

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

CP(IBC)/20/KOB/2023

*(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. Kasargod Power Corporation Limited.

Memo of parties: -

M/s. M.M.S. Steel & Power Private Limited,
17/2D, ONGC Road, Naranamangalam
Narimanam P.O., Nagore, Nagapattinam
District, Tamil Nadu- 611 002. Email:
mmssteel@gmail.com.

... Financial Creditor.

-Versus-

M/s. Kasargod Power Corporation Limited,
332 Bare Village, Mylatti Post, Kasargod,
Kerala- 671 123. Email:
ngroupcs@gmail.com.

... Corporate Debtor.

Order delivered on: 19.01.2024

Coram:

Hon'ble Member (Technical)

Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice (Retd.) T. Krishna Valli

Appearances:

For the Financial Creditor : Mr. Mohan Pulickkal, Adv.

For the Corporate Debtor : Ms. Deepthi Susan George, Adv.

ORDER

Per: Coram

1. Under consideration is Petition No. CP(IBC)/20/KOB/2023 filed by the Financial Creditor, M/s. M.M.S. Steel & Power Private Limited against the Corporate Debtor M/s. Kasargod Power Corporation Limited., invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process for the total default amount of **Rs. 7,57,63,243/- (Rupees Seven Crore Fifty-Seven Lakh Sixty-Three Thousand Two Hundred and Forty-Three Only)** in respect of credit facility availed by them from the Financial Creditor.
2. The facts as narrated in the petition and explained by the Financial Creditor are summarized hereunder:
 - i. The Financial Creditor is a private limited company incorporated under the Companies Act, 1956. having its registered office in the State of Tamil Nadu. The Corporate Debtor is a company registered under the Companies Act. 1956. having its registered

office at Kasargod in the State of Kerala. The Financial Creditor is represented by its Authorised Representative, M.A. Khayyum.

- ii. Under a Loan Agreement dated 20.06.2016 executed between the Corporate Debtor and the Financial Creditor. the Corporate Debtor availed of a loan of Rs.4,25,00,000/- (Rupees Four Crore Twenty-Five Lakh) from the Financial Creditor, agreeing to repay the loan in 5 years from the date of the agreement together with interest at 18% per annum.
- iii. As per the loan agreement dated 20.06.2016, the Financial Creditor disbursed in different tranches as required by the Corporate Debtor, a total amount of Rs.4,24,66,081/- between 30.06.2016 and 02.04.2019. Out of this, the Corporate Debtor repaid a total sum of Rs.25,00,000/- leaving the principal amount borrowed at Rs.3,99,66,081/- as at the due date of repayment as per the loan agreement.
- iv. As per the aforesaid loan agreement the Corporate Debtor was obliged to repay the loan within 5 years from the date of the loan agreement i.e. by 20.06.2021. The Financial Creditor stated that apart from the partial payment made of Rs. 25,00,000 (Rupees Twenty-Five Lakhs Only), the Corporate Debtor did not repay the outstanding amount comprising the principal debt and the interest accrued even after the due date. Therefore, the Financial

Creditor sent a letter to the Corporate Debtor on 22.06.2021 requiring the Corporate Debtor to repay the entire outstanding amount of Rs. 3,99,66,081/- with interest at 18% per annum.

- v. On receipt of the letter dated 22.06.2021, the Corporate Debtor by reply dated 07.01.2022, again requested for extension of 6 more months for repayment of the loan. However, the Financial Creditor acceded to the request of the Corporate Debtor again and did not press for payment for another 6 months. Again the Corporate Debtor is failed to repay the debt amount therefore the Financial Creditor sent a reminder dated 11.07.2022 to the Corporate Debtor, requiring repayment of the entire outstanding amount with interest.

- vi. Subsequently the Financial Creditor sent a demand notice dated 17.01.2023 calling upon the Corporate Debtor to repay a sum of Rs. 7,57,63,243/-, being the principal debt and interest thereon at 18% per annum from 30.06.2016 till 31.12.2022 forthwith. On receipt of demand notice dated 17.01.2023, the Corporate Debtor requested 3 months for the repayment of the entire amount demanded by the Financial Creditor. Despite several extensions granted by the Financial Creditor, the Corporate Debtor has continued its default in repayment of the debt due to the Financial Creditor.

- vii. The original date of default of the debt in terms of Loan Agreement is 20.06.2021. Thereafter the Corporate Debtor had requested for several extensions of time for repayment and even after receiving demand notice the Corporate Debtor sought 3 more months' time for repayment but failed to repay the debt. Thus the default occurred on 20.06.2021 still continues.
- viii. Hence, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7(4) of Insolvency and Bankruptcy Code, 2016.
3. On 13.10.2023, the Corporate Debtor filed its reply statement and stated that the Corporate Debtor to set up a 21 MW Low Sulphur Heavy Stock (LSHS) diesel-fired power plant, had leased land from the Kerala State Electricity Board (KSEB). The plant has achieved its commercial Operations date (COD) on 14.05.2001. The plant has stopped its operations from 31.03.2016 due to the non-renewal of the Power Purchase Agreement (PPA) dated 12.08.1998 executed between the Corporate Debtor and KSEB.
4. It is stated that despite numerous sincere efforts made by the corporate debtor to renew the PPA with KSEB, there was no response from KSEB in this regard. As a consequence, due to the non-renewal of the PPA, corporate debtors was facing hardship. As the PPA was

not renewed by KSEB, the corporate debtor had no other option but to sell its plant and machinery to a prospective buyer.

