

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No301
CP(IB)/66(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

G.L.E India Solar Pvt Ltd
V/s
Bright Solar Ltd

.....Applicant

.....Respondent

Order delivered on 11/10/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH, COURT-II**

CP(IB)/66/NCLT/AHM/2022

(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:

G.L.E. INDIA SOLAR PRIVATE LIMITED

...APPLICANT/FINANCIAL CREDITOR

Versus

BRIGHT SOLAR LIMITED

...RESPONDENT/CORPORATE DEBTOR

Order Pronounced On:11/10/2023

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

G.L.E. India Solar Private Limited

(CIN: U29100GJ2018PTC100982)

Having its registered office at
C-01, The First Commercial Complex,
B/s Keshavbaug Party Plot,
Vastrapur,
Ahmedabad-380015

...Applicant/Financial Creditor

Versus

Bright Solar Limited

(CIN: L51109GJ2010PLC060377)

C-103, Titanium Square,
Thaltej Cross Road,
S.G. Highway, Thaltej,
Ahmedabad-380059

.... Respondent/Corporate Debtor

Appearance

For the Applicant	: Mr. Pranav Thakkar, Advocate
For the Respondent	: Mr. Vishal Dave, Advocate a.w Mr. Nipun Singhvi, Adv.

ORDER

1. This application is filed by M/s. G.L.E. India Solar Pvt. Ltd. on 25.02.2022. The petitioner has filed the application u/s 7 of the IBC, 2016 for a debt amounting to Rs.4,02,37,377- which includes principal amount interest in penalty which remains unpaid by the respondent Ms. Bright Solar Ltd.

2. It is stated that there was a business agreement entered into by one parent company of the applicant with the respondent and the respondent suddenly cancelled the agreement invoking force majeure clause. It is also stated that there was one master loan agreement between the applicant and respondents for providing loan facility to the respondent by way of an agreement dated 18.01.2022. The loan was supposed to be repaid within 8 months from the date of agreement. However, the same was extended based on negotiations and finally on non-repayment, notice was issued dated 27.09.2021, the debt reckoned as date of default.

3. It is also stated that a credit transfer agreement for this loan was executed between the parent company M/s Ningbo Green-Light Energy Group Company for an amount of Rs.2,80,65,305/- on 20.09.2021 which was given as loan to the respondent company and the debt was assigned by the parent company to present applicant.

4. It is stated that the Ningbo had provided loan of Rs.2,80,65,305/- on various dates viz. 13.09.2019, 23.10.2019, 24.10.2019, 21.12.2019 and 23.01.2020 to corporate debtor and further amount of Rs.84,61,000/- was given directly from the applicant in total Rs.3,65,26,305/- towards principal amount as Rs.29,22,104/- towards interest and Rs.7,88,968/- as penalty

totalling Rs.4,02,37,377/- as stipulated in the agreement. It is further stated that the respondent has failed to repay the amount of loan given by the applicant till filing of this petition u/s 7 of IBC, 2016.

5. The applicant has also enclosed a master loan agreement with the respondent for grant of loan for a principal amount of Rs.5 crore which may be paid by 1 June 2020 for the purpose of using the proceeds of the loan in a project mentioned to be as Paschim Gujarat Vij Company Ltd., Rajkot, under work order No. PGVCL.DSM/SRT/75/7786. The applicant also submitted a letter to the respondent dated 13.09.2019 of having received an amount of Rs.45,68,127/- (equivalent to USD 64,962/-) on 13.09.2019.

6. A demand notice was issued on 27.09.2021 by M/s Spring (India) Law Firm to the respondent on behalf of M/s Ningbo Green Light Energy Group Co. Ltd., People Republic of China and its Indian subsidiary M/s. G.L.E. India Energy Pvt. Ltd. (Applicant). The respondent vide letter dated 15.10.2021 replied to the notice denying the contents / allegations mentioned in the demand notice. The respondent has vide his affidavit dated 06.08.2022 denied every statement / allegations / averments / submissions made in the petition. It is also stated that the applicant is not a financial creditor and there was no loan agreement between the applicant with Ningbo Green Light Energy Group Co. Ltd. The respondent in his affidavit

stated that based on MoU dated 10.10.2019 entered between him and Ningbo Green Light Energy Group Co. Ltd. was for development of solar rooftop projects in Gujarat State for which an amount of Rs.15 crores was to be provided for development of the project out of which, only Rs.45,68,127/- was paid. The MoU was terminated by the respondent through letter dated 15.06.2019 by invoking Article 7 force majeure stating that due to Covid, the project was unviable. The respondent also submitted that the applicant claiming that Ningbo Green Light Energy Group Co. Ltd. transferred the right to recover the loan amount disbursed to respondent under MoU dated 10.10.2019 was not maintainable as the applicant had already terminated the MoU on 15.06.2020. The respondent also states that the "Credit Transfer Agreement" dated 20.9.2021 is not a valid agreement as it is neither registered nor stamped and has no value in the eyes of law, therefore the petition filed by applicant is not maintainable.

