

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**CP(IB) No. 180/CB/2020**

*In the matter of:*

An application under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

**And**

*In the matter of:*

**NISHARANI MAHAPATRA**, residing at 104, Vasantham, Sudarshan Nagar, Seri Lingampally, Hyderabad-500 019;

**... Financial Creditor**

**Versus**

**LUMEX RESOURCES PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 having its registered office at Plot No. DCB- 108, DLF Cyber city, Patia, Bhubaneswar, Khordha, Odisha- 751 026.

**... Corporate Debtor**

***Coram:***

Shri Rajasekhar V.K. : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing)***

For Petitioner (s) : Mr. Ratnanko Banerji, Sr. Advocate  
Mr. Patita Paban Bishwal, Advocate  
Mr. Shaunak Mitra, Advocate

For Respondent (s) : Mr. Shyam Sundar Sonthalia, CMA

**Order reserved on :13.09.2021**

**Order pronounced on: 08.10.2021**

Sl

**ORDER**

*Per: Rajasekhar V.K. Member (Judicial)*

1. The Court convened by video conference.
2. This application under Section 7 of Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by Nisharani Mahapatra (hereinafter referred to as the Financial Creditor), thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Lumex Resources Private Limited, a company incorporated under the provisions of the Companies Act, 2013 having its registered office at Plot No. DCB- 108, DLF Cyber city, Patia, Bhubaneswar, Khordha, Odisha-751026, CIN:. U51909OR2019PTC031369 (hereinafter referred as the Corporate Debtor).
3. It is submitted in the Petition Part IV, that Financial Creditor had disbursed Loan amounting to an agreement sum of ₹5.50 Crore (Rupees Five Crore Fifty Lakh only) to the Corporate Debtor in several tranches and same was acknowledged and accepted by the Board of the Corporate Debtor.
4. The Financial Creditor had entered into and executed a Loan Agreement with the Corporate Debtor on November 1, 2019 and it was recorded and agreed that the Corporate Debtor would repay the entire amount of ₹5,50,00,000/- together with interest thereon @ 45% per annum to the Financial Creditor as per the terms and conditions of the Loan Agreement. (Annexure-H to the petition)
5. It is stated in the petition that the Corporate Debtor in discharge of its liability issued 12 undated cheques on account of monthly interest for ₹20,62,500/- each in favor of the Financial Creditor and also issued an

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

CP (IB) No. 180/CB/2020  
*In res: CIRP of Lumex Resources Pvt. Ltd.*

undated cheque for the principal sum of ₹ 5,50,00,000/- (Annexure-I to the petition).

6. It is further stated that, it was mentioned in the Loan Agreement, if any default in making payment by the Corporate Debtor of monthly interest payment for two consecutive months would constitute a “default” and if such a default arises, the principal outstanding would become due immediately on the date of such default.
7. It is stated that the Corporate Debtor failed and neglected to make payment of the monthly interest amounts in terms of the Loan Agreement and subsequently the Corporate Debtor had proposed to settle the loan along with interest by August 2020 and issued Fresh Cheques for the clearance of the all outstanding and entered into an debt Settlement Agreement on 1<sup>st</sup> July, 2020(Annexure-K to the petition). This agreement clearly records that there was default within the meaning of the Loan Agreement and IBC Code, 2016 and also that the date of default for the principal amount was 5<sup>th</sup> March, 2020. It was mentioned in Clause 6 of the Loan Agreement dated 1<sup>st</sup> November, 2019 that there will be default if monthly interest is not paid for two consecutive months which was admitted by the Corporate Debtor vide its electronic mail dated 10<sup>th</sup> June, 2020 (Annexure-J to the petition).
8. It is stated that the Fresh Cheques which were issued for the clearance of the all outstanding were dishonored upon presentation by the banker of the Corporate Debtor with Remarks that “FUNDS INSUFFICIENT”. This clearly shows that the intention of Corporate Debtor is not to repay the amount that was given to them as Loan. (Annexure-L to the petition).
9. It is further stated that the Financial Debt is admitted by the Corporate Debtor in his reply affidavit affirmed on 22<sup>nd</sup> December, 2020. The Financial Debtor relied upon the following documents of the reply affidavit:

- a) Board Resolution dated 19<sup>th</sup> October, 2019

Sd



- 
- b) Loan agreement dated 1<sup>st</sup> November, 2019
- c) The payment of interest @45% per annum to the Financial Creditor as mentioned in the statement made by the Corporate Debtor (Annexure-B to the reply affidavit at page 19).
10. It is further stated that the Corporate Debtor is in default of a sum of ₹5,50,00,000/- (Rupees Five Crore Fifty Lakhs only) along with accrued interest, @ 45% per annum, due calculated from 01.01.2020 till 29.02.2020, amounting to ₹34,30,000/- (Thirty Four Lakhs and Thirty Thousand only) which is described in the details of Bank Statement showing amounts disbursed and schedule containing particulars of the outstanding dues of the corporate debtor as on 5<sup>th</sup> March, 2020 (Annexure-F & M to the petition).
11. The Financial Creditor has also placed on record the Bank Statements showing the disbursement of loan to the Corporate Debtor (Annexure-F to the petition). It is stated that the Corporate Debtor failed to discharge its liability thereby compelling the Financial Creditor to file these proceedings.
12. It is further stated that Mr. Rajeev Lochan Das, Director of the Corporate Debtor has signed all the documents on behalf of the Corporate Debtor and also signed the reply affidavit.
13. The Corporate Debtor was duly served with notice and was afforded opportunity to file reply.
14. The Corporate Debtor has filed its reply affidavit through one of its Directors, Mr. Rajeev Lochan Das.
15. In its reply affidavit, the Corporate Debtor submitted the following:
- a) That the instant application is misconceived, manipulated and not maintainable and is result of gross violation of Section 10A of the IBC, 2016. The Financial Creditor has misled several facts and

calculated the outstanding due without taking into consideration the entire facts. It is filed just to take undue advantage of the provision of the IBC, 2016;

- b) That the interest rate is 45% per annum and the loan Transaction is barred under the Odisha Money Lenders Act;
- c) That the Loan Agreement was executed without authorization by the Corporate Debtor and is purportedly in violation of the provisions of the Companies Act, 2013 and there was earlier Loan Agreement directly with the partnership Firm;
- d) There are some adjustments of dues that are not taken into account by the Financial Creditor in calculating the defaulted amount and that the particulars of default given by the Financial Creditor are not correct;
- e) That the Financial Creditor has not given a sum of ₹30,00,000/- to the Corporate Debtor on 18<sup>th</sup> November, 2019;
- f) That the Financial Creditor has considered a sum of ₹40,00,000/- paid by one Business Art Private Limited which was not a part of the Loan Agreement.

16. In response to the reply of the Corporate Debtor, the Financial Creditor submits the followings:

- a) That the rate of interest has been agreed both by the Financial Creditors and the Corporate Debtors which is evident from the Board Resolution and the loan agreement. The Corporate Debtor had also issued cheques for such interest amount and actual payment of interest for two months. Odisha Money Lenders Act is no way applicable in the proceedings under section 7 of the IBC. The IBC proceeding is not an action for recovery of money t. Section 238 of the IBC states that the code shall have effect

---

notwithstanding anything inconsistent contained in any other law. A similar defence was raised and negated by the NCLT Kolkata Bench in Alliance Broadband Services Private Limited Vs Manthan Broadband Services Private Limited.

- b) That the Loan Agreement was executed with proper authorization and Mr. Rajeev Lochan Das, Managing Director of the Company is duly authorized and he himself signed the relevant Board Resolution, Loan Agreement and cheques issued in favor of Financial Creditors and the Board Resolution specifically records the Special Resolution was passed by the Corporate Debtor at the extra ordinary General meeting in this regard and the Financial Creditor is also not concerned with the internal dealings and affairs of Corporate Debtor (under doctrine of indoor management).
- c) That from the Loan Agreement dated 1<sup>st</sup> November, 2019 and Settlement Agreement dated 1<sup>st</sup> July, 2020, the Corporate Debtor has admitted the outstanding the amount after all adjustments. Regarding the earlier Loan Agreements with the partnership firm, the same are irrelevant and are of no consequence since the agreement with partnership firm stand superseded by the later agreement with the Corporate Debtor on 1<sup>st</sup> November, 2019.
- d) That the amount of ₹30,00,000/- which was paid to the Corporate Debtor by cash was duly acknowledged by the Corporate Debtor in the Board Resolution dated 19.10.2019 and agreement dated 01.11.2019 and emails that the total amount of loan amount is ₹5,50,00,000/- which included the amount of ₹30,00,000/-.
- e) That the amount of ₹40,00,000/- which was initially paid by one Business Arts Private Limited was duly acknowledged by the

Sd



---

Corporate Debtor in the Board Resolution dated 19.10.2019 and agreement dated 01.11.2019 and the table at Annexure F in the reply affidavit at Page 56.

