



ORDER

1. This petition is filed by M/s. Punjab National Bank, which is the Financial Creditor stating that M/s. Sri Guruprabha Power Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. **123,27,29,895.58/-**. This petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The brief averments made in the petition are as follows:
  - a) It is averred that the Corporate Debtor availed credit facilities granted by the Financial Creditor and thereafter committed default in repayment of the loan amounts to the Financial Creditor.
  - b) It is averred that the account of the Corporate Debtor was classified in to NPA account and thereafter the Financial Creditor invoked the provisions of the SARFESI Act and issued notice under Section 13(2) of SARFESI Act. The Corporate Debtor approached the Financial Creditor and proposed for OTS. The Financial Creditor sanctioned the OTS and the Corporate Debtor failed to comply the agreed amount under OTS scheme sanctioned by the Financial Creditor.
  - c) The details of Debt granted by the Financial Creditor to the Corporate Debtor are as follows:
    - i. Debt granted to the Corporate Debtor as Rupee Term Loan-1 facility of Rs. 28,88,40,000/- to part finance the setting up of a 10 M.W. Bio Mass Based Power Plant at Wakadi Village in the State of Maharashtra.
    - ii. Subsequently, the Second Rupee Term Loan-2 was for Rs. 4,35,30,000/- ( Rupees Four Cores Thirty Five Lakhs Thirty Thousand Only) was disbursed on 18<sup>th</sup> September,



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*[Handwritten mark]*

2009 along with a Cash Credit of Rs. 6,50,00,000/- on the same day.

d) It is averred that for the Repayment of the amounts due in term loan facility the following properties were secure by mortgage of immovable properties, which are mentioned below:

- i. The factory land together with plant and machinery, building, sheds in an area of admeasuring 29 Acres 52 guntas, in Gat No. 124/1, 124/2, 125/1, 125/1A, 125/1B and 125/2 situated at Wakadi village, Jalgaon District, Maharashtra together with building sheds etc., constructed thereon pertaining to 10 M.W. Bio Mass Power Project in the Wakadi Village, Jalgaon District, Maharashtra which belonged to the Corporate Debtor, which was confirmed by the deposit of title deeds by Manepalli Seshavataram.
- ii. Similarly the Corporate Debtor also offered the personal properties belonged to Manapalli Seshavataram i.e. all that piece and parcel of residential house bearing door no. 18-10-11 admeasuring 694.66 Sq yards in ward no. 9, Marellavari street, Bhimavaram, West Godavari District, towards security for the discharge of the Loan amounts and Outstanding balances payable by the Corporate Debtor to the Financial Creditor. The said equitable mortgage was confirmed by the said Manapalli Seshavataram **by a memo confirming** the deposit of the title deeds of the above property with the Financial Creditor.
- iii. In addition to the above immovable properties, the partnership firm M/s. Sri Sesharatna Raw and Boiled Rice Mills also offered immovable property as security to the Financial Creditor towards the discharge of the loan amounts and outstanding balances payable by the Corporate Debtor. The said partnership firm represented by its partners deposited the title deeds of the property



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4. I have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor.
5. The present petition is filed under Section 7 of the Code by the Financial Creditor stating that the corporate debtor had defaulted in payment of Rs. Rs. **123,27,29,895.58/-..**
6. The Learned Counsel for Financial Creditor contended that Financial Creditor granted various Financial Facilities to the Corporate Debtor from time to time. The Counsel contended the Corporate Debtor committed default of Rs. **123,27,29,895.58/-..**
7. Mr. Sunil Bagada, Authorized Representative of the Financial Creditor and working as Chief Manager has preferred the present application on behalf of the Financial Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor in terms of provisions of the Code.
8. The Financial Creditor has relied upon the following loan documents executed between the parties in respect of the financial facility sanctioned to the Corporate Debtor:
  - a) Sanction Letter Dated 04<sup>th</sup> April, 2007.
  - b) Agreement for Term Loan I dated 07<sup>th</sup> June, 2007.
  - c) Agreement of Guarantee given by M/s Sesharatnam Raw and Boiled Rice Mills, represented by its Managing Partners dated 18<sup>th</sup> July, 2007.
  - d) Deposit of Title deeds by the Corporate Debtor dated 08<sup>th</sup> June, 2007.
  - e) Agreement for Term Loan II dated 10<sup>th</sup> September, 2009.
  - f) Deed of Hypothecation dated 10<sup>th</sup> September, 2009.
  - g) Letter of Undertaking dated 10<sup>th</sup> September, 2009.
  - h) Agreement of Guarantee given by Mr. M.Suryanaryana Gupta, Mr. M.Seshvatram, Mrs. M.Naga Venkata Ratnamala and M/s Sesharatnam.
9. The Financial Creditor submitted that the Corporate Debtor failed to clear the outstanding dues and did not adhere to the terms and conditions of the loan agreements. Consequently, the Financial Creditor filed OA for recovery before Debt Recovery Tribunal. The



