it is deemed to be an Insolvent Company to initiate CIRP and pass necessary consequential orders.
11. The instant Company Petition is filed strictly in accordance with law by submitting all supporting documents and a qualified Resolution Professional namely Shri Rajendra Prasad Tak having Regn. No.IBBI/IPA-001/IP-P00526/2017-18/10951 is suggested, who also has filed his written consent. Therefore, he is prima facie eligible to be appointed as IRP. So far as the issue whether only name of the panel



prepared by IBBI for Bengaluru Bench, is invariably to be chosen or not is concerned, the said RP has given a written communication dated 15.11.2018 by inter alia stating that he is a qualified Resolution Professional with Regn.No.IBBI/IPA-001/IP-P00526/2017-18/10951 and is eligible to be appointed as IRP in respect of the Corporate Debtor. Therefore, there is no bar to appoint him even though his name is not figured in the list of names forwarded by the IBBI. Learned Counsel for the Petitioner also submits that since the Registered Office of the Petitioner is in Delhi and the DRT proceedings also pending before the DRT, there is no bar for the Adjudicating Authority to appoint him as the IRP.

12. It is a settled position of law that the proceedings under the provisions of the Code will lie before the Adjudicating Authority in spite of other proceedings before other forums which includes DRT, Criminal Court, etc. Therefore, there is no bar to maintain the instant Petition before this Adjudicating Authority under Section 7 of the Code. Even though the interim orders passed by the DRT-1, Delhi vide order dated 11.02.2016 restraining the Respondent from transferring/alienating etc., this Adjudicating Authority can still pass moratorium in respect of the Corporate Debtor namely M/s. Noble Ispat & Energies Limited. Therefore, we are of the considered view that the Company Petition is a fit case to admit for initiating the CIRP, appointing IRP, etc.
13. In view of the above facts and circumstances of the case and by exercising powers conferred on this Adjudicating Authority, under Section 7(5)(a) and other extant provisions of the Code, C.P. (IB) No.137/BB/2019 is hereby admitted with the following consequential directions:



- (1) We hereby appointed **Shri Rajendra Prasad Tak having Regn. No.IBBI/IPA-001/IP-P00526/2017-18/10951**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely **M/s. Noble Ispat & Energies Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.
- (2) The following moratorium is declared prohibiting all of the following, namely:
- 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.
 - e. 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.



- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Registry is directed to issue copy of this order to Shri Rajendra Prasad Tak, IRP and also to the Insolvency and Bankruptcy Board of India.
- (7) Post the case for report of the IRP on **20th September, 2019**.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL