IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB)No.484/7/HDB/2019

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

<u>In the matter of:-</u>

M/s. Sunpower Solar Technick Private Limited,

M/s. Shriram City Union Finance Limited,
Regd. Office: No:123, Angappa Naicken Street,
Parrys, Chennai – 600 001.

...Petitioner/
Financial Creditor

Vs

M/s. Sunpower Solar Technick Private Limited,
Regd. Office: D-97-A, Road No.18, IDA Phase-I,
Jeedimetla, Hyderabad – 500 055.

...Respondent/
Corporate Debtor

<u>Order delivered on:13.11.2019</u>

Coram: Shri.K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL

<u>Parties/Counsel Present:</u>

<u>For the Petitioner/Financial Creditor:</u>

PER: K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

ORDER

1. The present petition is filed by 'M/s. Shriram City Union Finance Limited' (hereinafter referred to as 'Financial Creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Sunpower Solar Technick Private Limited (hereinafter referred to as 'Corporate Debtor').

2. The Petitioner/Financial Creditor is having its Registered Office at Angappa Naicken Street, Parrys, Chennai. The Registered office of the Corporate Debtor is situated at Jeedimetla, Hyderabad.

3. Before proceeding with this matter, it would be appropriate to make a note of background facts as stated by the Financial Creditor in its petition for the purpose of determination of this petition:

   a) That the Respondent/CD has approached the Petitioner/Financial Creditor with a request to extend finance facility to the tune of Rs.14,00,00,000/- (Rupees Fourteen Crores Only) for its working capital and allied business activities. The request of the Respondent/CD was considered and the Petitioner acceded to extent Enterprise Finance Loan to the Corporate Debtor to the tune of Rs.14,00,00,000/- (Rupees Fourteen Crores Only) and there upon the Respondent/CD entered into a Loan Agreement bearing no: TEHO2TE1602100001 dated 10.02.2016 with the Petitioner/FC from 10.04.2016 to 10.06.2016 and the principal amount of Rs.14,00,00,000/- was payable on 10.06.2016.

b) Though the Corporate Debtor undertook to repay the amount in 3 months, after paying the interest amount for three months, committed default in payment of the Principal sum which fell due on 10.06.2016. The Corporate Debtor neither paid any amount nor settled any amount despite repeated demands made by the applicant. Hence, the Petitioner issued a notice dated 21.09.2018, terminating the agreement entered into by the Corporate Debtor and called upon the Corporate Debtor and the guarantors to settle the contract. Even after the said notice, the Corporate Debtor and the Guarantors have neither cleared the arrears not settled the contract in toto. The demands made by the applicant yielded no results. As on 20.09.2018, a sum of Rs.22,68,33,596/- is due and payable by the Corporate Debtor.

4.The Petitioner/FC has enclosed the following documents along with the Company Petition to prove his claim amount.

i. Balance Sheet filed by the Respondent / Corporate Debtor as on 31.03.2014.

ii. Loan application made by the Respondent / Corporate Debtor.

iii. Loan Agreement

iv. Statement of Account

5.The Respondent/CD inter-alia filed its reply/counter stating as under:

i. That the above said Company Petition has been filed by the above said Financial Creditor for initiation of Insolvency

Loan to the tune of INR 22,68,33,596.00 (Indian Rupees Twenty Two crore Sixty Eight lakh Thirty Three thousand Five hundred and Ninety Six only), arising out of the sanction letter dated 18.01.2016 and the Loan Agreement dated 10.03.2016(for short "LA") said to have been executed between the Financial Creditor and the Respondent Company (Corporate Debtor).

ii. That the claim in the real sense relates to an arrangement of fund transfer, structured to fuel working capital for an overseas wind farm project of the Wholly Owned Subsidiary (WOS) of the Respondent Company for which the financial closure was in the final stages and the Vendors to the WOS are the group entities of the promoters of the Applicant Company who were in urgent requirement of funds. The promoters of the Respondent Company, owing to their familiarity and historical transactions with the Applicant's Promoter Group entered into the borrowing arrangement to only help the group companies of the Applicant Company. Thus, it is submitted that the foreign concerns of the promoters of the Petitioner Company have transactions with the foreign subsidiary of the Respondent Company and a view was taken by both the promoters to arrive at an amicable settlement.