5. It is further stated that the machinery of the plant has not been in operation for the past 8 years and there is a deterioration in the market value of the machinery of the plant. In light of the same, the corporate debtor requested the approval of UCO Bank for selling the hypothecated equipment in the plant and the mortgaged land of the Corporate Debtor for repaying the loan from the proceeds of the sale.
6. The Corporate Debtor had placed many requests before the UCO Bank for selling the assets to a prospective buyer to repay the loan due to it. But UCO Bank did not issue any NOC nor did it approve the proposals of the corporate debtor to sell the machinery of the plant. Therefore, the corporate debtor was necessitated to enter into a Loan Agreement with the Financial Creditor on 20.06.2016 for a loan amount of Rs. 4,25,00,000/- (Rupees Four Crores Twenty Lakhs only) for meeting its financial requirements and also for repaying its pending loans.
7. It is stated that the non-repayment of the loan was not intentional but due to the unforeseen circumstances which had crippled the Corporate Debtor from repaying the loan to the Financial Creditor. The corporate debtor had initially sought a time extension of 6 months on 26.06.2021 and since the Corporate Debtor could not

arrange the funds for repayment, it has sought multiple extensions on 07.01.2022 and 24.01.2023 requesting further time as they could not collect the receivables for repaying the loan to the Financial Creditor. It is stated that as on 20.06.2021, the amount payable by the Corporate Debtor to the Financial Creditor was Rs. 4,25,00,000/- (Rupees Four Crores Twenty-Five Lakhs only) along with an interest @ 18% per annum as per the loan agreement dated 20.06.2016 entered by the Financial Creditor and Corporate Debtor.

FINDINGS: -

8. We have heard the learned counsel for both parties and perused the entire case records/documents. We have also gone through the evidence on record. On hearing both sides and with an appreciation of the documents produced, it is seen that the Corporate Debtor had sought several probabilities to settle the debt due to the Financial Creditor. Hence, it is clear that a substantial amount is due to the Financial Creditor from the Corporate Debtor.
9. A reading of the above facts, makes it clear that nothing on record to show that the Corporate Debtor entered into a compromise agreement and repayment of the entire outstanding amount has been made. However, by agreeing to repay the amount the Corporate Debtor accepted the debt due to the Financial Creditor. The Corporate Debtor

is required to honour the commitments made to the Financial Creditor.

10. As there is a default in the payment of the financial debt, which has been confirmed by them in the counter affidavit that the Financial Creditor paid the money to the Corporate Debtor, we are of the view that the present application filed by the Financial Creditor satisfies all the definitions of “Financial Creditor”, “Default” and “Financial Debt” and qualifies for applying for Insolvency and Bankruptcy Code. By mentioning various procedural hurdles, the Corporate Debtor cannot wash off its hands in repaying the amount borrowed, which is a financial debt owed by them. Hence, there is a Creditor-Debtor relationship with them. So, we are of the considered opinion that the present application of the Petitioner/ Financial Creditor may be admitted under Section 7 of the IBC, 2016 and CIRP initiated against the Corporate Debtor.

11. In view of the aforesaid observations, we hereby pass the following Orders.

- i. The petition bearing CP (IBC)/20/KOB/2023, filed by M/s. M.M.S. Steel & Power Private Limited, the Financial Creditor, 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 for initiating CIRP against the

Corporate Debtor M/s. Kasargod Power Corporation Limited is
ADMITTED.

- ii. There shall be a moratorium under Section 14 of the Code.
- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the Resolution Plan under Sub-Section (1) of Section 31 of IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- iv. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- v. The Financial Creditor has proposed the name of one **Mr. Nethi Mallikarjuna Setty** having Registration Number: **IBBI/IPA-001/IP-P01251/2018-2019/11958** as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 along with valid authorization has been filed by the proposed IRP, who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP

must take any additional actions in this regard that are mandated by the law, more specifically specified in Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out its functions as contemplated by Sections 15 and 21 of the Code.

- vi. During the CIRP period the management of the Corporate Debtor shall vest with 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 one week from the date of receipt of this order, in default of which coercive steps will follow.
- vii. The IRP/RP shall submit to this Adjudicating Authority periodical reports as per Regulations/Rules concerning the progress of the CIRP in respect of the Corporate Debtor.
- viii. The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of

issuing publication and inviting claims, etc. These expenses are subject to approval by the Committee of Creditors (CoC).

- ix. In terms of Section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the Corporate Guarantor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- x. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and the Registrar of Companies, Kerala, 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 Tribunal within seven days from the date of receipt of a copy of this order.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM
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SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

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(MEMBER JUDICIAL)

Signed on this 19th day of January, 2024.

Rajasree R. Nair/LRA