



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

CP(IBC)/50/KOB/2022

*(Under Section 7 of IBC, 2016 read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

In the matter of

M.M.S Steel & Power Private Limited Vs Kasargod Power Corporation Limited

MEMO OF PARTIES:

M.M.S STEEL & POWER PRIVATE LIMITED, 17/2D, ONGC Road,
Naranamangalam Narimanam PO, Nagore, Nagapattinam District, Tamil Nadu
611002;

... Applicant/Financial Creditor

-Versus-

KASARGOD POWER CORPORATION LIMITED, 332 Bare Village, Mylatti
Post, Kasargod 671123.

... Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant/Financial Creditor : Mr. Akhil Suresh,
Mr. Adithya Venugopal, Adv.

For Corporate Debtor : Ms. Anchala C, Adv.

Order reserved on: 07.12.2022

Order pronounced on: 08.02.2023

ORDER

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,



2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **Kasargod Power Corporation Limited**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a Private Limited Company with Corporate Identification Number U4010TN2002PTC048338. As per Part II of the application, the Corporate Debtor is a Public Limited Company with Corporate Identification Number U40102KL1994PLC008127 and with registered office at 332 Bare Village, Mylatti Post, Kasargod 671123. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Nethi Mallikarjuna Setty, IBBI Registration Number: IBBI/IPA-001/IP-P-01251/2018-2019/11958 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 24,79,77,556/- as on 30.03.2022. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:
 - a) Loan Agreement dated 29.09.2017 executed between Corporate Debtor and Dhanishta Farms Pvt Ltd (Original Lender)
 - b) Loan Assignment Agreement dated 30.03.2019 amongst Dhanishta Farms Pvt Ltd, Corporate Debtor, Financial Creditor and KVK Energy and Infrastructure Pvt Ltd
 - c) Loan Agreement dated 30.03.2019 between Financial Creditor and Corporate Debtor
 - d) Ledger Accounts of Financial Creditor having entries of payment to Dhanishta Farms Pvt Ltd and to Corporate Debtor



- e) Letter to Corporate Debtor from Financial Creditor dated 01.05.2020 for repayment of debt
- f) Reply of Corporate debtor dated 05.06.2020 requesting extension of due date
- g) Letter dated 23.06.2020 from FC extending due date for repayment of debt
- h) Letter to Corporate Debtor from Financial Creditor dated 05.10.2020 for default of repayment of debt
- i) Reply of Corporate debtor dated 16.10.2020 for further consideration of repayment of debt
- j) Letter to Corporate Debtor from Financial Creditor dated 23.12.2020 for immediate repayment of debt
- k) Reminder Letter to Corporate Debtor from Financial Creditor dated 15.02.2021 for immediate repayment of debt
- l) Demand Notice dated 09.06.2021 to Corporate Debtor
- m) Calculation sheet of Financial Debt produced by the Financial Creditor along with Financial Statements of FC

4. Brief fact of the case are as under:

- i. The present application is filed by MMS Steel & Power Private Limited, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Ms. Kasargod Power Corporation Ltd.
- ii. The Financial Creditor is the assignee of original loan agreement dated 29.09.2017 between Corporate Debtor and Dhanishta Farms Pvt Ltd for a sum of Rs.13,20,00,000/- with 19.5% interest for business purposes. Subsequently pursuant to Agreement dated 30.03.2019 executed



between Financial Creditor, Corporate Debtor, Dhanishta Farms Pvt Ltd and another entity, KEIL, the guarantor to assignment, the debt was assigned to Financial Creditor by Dhanishta Farms Pvt Ltd wherein Rs.15,64,00,000/- due to Dhanishta Farms Pvt Ltd was settled by the Financial Creditor and the Corporate Debtor was released from its obligation to Dhanishta Farms Pvt Ltd. On same date, 30.03.2019, via loan agreement executed between Financial Creditor and CD, CD agreed to repay Rs.15,64,00,000/- with 19.5% interest to Financial Creditor on or before 30.06.2020.