7. The applicant was directed by this Tribunal vide order dated 23.06.2023 to prove his case by showing disbursement of amount to the respondent company including certified copy of the bank account of the relevant period showing disbursement to the respondent to be filed within 15 days and copy also to be furnished to the respondent company.

8. However, the applicant could not file any such documents ordered though repeated chances were given.

9. We have heard Ld. Counsels for both the sides and perused the documents on record. The applicant has relied upon disbursal letters (page no.47) and acknowledgement of receipt of amount. He has also relied upon confirmation of payment by the respondent. Page 47 to 51 are confirmation receipt of some funds given in the name of financial creditor M/s. Ningbo Green Light Energy Group Co. those are dated 13.09.2019, 23.10.2019, 24.10.2019. The learned advocate for the applicant submitted that principal amount was Rs. 3.65 Crore and the interest accrued upon it as well as penalty. According to him, the date of default is 29.07.2021. The said debt is transferred from Chinese Company to the applicant company for recovery of amount as per Credit transfer agreement- Annexure D (page 32-33). As against this, learned advocate for the respondent submitted that there were no dues at all and thus no default. They have also received only Rs. 45,65,127/- on 13.09.2019. The alleged MoU of October 2019 is not produced by the applicant, it was not a party to the credit transfer agreement. According to the respondent, only after giving the receipt the company used to disburse the amount, therefore, the receipts were given but the amount was not disbursed at all. He

further submits that though they were promised to pay Rs.5 Crore but paid only Rs. 32 lacs, due to which he terminated agreement.

10. It appears that the applicant has not attached the copy of alleged business agreement between M/s. Ningbo dated 07.08.2019 and 10.10.2019. The corporate debtor has not entered into any agreement with the applicant company, the agreement entered into between the M/s. Ningbo and respondent was for Solvar PV rooftop system and not for any other purpose. No loan agreement was entered into between the applicant company and respondent. There is nothing on record to show that M/s. Ningbo is the financial creditor. There was dispute regarding payment made by M/s. Ningbo and respondent debtor so the agreement was also cancelled during covid projection. Moreover, when the MoU with M/s. Ningbo is terminated by the corporate debtor, it cannot transfer right to recover loan by the applicant company. The respondent also submitted that he was not having knowledge of credit transfer agreement dated 20.09.2021 and was not a party to the same. Therefore, as per Section 130(1) of the Transfer of Properties Act, 1882 it cannot be validly transferred.

11. The counsel for the respondent relied upon "Messrs. SadasookRampratapus Hoare Miller And Co." dated 11.05.1923 in which it was held that :-

"The Indian Legislature in 1900 has composed a new scheme which has some of the features of both, and, as I read Section 130

it says this that the law, while regarding the transfer of an actionable claim as valid if effected in a certain manner, will not undertake to enforce against a debtor the assignment except upon the terms that the debtor may arrange with his original creditor unless and until he has received in writing a particular kind of notice."

He further submits that the applicant M/s. Ningbo never served any such notice to the respondent with respect to credit transfer agreement. According to the respondent, in such circumstances, the applicant has no right to file application under Section 7 of IBC, 2016.

12. The documents produced on record does not show disbursal of loan amount to the respondent. The applicant failed to prove the issuance of debt to the respondent. There also appears dispute regarding payment of amount, if any, by the applicant or any other company. The applicant could not furnish record of NeCL default recorded with the Information Utility or any other record to show default. No existence of default is ascertained from the evidence on record. In such circumstances, the application deserves to be dismissed and the application is not maintainable. The application is filed without any concrete evidence hence, it is necessary to impose cost upon the applicant.

13. Hence, We pass the following order:

ORDER

The application is dismissed with cost of Rs. 2 lacs to be paid through online payment in www.mca.gov.in under miscellaneous fee.”

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

Prakash - Steno