



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/209/(CHE)/2023

*(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 M/s Connect Wind (India) Pvt. Ltd.,

State Bank of India

Represented by its Assistant General Manager,
Stressed Assets Management Branch,
No.32, Second Floor,
Montieth Road, Red Cross Building,
Egmore, Chennai - 600 008

... Petitioner/Financial Creditor

-Vs-

M/s. Connect Wind (India) Pvt. Ltd.,

CIN: U40108TN2010PTC077643

Represented by its Directors,
Having its registered office at No.165,
Lake View Road, West Mambalam,
Chennai – 600 033

... Respondent/Corporate Debtor

Order pronounced on 01st March, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Mr. M.L. Ganesh, Advocate

For Respondent : Mr. Anil Relwani, Advocate

ORDER

(Hearing Conducted through Video Conferencing)

This Petition has been filed by State Bank of India (hereinafter referred as *Financial Creditor*) against the M/s Connect Wind (India) Pvt.



Ltd., (hereinafter referred as *Corporate Debtor*) seeking to initiate Corporate Insolvency Resolution Process(CIRP) against the Corporate Debtor.

2. Part – I of the Application sets out the details of the Financial Creditor. It is stated that the Financial Creditor is a body corporate constituted under the State Bank of India Act, 1955.

3. In Part – II of the Application, it is stated that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act 1956 on 11.10.2010, and having its registered office at No.165, Lake View Road, West Mambalam, Chennai-600 033.

4. In Part – III of the Application, it is stated that the Financial Creditor has proposed the name of Mr. Ramakrishnan Sadasivan as the Insolvency Resolution Professional.

5. In Part – IV of the Application, the Financial Creditor has claimed total sum of Rs.30,28,21,940.71/- as on 04.02.2019 from Corporate Debtor. It is stated that, the Account of Corporate Debtor slipped into NPA on 29.02.2016.



6. It is stated that, the Corporate Debtor is a wholly owned subsidiary company of PPS Enviro Power Pvt. Ltd. and it has been established as a special purpose to set up wind power generating unit. It is further averred that the Corporate Debtor had approached the Financial Creditor requesting for term loan assistance for the purpose of setting up of 7.8MW Wind Power Project at Theni, Tamil Nadu.

7. It is stated that, the Financial Creditor has sanctioned a term loan facility to the limit of Rs.35.70 Crores to the Corporate Debtor vide sanction letter dated 15.05.2014 subject to the following terms and conditions:

Primary Security for term loan facility:

A. Exclusive first charge by way of mortgage on all immovable properties (EM of owned and leased lands) together with all structures and appurtenances thereon, present and future of the CD Company pertaining to the project.

B. Exclusive first charge by way of hypothecation of all movables namely, plant and machinery, spares, tools, accessories, furniture, fixtures, vehicles and all other movable properties of whatsoever nature(present and future) pertaining to the project.

C. Exclusive first charge on book debts, operating cash flows, receivables, commissions, revenues, sale proceeds of REC/GBI/CDM Benefits, any other current assets of whatsoever nature and wherever arising, present and future, intangibles, goodwill, uncalled, present and future, pertaining to the project.



D. Exclusive first charge by way of assignment or creation of charge on all the project, right, title, interest, benefits, claims and demands whatsoever of the company in any LC, BG, Performance Bond provided by any party to the project documents, all insurance contracts/insurance proceeds.

E. Exclusive first charge on the debt service reserve account created for the applicant bank.

COLLATERAL SECURITY:

Creation of EM of the immovable properties as morefully described in the schedule here under.

GUARANTEE:

Personal guarantee of Mr. Badri Kasturi and corporate guarantee of PPS Enviro Power Pvt Ltd., and M/s. Sun Power Solar Technick Pvt Ltd

8. It is further stated that, the Corporate Debtor Company and its Guarantors have executed a loan security documents on 17.05.2014 to cover the loan liability of Rs.35.70 Crores. The loan security documents are attached as **Annexure 2** in the Petitioner typeset of documents.

9. It is stated that, the Corporate Debtor created Equitable Mortgage by depositing title deeds pertaining to its property in terms of Section 58(f) of Transfer of Property Act, 1882 to cover the loan liability and also executed MOD registered as Doc No.2532/2014 S.R.O Thevaram, Doc. No. 1989/2014, S.R.O Panagudi, Doc.No. 2463/2014, S.R.O. Idaikal. It is



further stated that, the Corporate Debtor has duly registered the charge in favor of Financial Creditor over its property with ROC. The charge in favor of Financial Creditor is reflected in the Search and Status Report annexed as **Annexure 3** in the Petitioner's typeset documents.

10. It is stated that, the Corporate Debtor's project of Commissioning Wind Mill was not completed as per the scheduled date and no payments were made to the Financial Creditor. It is further stated that, the Financial Creditor has conducted money trailing through investigation and they came to understand that the Corporate Debtor had availed the credit facilities under the guise of commissioning the windmill project and diverted the funds to M/s PPS Enviro Power Pvt, which is the holding company of Corporate Debtor, through a Contractor - M/s Infinitas Energy Pvt. Ltd.

11. It is stated that, the Corporate Guarantor had clandestinely hatched a conspiracy to cheat the Financial Creditor for unlawful gains under the guise of windmill projects. It is further averred that, the Financial Creditor has lodged a Police complaint with CBI which is investigating into the affairs of the entire transaction and the same is under progress.