- iii. After availing the facility pursuant to assignment of loan, Financial creditor sent letter dated 01.05.2020 for repayment due date which was extended by the FC till 30.09.2020 based on request by the CD via letter dated 23.06.2020. A communication was made by the Financial creditor on 05.10.2020 seeking repayment of loan to which the CD had informed that due to non-receipt of cash receivables from customers the CD is unable to settle the debt timely. Further communication on 23.12.2020 and 15.02.2021 by FC was not replied by the CD and on 09.06.2021 a demand notice was sent for recovery of Rs.15,64,00,000/- along with interest @ 19.5% also informing about proceedings under IBC, 2016.
 - iv. The FC state that pursuant to loan agreement dated 30.03.2019, the CD is liable for the Financial Debt coming under definition of section 5(8) of the IBC which is payable to FC having the commercial effect of a borrowing. The default became due as on 30.06.2020 and continued thereon despite several communications between the parties. Hence FC is left with no choice but to proceed under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
5. On the respondent side, it is submitted that the intention of the FC is not resolution but recovery of money. The application is barred under Section 10A of the IBC, 2016. It is stated that the plan of business of the CD was to set up a 21 MW low sulphur Heavy Stock Diesel fired power plant on leased land from



Kerala state electricity board (KSEB) which became operational on 14.05.2001. However the plant had to stop operations on 31.12.2013 due to non renewal of power purchase agreement by the KSEB despite sincere efforts from CD. Left with no choice the CD proceeded to sell its plant assets which was under hypothecation of UCO Bank. But UCO Bank did not issue an NOC or approve the same to sell the plant assets which was lying idle for 8 years facing depreciation in value. In the situation, Dhanishta Farms Pvt Ltd agreed to provide loans to CD. However due to non-operation of plant, the loan was defaulted and subsequent assignment of loan was carried out. The CD submits that due to business failure along with Covid disaster, the repayment of loan was not made due to inability to arrange funds in time. The CD further states that the FC at no time had claimed or accounted for any interest on the loan and hence is not liable to pay the same. Further towards the principal amount the CD requested a period of further 6 months to settle the same.

Point for determination is:

Whether the petition is hit by proviso to Section 10A of IBC 2016?

6. The financial creditor stated in the petition that the corporate debtor executed an agreement on 30.03.2019 in favour of the financial creditor agreeing to pay an amount of Rs.15,64,000/- with interest @19.5%per annum on or before 30.06.2020. On 01.05.2020 the financial creditor had issued a letter to the corporate debtor reminding the date of repayment of the loan along with interest as 30.06.2020. The corporate debtor not paid the amount on 30.06.2020 at the request of corporate debtor financial creditor extended the time for payment from 30.06.2020 to 30.09.2020. The financial creditor issued letter on 05.10.2020 to corporate debtor informing the default requesting to pay the amount immediately. In part IV (2) of the petition the date of default is given as “The amount is in default since 30.06.2020”.
7. Thus, from the pleadings it is crystal clear the date of default arose for the petition is on 30.06. 2020. Section 10A of IBC 2016 suspended Initiation of



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/50/KOB/2022

In re M.M.S Steel & Power Private Limited Vs Kasargod Power Corporation Limited

Insolvency Resolution Process under sections 7,9, & 10 for any default arising on or after 25.03.2020 for a period of six months, subsequently by Notifications dated S.O.3265(E) dated 24.09.2020 time extended till 25.12.2020 and by Notification S.O.4636(E) dated 22.12.2020 further time extended till 25.03.2021. As per proviso to Section 10A of IBC 2016 no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the default occurring during the period from 25.03.2020 to 25.03.2021. In this case default occurred on 30.06.2020 hence this petition is not maintainable in view of proviso to section 10A of IBC 2016.

8. On the petitioner side it is stated in the part IV (2) of petition that the financial creditor issued demand notice A17 on 09.06.2021 after the expiry of period specified under section 10A of IBC 2016. The default has continued ever since 30.06.2020 and also continued even after the date of A17 demand notice on all subsequent dates.
9. The contention of the financial creditor is since the last demand notice was given only after the expiry of period mentioned in 10A and the petition is presented subsequently the petition is maintainable and not hit by section 10A of IBC 2016. This submission is not acceptable. Section 10A clearly mention about the “default arising on or after 25th March 2020”, there is nothing mentioned about demand. Further first proviso to section 10A specifically said no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said **default occurring during the said period**. If the submission of the petitioner side is accepted, the introduction of Section 10A itself became otiose, because any one can defeat the provision simply by raising a demand after the said lock period.
10. In the circumstances it is answered that the petition is hit by section 10A of IBC 2016 and in consequence this petition is **Dismissed**.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/50/KOB/2022

In re M.M.S Steel & Power Private Limited Vs Kasargod Power Corporation Limited

-
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
 12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.02.08 15:50:02 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.02.08 14:44:06 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 08th day of February, 2023.

Supriya_P.s