

IN THE NATIONAL COMPANY LAW TRIBUNAL

- HYDERABAD BENCH, HYDERABAD

CP (IB)No.506/7/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.

In the matter of:-

M/s. M.S.M Energy Limited,

M/s. Acquaint Engineers & Infrastructure Private Limited,
Regd. Office: H.No.2-86/2/G-3, Koppula Towers,
Road No.1, Budha Nagar, Peerzadiguda Village,
Medipalli Mandal, Hyderabad,
Rangareddi, Telangana – 500 092.

...Petitioner/
Financial Creditor



Vs

M/s. M.S.M Energy Limited,
Regd. Office: Plot. No.53, Flat No.102,
Ashwini Homes, Behind Andhra Jyothi,
Journalist Colony, Road No.70,
Jubilee Hills, Hyderabad,
Telangana – 500 033.

...Respondent/
Corporate Debtor

Order delivered on: 15.10.2019

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

Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

Mr.Raja Shekar Rao Salvaji, Counsel.

For the Respondent/Corporate Debtor:

Mr.G.Sai Prasen, Counsel.

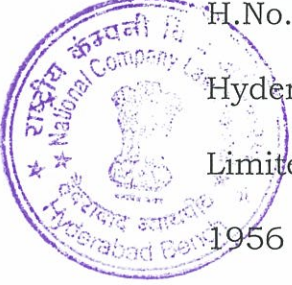
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PER: K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

O R D E R

1. The present petition is filed by 'Acquaint Engineers & Infrastructure Private 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. M.S.M Energy Limited (hereinafter referred to as 'Corporate Debtor').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The Petitioner/Financial Creditor, is a body corporate constituted under the Companies Act, 1956, having its Registered Office at H.No.2-86/2/G-3, Budha Nagar, Peerzadiguda Village, Medipalli, Hyderabad, Telangana. The Respondent/Corporate Debtor is a Private Limited Company incorporated under the provisions of Companies Act, 1956 and having its registered office at Journalist Colony, Jubilee Hills, Hyderabad, Telangana State.
4. It is submitted that the Respondent Company is engaged in power generation in Maharashtra State and had approached the Petitioner/FC to provide finance for meeting the short term funding for implementation of two 10 MW each Power Projects at Parbahani and Amaravati in Maharashtra State respectively.
5. It is also submitted that the Petitioner/FC entered into a Loan Agreement on 01.02.2012 in terms of which, the Petitioner/FC will lend an amount of ₹.1,00,00,000/- (Rupees One Crore Only) in



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tranches as short term loan at an interest of 18% per annum. The amount would be released as per the requirement of the Respondent/CD. The Promoter of the Respondent/CD had given Personal Guarantee for the loan amount.

6. The Petitioner/FC had disbursed an amount of ₹.65,59,028/- (Rupees Sixty Five Lakhs Fifty Nine Thousand Twenty Eight Only) as on 12.10.2018 as per the requirement of the Respondent/CD. The Respondent/CD after availing the loan facility had failed to pay principal or interest till date. The Petitioner/FC had twice issued reminders - on 12.03.2015 and 12.10.2018 requesting the Respondent/CD to pay the debt. The Respondent/CD had acknowledged the debt on 22nd March, 2015 and 25th October, 2018.

7. It is also submitted that total amount due is ₹.65,59,028/- (Rupees Sixty Five Lakhs Fifty Nine Thousand Twenty Eight Only) excluding interest and ₹.1,79,28,459/- (Rupees One Crore Seventy Nine Lakhs Twenty Eight Thousand Four Hundred and Fifty Nine Only) including interest which the Respondent/CD is liable to pay.

8. In order to prove the existence of financial debt and default on the part of the Respondent/CD, the Petitioner/Financial Creditor along with its Application has submitted Copies of several documents as stated below:

- i. Loan Agreement dated 01.02.2012.
- ii. Demand Promissory Note dated 12.03.2015.
- iii. Personal Guarantee dated 01.02.2012.
- iv. Debt Acknowledgements dated 22.03.2015 & 25.10.2018 respectively.

9. The Respondent/Corporate Debtor filed counter affidavit which is seen.

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10. The learned counsel for the Respondent in his reply to the Petitioner's averments submitted that the Respondent/Corporate Debtor does admit the claim amount and stated that the financial position of the Respondent/CD has deteriorated continuously over past few years. In fact, due to such financial deterioration the Respondent/Corporate Debtor had approached the Petitioner/ Financial Creditor to provide finance for meeting the short term funding for implementation of two 10 MW each Power Projects at Parbahani and Amaravati in Maharashtra State. That, the power sector as a whole is in distress due to prevailing market conditions. That, due to the stressed condition the Respondent/Corporate Debtor was not able to repay the debt taken from the Petitioner/ FC on time.

11. It is further submitted by the Respondent/CD that the Leader of the Consortium of secured financial creditors (IDBI Bank) already assigned its share to an ARC i.e., UVARC Limited, New Delhi. The other Secured Financial Creditor (SBI) along with UVARC Limited initially indicated in a Joint Lenders Committee meeting to lease out the plant to an investor to operate the plant in the process of resolving the debt. The investor/process lessee invested about ₹.3.00 Crores towards initial restart expenses. However, the proposal was finally not accepted by the Secured Financial Creditors and the investor is also demanding now the return of his initial investment.

12. It is also submitted that, the Respondent/CD is not having any means to pay the Petitioner/ FC as the plant is closed and that it has no objection against initiating the Corporate Insolvency Resolution Process (CIRP) in the case of Respondent/CD company.

13. Heard both the sides and perused the record.

14. It is the case of the Petitioner/ FC that it has provided finance for meeting the short-term funding to the present Respondent/CD and



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total amount in default is ₹.1,79,28,459/- (Rupees One Crore Seventy-Nine Lakhs Twenty-Eight Thousand Four Hundred and Fifty Nine Only) including interest. The Respondent in its counter admitted the amount in default but has stated various reasons for not repaying the debt on time taken from the Petitioner/ FC. The Learned Counsel for the Respondent/CD has reported no objection while making submission. The Petitioner has proved by placing evidence viz, Loan Agreement, Demand Promissory Note, Personal Guarantee and Debt Acknowledgements that default has occurred for which the present Respondent/CD is liable to pay. In these circumstances, this Adjudicating Authority is satisfied that the Financial Creditor has fulfilled all the requirements of law for initiation of CIRP. The Petitioner/FC has also proposed the name of IRP after obtaining his written consent in Form-2.

15. 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.

16. 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..

17. We hereby appoint Mr.Kalvakolanu Murali Krishna Prasad 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.

18. 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 prohibit all of the following, 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 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.*

19. 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.

20. 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

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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.

21. 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 this Order as per the provisions of I&B Code, 2016.

22. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

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

Mr. Kalvakolanu Murali Krishna Prasad
Address : 8-27, Jillelguda,
Mythripuram Colony,
Vyshalinagar, West Marredpally,
Hyderabad, Telangana, 500079
Email: kmk123ip@gmail.com

Reg. No: IBBI/IPA-001/IP-P00967/2017-2018/11588.

24. The present Petition bearing CP (IB) No.506/07/HDB/2019 is hereby admitted.


15/10/19
Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL


K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

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Dy. Regr./Asst. Regr. Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER... CP (IB) No. 506/7/HDB/2019
निर्णय का तारीख
DATE OF JUDGEMENT... 15/10/19
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 21/10/19