IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

CP (IB)/152(CHE)/2021

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **VRONE ENERGY PRIVATE LIMITED.**

PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED,
1 Moorgate, London,
EC2R 6JH. ... *Financial Creditor*

-Vs-

VRONE ENERGY PRIVATE LIMITED.
CIN: U45400TN2010PTC078503,
Temple Towers, 3rd Floor,
672/476 Anna Salai,
Nandanam (Mount Road)
Chennai – 600 035. ... *Corporate Debtor*

Order Pronounced on ***13th December 2022***

CORAM:

Dr. DEEPTI MUKESH MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor: Mr.S.K.Ravi, Advocate
Mr.Mithilesh Kumar Pandey, Advocate
For Corporate Debtor: Mr.Dev Eshwar, Advocate

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by **PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED** (hereinafter referred to as 'Financial Creditor') through Mr.Ravi K Chetani duly authorized vide Power of Attorney dated 25.06.2019, on 06.06.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **VRONE ENERGY PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank, having registered office stated to be situated at 1 Moorgate, London, EC2R 6JH and also a Branch office in India is situated at Punjab National Bank International Limited, 2nd Floor, 3, Siddhartha Enclave, Ashram Chowk, New Delhi-14.

3. As per Part II of the Application the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 21.12.2010 with CIN: U45400TN2010PTC078503. The registered office of the Corporate Debtor as per the MCA master data is situated at Temple Towers, 3rd Floor, 672/476 Anna Salai, Nandanam (Mount Road), Chennai – 600 035.

4. In Part-III of the Application, the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr.Rakesh Bothra, Reg. No.IBBI/IPA-001/IP-P-01758/2019-2020/12675.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of USD 15,536,317 (INR 113,41,51,188 [1 USD=INR 73]) as on 30.09.2020 excluding legal

and other expenses, which is due and payable by the Corporate Debtor. The date of default is stated as 03.01.2017.

6. Part V of the application describes the particulars of Financial Debt as follows,

i) Security Agreement dated 29.03.2011 and 10.06.2011 along with a letter of guarantee dated 21.06.2012, with the Financial Creditor.

ii) Judgement dated 14.01.2019, passed by the Court of Common Pleas, State of South Carolina, Country of Chester.

iii) Loan Restructuring approval letter dated 12.05.2014 issued by the Financial Creditor.

iv) Copy of Utility Information Report.

and a further list of documents placed in the typed set of the Application.

7. It is submitted by the Financial Creditor submitted that the Financial Creditor had lent money to South Eastern Petroleum LLC (Principal Borrower) vide sanction letters dated 31.01.2011. As per the requirement of the sanction of the loan, the Corporate Debtor stood as the Corporate Guarantor for the above-said loan and the same was approved by the Board of Directors of the Corporate Debtor herein in their meeting held on 18.03.2011.

8. It was further submitted that a Term Facility Agreement was executed between the above Parties (Principal Borrower, Financial Creditor and Corporate Debtor) on 29.03.2011 for a sum of USD

17 Million of which USD 9 Million was lent by the Financial Creditor. Subsequently, on 14.10.2011 a Restated Facility Agreement was executed between the for an additional working capital facility for a sum of USD 1.5 Million vide Amendment and Restatement Agreement dated 14.10.2011.

9. Further, at the joint request of the Principal Borrower and the present Corporate Debtor, the Financial Creditor issued a Restructuring of Debt letter dated 12.05.2014, which was signed and acknowledged by the Principal Borrower along with the present Corporate Debtor and other Corporate Guarantors. It was argued that in the said letter, the borrowers including the Corporate Debtor agreed to repay the loan in 28 Equated Quarterly Instalments, the first instalment began on 30.06.2016 and the last instalment is on 31.03.2023 and hence the loan is still alive.

10. It was further submitted that the payment of Equated Quarterly Instalments was made till 30.06.2015 and thereafter on 30.09.2015 the loan accounts become Non-Performing Assets. Subsequently, a legal notice was sent to the Corporate Debtor on 23.06.2016 by invoking the Corporate Guarantee and seeking the repayment of the amount due.

11. Thereafter, the Financial Creditor initiated the legal proceedings against the Principal Borrower and the Corporate Debtor and the other Guarantors before the High Court of Justice

Chancery Division and the Court of Common Pleas, State of South Carolina, Country of Chester during the year 2017.

12. The Court of Common Pleas, State of South Carolina, Country of Chester allowed the petition and vide judgement dated 14.01.2019 held that the defendants therein are liable to pay the judgement debt specified therein. The High Court of Justice Chancery Division has dismissed the proceeding on the ground of want of jurisdiction vide judgement dated 24.01.2019. Despite the said judgements against the Principal Borrower and Corporate Debtor failed to settle the Financial Creditor. Aggrieved by the non-payment by the Corporate Debtor, the Financial Creditor preferred this application.

13. It is submitted by the Corporate Debtor that the alleged loan become NPA on 30.09.2015 and the Demand Letter issued by the Financial Creditor on 23.06.2016. However, the present application has been filed on 30.05.2021, which is much beyond the limitation period of 3 years.

14. It was further contended that the alleged part payment received by the Financial Creditor on 03.01.2017 is not actually made by the Principal Borrower, rather it is a loan recovery made by the Financial Creditor and hence the benefit of fresh limitation cannot be availed by virtue of Section 19 of Limitation Act, 1963

since the amount pointed out by the Financial Creditor is only a Loan Recovery but not a payment made by the Principal Borrower.

15. It was further contended that the time taken in the proceedings before the High Court of Justice Chancery Division cannot be taken as an exclusion period by virtue of Section 14(2) of the Limitation Act, 1963 since the Financial Creditor ought not to have proceeded the case before the Foreign Court when the applicable law in terms of the Corporate Guarantee Executed by the Respondent is governed only by the laws of India.

16. It was further contended that the Financial Creditor has not produced the Corporate Guarantee dated 21.06.2012 executed by the Corporate Debtor, which is the basic document to prove that the Corporate Debtor is liable to pay the debt of the Principal Borrower. For the above-said reasons, the Corporate Debtor sought to reject this application.

17. In the course of the hearing the Financial Creditor is permitted to file the Corporate Guarantee dated 21.06.2012 entered into between the Financial Creditor and the Corporate Debtor and the same was filed and taken on record in view of the decision of Hon'ble Supreme Court in ***Dena Bank Vs. C.Shivakumar Reddy***, wherein it was held that "*the decision of Adjudicating Authority to entertain and/or allow the request of the*

appellant bank for the filing of additional documents with the supporting pleadings and to consider such documents and pleadings did not call for interference in appeal."

18. Having heard the submissions of both sides and perusal of the documents in the record it is seen that in Corporate Guarantee dated 21.06.2012 (Extracted hereunder) is entered into between the Corporate Debtor, Financial Creditor herein and Bank of Baroda, New York.

LETTER OF GUARANTEE

THIS LETTER OF GUARANTEE (the **"Guarantee"**) is executed at Chennai this 21^{st} day of June, 2012 by:

VRONE ENERGY PRIVATE LIMITED, a private limited company incorporated and registered under the Companies Act, 1956, having its registered office at 1^{st} Floor, Egmore Benefit Fund Society Building, No. 25, Flowers Road, Chennai – 600 084, India (hereinafter called the **"Corporate Guarantor"**, which expression shall, unless it be repugnant to the context or meaning thereof shall mean and include its successors and permitted assigns) of the One part

IN FAVOUR OF

BANK OF BARODA, NEW YORK, having its office at One Park Avenue, New York, New York 10016, United States of America (hereinafter referred to as **"the Security Trustee"**, which expression shall mean and include its successors in title and assigns) of the Other Part.

x Vaithsala Ranganathan

WHEREAS:

(A) **PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED**, a company incorporated in England and Wales (Company registration number 5781326) having its registered office at 87 Gresham Street, London, London EC2V 7NQ (hereinafter referred to as **"PNB"**, which expression shall mean and include its successors in title and assigns) and **BANK OF BARODA, NEW YORK**, having its office at One Park Avenue, New York, New York 10016, United States of America (hereinafter referred to as **"BOB"**, which expression shall mean and include its successors in title and assigns) have together agreed to grant /having granted Term Loan Facility of USD 17 Millions (USD Seventeen Millions Only) and Working Capital Facility of USD 3 Millions (USD Three Millions Only) (**"Facility"**) to **South Eastern Petroleum LLC**, having their registered office at C/o Capitol Corporate Services, Inc, 2 Office Park Court, Suite 103, Columbia, SC 29223 and Correspondence address at Southeastern Petroleum, LLC, 1856 Belt Line Road, Chester, South Carolina 29706 (**"Borrower"**), on the terms and conditions and securities mentioned in the Letter of Sanction NY/ADV/12/148 of BOB dated 30.04.2012 and the Letter of Sanction of PNB dated 09.08.2011(hereinafter referred to as the **"Sanction Letters"**) and the Restated Facility Agreement dated [ ] as amended, varied, supplemented from time to time (**"Restated Facility Agreement"**).

PNB and BOB are hereinafter collectively referred to as the **"Lenders."**

the above document undoubtedly clarifies that the Corporate Debtor has provided a Guarantee to the Principal Borrower.

19. It is essential to refer to the relevant provisions of IBC, 2016

*"**Section 3(7):** "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.*

***Section 3(8):** "**corporate debtor" means a corporate person** who owes a debt to any person;*

***Section 5 (5A): "corporate guarantor" means a corporate person who is the surety in a contract of guarantee** to a corporate debtor.*

***Section 5 (8)**: "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–*

(a) money borrowed against the payment of interest;

...

*(i) the amount of any liability in respect of **any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h)** of this clause;*

...

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf

*of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a **corporate debtor** before the Adjudicating Authority when a default has occurred.*

..."

reading the above provisions clarifies that the Application under Section 7, of IBC, can be proceeded against the Corporate Debtor herein.

20. In the pleadings the Corporate Debtor admitted the fact that the loan taken by the Principal Borrower become NPA on 30.09.2015, consequently, a demand notice dated 23.06.2016 was sent to the Corporate Debtor, which depicts the existence of debt and default of the Corporate Debtor. Hence, the only plea of the Corporate Debtor is that the application is not maintainable on the grounds of limitation.

21. Noting the above position, we may now turn to relevant provisions regarding limitations in the IBC, 2016. Section 238A of IBC, 2016 provides as follows,

"238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

Article 137 of the Limitation Act, 1963 provides as follows,

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

Sections 14(2) and 19 of the Limitation Act, 1963 reads as follows,

Section 14. *Exclusion of time of proceeding bona fide in court without jurisdiction.*
(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Section 19. *Effect of payment on account of debt or of interest on legacy— Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:"*

22. Reading of the above provisions explicates that the provisions of the Limitation Act, 1963 as far as may be applicable to proceedings of the IBC, 2016. Since there is no specific provision for insolvency proceedings in the limitation Act, 1963, as

per residual provision viz., Article 137, three years are to be considered as a limitation of IBC, 2016 proceedings.

23. In the statement of accounts of the Financial Creditor, it is recorded as follows,

punjab national bank (International) Limited
(Authorised and Regulated by the Financial Services Authority)
Corporate Office: 01, Moorgate, London EC2R 6JH
Tel: 020 7796 9600 Fax: 020 7796 1015 email: credit@pnbint.com Website: www.pnbint.com
Sort Code: 60 95 00 SWIFT Code: PUNBGB22

