



S. No. 9

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
19-10-2022 AT 03:30 PM. THROUGH VIDEO CONFERENCE.**

IA(IBC) 930/2022 in CP(IB) 153/7/HDB/2022
U/s 7 of IBC, 2016

IN THE MATTER OF:

Indian Renewable Energy Development Agency Ltd ...Financial Creditor

Vs

M/s Shalivahana Green Energy Ltd ...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Order in Company Petition CP (IB) No.153/7/HDB/2022 pronounced. Recorded vide separate sheet. In the result Company Petition is admitted and Corporate Debtor is put under CIRP.

As orders are pronounced in the Company Petition, IA (IBC) 930/2022 become infructuous. Hence disposed of accordingly.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No.153/7/HDB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Read with Rule 4 of Insolvency and Bankruptcy
(Application to Adjudicating Authority Rules), 2016

In the matter of:

Indian Renewable Energy Development Agency Limited,
India Habitat Centre, 1st Floor,
East Court, Core 4A, Lodhi Road,
New Delhi - 110003

...Financial Creditor

Versus

M/s Shalivahana Green Energy Limited,
7th Floor, Minerva Complex, 94,
S.D. Road, Secunderabad,
Telangana-500003

... Corporate Debtor

Date of Order: 19.10.2022

Coram:

Dr. Venkata Ramakrishna Badrinath Nandula, Hon'ble Member (Judicial)
Sh. Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Parties/Counsels present:

For the Applicant: Mr. Abhishek Kumar, Advocate
For the Respondent: Mr. Bikki Ravendra Babu, Advocate



PER BENCH

1. This Application is filed by Indian Renewable Energy Development Agency Limited (*Hereinafter referred as Financial Creditor*) under Section 7 of Insolvency and Bankruptcy Code (*Hereinafter to be referred as "IBC"*), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (*Hereinafter referred as CIRP*) against M/s Shalivahana Green Energy Limited (*Hereinafter referred as Corporate Debtor*), alleging non-payment of Rs. 7,61,90,844/- (*Rupees Seven Crores Sixty-One Lakh Ninety Thousand and Eight Hundred and Forty Four Only*), said to be due and payable by Corporate Debtor to Financial Creditor.
2. The Financial Creditor is a Public Financial Institution under Section 4A of the Companies Act, 1956 and is registered as a Non-Banking Financial Company with the Reserve Bank of India having CIN as U65100DL1987GOI027265.
3. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 having CIN as U45200TG1992PLC014925. Its Authorized Share Capital is Rs.186,00,00,000/- and Paid-up Capital is Rs.185,86,91,010/-
4. **The Contentions as put-forth by the Financial Creditor are:**
 - 4.1. It is submitted that the present application under Section 7 of IBC is being preferred through Mr. Darpan Garg, Chief Manager (Technical Services), of Financial Creditor, who has been duly authorized to file and pursue the present application by the board of directors of the Financial Creditor in



terms of board resolution dated 21.05.2004. It is further submitted that the designation of Senior Manager, appearing in the Board Resolution dated 21.05.2004 was renamed as Chief Manager by the Financial Creditor vide Office Order No. 2019/0004 dated 01.01.2019. A duly certified copy of Board Resolution dated 21.05.2004 along with a copy of Office Order No. 2019/0004 dated 01.01.2019 are enclosed with the Application as Annexure A-1.

- 4.2. It is submitted that the Corporate Debtor approached the Financial Creditor for the purpose of obtaining a loan for setting up of 10 MW Biomass Power Project at Chanaka Village, Wani TK, Yavatmal District, Maharashtra. Based on the representations made and documents submitted by the Corporate Debtor, the Financial Creditor vide sanction letter dated 19.01.2006 sanctioned a term loan of Rs. 2020 Lakhs (*Rupees Twenty Crore and Twenty Lakh Only*) to the Corporate Debtor. A copy of the sanction letter dated 19.01.2006 is annexed herewith and marked as Annexure A-4.
- 4.3. It is submitted that a loan agreement dated 24.02.2006 was executed between Financial Creditor and the Corporate Debtor by virtue of which Financial Creditor agreed to disburse the total loan amount of Rs.2020 Lakhs (*Twenty Crores and Twenty Lakh only*) to the Corporate Debtor subject to the terms and conditions mentioned in the Loan Agreement on various dates between March 2006 to March 2008. Copy of the Loan Agreement dated 24.02.2006 executed between the Financial Creditor and the Corporate Debtor is enclosed and marked as Annexure-5.
- 4.4. It is submitted that the Corporate Debtor was originally incorporated by the name of M/s Shalivahana Constructions Ltd. and later its name was