17. We have carefully gone through the pleadings filed by the parties. The reply submitted by the Corporate Debtor does not give any valid or plausible ground or reason for not making the payment. On the other hand, in the settlement agreement dated 1<sup>st</sup> July, 2020, Board Resolution dated 19<sup>th</sup> October, 2019, Loan Agreement dated 1<sup>st</sup> November, 2019, email dated 10<sup>th</sup> June, 2020, admission in reply affidavit that the Board resolution was rate was paid to the Financial Creditor, the corporate debtor has admitted default in payment of the dues of the petitioner (Financial Creditor). The corporate debtor, in discharge of its liability, also issued twelve undated cheques on account of monthly interest for ₹20,62,500/- each in favour of the Financial Creditor and also issued an undated cheque for the principal sum of ₹5,50,00,000/-.
18. We have also been gone through the contents of the Petition and each and every relevant portion of the pleadings filed by the Financial Creditor along with Annexures, and the reply of the Corporate Debtor. We are fully convinced that the loan amount of ₹5,50,00,000/- was duly advanced to the Corporate Debtor and the Corporate Debtor had paid interest at the agreed rate before making defaults of interest for the month of January and February, 2020 and there by the principal outstanding became due along with interest from 6<sup>th</sup> March, 2020. The requisites of an application under section 7 of IBC are available on record and duly proved.
19. The Financial Creditor has filed an application being Interim Application No. IA (IB) No. 43/CB/2021 on 25<sup>th</sup> May, 2021, proposing the name of **Mr. Suresh Chandra Pattanayak**, Insolvency Professional, holding IBBI **Registration No. IBBI/IPA-02/IP-N00759/2018-19/12384**, as the Interim Resolution Professional (IRP) of the Corporate Debtor instead of

Sd

Mr. Sandip Mitra as Mr. Sandip Mitra has withdrawn his consent to act as an Interim Resolution Professional. Consent from Mr. Suresh Chandra Pattanayak to act as Interim Resolution Professional (IRP) of the Corporate Debtor has been obtained and submitted in Form-2 and that no disciplinary proceedings are pending against him with the Board or IIPICA.

20. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

21. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) No.180/CB/2020** filed by **Nisharani Mahapatra**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Lumex Resources Private Limited** (CIN: U51909OR2019PTC031369), the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
  - (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (Sarfaesi) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
  - (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Suresh Chandra Pattanayak**, Insolvency Professional, holding IBBI Registration No. **IBBI/IPA-02/IP-N00759/2018-19/12384** having his address at GKV-38, Gati Krushna Villa, Tankapani Road, Brahmeswar Bagh, Bhubaneswar, Khordha, Orissa 751018,

and possessing AFA Certificate No. AA2/12384/02/231121/200713 valid upto 23.11.2021, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The IRP/RP shall submit to this Adjudicating Authority quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (i) The Financial Creditor shall deposit a sum of ₹2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 7(5)(a) of the IBC, the Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed

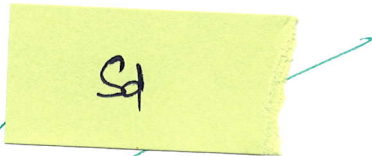
Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

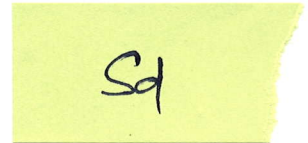
CP (IB) No. 180/CB/2020  
*In res: CIRP of Lumex Resources Pvt. Ltd.*

Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- (k) CP (IB) No.180/CB/2020 to come up on 15.12.2021 for progress report.
- (l) The **IA (IB) No. 43/CB/2021** shall stand disposed of with the above direction.



**Satya Ranjan Prasad**  
**Member (Technical)**



**Rajasekhar V.K.**  
**Member (Judicial)**

Signed this, the 8<sup>th</sup> day of October 2021.

Nishi Steno