IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI

IBA/756/2019

Under Section 7r/w Rule 4 of the IBC, 2016

In the matter of *M/s. Cauvery Power Generation Private Limited*

M/s. Punjab National Bank

.. **Financial Creditor**

V/s

M/s. Cauvery Power Generation Private Limited

.. **Corporate Debtor**

Order delivered on: 18.10.2019

CORAM:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

B. ANILKUMAR, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. M.L. Ganesh, Advocate*
For the Corporate Debtor : *Shri. Avinash Krishnan Ravi, Advocate*

ORDER

Per: B. ANIL KUMAR, MEMBER (TECHNICAL)

Heard on: 16.10.2019

1. This Company Petition has been filed before this Tribunal u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by Punjab National Bank (hereinafter called as **"Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process **("CIRP")** on the ground that M/s. Cauvery Power Generation

Private Limited (hereinafter called as **"Corporate Debtor")** has defaulted in repaying the loan amount of ₹13,71,05,776.34/- fallen overdue as on 31.12.2018.

2. In continuation of the default, the Financial Creditor had initiated proceedings under Section 13(2) of the SARFAESI Act for the recovery of the said balance which did not result in recovery of the debt. As a result, the Financial Creditor initiated Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016, r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016.

3. The Counsel for the Corporate Debtor initially represented that he has instructions from his client for settlement of the outstanding debt to the Financial Creditor by way of One Time Settlement, despite several opportunities having been granted to the Corporate Debtor, nothing has become fruitful.

4. On being called upon to make their submissions, the Counsel for Financial Creditor stated that the Corporate Debtor Company viz., M/s. Cauvery Power Generation Private Limited is registered on 09.04.2009 under the Companies Act, 1956, and is represented by its Directors Mr. Elangovan Shanmugam and Mr.Premkumar Ayyadurai. The authorized share capital of the Company is ₹79,00,00,000/- (Rupees Seventy Nine Crores) and the paid-up share capital of the Company is ₹78,79,22,000/-. In order to meet its long term fund requirement, the Corporate Debtor had originally approached various nationalized banks such as State Bank of India (SBI), Punjab National Bank (PNB), State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Travancore (SBT) who had agreed in principle to lend and advance to the Corporate Debtor the financial assistance in the form of 'term loan' amounting to ₹184 Crores as per the following pattern:-

(Rs. In Crores)

S. No.	Name of the Lenders	Term Loan
1.	Punjab National Bank	39
2.	State Bank of Hyderabad	35
3.	State Bank of India	35
4.	State Bank of Mysore	25
5.	State Bank of Travancore	50
Total		**184**

5. The Counsel for Financial Creditor has also submitted that in furtherance of the course of action and in terms of the sanction letter, the Corporate Debtor Company had offered various securities both Primary and Collateral as well as Personal and Corporate Guarantees to secure the repayment of loan amount.

6. The Counsel for the Financial Creditor has submitted that in consideration of the aforesaid grant of credit facilities by the Financial Creditor and SBI associate banks, the Board of Directors, Corporate Debtor and the Corporate Guarantor had duly passed Board Resolutions on 22/02/2010 in pursuance of which the Corporate Debtor and guarantors had executed various loan security documents in favor of the Financial Creditors on

15/03/2010. It has been further submitted that the Financial Creditor had duly registered the charge on 12.04.2010 with the ROC, Chennai.

7. The Counsel for Financial Creditor has further submitted that the Corporate Debtor was running the business operation to the satisfactory level till September, 2016 and thereafter failed to service the interest regularly owing to reasons which include increase in the coal price, imposition of additional cess by the Central Government, decline of price of power, etc., Consequently, the profit of the Corporate Debtor drastically declined for the Financial year 2017.

8. The Counsel for Financial Creditor has further submitted that as a result of continuous loss and inability to service the debt, the loan account with State Bank of India (SBI) was running irregular, the account with SBI was classified as NPA in September, 2018 and subsequently the Financial Creditor also

declared the account of the Corporate Debtor as NPA on 03/01/2019.

9. The Counsel for the Financial Creditor has further submitted that though a Consortium meeting was held on 01/12/2018 to find out the viability, feasibility and acceptability of the promoter's proposal for revival of business operation, it was found to be commercially unviable to revive the operations of the Corporate Debtor.

10. The Counsel for Financial Creditor has further submitted that since the Corporate Debtor has not initiated tangible and concrete steps to revamp the business operation in order to repay the outstanding loan amount which was mounting day by day, the Financial Creditor was constrained to initiate SARFAESI action by causing demand notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor and guarantors, which evoked no response. Hence, the Financial Creditor is left with no

other option except to approach this Tribunal by way of filing the application for initiating CIRP process.

11. The Counsel for Financial Creditor has further submitted that the debt owed by the Corporate Debtor has fallen overdue and the Corporate Debtor has become unable to pay a sum of ₹13,71,05,776.34/- as on 31/12/2018 towards the Term Loan facility availed from the Bank. The statement of accounts and certificate issued under Banker's Books Evidence Act were filed along with the application, forming part of the typed set.

12. The Counsel for the Corporate Debtor did not file any written submissions but stated that they would prepare a scheme for settlement provided one more opportunity is given to them. The Director of the Corporate Debtor who was present before this Tribunal was also heard who stated that they have already paid a substantial portion of the amount due and the balance is only ₹13.71 Crores which would be settled, given a chance.

13. Having heard both the parties and satisfied that the Corporate Debtor is not in a position to revive the operations successfully or make any tangible proposal to pay off the debt due to the Financial Creditor, this Tribunal hereby **admit** this Company Petition, by appointing **Mr. R. Venkatakrishnan** who is named in this petition as IRP looking at the consent given by the said IRP with directions as follows.

I. That Moratorium is hereby declared prohibiting all of the following actions, 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 Securitization 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.

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

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from **18.10.2019** till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints **Mr. R. Venkatakrishnan, having Registration Number [IBBI/IPA-001/IP-P00115/2017-18/10250], "1/4", RANGAS, Fourth Main Road, R.A. Puram, Chennai-600028, E-Mail: rvk@rvkassociates.com, Mobile No: 9840813918** as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations / Circulars / Directions issued in this regard.

14. Accordingly, this Petition is **admitted.**

15. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

Raymond