STATEMENT OF ACCOUNT FOR THE PERIOD OF 29-03-2011 to 30-04-2021

DATE	VALUE DATE	PARTICULARS	WITHDRAWALS	DEPOSITS	Balance (USD)
12-12-2014	12-12-2014	INTT FROM 30.03.14 TO 30.06.14		119,765.62	7,878,903.66Dr
12-12-2014	12-12-2014	INTT FROM 30.06.14 TO 30.09.2014		121,531.09	7,757,372.57Dr
12-12-2014	12-12-2014	INTT FROM 31.03.13 TO 30.06.14		112,760.70	7,644,611.87Dr
12-12-2014	30-09-2014	Interest:01-07-2014 to 30-09-2014	116,052.95		7,760,664.82Dr
-12-2014	30-09-2014	To Penal Int oll:01-07-2014 to	28,179.32		7,788,844.14Dr
31-12-2014	31-12-2014	Interest:01-10-2014 to 31-12-2014	110,208.56		7,899,052.70Dr
31-12-2014	31-12-2014	To Penal Int oll:01-10-2014 to 31-12-2014		3,076.82	7,895,175.88Dr
30-03-2015	30-03-2015	INTEREST FROM 30/09/2014 TO 31/12/2014		122,398.74	7,772,777.14Dr
31-03-2015	31-03-2015	Interest:01-01-2015 to 31-03-2015	110,680.07		7,883,457.21Dr
31-03-2015	31-03-2015	To Penal Int oll:01-01-2015 to	8,568.09		7,892,025.30Dr
18-05-2015	18-05-2015	REVERSAL OF EXCESS INTT CHARGED BY THE SYSTEM		36,302.05	7,855,723.25Dr
30-06-2015	30-06-2015	Interest:01-04-2015 to 30-06-2015	107,963.25		7,963,686.50Dr
30-06-2015	30-06-2015	To Penal Int oll:01-04-2015 to 30-06-2015		12,539.00	7,951,147.50Dr
30-06-2015	30-06-2015	INTT FROM 1/01/15 TO 31/03/2015		113,071.85	7,838,075.65Dr
30-09-2015	30-09-2015	Interest:01-07-2015 to 30-09-2015	114,081.18		7,952,156.83Dr
30-09-2015	30-09-2015	To Penal Int oll:01-07-2015 to	8,331.45		7,960,488.28Dr
-12-2015	16-12-2015	FP TRF TO STRADBROOKS GLOBAL LTD	1,378.35		7,961,866.63Dr
16-12-2015	16-12-2015	FP CHARGE	7.66		7,961,874.29Dr
31-12-2015	31-12-2015	Interest:01-10-2015 to 31-12-2015	114,977.97		8,076,852.26Dr
31-12-2015	31-12-2015	To Penal Int oll:01-10-2015 to	9,282.14		8,086,134.40Dr
31-03-2016	31-03-2016	Interest:01-01-2016 to 31-03-2016	119,263.20		8,205,397.60Dr
31-03-2016	31-03-2016	To Penal Int oll:01-01-2016 to	10,132.35		8,215,529.95Dr
30-06-2016	30-06-2016	Interest:01-04-2016 to 30-06-2016	119,679.71		8,335,209.66Dr
30-06-2016	30-06-2016	To Penal Int oll:01-04-2016 to	11,113.60		8,346,323.26Dr
12-08-2016	12-08-2016	SWIFT TRF TO BANK OF BARODA	2,477.00		8,348,800.26Dr
03-01-2017	03-01-2017	BY LOAN RECOVERY		65,403.00	8,283,397.26Dr
28-02-2017	28-02-2017	TO PROF FEE TO BOB NY A/C SOUTH EASTE	12,007.36		8,295,404.62Dr
28-02-2017	28-02-2017	SWIFT TRF CHRG	30.00		8,295,434.62Dr
28-02-2017	28-12-2016	TOWARDS LEGAL CHARGES - SABHARWAL	3,305.85		8,298,740.47Dr

Contd...

which shows that on 03.01.2017, USD 65,403 has been deposited by the Principal Borrower in the account of the Financial Creditor as loan recovery and hence the fresh limitation further 3 years has been stated from this payment record as stipulated in Section 19 of the Limitation Act.

24. In the judgement dated 14.01.2019, passed by the Court of Common Pleas, State of South Carolina, Country of Chester it was observed as follows,

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
~~C/A NO.: 2017-CP-12-00132~~

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BANK OF BARODA, NEW YORK BRANCH and PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED,

Plaintiffs,

vs.

~~SOUTHEASTERN PETROLEUM LLC,~~
~~VRONE ENERGY PRIVATE LIMITED,~~
TRISHE ENERGY, INC., PESCO-BEAM ENVIRONMENTAL SOLUTIONS, INC., SHRIRAM AUTO FINANCE, PESCO BEAM ENVIRONMENTAL SOLUTIONS PRIVATE LIMITED, CHESTER COUNTY, a political subdivision of South Carolina, VATSALA RANGANATHAN, A. SUBRAMANIAN, ANANTHARAMAN SHANKAR, LUKE STAENGI,

Defendants.

JUDGMENT AND ORDER

A hearing was held on January 14, 2019 at 11:00 o'clock a.m. at the Office of the Special Referee, Lamar Kelsey, Esq., Special Referee for Chester County, South Carolina, 125 Wylie Street, Chester, SC 29706. The testimony was taken, which is reported here with, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Summons, Lis Pendens and Complaint were filed on March 23, 2017.
2. Service was made upon the all of the above named Defendants as shown

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2017-CP-12-00132

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In para 17 of the above judgement, it was observed as below,

> *"The Defendants, other than Chester Country, which has no liability, are liable for the aforesaid judgement debt and are ordered to pay to the Plaintiff or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with costs and disbursement of this action."*

shows that the proceedings were instituted on 23.03.2017, between the same parties for the same claim arising out loan sanctioned to the Principal Borrower, and it was admitted on 14.01.2019.