changed to M/s Shalivahana Projects Limited. Further, on 28.09.2007 its name was again changed to M/s Shalivahana Green Energy Limited. Copy of the revised certificate of incorporation of the Corporate Debtor dated 28.09.2007 is enclosed with the Application as Annexure A-3.

- 4.5. It is submitted that the principal amount under the loan agreement i.e. Rs. 2020 Crores was repayable by the Corporate Debtor in 40 quarterly instalments, as per the Amortisation Schedule, The first instalment was due and payable on 31.03.2008 and the last instalment was due and payable on 31.12.2017.
- 4.6. It is submitted that the Corporate Debtor vide letter dated 14.04.2006 submitted to the Financial Creditor, Form-8 filed by the Corporate Debtor before the Registrar of Companies, Hyderabad, for creation of charge/mortgage in favour of Financial Creditor by way of deposit of original title deeds. The charge was duly recorded by the ROC. A Copy of letter dated 14.04.2006 along with Form-8 and acknowledgment by ROC is enclosed with the Application as Annexure A-36.
- 4.7. It is submitted that a Trust and Retention Account Agreement was executed between the Financial Creditor, Corporate Debtor and the IDBI Bank. Copy of Trust and Retention Account Agreement dated 07.09.2006 is enclosed with the Application as Annexure A-37.
- 4.8. It is submitted that the Corporate Debtor, vide its letter dated 27.03.2008, citing certain difficulties requested the Financial Creditor to defer the payment of principal amount by 6 months. Copy of letter elated 27.03.2008 by the Corporate Debtor is enclosed with the Application as Annexure A-38.



- 4.9. It is submitted that pursuant to the above-mentioned request dated 27.03.2008 of the Corporate Debtor, the loan agreement dated 24.02.2006 was amended vide letter dated 11.04.2008, whereby Financial Creditor extended the period for repayment of loan by further 6 months. The said amendment was confirmed and accepted by the personal guarantors as well as the corporate guarantors. Copy of letter dated 11.04.2008 is enclosed with the Application as Annexure A-39.
- 4.10. It is submitted that vide letter dated 07.05.2010, Ministry of New & Renewable Energy (*Hereinafter referred as MNRE*) granted a subsidy of Rs.88,50,000/- (*Rupees Eighty-Eight Lakhs and Fifty Thousand only*) to the project of the Corporate Debtor under the scheme for Promotion of Grid Interactive Power Generation Project based on Renewable Energy Sources for Financial Year 2010-11. The said letter also provided that the abovementioned amount of subsidy would be disbursed to Financial Creditor who would then reduce the abovementioned amount from the total loan amount granted to the Corporate Debtor. Consequently, the said amount of Rs.88,50,000/- was adjusted to and reduced by Financial Creditor from the total loan amount due and payable by the Corporate Debtor. Copy of letter dated 07.05.2010 by MNRE, Government of India is enclosed with the Application as Annexure A-40.
- 4.11. It is submitted that the Corporate Debtor vide its letter dated 01.02.2011, submitted a board resolution dated 24.12.2010 and an undertaking dated 22.01.2011 to the Financial Creditor for release of capital subsidy sanctioned by MNRE to the Corporate Debtor's project. Vide the said undertaking, the Corporate Debtor, inter-alia, undertook to refund, without demur, the entire amount of capital subsidy to Financial Creditor for onward remittance to MNRE. In case Financial Creditor enforces its



security or file the application with the Hon'ble Tribunal or with court with recovery of its dues from the Corporate Debtor. Copy of letter dated 01.02.2011 along with Board Resolution dated 24.12.2010 and undertaking dated 22.01.2011 is enclosed with the Application as Annexure A-41.

- 4.12. It is submitted that the-Corporate Debtor, vide its letters dated 02.02.2013 and 02.03.2013 requested for rescheduling the loan account once again citing some financial difficulties. Copies of letters dated 02.02.2013 and 02.03.2013 are with the Application as Annexure A-42 and Annexure A-43 respectively.
- 4.13. It is submitted that the Financial Creditor in order to support the Corporate Debtor, agreed to reschedule the period for repayment of the balance principal loan amount vide its letter dated 28.03.2013. Accordingly, the quarterly payment of balance principal outstanding was rescheduled to commence from 31.03.2014 and to end on 30.06.2018. The Financial Creditor also funded the interest overdue for the period 30.09.2012 to 30.06.2013. The said reschedule was accepted by the Corporate Debtor as well as by the guarantors. A copy of letter dated 28.03.2013 is enclosed with the Application as Annexure A-44.
- 4.14. It is submitted that despite the above relaxation, the Corporate Debtor failed to make regular payments in terms of the revised Amortization Schedule and once again requested for rescheduling the period for payment of balance outstanding amount vide its emails dated 23.10.2013 and 20.12.2013. For discussing the abovementioned request, a review meeting was held between the parties on 26.11.2013 and the Financial Creditor, vide its letter dated 28.11.2013 asked the Corporate Debtor to



make payment of at least one quarter, so as to enable the Financial Creditor to consider the requests made by the Corporate Debtor. Copies of emails dated 23.10.2013 and 20.12.2013 are annexed herewith as Annexure A-45 and a copy of letter dated 28.11.2013 is enclosed with the Application as Annexure A-46.

- 4.15. It is submitted that the Financial Creditor, vide its letter dated 14.03.2014, agreed to reschedule the period for repayment of the balance loan amount and accordingly, the commencement date of quarterly payment of balance principal outstanding was rescheduled to start from 31.03.2015, and the last instalment was to be paid on 30.09.2020. The Financial Creditor also funded the interest overdue for the period 31.12.2013 to 31.03.2014. A copy of letter dated 14.03.2014 is annexed herewith and marked as Annexure A-47.
- 4.16. It is submitted that the Corporate Debtor, however, once again citing some financial difficulties, vide its letter dated 18.11.2015 requested the Financial Creditor to grant benefits under “IREDA NCEF Refinance Scheme”. Under the aforesaid scheme there were certain provisions for refinancing the debts of any borrower. A copy of letter dated 18.11.2015 is enclosed with the Application as Annexure A-48
- 4.17. It is submitted that the above mentioned request of the Corporate Debtor was accepted by the Financial Creditor vide its letter dated 28.03.2017 and accordingly, the Financial Creditor refinanced an amount of Rs 363.30 Lakhs under IREDA NCEF Refinance scheme to the Corporate Debtor. The date for repayment of NCEF component were to commence from 30.06.2017 and to end on 30.09.2023. Further, the repayment schedule of the principal outstanding was once again modified and as per



the revised schedule, the payment was to commence from 31.12.2017 and to end on 30.09.2023. A copy of letter dated 28.03.2017 is enclosed with the Application as Annexure A-49.

- 4.18. It is submitted that the Corporate Debtor after making some payment, once again defaulted in payment of its Instalment i.e. Rs. 41,18,000/- fallen due on 31.03.2020. It is further submitted that Due to continuous failure of the Corporate Debtor to make any further payment, the Financial Creditor was constrained to declare the loan Account of Corporate Debtor as a Non-Performance Asset (*Hereinafter referred as NPA*) on 31.03.2021.
- 4.19. It is submitted that despite declaration of account of the Corporate Debtor as NPA, the Corporate Debtor did not bother to pay the instalments fell due during the Financial Year 31.03.2020 to 31.03.2021. Even thereafter, the Corporate Debtor not only did not bother to clear the payment due in lieu of the previous instalments but also defaulted in payment of instalments which fell due in June, 2021, September, 2021 and December, 2021.
- 4.20. It is submitted that having left with no other option, the Financial Creditor, proceeded to issue a recall notice dated 10.01.2022 to the Corporate Debtor, thereby, recalling the entire loan facility granted to the Corporate Debtor and calling upon it to repay the financial debt of Rs. 7,40,40,482/- which had fallen due and had become payable by the Corporate Debtor as on 31.12.2021. Copy of Recall Notice dated 10.01.2022 is enclosed with the Application as Annexure A-50. It is further submitted that the recall notice dated 10.01.2022 was duly delivered at the address of the



Corporate Debtor. However, no response or payment was received by the Financial Creditor from the Corporate Debtor.

- 4.21. It is submitted that as on 31.03.2022 the total financial debt due and outstanding under the loan facilities granted to the Corporate Debtor is Rs.7,61.90.844/- (*Rupees Seven Crores Sixty-One Lakh Ninety Thousand and Eight Hundred and Forty Four Only*), and the same is payable by the Corporate Debtor under the loan agreement. The duly certified copy of Statement of account of the Corporate Debtor maintained in the books of Financial Creditor along with a summary of the working of the financial debt is enclosed with the Application as Annexure A-51.
- 4.22. It is submitted that the Corporate Debtor has acknowledged the debt due and payable to the Financial Creditor in its balance sheet for the Financial Year 2018-2019, 2019-2020 and 2020- 2021. Copy of relevant pages of the balance sheet of the Corporate Debtor for the Financial Year 2018-2019, 2019-2020 and 2020-2021 are enclosed with the Application and marked as Annexure A-52, Annexure A-53 and Annexure A-54 respectively.
- 4.23. It is submitted that the Financial Creditor has proposed the name of Mr. Vishal Ghisulal Jain as Interim Resolution Professional having its Registration No. as IBBI/IPA-001/IPP00419/2017-2018/10742 having Address-Office No.502, G Square Business Park, Opposite Sanpada Station, Sector-30A, Vashi, Navi Mumbai, Maharashtra – 400703 and having Email: vishal@cavishaljain.com, Phone No. as +91 9820074563. Form-2 is enclosed with the Application and his AFA is valid till 04.01.2023.



4.24. It is submitted that the debt owed by the Corporate Debtor is a financial debt as defined under the IBC and therefore, Financial Creditor is a secured financial creditor. The Corporate Debtor has failed to discharge its liability under the loan agreement dated 24.02.2006 despite lapse of such a long time, therefore prayed to this Adjudicating Authority to initiate CIRP under the provisions of IBC against the Corporate Debtor. Hence, this present application is filed under Section 7 of the IBC.

5. The contentions put forth by the Corporate Debtor in its Counter are:

5.1. It is submitted that there is no authorization to the Chief Manager of the Financial Creditor to act on behalf of the Financial Creditor. The circular filed by the Financial Creditor as Annexure - I at page 83 indicate that it is only the Chairman cum Managing Director, Managing Director (Finance), Director (Technical), Chief General Manager and General Managers, Deputy General Managers, Assistant General Managers, Law Officers and Assistant Law Officers are severally authorized to institute necessary legal action, but not the "Chief Manager". In this context it is submitted that Form - 1 contemplate that it should be signed by the person authorized to act on behalf of the Financial Creditor and further disclose the position of the authorized person with or in relation to the Financial Creditor. The Chief Manager that signed on Form - 1 is not the person authorized as per the circular on delegation of powers. Hence, the present application in Form - 1 filed by the Chief Manager styling as authorized person of the Financial Creditor is liable to be dismissed in limine.

5.2. It is submitted that the account of the Corporate Debtor was treated as NPA with effect from 31.03.2021 without following the norms and



guidelines given by Reserve Bank of India in its circular issued on the subject of NPA.

