IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 880/MB-VI/2023

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

GLOBAL WIND INFRASTRUCTURE AND SERVICES PRIVATE LIMITED
[CIN: U74900DN2009PTC000294]
Registered Office: No. 211, 2nd Floor
Survey No. 24/1, 26, 27,28, 358/2/2
359/1, Village Kherdi, Kala, Khanvel
Silvassa, Dadra & Nagar Haveli-396230.

…Operational Creditor

V/s

M/s. TRIUMVIRATE SORORITY PRIVATE LIMITED
[CIN: U70100MH2006PTC160725]
Registered Office: 502, Plot No. 91/94
Prabhat Colony, Santacruz (East)
Mumbai -400055, Maharashtra.

...Corporate Debtor

Reserved: 27.10.2023
Pronounced: 21.11.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SMT. MADHU SINHA, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. G. Aniruth Purusothaman

Corporate Debtor: Adv. Yash Jariwala

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. **Background**

1.1. This Company Petition bearing C.P. (IB) No. 880/MB/C-VI/2023 (Application) was filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Mr. Suresh Pandian Madasamy, duly authorised by Global Wind Infrastructure Private Limited, the Operational Creditor (OC), *vide* Board Resolution dated 15.06.2023 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Triumvirate Sorority Private Limited, the Corporate Debtor (CD).

1.2. The Application was filed on 11.08.2023 before this Adjudicatory Authority in relation to a total amount claimed by the OC as default of Rs. 2,88,08,385/- (Two Crores Eighty-Eight Lakhs Eight Thousand Three Hundred Eighty-Five Rupees) for the period from 30.06.2021 to 30.06.2023, on the basis of unpaid invoices sent by the OC to the CD on different dates.

1.3. The date of default as mentioned in the Part IV of the Application is 03.06.2021 i.e., the date on which the payment against the OC's invoice (first invoice raised) No. 0014 dated 09.06.2021 was due to be paid by the CD to the OC.

2. **Contentions of OC**

2.1. The OC is, *inter alia*, engaged in the business of operation and maintenance of wind farm projects for generating electricity by means of Wind Turbine Generators (WTGs). The CD is engaged in the business of electricity generation and was engaged in setting up of 2.25 MV Wind Farm project in Naranapuram and Govindpuram Village, located in Dharapuram Taluka, in the State of Tamil Nadu.

2.2. The OC submits that it was approached by the CD to provide both preventive and breakdown maintenance of the WTGs along with related equipment including replacement of parts, etc.; for the purpose of smooth functioning of the WTGs, following which, the OC rendered its services to the CD since 2009, as per mutually agreed terms for which the CD had made regular payments. At the time of initial contractual relationship, the name of the CD was AAA Pivotal Enterprises Private Limited, which was later merged with four other private companies related to the infrastructure, in terms of the Hon'ble Bombay High Court's order dated 28.09.2015. Later, the CD changed its name from AAA Corporation Private Limited to "Triumvirate Sorority Private Limited" on 09.12.2019.

2.3. The OC further submits that it executed an agreement with the CD for operation and maintenance services of the CD's WTGs in its Wind Farm Project in Tamil Nadu on 07.09.2020. It was mutually agreed between the OC and the CD that the said agreement will be valid for the next ten years.

2.4. The OC further submits that the CD never raised any dispute regarding operation and maintenance services as provided to it by the OC. However, despite the OC's attempts to remind the CD and the follow up for payment of dues for various periods from 01.10.2018 to 31.03.2022, the CD failed to comply with the mutually agreed terms of the aforesaid agreement.

2.5. The OC submits that as per its books of account, the total amount of Rs. 2,88,08,385/- was to be paid by the CD as on 30.06.2023 in respect of twelve pending invoices raised for the services provided by it for the period from 01.10.2018 to 31.03.2022. Whenever the OC sent the invoices to the CD, it never raised any dispute over the veracity and validity of the invoices, rather it acknowledged the receipt of such invoices. According to the OC, the same is evidenced from the copies of balance confirmation dated 30.03.2021; 0.09.2021; 30.03.2022; 30.09.2022; 31.03.2023; and 30.06.2023 as provided in the calculation sheet annexed to the Application.

2.6. In view of the above events, the OC issued Demand Notice on 01.07.2023 under Section 8 of the IBC to the CD. The CD acknowledged the receipt of the said Demand Notice on 03.07.2023 but it neither gave any reply to the Notice nor released any payment in favour of the OC after receipt of the same.

2.7. The OC further submits that it has produced the record of default by the CD from the National e-Governance Services Limited (NeSL) dated 08.08.2023 and the date of default as mentioned in the Part- IV of the Application is the same as reflected in the NeSL record annexed to the present Application.

2.8. The OC further submits that it has filed an Affidavit dated 10.08.2023 under Section 9(3)(b) of the IBC, stating that it has not received any notice or letter regarding any dispute of unpaid operational debt or dispute over any invoices from the CD.