12. It is stated that, the Financial Creditor had filed O.A No.207 of 2017 before DRT-II, Chennai against the Corporate Debtor and Guarantors which was allowed on 06.02.2018. Subsequently, DRC No.40 of 2019 was issued on 04.02.2019 by DRT-II, Chennai, which is annexed as **Annexure-4** in the Petitioner's typeset of documents.

13. It is stated that, the Corporate Debtor had given a One-Time-Settlement (OTS) proposal letter on 22.05.2021 offering to pay a sum of Rs.5.50Crores as full and final settlement, which was rejected by Financial Creditor. The OTS letter is annexed as **Annexure 5** to the Petitioner's typeset documents.

14. It is stated that, the OTS letter serves as an acknowledgment of loan to the Financial Creditor and this present petition has been filed within 3 years from the date of OTS and twelve years from the date of issuance of DRC No.40 of 2019 by DRT-II, Chennai.

15. It is stated that, the Financial Creditor on 13.02.2024 has filed NeSL report dated 17.11.2023 and a perusal of the same would manifest the fact that debt status is shown as '*deemed to be authenticated*'.



16. Upon perusal of the documents, more particularly the **Annexure-A13** in the typeset documents filed by the Petitioner, it is understood that the Notice of this Application was provided to the Respondent and the Counsel for Respondent appeared on 01.01.2024 and sought for three days time to file vakalath. Moreover, on 13.02.2024, the Counsel for the Respondent appeared but neither filed the Reply/Counter nor Vakalath. This Tribunal vide order dated 13.02.2024 closed the right of the Respondent to file the Reply. In the said circumstances, we are constrained to proceed in this matter in the absence of the Corporate Debtor.

17. We have heard the submissions made by the Learned Counsel for the Financial Creditor and perused the documents.

18. Upon perusal of the documents annexed along with this Petition, it is seen that, the Financial Creditor had filed O.A. No. 207 of 2017 before DRT-II Chennai against the Corporate Debtor and its Guarantors. Subsequently, DRC No 40 of 2019 was issued on 04.02.2019 by DRT-II, Chennai, which shows that the Corporate Debtor is liable to pay the Financial Creditor a sum of Rs.30,28,21,940.71/- as on 04.02.2019. Further,



the Corporate Debtor on 22.05.2021 sent a One-Time-Settlement proposal letter to the Financial Creditor.

19. In relation to the OTS Letter dated 22.05.2021 issued by the Corporate Debtor, we place reliance upon the decision of the Hon'ble Supreme Court in the matter of **Kotak Mahindra Bank -vs- Kew Precision Parts Private Ltd. and others** in *Civil Appeal No. 2176 of 2020*, wherein at para 29 to 33 it has held as follows;

“29. From the above, it is clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement. It appears that Section 25(3) of the Indian Contract Act was not brought to the notice of the NCLAT. The NCLAT also did not consider the aforesaid Section.

30. In this appeal, it is contended that the last offer of 20th December, 2018 was followed by an agreement. Whether there was such agreement or not would have to be considered by the Adjudicating Authority. To invoke Section 25(3), the following conditions must be satisfied:

- (i) It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;*
- (ii) There must be a distinct promise to pay such debt, fully or in part;*
- (iii) The promise must be in writing, and signed by the debtor or his duly appointed agent.*

31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the



creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing and Manufacturing Company Limited vs. State of Bombay.

32. *Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).*

33. *There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional."*

20. Thus, to invoke Section 25(3) of the Contract Act, 1872, the following test has been laid down by the Hon'ble Supreme Court in the matter of **Kew Precision** (*supra*)

- (i) It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;



- (ii) There must be a distinct promise to pay such debt, fully or in part;
- (iii) The promise must be in writing, and signed by the debtor or his duly appointed agent.

21. In the present case, the OTS Letter dated 22.05.2021 issued by the Corporate Debtor has referred to the debt which the creditor, but for the period of limitation, might have enforced; has a distinct promise to pay such debt, in part; the said promise has been made in writing and signed by the Corporate Debtor.

22. Thus, the said OTS letter dated 22.05.2021 fulfils the conditions laid down by the Hon'ble Supreme Court under Section 25(3) of the Contract Act, 1872 and as such it gives a fresh cause of action for the Financial Creditor to file the Section 7 Petition. The present petition under Section 7 of IBC, 2016 was filed by the Financial Creditor before this Adjudicating Authority on 20.12.2023 and as such the present petition is well within the period of limitation.

23. Thus, the said acknowledgment of the Corporate Debtor through One-Time-Settlement proves that there is a 'financial debt' and the Corporate Debtor has committed 'default' in repayment of such financial debt, which is more than 1 crores. Under the said circumstances, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7(5) of IBC, 2016. We therefore



admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

24. The Financial Creditor proposed the name of one **Mr. Ramakrishnan Sadasivan** with Reg. No. **IBBI/IPA-001/IP-P00108/2017-2018/10215**, email (*sadasivanr@gmail.com*), Mobile: **94444 55982**, as the Interim Resolution Professional. The Authorization for Assignment is valid upto **04.10.2024**. The said Interim Resolution Professional (IRP) has also filed his written consent prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. Hence, we appoint **Mr. Ramakrishnan Sadasivan** as the IRP who shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.



25. 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 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 sub-section, 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;



26. However, during the pendency of 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 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.

27. The duration of 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 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.

28. The IRP 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 claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. 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.

30. 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 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

31. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

32. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

33. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code 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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

34. Accordingly, CP(IB)/209(CHE)/2023 stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM

MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN

MEMBER (JUDICIAL)

Kishore P