- 5.3. It is submitted that MEDA has allotted the project to Shalivahana Projects Limited vide Implementation agreement dated 10.05.2006 vide Annexure-I enclosed with the Counter. Consequent upon the change of name from Shalivahana Projects Limited to Shalivahana Green Energy Limited a supplementary agreement dated 10.07.2009 was entered into with Maharashtra Energy Development Agency (MEDA) vide Annexure-II enclosed with the Counter.
- 5.4. It is submitted that it is not out of place to mention that MEDA has given about 44 other licenses for Biomass based power generation projects to other promoters. However, only 20 projects could be installed and achieved commercial operation and at present only 6 to 7 projects are in operation, on account of unavailability of raw material, realization of amounts against power supplied to MSEDCL.
- 5.5. It is submitted that Corporate Debtor implemented 10 MW Biomass based power project at Chanka village, Wani Tehsil, Yavatmal District, Maharashtra at an estimated cost of 38.50 Crore which was financed by Rupee Term Loan (RTL) of Rs. 26.59 crore from the Financial Creditor, whereas IDBI Bank sanctioned financial assistance by way of RTL of Rs. 6.75 Crore. The Corporate Debtor discharged Rupee Term Loan taken by IDBI Bank during the year 2013-14, as per the schedule.
- 5.6. It is submitted that Corporate Debtor it entered into PPA with MSEDCL, Mumbai on 07.06.2006 vide Annexure-III enclosed with the Counter. Subsequently the supplementary PPA was executed with MSEDCL on 09.09.2009 vide Annexure-IV. The supplementary agreement was



entered into on account of change of name of Company. The terms and conditions in the PPA dated 07.06.2006 and supplementary PPA dated 09.09.2009 are one and the same.

- 5.7. It is submitted that as per Clause Nos. 5.1 and 5.2 of PPA dated 07.06.2006 the tenure of the agreement is valid till 13th Anniversary of plant from the date of COD. The Letter dated 17.01.2008 issued by MSEDCL relating to COD is enclosed as Annexure-V in the Counter. The Corporate Debtor started commercial operations from 17.01.2008. The tenure of PPA was valid only till 16.01.2021.
- 5.8. It is submitted that as per Clause 5.2 of PPA the duration of PPA can be extended/renewed by mutual agreement of both parties. However, MSEDCL did not come forward for renewal of PPA.
- 5.9. It is submitted that due to lack of working capital with the Corporate Debtor and frequent grid failures and abnormal delay in realization of amount against the power exported to MSEDCL, threw the Corporate Debtor into financial crisis and unable to run the plant. It is further submitted that the Financial Creditor did not accord approval for fund utilization and further forced the Corporate Debtor to create Debt Service Reserve Account (DSRA), in spite of regular payments which resulted in short fall in budget and thereby operation constraints became uncontrollable. In those circumstances the Corporate Debtor was forced to close the plant from July, 2019.
- 5.10. It is submitted that PPA expired on 16.01.2021. Corporate Debtor made a request to MSEDCL/MEDA/Government of Maharashtra for renewal of PPA for another 7 years since the life span of Biomass project is 20 years. The letters dated 22.02.2021 addressed to Hon'ble Chief Minister,



Government of Maharashtra, The Director General MEDA, The Director (Commercial) MSEDCL are enclosed in the Counter as Annexure-VI. The Ministry of Renewable Energy, Government of India addressed letters dated 16.12.2021 and 18.02.2022 to the Chief Secretary, Government of Maharashtra to take necessary action to extend the PPAs. The copies of the letters dated 16.12.2021 and 18.02.2022 are enclosed as Annexure-VII in the Counter.

- 5.11. It is submitted that MSEDCL did not give any response made by the Corporate Debtor for renewal of PPA. Hence, Corporate Debtor filed Case No. 69/AD/2022 under Section 86 (1) (b) of Electricity Act, 2003 before MERC seeking extension of PPA entered Into between Corporate Debtor and MSEDCL. The said case is still pending. The copy of the notice issued by MERC is enclosed as Annexure –VIII in the Counter.
- 5.12. It is submitted that Financial Creditor within one year from the date of NPA, even without considering the constraints of the Corporate Debtor as narrated above rushed to trigger CIRP under Section 7 of IBC.
- 5.13. It is submitted that in case MERC direct the MSEDCL to renew the PPA, Corporate Debtor would be in a position to operate the plant and generate the power. Financial Creditor even without waiting for the result of the Case No. 69/AD/2022 pending before the MERC hastily initiated the process under IBC which is totally detrimental to the interest of Corporate Debtor and the object of the IBC.
- 5.14. It is submitted that there is no virtual default in discharging the debt if any due to Financial Creditor. In the absence of occurrence of default, the CIRP cannot be commenced.