3. Contentions of CD

3.1. The CD in its Affidavit-in-Reply submits that it admits the outstanding amounts to be paid to the OC and intends to pay the same, but it was unable to make payments due to non-availability of funds.

3.2. The CD further submitted that it is a going concern and its management is trying to ensure its solvency and requests grant of time for the purpose of repayment of the aforesaid default amount.

3.3. The CD submits that, admitting the present Application for initiation of CIRP, would cause irreparable harm and adverse effect upon the CD's interests as it is a solvent company.

4. Analysis and Findings

4.1. Upon perusal of the documents available on record, we are of the considered view that the date of default for the purpose of determining the maintainability of this Application is 30.06.2021, i.e., the date on which the CD failed to make payment to the OC's invoices for the first time. We find that the present Application was filed on 11.08.2023, i.e. within the period of three years from the date of default, and is hence, maintainable to be adjudicated by us under Section 238A r/w Article 137 of the Limitation Act, 1963.

4.2. The basic point of defence in an application filed under Section 9 of IBC is the existence of dispute or suit or arbitration prior to the receipt of the demand notice under Section 8 of the IBC. However, in the present matter, neither any dispute was brought to the notice of the OC nor there was pendency of any suit/arbitration proceeding regarding the OC's invoices or services provided to the CD.

4.3. As observed by the Hon'ble Supreme Court in *M/s. S.S. Engineers Vs. Hindustan Petroleum Corporation Limited, (Civil Appeal No. 4583/2022, decided on 15.07.2022)* that, Sections 8 and 9 of the IBC clearly state that an OC can trigger CIRP, when there is an undisputed debt and a default in payment thereof. If the claim of an OC is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an OC. From the available records, it is apparent that the CD had not only acknowledged the outstanding debts to the OC during the period of 30.06.2021 to 30.06.2023, but also sought time to repay the outstanding debts. It has been brought to our notice that at the time of filing the present Application on 11.08.2023, the CD had confirmed the balance of the outstanding debts in the OC's books of account upon the OC's letters dated 30.03.2021; 30.09.2021; 30.03.2022; 30.09.2022; 31.03.2023; and 30.06.2023. We find that the above legal position as settled by the Hon'ble Supreme Court is clearly applicable to the case on hand.

4.4. In the view of absence of any fact regarding dispute over the services of the OC, we hold that the debt against operational and maintenance services provided to the CD arising out of unpaid invoices during the period of 30.06.2021 till 30.06.2023 was not disputed, and, hence, the debt falls within the meaning of "operational debt" under Section 5(21) of the IBC. Moreover, the CD has admitted the debt and default but was only requesting for time for payment. It further claimed that it is a solvent company and that CIRP would only cause irreparable harm and adverse effect upon its interests.

4.5. On perusal of the documents submitted by the OC, it is clear that the operational debt of Rs. 2,88,08,385/- is due and payable by the CD to the OC in terms of Section 4 of the IBC, and thus, the present Application under Section 9 of the IBC is maintainable. The CD has not notified the existence of any dispute to the OC. The Application is complete and has been filed under the proper form. In view of the above, we can only find that the matter is fit for admission under section 9(5)(i) of the IBC.

4.6. The Applicant has proposed the name of Truue IPE (P) Limited, a registered Insolvency Professional Entity (IPE) having Registration Number- [IBBI/IPE-151/IPA-1/2023-24/50052] and Email id.- jain_cp@yahoo.com; and has submitted its consent letter dated 10.08.2023 under Section 9(4) of the IBC to carry out the functions thereunder.

ORDER

The Application bearing C.P. (IB) No. 880/NCLT/MB/C-VI/2023 filed by Global Wind Infrastructure Private Limited**,** the OC, under Section 9 of the IBC read with Rule 6 of the AA Rules, for initiating CIRP in respect of M/s. Triumvirate Sorority Private Limited, the CD is **Admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

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

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order of liquidation of the CD under section 33 of the IBC, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints Truue IPE (P) Limited, a registered IPE having Registration Number- [IBBI/IPE-151/IPA-1/2023-24/50052] and the said IPE's Email id.- jain_cp@yahoo.com; as the Interim Resolution Professional (IRP) to carry out the functions under the Code, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow under the provisions of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules). The CD or any of its directors or officers shall not commit any offence under Chapter VII of Part II of the IBC.

VII. The IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the CD.

VIII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by the IRP out of this fund, shall be subject to approval by the Committee of Creditors (CoC).

IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Adjudicatory Authority within seven days from the date of receipt of a copy of this order.

X. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.

XI. C.P. (IB) No. 880/MB/C-VI/2023 to come up on 04.01.2024 for filing the periodical report.

XII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
MADHU SINHA	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

//Tanmay Jain//