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*[Signature]*

Financial Creditor issued Demand notice Dated 14.06.2018 demanding repayment of the outstanding dues from the Corporate Debtor. However the Corporate Debtor failed to pay the amount despite of the demand notice.

10. The contention of Learned Counsel for Corporate Debtor is that the Financial Creditor failed to infuse required funds as per terms and due Force Majeure events resulted in cost and time over run. Counsel contended that the Financial Creditor failed to adhere to the terms mentioned in the Sanctioned terms resulted the Corporate Debtor ran in to liquidity crunch for the last several months which caused delay in making payments to the Financial Creditor.
11. The Financial Creditor is no way responsible for happening of certain events which causes delay in implementation of the Project. Thus, there is no valid objection raised for admission of the Petition. The Contention of the Corporate Debtor is that the company is likely to revive its business. This is not a ground on which the petition can be rejected. Further the corporate debtor admitted default.
12. The Corporate Debtor made several allegations against the Financial Creditor. The allegations raised by the Corporate Debtor cannot be looked into while deciding Application under Section 7 of I & B Code, 2016 Before admitting the Petition filed under Section 7 of IBC, this Tribunal has to see whether there is a debt due and if it is in default. Hon'ble Apex Court held in "**Innoventive Industries Ltd Vs. ICICI Bank and Ors (2018) 1 SCC 407**" that "The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the Applicant to rectify the defect within 7 days of receipt of notice from the Adjudicating Authority"
13. The Corporate Debtor admitted that loans were disbursed and also admitted the default. The Contention of the Corporate Debtor is that Financial Creditor failed to infuse required funds and failed to give financial support as and when required. The Financial Creditor filed voluminous documents along with the Application to prove its claim. The Corporate Debtor admitted the default but contented that



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default occurred due to several reasons and also due to breach of terms of sanction letters by the Financial Creditor. At the request of the Corporate Debtor the Financial Creditor sanctioned OTS. The Corporate Debtor failed to comply with the terms of OTS Scheme sanctioned by the Financial Creditor. The account of the Corporate Debtor was declared as NPA by the Financial Creditor. The Financial Creditor has been able to prove to debt and default. The present petition is well within the Limitation. The Petition is in order. The petition is complete and therefore deserves to be admitted.

14. The Financial Creditor has suggested the name of IRP who has given consent in Form-2 and there is no disciplinary action pending against present IRP. The account of Corporate Debtor is treated as NPA and there are grounds to admit the petition.

15. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

a) The Bench hereby prohibits 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; 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.



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- 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 20.09.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- e) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- f) That this Bench hereby appoints Mr. B.Naga Bhushan as IRP having registration number IBBI/IPA-001/IP-P00032/2016-17/10085 residing at 1-1-380/38, Ashok Nagar Extension, Hyderabad- 500020.



Accordingly, this Petition is admitted.

*NK*  
20.9.2019  
(NARENDER KUMAR BHOLA)  
(Member Technical)

*R*  
20.9.19  
(RATAKONDA MURALI)  
(Member Judicial)

*V*  
Ny. Regr./Asst. Regr. Court Officer/  
National Company Law Tribunal, Hyderabad Bench

VISWARAJ  
(Law Research Associate)

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER *CP (IB) No. 681/17/HNB/2018*  
निर्णय का तारीख  
DATE OF JUDGEMENT *20/9/19*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON *23/9/19*