- 5.15. It is submitted that the statement of account filed by the Financial Creditor is incorrect. The Financial Creditor has to prove the accuracy and authenticity of each entry. The statement of account filed by the Financial Creditor is not in compliance with Section 4 of Bankers Book Evidence Act, 1981 and it cannot be admitted into evidence without proof of each and every entry. It is further submitted that Section 34 of Bankers Book Evidence Act, 1981 says that parties cannot be saddled with liability basing on the entry in the books of accounts kept in regular course of business only, unless there is other material on record.
- 5.16. It is submitted that the burden of proof is on the Financial Creditor to establish the existence of debt and occurrence of default. In this case there is no default as alleged by the Financial Creditor.
- 5.17. It is submitted that Form-1 filed by the Financial Creditor is incomplete and it is not filed by an Authorized person and therefore it is liable to be rejected.
- 5.18. It is submitted that the power project is based on Biomass which is a raw material for creation of energy. It is only in case of power project based on Biomass the cost of raw material plays vital role. Whereas, in the case of other power projects there is no need of raw material at all except thermal projects.
- 5.19. It is submitted that it has got 5 power plants in the name of Corporate Debtors Companies name -Shalivahana Green Energy Limited at various locations such as Mancherial, Wani, Dhenkanal and Chhindwara (based on Biomass) and one power plant in Korba District, Chhatisgarh which is a Small Hydro Electric Project (SHEP). Out of these plants Dhenkanal and Jatashankare were sold and the sale proceeds were credited in favour



of their respective lenders against the out standings of the Corporate Debtor. Hence, prayed that the Adjudicating Authority be pleased to dismiss the petition with costs.

6. The contentions as put forth by the Financial Creditor in it Written Submissions are:

6.1. It is submitted that the Corporate Debtor has filed an application bearing I.A. No. (IBC) 930/2022 seeking stay of the present proceedings pending disposal of MERC Case No. 69/AD/2022 relying on the judgment of Hon'ble Supreme Court in **Vidarbha Industries Power P. Ltd. vs. Axis Bank Limited**¹. However, the aforesaid application is not maintainable. Even the said judgment is not applicable to the facts and circumstances of the present case for the following reasons:

- (a) In terms of Section 238 of IBC, the provisions of IBC shall prevail over provisions of any other law.
- (b) Without prejudice to the above, it is submitted that in Vidarbha case, a sum of Rs. 1730 crores was awarded in favour of the Corporate Debtor by APTEL. Whereas in the present case there is no such award/decreed or order of any court awarding any sum in favour of the Corporate Debtor.
- (c) The said application filed by the Corporate Debtor is based on the premise that it has filed a case before MERC thereby seeking extension of Energy Purchase Agreement (EPA) entered into between itself and Maharashtra State Electricity Distribution Company Limited. However, the filing of such application by the Corporate Debtor cannot be helpful to the Corporate Debtor in any manner to the present proceedings, firstly,

¹ Supra Note 1.



because of Section 238 of IBC and secondly, that admittedly the plant was closed in July 2019 and the PPA expired on 06.01.2021 itself. Therefore, there is no way that Corporate Debtor can generate any kind of income so as to satisfy the debt of the Financial Creditor.

- (d) Further, the account of the Corporate Debtor turned NPA on 31.03.2021 and the loan recall notice was issued on 10.01.2022 whereas the abovementioned case was filed before MERC on 31.03.2022 which is clearly an afterthought solely with an intention to delay the present proceedings.
- (e) Even otherwise, in para 87 of the above judgment, the Hon'ble Supreme Court of India has categorically held that *"even though Section 7(5)(a) of the IBC may confer discretionary power on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously"*.
- (f) Further in para 89 of the above judgment, the Hon'ble Supreme Court held that *"The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only*



illustrative". In view of the above-mentioned observations and the facts involved in the present matter, the Corporate Debtor has failed to make out any case for not proceeding against them under the provisions of IBC.

