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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI RATAKONDA MURALI– MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA– MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.03.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 81/7/HDB/2020
NAME OF THE COMPANY	Hindupur Bio-Energy Ltd
NAME OF THE PETITIONER(S)	KSK Energy Financing India Pvt Ltd
NAME OF THE RESPONDENT(S)	Hindupur Bio-Energy Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced vide separate orders. Petition is admitted.

Member (T) **Member (J)**

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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I

CP (IB) No. 81/7/HDB/2020

Petition under U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF

KSK Electricity Financing India Private Limited
8-2-293/82/A/431/A, Road No.22
Jubilee Hills, Hyderabad – 500033 ... Petitioner/ Operational Creditor

VERSUS

Hindupur Bio-Energy Pvt Limited
6-3-1109/A/1, III Floor
Navabharat Chambers
Rajbhavan Road, Hyderabad - 500082 ...Corporate Debtor/ Respondent

Date of order: 16.03.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Appearance:

For Petitioner: Shri M.M. Viswaraj, Advocate
For Respondent: Ms Suma, Advocate

Heard on: 04.03.2020

PER: HON'BLE SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

JUDGEMENT

1. Under consideration before us is the petition filed by M/s. KSK Energy Financing India Private Limited/ Financial Creditor, stating that M/s. Hindupur Bio-Energy Private Limited, the Corporate Debtor herein had defaulted in repaying a sum of Rs. 2,50,00,00/- (Rupees Two Crores Fifty Lakhs only) together with interest of Rs. 2,79,83,826/- (Rs. Two Crores Seventy Nine Lakhs, Eighty three thousand, Eight hundred twenty six only @ 12 % interest per annum). Hence this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. **AVERMENTS IN THE PETITION:-**

The averments apropos to the Petition in brief are:-

2.1 KSK Electricity Financing India Private Limited/ Financial Creditor, is a company incorporated under the Companies Act, 1956 having its Registered Office at 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad – 500033.

2.2 Hindupur Bio-Energy Private Limited / Corporate Debtor is the Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 6-33-

1109/A/1, III Floor, Navabharat Chambers, Rajbhavan Road, Hyderabad – 500082.

2.3 It is averred on the request of Corporate Debtor, M/s Sai Wardha Power Generation Limited granted Inter-Corporate Deposit (ICD) of Rs. 2,50,00,000/- and entered into an agreement dated 10.03.2010. The rate of interest is fixed at 12% per annum to be payable along with the Principle at the time of repayment.

2.4 M/s Sai Wardha Power Generation Limited was apprised by the Corporate Debtor about the difficulties being faced by it in collecting amounts receivable and requested to postpone the repayment date. It is submitted by the petitioner that Corporate Debtor has acknowledged the debt payable to M/s Sai Wardha Power Generation Limited.

2.5 It is submitted M/s Sai Wardha Power Generation Limited, the Assignor vide agreement dated 01.04.2018 has assigned the Inter-Corporate Deposit Assignment to the Financial Creditor / Petitioner herein/ Assignee who agreed to take up all the rights, interest, title, claims and benefits of the Assignor in the Corporate Debtor.

2.6 It is further submitted that Financial Creditor was informed by the Corporate Debtor vide letter dated 29.03.2019 that they are in the process of borrowing from external sources to clear its debt but till date the Financial Creditor / Petitioner has not received the amount.

2.7 It is submitted that the Petitioner/ Financial Creditor vide its letter dated 30.11.2019 requested Corporate Debtor to pay the outstanding debt of Principal amount of Rs.

2,50,00,000/- along with interest of Rs. 2,79,83,826/-but till date the amount is outstanding against Corporate Debtor. Hence, this Petition is filed to trigger Corporate Insolvency Resolution Process against the Corporate Debtor.

REPLY / COUNTER BY CORPORATE DEBTOR

3 Reply is filed by Corporate Debtor. The contentions of the Corporate Debtor in brief are:

3.1 It is submitted by the Corporate Debtor that during the course of business activities, the Corporate Debtor Company, for development and expansion of its business borrowed a sum of Rs. 2,50,00,000/- @ 12% interest from M/s Sai Wardha Power Company Limited through an Inter-Corporate deposit Agreement dated 10.03.2010 with a condition to repay the loan within 48 months from the date of Agreement. Subsequently, M/s Sai Wardha Power Generation Limited, has in turn assigned the loan to the Financial Creditor/ Petitioner herein and entered into Inter-Corporate Deposit Assignment Agreement with Corporate Debtor.

3.2 It is submitted by the Corporate Debtor there is a delay in repayment of the said loan owing to certain unavoidable facts and circumstances surrounding the power sector. However, there is no dispute with regard to the debt and default.

FINDINGS:

4. We heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor and perused the documents on record. This petition is triggered by Petitioner who is the Financial Creditor stating that Corporate Debtor defaulted in repaying the loan to the tune of Rs. 2,50,00,000/- plus interest of Rs. 2,79,83,826/- @ 12% interest agreed to between the parties vide Inter-Corporate Deposit Assignment Agreement dated 01.04.2018. At the first instance the loan was granted by M/s Sai Wardha Power Company Limited which was later assigned to the Petitioner/Financial Creditor herein. Except highlighting the various challenges faced by the Power Sector across the country, the Corporate Debtor has not challenged the debt due and default committed by it. The claim is not barred by limitation since the Corporate Debtor through various correspondence admitted the liability, the latest such letter of admission of liability being dated 29.03.2019. Copy of all such correspondence dated 01.02.2014 to 30.11.2019 is available at page 46-67 of the Petition.

5. The Corporate Debtor accepts the default and debt due and pleads various grounds which are not relevant for deciding the admission. The Financial Creditor has suggested the name of Ms. Varalakshmi Narala, as Interim Resolution Professional who has filed her consent in Form-2. The Petition is complete in all respects and is filed within the limitation period.

<u>ORDER</u>

6. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

6.1 The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

6.2 That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

6.3 That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

6.4 That the order of moratorium shall have effect from 16.03.2020 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

6.5 This Bench hereby appoints Ms. Varalakshmi Narala, #R/o H.No. 1-8-588/29/A, Acchai Nagar, Adj to RTC Kalyanamandapam, Baglingampally, Hyderabad – 500044 having Registration No. IBBI/IPA-002/IP-N00620/2018-19/11980 as Interim Resolution Professional.

6.6 That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

6.7 Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.

Accordingly, this Petition is admitted.

16.3.2020 16.3.2020

(NARENDER KUMAR BHOLA) (RATAKONDA MURALI)
MEMBER (TECHNICAL) MEMBER (JUDICIAL)

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