25. The Applicant further submitted that the order of the Court of Common Pleas, State of South Carolina though was passed *ex-parte,* however, no appeal was filed by the Respondent with respect to jurisdiction of the court thereby submitting to the jurisdiction of the court in the matter the order has achieved finality. Taking the above representation under consideration the limitation stands extended.

26. In the Debt Restructuring letter dated 12.05.2014, issued by the Financial Creditor, it was agreed and signed by the Corporate Debtor as follows,

punjab national bank (International) Limited
(Authorised by PRA and Regulated by FCA and PRA)
1, Moorgate, London EC2R 6JH

12.05.2014

To
M/s. Southeastern Petroleum LLC,
1856, Beltline Drive,
Chester, SC 29706
South Carolina, USA.

Dear Sirs,

Re: South Eastern Petroleum LLC - Restructuring of debt.

This is in reference to the restructuring and revival plan submitted. On perusal of the documents submitted we have since approved the request for restructuring of existing debt of the company as under:

A) Amendment in repayment schedule of existing term loan:

	Existing	Proposed
Repayment schedule	Principal amount to be repaid in 28 quarterly instalments commencing from the end of moratorium period of 12 months after 1st utilization. The detail is as under:	Principal outstanding of USD 14.56 Mn (PNBIL: USD 7.72 Mn & BOB: USD 6.84 Mn) is to be repaid in 28 equal quarterly instalments with first instalment falling due on 30.06.2016 and last instalment on 31.03.2023.

Existing (In USD Mn)

Date	Total Inst	PNBIL Inst	BOB Inst
30.06.12	0.61	0.32	0.29
30.09.12	0.61	0.32	0.29
30.12.12	0.61	0.32	0.29
30.03.13	0.61	0.32	0.29
30.06.13	0.61	0.32	0.29
30.09.13	0.61	0.32	0.29
30.12.13	0.61	0.32	0.29
30.03.14	0.61	0.32	0.29
30.06.14	0.61	0.32	0.29
30.09.14	0.61	0.32	0.29
30.12.14	0.61	0.32	0.29
30.03.15	0.61	0.32	0.29
30.06.15	0.61	0.32	0.29
30.09.15	0.61	0.32	0.29
30.12.15	0.61	0.32	0.29
30.03.16	0.61	0.32	0.29
30.06.16	0.61	0.32	0.29
30.09.16	0.61	0.32	0.29
30.12.16	0.61	0.32	0.29
30.03.17	0.61	0.32	0.29
30.06.17	0.61	0.32	0.29
30.09.17	0.61	0.32	0.29
30.12.17	0.61	0.32	0.29
30.03.18	0.61	0.32	0.29
30.06.18	0.61	0.32	0.29
30.09.18	0.61	0.32	0.29
30.12.18	0.61	0.32	0.29
31.03.19	0.61	0.32	0.29

Proposed (In USD Mn)

Date	Total Inst	PNBIL Inst	BOB Inst
30.06.16	0.52	0.28	0.24
30.09.16	0.52	0.28	0.24
31.12.16	0.52	0.28	0.24
31.03.17	0.52	0.28	0.24
30.06.17	0.52	0.28	0.24
30.09.17	0.52	0.28	0.24
31.12.17	0.52	0.28	0.24
31.03.18	0.52	0.28	0.24
30.06.18	0.52	0.28	0.24
30.09.18	0.52	0.28	0.24
31.12.18	0.52	0.28	0.24
31.03.19	0.52	0.28	0.24
30.06.19	0.52	0.28	0.24
30.09.19	0.52	0.28	0.24
31.12.19	0.52	0.28	0.24
31.03.20	0.52	0.28	0.24
30.06.20	0.52	0.28	0.24
30.09.20	0.52	0.28	0.24
31.12.20	0.52	0.28	0.24
31.03.21	0.52	0.28	0.24
30.06.21	0.52	0.28	0.24
30.09.21	0.52	0.28	0.24
31.12.21	0.52	0.28	0.24
31.03.22	0.52	0.28	0.24
30.06.22	0.52	0.28	0.24
30.09.22	0.52	0.28	0.24

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For VRONE ENERGY PRIVATE LIMITED
Vathsala Ranganathan

Director

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Interest amount to be paid on every Interest reset date.
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Interest amount to be paid on every Interest reset date.
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B) Conversion of existing OD limit of USD 2.50 Mn (PNBIL: USD 1.50 Mn & BOB: USD 1.00 Mn) to Working Capital Term Loan. Working Capital Term Loan to be repaid in 28 equal quarterly instalments along with Term loan instalments, with first instalment falling due on 30.06.2016 and last instalment on 31.03.2023. The interest amount shall be paid as and when levied.

