

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP (IB) No.31/GB/2019

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

In the matter of:

Bazigar Trading Pvt. Ltd. ... Financial Creditor

-Versus-

Everest Infra Energy Ltd. ... Corporate Debtor

Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

For the Operational Creditor ... Mr. Abhijeet Kakati, Advocate

ORDER

Date of Order: 08th November, 2019

The petition is allowed as per separate order of date. Mr. Jay Prakash Gupta, Chartered Accountant is appointed as IRP.

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 08th day of November, 2019
/Deka//08.11.2019//

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This is an application filed by the Bazigar Trading Pvt. Ltd. (hereinafter called as Financial Creditor (in short, FC) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, IBC) for initiation of Corporate Resolution Process (in short, CIRP) against the Everest Infra Energy Ltd. (hereinafter called as Corporate Debtor (in short, CD).

2. Brief facts of the application, as narrated by the FC, are as follows:

- A. The FC is a registered Non-Banking Financial Company and is engaged in money lending business. On or about July, 2016 the CD approached the FC for certain financial assistance and after series of discussions between them, the FC agreed to provide financial assistance for Rs.4,00,00,000.00 (Rupees Four crores only) to be advanced on several tranches as an inter corporate loan for a period of 12(twelve) months with interest @12% per annum.

- B. Accordingly, the FC disbursed the said inter corporate loan of Rs.4,00,00,000.00 (Rupees Four crores only) on mutually agreed terms & conditions through RTGS on several tranches during the period 2016 – 2017 as detailed herein below:

Date	Amount (Rs.)	RTGS/UTR Number.
09.08.2016	1,50,00,000.00	BARBR52016080900845128
23.08.2016	50,50,000.00	BARBR52016082300845348
01.11.2016	50,00,000.00	BARBR52016110100855251
31.07.2017	1,00,00,000.00	BARBR52017073100826024
08.08.2017	50,00,000.00	BARBR52017080800924423
TOTAL	4,00,00,000.00	

Copy of the bank statement of the FC from August 1, 2016 to August 31, 2018 evidencing the money lent and advanced to the CD and the general ledger of the FC for FY 2016–17 and 2017–18 are annexed with the petition marked as Annexure– E and G respectively.

- C. Though the CD has utilized the entire amount of inter corporate loan provided by the FC, the CD, despite the agreed terms & conditions, has neither paid any interest nor the principal amount till the date of expiry of 12(twelve) months i.e. 08.08.2017 and even failed to repay the principal loan amount as well as interest thereon till July 31, 2019.
- D. However, the CD has deposited the TDS on the gross annual interest accrued on the aforesaid inter corporate loan for the entire period – financial year 2016–17, 2017–18 and 2018–19 and the CD has issued confirmation of accounts clearly acknowledging its liability towards the FC. Copies of TDS records of FC evidencing TDS deposit and deduction by the CD are annexed with the petition marked as Annexure –H.

- E. It is submitted that the CD has also acknowledged confirmation of account for the FY 2016–17 and 2017–18 vide **Annexure –I**, copies of which are at pages 41 and 42 of the petition and thereby, the CD has admitted the default in payment of the dues.
- F. It is submitted that the FC has issued several reminder letters on 29.08.2018, 04.01.2019, 07.03.2019 and 51.05.2019. However, despite receipt of such letters, the CD has failed and neglected to repay the principal amount of inter corporate loan as well as the agreed interest accord thereon. **Annexure –J, K, L and M** annexed with the petition are the copies of the aforesaid reminders.
- G. That as there was no response from the side of the CD in regard to the letters/ reminders of the FC, the FC has also sent a legal notice to the CD on 15.06.2019, demanding repayment of disbursed inter corporate loan amount along with interest overdue amounting to Rs.4,93,71,124.00 (Rupees Four Crores Ninety Three lacs Seventy One thousand One hundred Twenty Four only) as on 31.05.2019. Copy of the said legal notice is annexed with the petition marked as **Annexure – N**.
- H. It is also submitted that the total dues including interest @12% per annum on the principal loan amount, to be paid by the CD to the FC has become Rs.5,01,75,107.00 as on 31.07.2019.
- I. Despite receipt of the letters/reminders as well as the legal notice as aforesaid, the CD has neither responded to nor has raised any dispute, and hence, the FC has filed the instant company petition before this Tribunal seeking initiation of corporate insolvency resolution process against the CD.

3. The petitioner/FC being succeeded in proving that it has meted out all the requirements under Section 7 of the Code and since the CD remained ex-parte, this application is liable to be admitted.

4. Since the FC has not proposed the name of insolvency resolution professional, Mr. Jay Prakash Gupta, Chartered Accountant having IP Registration No. IBBI/IPA-001/IP - P01158/2018-2019/11914 (e-mail: cajayprakash@gmail.com), Mobile No. 9435559687 is chosen from the list published by the IBBI as Interim Resolution Professional for initiating insolvency resolution process subject to submission of written consent and Form 2 within 7 days from the date of receipt of this order.

5. Accordingly, the petition filed by Bazigar Trading Pvt. Ltd. under Section 7 of IBC is admitted upon the following:

O R D E R S

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. Everest Infra Energy Ltd.*
- (ii) *I hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*
- (iv) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
 - 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 (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 corporate debtor.*

- (v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.*
- (viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*
- (x) Mr. Jay Prakash Gupta, Chartered Accountant having IP Registration No.IBBI/IPA-001/IP - P01158/2018-2019/11914 (e-*

mail:cajayprakash@gmail.com), Mobile No. 9435559687 is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

- (xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- (xii) The FC shall deposit an amount of Rs.2,00,000.00 (Rupees Two lacs only) with the Registry towards initial charges for initiation of resolution process by the IRP within 2 (two) week from the date of this Order by way of DD drawn in the name of the IRP and the IRP shall acknowledge and account for the same. The DD shall be handed over to the IRP by the Registry after giving his consent of appointment.
- (xiii) Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.
- (xiv) The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.

6. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



Member (Judicial),
Adjudicating Authority

Dated, Guwahati the 08th day of November, 2019
/DeKa//08.11.-2019//