IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.609/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Indian Renewable Energy Development Agency Limited

[CIN: U65100DL1987GOI027265]

…Financial Creditor/Applicant

V/s

Green Elephant India Private Limited

[CIN: U74999MH2008PTC182039]

...Corporate Debtor/Respondent

Order Dated: 17.02.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Ms. Raina Birla, Advocate.
For the Respondent(s)	:	None.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 609/MB/C-IV/2021 filed by Indian Renewable Energy Development Agency Limited, the Financial Creditor/Applicant, under section 7 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Green Elephant India Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Darpan Garg, Chief Manager of the Financial Creditor duly authorised vide its Authority Letter dated 27.03.2021, claiming total default of Rs.11,40,97,470/- (Rupees eleven crore forty lakh ninety-seven thousand four hundred seventy only) as on 31.12.2020.

3. The Date of NPA is stated to be 01.04.2018 in the Part-IV of the Petition. The Petition is filed on 31.03.2021.

4. The Financial Creditor had granted Term Loan of Rs.5,41,00,000 (Rupees five crore forty-one lakh only) on 29.09.2010. The Financial Creditor had further granted Term Loan of Rs.8,10,00,000/- (Rupees eight crore ten lakh only) on 26.07.2013.

5. The Financial Creditor submitted that the Corporate Debtor agreed to pay interest @ 12.25 for Project No. 1910 and 13.50% for Project No. 2028 in the term loan account subject to reset clause as mentioned in the Loan Agreement. In addition to the above, the Corporate Debtor has also agreed to pay on the defaulted amounts, liquidated damages at the rate of 2.50% per annum for the period of default, over and above applicable rate of interest for the project.

6. The Financial Creditor has filed the CIBIL Report dated 26.03.2021.

7. The Corporate Debtor has not filed reply in the matter after giving several opportunities in the matter.

Findings/Observations:

8. We have heard the arguments of the Learned Counsel for Operational Creditor.

9. After perusal of the material on record, this Bench is of considered view that The Financial Creditor had granted Term Loan of Rs.5,41,00,000 (Rupees five crore forty-one lakh only) on 29.09.2010 and Term Loan of Rs.8,10,00,000/- (Rupees eight crore ten lakh only) on 26.07.2013. The Corporate Debtor has not filed its reply after giving several opportunities in the matter, and hence the right to file reply of the Corporate Debtor was forfeited vide order dated 04.05.2022. When the matter was listed on 04.05.2022, the Corporate Debtor appeared and admitted the debt and default on the part of Corporate Debtor.

10. No date of default is stated in Part-IV and the reference has been drawn to the Statement of Account for determination of date of default. However, vide Notice dated 21.01.2019, the Financial Creditor issued Notice under section 13(2) of the SARAFAESI Act calling upon the Corporate Debtor to pay aggregate amount of Rs.2,14,70,583/-, due up to 30.09.2018, within 60 days from the date the Notice. Accordingly, the date of default is determined as 21.03.2019 for the purpose of this Application. Since this Application has been filed on 31.03.2021, the same is within the limitation period.

11. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form.

12. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

13. The Application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.

14. The Applicant has proposed the name of Mr. Laxman Digambar Pawar, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code. It is observed by the Bench that the Proposed IRP is having 44 (Forty-four) assignments with him and his AFA is not Valid as observed from the IBBI records. Hence, this Bench is of the view that another IRP should be appointed in the matter for the purpose of the smooth functioning of CIRP.

ORDER

15. This Application being C.P. (IB) No. 609/NCLT/MB/C-IV/2021 filed by Indian Renewable Energy Development Agency Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Green Elephant India Private Limited, Corporate Debtors is **admitted**. We further declare

moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Yatinkumar Sumatilal Shah, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01785/2019-2020/12764], Contact: 9820135632, E-mail: yatinshah01@yahoo.co.in as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
17.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)