C) Approval for change in management of the Company.

D) Security: The facility shall be secured by:

a. 1st charge on paripassu basis on fixed and current assets of the company (present & future)
b. Pledge of shares of South Eastern Petroleum LLC.

Collateral security:

- Corporate guarantee of (i) VRONE Energy Pvt Ltd., (ii) Trishe Energy Inc, (iii) Pesco Beam Environmental Solutions Pvt Ltd., (iv) Trishe Energy Global BV.
- Personal guarantee of (i) Mrs Vathsala Rangnathan, (ii) Mt A Shankar, (iii) Mr Luke Staengl, (iv) Mr A Subramaniam.

The above approval is subject to following stipulation:

- Company to remove entire Interest Irregularity In the accounts.
- Company to submit technical viability report from an Independent agency.
- Proper legal documentation/agreement is executed for transfer of shares.
- Executing of personal guarantee documents by the directors of Pesco Beam and submission of their Net Worth certificates.
- Company to undertake to Induct proposed fresh equity for up-gradation of the unit and commencing commercial operations.

Yours faithfully,

For and on behalf of

punjab national bank (International) Limited
(Authorised by PRA and Regulated by FCA and PRA)
1, Moorgate, London EC2R 6JH

ACKNOWLEDGED AND AGREED:

1. For South Eastern Petroleum LLC
(Signature)
Name:
Title
Date:

2. For VRONE Energy Pvt. Ltd.
Vathsala Ranganathan
(Signature)
Name:
Title
Date:

3. For Trishe Energy Inc.
(Signature)
Name:
Title
Date:

4. For Pesco Beam Environmental Solutions Inc.
(Signature)
Name:
Title
Date:

5. For Pesco Beam Environmental Solutions Pvt. Ltd.
(Signature)
Name:
Title
Date:

6. For Trishe Energy Global BV
(Signature)
Name:
Title
Date:

7. Mrs. Vatsala Ranganathan
Vathsala Ranganathan
(Signature)
Title:
Date:

8. Anantharaman Shankar
(Signature)
Title
Date:

9. A. Subramaniam
(Signature)
Title:
Date:

10. Luke Staengl
(Signature)
Title:
Date:

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A perusal of the above letter depicts that the debt was restructured and the payment schedule was revised from 30.06.2016 till 31.03.2023 which was also properly acknowledged by the Corporate Debtor. Since the last repayment is on 31.03.2023, this debt should be considered as live debt and it is in continuous default till the filing of this application.

27. In view of the above discussion, we find that the plea of limitation appears to be a bogus and we reasonably conclude that

the application was filed well within the limitation and there is undoubted debt and default on the part of the Corporate Debtor and this Tribunal is inclined to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

28. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent including the 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this subsection, it is hereby clarified 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 or a similar grant or right during moratorium period;

29. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central

Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

30. The duration of a period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

31. The Financial Creditor has proposed the name of ***Mr.Rakesh Bothra*** **(Email id: *ip.rakeshbothra@gmail.com*)**, **Reg. No. [*IBBI/IPA-001/IP-P-01758/2019-2020/12675*]** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 at Annexure-18 of the application and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 12.07.2023 and no disciplinary proceedings pending against him.

32. **Mr.Rakesh Bothra** is appointed as the IRP and is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of a claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

33. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, and 18 of the IBC, 2016. 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.

34. 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 directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

35. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

36. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

37. Accordingly, this CP(IB)/152(CHE)/2021 stands **admitted.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

Dr.DEEPTI MUKESH
MEMBER (JUDICIAL)

Gopishankar. D

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Judicial Member Dr. Deepti Mukesh on behalf the bench comprising of Dr. Deepti Mukesh, Member (Judicial) and Sameer Kakar, Member (Technical).

M. Nallucheeaya
(Court officer)