

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III

Company Petition No. IB-280(ND)/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

GMM Barter Private Limited

...Applicant/Petitioner

AND

In the matter of:

Value Solar Energy Private Limited

...Corporate Debtor

Judgment delivered on: 03.01.2023

Coram:

SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA
HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Milan Negi & Mr. Nikhil Jha, Advs.

For the Respondent : Ms. Udita Singh, Advocate.

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition i.e., CP (IB)-280(ND)/2022 has been filed under Section 7 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Value Solar Energy Pvt. Ltd.*, declare the Moratorium and appoint the Interim Resolution Professional on the ground of default towards payment of interest on




the principal loan amount as stipulated under the Loan Agreement dated 16.12.2014. The Applicant/Financial Creditor issued a recall notice against the Respondent/Corporate Debtor on 13.10.2015.

2. It is submitted that the Respondent has failed to repay the amount of Rs. 6,75,00,000/- towards principal amount and an interest of Rs. 76,62,011/- within 10 days from the date of the recall notice. Therefore, the present petition under Section 7 of IBC has been filed against the Respondent/Corporate Debtor.

3. It is also submitted that the Respondent failed to adhere with the conditions envisaged under Clause 10 of the Agreement and defaulted to two consecutive instalments of loan repayment and interest because of which the Applicant had to recall the amount in terms of Clause 13 of the Agreement.

4. It is further submitted that the Respondent is in continuous default in paying the debt due. The debt due and payable is reflected and acknowledged by the Corporate Debtor in the audited balance-sheet dated 31.03.2020 of the Respondent/Corporate Debtor.

5. The Respondent/Corporate Debtor has filed a reply affidavit on 17.05.2022. The Respondent/Corporate Debtor has clearly stated in its reply affidavit that the Respondent/Corporate Debtor paid the monthly instalment of Rs. 12,58,274/- in March, 2015. However, due to financial constraints the Respondent/Corporate Debtor could not make regular payments. The Respondent/Corporate Debtor requested to the Applicant/Financial Creditor to waive of the interest to enable it to pay principal amount only. However, despite waiver of the interest amount, the Respondent/Corporate Debtor failed to repay the principal amount. The Respondent/Corporate Debtor in its reply affidavit has admitted that there was a default on the part of the Corporate Debtor to repay the amount under the Loan Agreement.


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6. We have heard Mr. Milan Negi, Learned Counsel appearing for the Applicant/Financial Creditor and Ms. Udit Singh, Learned Counsel appearing for the Respondent/Corporate Debtor and perused the records. From the averments made in the reply affidavit filed by the Respondent/Corporate Debtor and submissions made by the Learned Counsels, it is amply clear that the Corporate Debtor has admitted its liability. Therefore, we have no option except to admit the present petition under Section 7 and initiate the CIR Process against the Respondent/Corporate Debtor.

7. The Financial Creditor has also proposed the name of Resolution Professional viz, **Mr. Shamsher Bahadur Singh, having Registration No: IBBI/IPA- 003/0341/2021-2022/13623 Address: 1st Floor, D-54, Defence Colony, New Delhi, 110024 Email: shamsher_cs@yahoo.co.in and Mobile No: 9810771227.** The written Consent and IBBI registration certificate of IRP is taken on record. The IRP is directed to place on record AFA valid Authorisation of Assignment Certificate within 2 (two) days of pronouncement of this Order. As per the consent letter, no investigation is pending against the Resolution Professional and he agreed to accept the assignment as Interim Resolution Professional in the matter. The proposed Resolution Professional has also submitted his AFA which is valid upto 14.06.2023. Therefore, all the legal requirements are fulfilled, the application is **admitted**. The CIRP is initiated against the Corporate Debtor viz., *M/s. Value Solar Energy Private Limited. Mr. Shamsher Bahadur Singh is hereby appointed as IRP in the matter.*

8. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

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- (a) 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;
 - (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 the possession of the corporate debtor.
 - (e) The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during

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moratorium period. The provisions of Sub- section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. We hereby direct the Financial Creditor to pay a sum of Rs. 2,00,000/- to the IRP, as required under the provisions of the Code to meet out the initial expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

12. The Learned Counsel for the Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. On receiving the order, the IRP is directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the concerned RoC.

13. The CP/IB-280(ND)/2022 is **admitted**.

(Dr. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)