7. In the light of the above contentions the point that emerges for consideration is :

Whether a financial debt as claimed by the financial creditor is due and payable by the corporate debtor, if so, whether the corporate debtor defaulted in payment of the same ?.

We have heard Mr. Abhishek Kumar, Counsel for Financial Creditor and Mr. Bikki Ravendra Babu, Counsel for Corporate Debtor perused the Record, the written submissions and the case law.

8. At the outset we may state that a perusal of the counter filed by the corporate debtor discloses that Corporate Debtor has not disputed availing the loan from the Financial Creditor for setting up 10 MW Biomass Power Project at Chanka Village, Wani TK, Yavatmal District, Maharashtra, in the form of Term loan of Rs.2020 lakhs vide sanction letter dated 19.01.2006. Execution of loan agreement dated 24.02.2006 by the Corporate Debtor in favour of Financial Creditor is also not in dispute. Pursuant to the execution of loan agreement, required guarantee agreement also has been executed. That a part the Corporate Debtor has acknowledged the debt due and payable to the financial creditor in its financial statement for the financial year 2018-19, 2019-20 and 2020-21. However, the defence per the counter is that the Financial Creditor within one year from the date of NPA, even without considering the constraints of the Corporate Debtor rushed to initiate CIRP under Section 7 of



IBC, as such the application is not maintainable, that the person who filed the application is not authorized to file and that financial statements required proof in terms of Section 4 of Bankers Book Evidence Act, 1981 and which requirement was not complied with the Financial Creditor.

- 1) As per Section 7 (3) IB Code which is as below,
- 2) A financial creditor either by itself or jointly with ¹[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

²[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant



financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

³[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) Where the Adjudicating Authority is satisfied that--

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.



(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate--

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

where the Adjudicating Authority is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. The case on hand projects admissions as to availing of credit facilities and no proof of repayment. Therefore, we are satisfied that both debt and default are established. Hence it is fit case for admission.

9. In so far as the plea that the person who filed the application is not authorized to file and that the financial statements required proof in terms of Section 4 of Bankers Book Evidence Act, 1981 and which requirement was not complied with by the Financial Creditor, it may be stated that the said objections are not germane for considering an application under Section 7 of IBC. Even otherwise the contention that the person who signed and filed the present Petition is not competent is untenable and unsustainable in as much as the delegation of power clearly empowers Mr. Darpan Garg, Chief Manager (Technical Services) who signed and verified the application on behalf of the applicant. As far as the financial statements are concerned it may be stated that these financial statements are uploaded by the Corporate Debtor in the



official website as mandated under the rules framed by MCA as such question of disputing the same does not arise.

10. Therefore, as the financial debt as claimed by the Financial Creditor stands zestablished, the Adjudicating Authority admits the Petition under Section 7 of IBC declaring moratorium for the purposes referred to in Section 14 of IBC, with following directions:

- A. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;
- B. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- C. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- D. That the order of moratorium shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section



31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- E. This Bench hereby appoints Mr. Vishal Ghisulal Jain as Interim Resolution Professional, having Reg. No. IBBI/IPA-001/IPP00419/2017-2018/10742 and Address as Office No.502, G Square Business Park, Opposite Sanpada Station, Sector-30A, Vashi, Navi Mumbai, Maharashtra-400703 and Email: vishal@cavishaljain.com. He has given his consent in Form-2 dated 21.12.2021 and Authorization for Assignment is valid up to 04.01.2023.
- F. That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under Section 13 of Insolvency and Bankruptcy Code, 2016.
- G. The Financial Creditor is directed to send a Copy of this Order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.
- H. The Registry is directed to send a copy of this order to the Financial Creditor and Interim Resolution Professional appointed in this case.
- I. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- J. Accordingly, this Petition is admitted.

Sd/-

**VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Sd/-

**DR. N V RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)**