


aggregating to 10.65 crores to the CD in the year 2013 for which the CD executed all the necessary loan documents in favour of the Financial Creditor (in short, FC) to repay the said amount with interest from time to time as per the guidelines of the Reserve Bank of India (in short, RBI). The CD, besides executing the loan documents also created Equitable Mortgage of immovable properties and Hypothecation of movable properties in favour of the FC. As the CD committed default in repayment of the loan amount, the loan account of the CD was declared as Non-Performing Asset (NPA) on 30.04.2018. The FC initiated measures under the SARFAESI Act by issuing demand notice and also disposed of some of the mortgaged properties. Apart from initiating measures under SARFAESI Act, the FC also initiated action for recovery of the amount by filing Original Application in O.A.438 of 2018 on the File of the Debts Recovery Tribunal (in short, DRT), Guwahati both against the CD and its Guarantors and the same is pending. As the outstanding amount due to the FC remained unresolved, the FC filed the present application under Section 7 of the IBC.

3. The Respondent/CD did not choose to file any reply in the main company petition and filed an Interlocutory Application, I.A.09/2020 for dismissal of the company petition for suppression of facts in not pleading about the various proceedings instituted against each other.

4. It is the contention of the CD that the CD has sustained severe loss on account of the inaction of the FC in not taking proper comprehensive Insurance Policy in the name of the CD, as a result of which the CD sustained huge loss due to the floods. It is the further contention of the CD that the National Insurance Company Ltd. repudiated the insurance claim of the CD on account of not having valid insurance claim, aggrieved against which, the CD filed Money Suit bearing Suit No.297/2018 on the file of the Civil Judge No.1, Kamrup (Metro) both against the Insurance Company and also against the Bank. It is the further contention of the CD that the CD also filed Writ Petition against the FC in W.P.(C) No.7664/2019 challenging the Show Cause Notice issued to the Directors of the CD company. Thus, it is the contention of the CD that the above company petition is liable to be dismissed for suppressing the above material facts in the company petition and prayed for dismissal of the company petition.



5. Before going into the merits of the matter, it is important to place on record that Mr R. Dubey, learned Advocate for the CD, submitted across the Bar that the above I.A.09/2020 may be treated as reply to the main company petition and the matter may be disposed of without filing any separate reply by the CD basing on the above I.A. Accordingly, this Tribunal is passing common order in both the I.A. as well as the main company petition.

6. Heard both sides and perused the record. As stated above, it is the contention of the CD that the CD has sustained huge monetary loss on account of certain actions and inactions committed by the FC and similarly, the FC also initiated the above referred legal proceedings for recovery of the debt and the proceedings initiated against each other are pending before various legal forums and therefore, the present company petition is not maintainable.

7. In the light of the above contentions of the CD, the question that falls for consideration is:

- i) Whether the CD can raise all the above pleas in a Section 7 Application? and whether the above company petition can be allowed?

8. Before deciding the above issue, it is important to mention here that the proceedings before NCLT are summary in nature and the adjudicating authority, namely, NCLT has to merely look into the following aspects before admitting the applications filed under Section 7 & 9 of the IBC as per the law laid down by the Apex Court and Hon'ble NCLAT:

- i) Existence of Debt and Default
- ii) Whether the application is filed in prescribed Format? Whether the applicant has suggested the name of IRP in the petition? And whether there are any disciplinary proceedings pending against the IRP?

When once the executing authority is satisfied about the existence of the above issues the company petition filed under Sections 7 & 9 has to be admitted.

9. Applying the above principles to the present case on hand, it is important to mention here that the CD in the present case is neither disputing the debt nor the default. Similarly, the application is also filed in prescribed Format and the applicant

also suggested the name of the IRP and thus the applicant has satisfied all the ingredients necessary for admitting the above company petition when once the applicant fulfills the above conditions, the Adjudicating Authority has no jurisdiction to go into the various contentions/issues raised by the CD as they are beyond the purview of an application under Section 7 of the IBC more so when cases and counter cases are pending against each other in various legal forums. Hence, this Tribunal has no hesitation in holding that all the above contentions raised by the CD are not legally permissible to be looked into in the present application by this Tribunal.

10. As stated above, the applicant has proved the Debt and Default which are not disputed by the CD. The petition is also in prescribed Format suggesting the name of RP. Therefore, the above company petition has to be admitted and accordingly, the above company petition is admitted by passing the following:

ORDER

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s Agnipa Energy Private Limited.*
- (ii) *I hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*
- (iv) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
 - a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of*

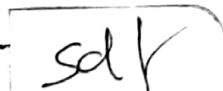
- any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization 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 possession of the corporate debtor.
- (v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- (x) The FC has proposed the name of Mr Pradeep Kumar Goenka, with address at A V Insolvency Pvt. Ltd. Bajarang Kunj, Room No.412-413, 2B, Grant Lane, 4th Floor, Kolkata-700012 with IPE **Registration No.IBBI/IPA-002/IP-N00294/2017-2018/10851** with e-mail ID-

goenka.pradeep@gmail.com as the Interim Resolution Professional (in short, IRP). As per the web site of IBBI, there is no disciplinary proceeding pending against Shri Pradeep Kumar Goenka. Accordingly, Shri Pradeep Kumar Goenka is hereby appointed as IRP from the panel of IRPs certified by IBBI for a resolution.

- (xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.
- (xii) Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.
- (xiii) The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.

11. List the matter after six weeks for the filing of the progress report.

12. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


Member (Judicial)
Adjudicating Authority

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**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

I.A.No.09/2020
In
C.P.(IB)No.37/GB/2019

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating) Authority) Rules 2016.

In the matter of:

Bank of India ... Applicant/Financial Creditor
-Versus-
M/s Agnipa Energy Pvt. Ltd. ... Respondent/Corporate Debtor

Coram:

Hon'ble Mr Hari Venkata Subba Rao, Member (J)

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ORDER

Date of Order: 12th February 2020

Order pronounced in open court vide separate order. In the result, the above company petition is allowed and Mr Pradeep Kumar Goenka is appointed as Interim Resolution Professional. I.A.09/2020 is dismissed.



Adjudicating Authority
National Company Law Tribunal
Guwahati Bench, Guwahati

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