iii. It is submitted that the Petitioner served a notice on 21.09.2018 on the Respondent Company and guarantors that an amount of INR 22,68,33,596.00 (Indian Rupees Twenty Two crore Sixty Eight Lakh Thirty Three thousand Five hundred and Ninety Six only), is the amount due and has to be paid in 7 days of receipt of the notice failing which the Financial Creditor would initiate Insolvency Resolution Proceedings against the Respondent Company and Guarantors. It is herein submitted that there exits an Arbitration Clause in the agreement entered into between the

the Agreement. Besides, the notice served manifests the sinister design of the Financial Creditor to employ and abuse the Resolution Process to threaten the Corporate Debtor for recovery of dues, which violates against the spirit of the benign legislation.

iv. That the Applicant approached this Adjudicating Authority suppressing all the above stated material facts only to gain wrongful advantage of the Insolvency and Bankruptcy Code, 2016. The applicant company is duty bound to answer this Hon'ble Tribunal if they are justified in bringing the Respondent Company to bankruptcy proceedings and seek initiation of CIRP.

v. That the Present Company Petition has been filed on behalf of the Financial Creditor by one Mr.A.Ramanujam, Vice President, M/s. Sriram City Union Finance Limited, Chennai, who is neither the Secretary nor Director nor Principal Officer of the Financial Creditor. He filed the Petition in terms of the Powers delegated to him by one Mr. I. R. Chandrasekhar, Executive Director & CFO of the Financial Creditor, who claims to have been vested with the authority in terms of the Powers conferred unto him under a Board Resolution dated July 28, 2015. There does not exist a specific board resolution authorizing Mr. I.R. Chandrasekhar to initiate or take steps or act or represent or subsequently authorize to initiate legal action, in conformity with their memorandum & Articles of Association, against the respondent company in terms of the Insolvency and Bankruptcy Code, 20016. Further, the Board Resolution relied upon for authorization is dated 28.07.2015 which is very much prior to the date of the Insolvency and Bankruptcy Code, 2016, came into effect. Thus, the present Application as presented through Mr. A. Ramanujam is without any Authority and as such, the present CP itself is

26.07.2019, when the matter was listed on 26.07.2019, counsel for the petitioner was directed to send notice to the Respondent for appearance and file proof of service on the next date of hearing i.e. on 20.08.2019. Between 29.08.2019 to 03.10.2019 hearings were conducted and adjourned several times at the request of counsel for both the parties for filing counter, and rejoinder, if any, and the matter was finally heard and reserved for orders on 03.10.2019.

7. Heard both sides and perused the record.

8. It is the case of the Financial Creditor that it has provided a loan amount of Rs. 14,00,00,000/- (Rupees Fourteen Crores Only) and the amount in claim as on date of filing is Rs. 22,68,33,596/- (Rupees Twenty Two Crores Sixty Eight Lakhs Thirty Three Thousand Five Hundred Ninety Six Only). The Corporate Debtor in its counter has nowhere denied the debt and not placed any proof of repayment of the claim amount but has only raised an objection regarding Authorisation to file the present application. However, on perusal of record, it is seen that the Petitioner has placed on record Authorization letter on the letter head of the Petitioner Company which was duly signed by Sri.R.Chandrasekar, Executive Director & CFO. Thus, such stand of the Respondent/CD doesn't form any valid ground for rejection of the instant Petition.

9. In view of the submission made and evidences produced this Adjudicating Authority is satisfied that the Financial Creditor have fulfilled all the requirements under the

Petitioner/FC has also proposed the name of IRP after obtaining his written consent in Form-2.

10. In view of the above observations, this Adjudicating Authority is inclined to admit the petition filed Under Section 7 of the IB Code, 2016 by the petitioner.

11. Therefore, the instant petition is hereby admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall get completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.

12. We hereby appoint Mr. Mr. Sriram Parthasarathy as the Interim Resolution Professional. His name has been proposed by the Financial Creditor and his name is also reflected in IBBI website. He has also filed his written consent in Form-2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

13. This Adjudicating Authority declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to

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 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 the possession of the corporate debtor.

14. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

15. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

16. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with

18. The address details of the IRP is as follows: -

    Mr. Sriram Parthasarathy
    Address : 10/17, Anandam Colony,
    South Canal Bank Road, Mandaveli,
    Chennai, Tamil Nadu – 600 028.
    Email: *srirampcs@gmail.com*
    Cell: 9940336666
    Reg. No: IBBI/IPA-002/IP-N00292/2017-18/10895.

19. The present Petition bearing CP (IB) No.484/07/HDB/2019 is hereby admitted.

13.11.19

Dr.BINOD KUMAR SINHA
MEMBER TECHNICAL

K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Sravan.K.