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

**IBA/650/2020**

*(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 **Indowind Energy Limited***

**Export - Import Bank of India**

**Head Office at:**

Centre one Building, Floor 21,  
World Trade Centre Complex,  
Cuffe Parade, Mumbai – 400 005.

**Regional Office at:**

Overseas Towers, 4<sup>th</sup> & 5<sup>th</sup> Floor,  
No.756-L, Anna Salai,  
Chennai – 600 002.

*... Financial Creditor*

-Vs-

**Indowind Energy Limited**

Kothari Buildings, 4<sup>th</sup> Floor,  
114, M.G.Road,  
Nungambakkam,  
Chennai – 600 034

*...Corporate Debtor*

*Order Pronounced on **21<sup>st</sup> March 2022***

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)**  
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Mr. T. Ravichandran, Advocate*  
*For Corporate Debtor : Mr. E. Om Prakash, Senior Advocate*  
*For Ramalingam & Associates*

**ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

This Application has been filed by one **EXPORT - IMPORT BANK  
OF INDIA** (hereinafter referred to as 'Financial Creditor') on

09.09.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **INDOWIND ENERGY LTD** (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 moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The Export- Import Bank of India was established by virtue of Export – Import Bank of India Act, 1981 which came in to force on 01.01.1982. The registered office address of the Financial Creditor as per the Application is stated to be situated at Centre one Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai – 400 005 and the Regional Office address of the Financial Creditor is situated at Overseas Towers, 4<sup>th</sup> & 5<sup>th</sup> Floor, No.756-L, Anna Salai, Chennai – 600 002. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. Madusuthan.J, Deputy General Manager and Regional Head of the Financial Creditor duly authorised by Power of Attorney dated 22.07.2020 placed at Annexure No.I (1) in the Application typeset.



3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Public limited company incorporated under the Companies Act, 1956 on 19.07.1995 with CIN: L40108TN1995PLC032311. The registered office of the Corporate Debtor as per the MCA master data is situated at Kothari Buildings, 4<sup>th</sup> Floor, 114, M.G.Road, Nungambakkam, Chennai – 600034.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Ramakrishnan Sadasivan, Reg. No. IBBI/IPA-001/IP-P00108/2017-18/10215.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.101,98,11,060.18/- as on 26.08.2020 which is due and payable by the Corporate Debtor. It was stated that as on 26.08.2020, Rs. 101,98,11,060.18/- was due and outstanding from the Corporate Debtor, in respect of the Loans of Euro 18 Million, as per break up given hereunder :-

<b>PARTICULARS OF DUES AS ON AUGUST 26,2020</b>	<b>AMOUNTS (IN INR)</b>
Principal	71,89,98,412.62
Interest	28,27,04,778.41
Liquidated Damages	1,81,07,869.15
<b>Total</b>	<b>101,98,11,060.18</b>

The date of default as per CRILC Report as averred in Part-IV of the Application is 01.06.2018. The Details of the Disbursement of the term loan is tabulated in Annexure –I(3) of the Typed set of the Application are reproduced below :

Facility Extended: **Term Loan**

Sanctioned Amount: **Euro 18 Mn (Available in equivalent USD)**

<b>S. No.</b>	<b>DATE(S) OF DISBURSEMENT</b>	<b>AMOUNT DISBURSED IN USD.</b>
1	27.05.2011	USD 10 mn
2	28.03.2013	USD 1.96 mn
3	09.05.2013	USD 0.92 mn
	<b>Total</b>	<b>USD 12.88 mn</b>

6. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default and the same is placed at Annexure – I (38) and the other relevant documents are placed at Serial No.5 of the Part-V of the Application typeset filed by the Financial Creditor.

7. It was submitted by the Learned Counsel for the Financial Creditor that the Respondent/Corporate Debtor approached the Applicant for a term loan of Euro 18,000,000 (Euro Eighteen million only) (also available in equivalent USD) for part financing import of equipment and allied services. The same was sanctioned vide letter No.CBG/IFP/40:06 dated 17.06.2010 subject to various terms and conditions. The Sanction was modified on 29.07.2010 and under the

modified term, the Respondent/ Corporate Debtor agreed to repay the term loan with interest at the rate of EURO/USD : LIBOR (6M) + 400 bps per annum payable quarterly and it was accepted by the Applicant on 24.08.2010.

8. The Learned Counsel for the Financial Creditor submitted that the Respondent/Corporate Debtor had **executed** the following documents in favour of the Financial Creditor:

S.NO	DATE	DESCRIPTION
1	18.01.2011	Multi-Currency Loan Agreement containing various conditions with regard to repayment, interest, liquidated damages, Corporate Debtor's representations and general conditions.
2	18.01.2011	Deed of hypothecation
3	12.02.2013	undertaking to provide security within a period of 3 months from the date of second disbursement procure creation of security by way of escrow mechanism for deposit of power receivables on the windmills and the mode of financing by the applicant as specified in the schedule
4	27.03.2013	Undertaking by Corporate Debtor that it is seized and possessed the lands and other immovable properties situated at Thenampatti Village and morefully described in the said undertaking under "Part A" and that the Corporate Debtor has not created any other charge in respect of the immovable property
5	15.10.2013	Trust and Retention Agreement by the Corporate Debtor in favour of the Applicant in terms of which Axis Bank Limited was appointed as the Trust Bank and the Corporate Debtor had agreed to maintain the Designated Account in accordance with the terms of this Agreement. However, the aforesaid escrow arrangement is yet to be operationalised
6	18.05.2018	letter acknowledging the debt

9. It was further submitted by the Learned Counsel for the Financial Creditor that since, the Corporate Debtor failed to comply with the terms and conditions of sanction, the Applicant issued a letter dated 24.02.2014, calling upon the Corporate Debtor to immediately clear interest to the tune of US Dollar 8,457.16 which was overdue since 18.02.2014, assign all insurance policies in favour of the Applicant and arrange to create escrow account for other receivables in order to secure the Applicant's debt servicing. Further, this was followed by another letter dated 18.03.2014 again calling upon the Corporate Debtor to clear the outstanding.

10. It was further submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor requested for re-phasing which was sanctioned on 23.09.2014, wherein the terms and conditions of re-phasing was also set out in the said letter.

11. It was further submitted by the Learned Counsel for the Financial Creditor that on 09.12.2014, the Applicant requested the Corporate Debtor to convey its acceptance to the rephased terms and the Corporate Debtor accepted the same vide its letter dated 26.12.2014. Thereafter, certain other requests were made by the Corporate Debtor which was also accepted by the Applicant vide its letter dated 12.02.2015.

12. Despite rephasing of the loan, the Corporate Debtor committed default in payment of the interest due on the loan and therefore, the account of the Corporate Debtor was classified as Non – Performing Asset (NPA) with effect from 29.08.2014. Thereafter, on the request of the Corporate Debtor, the repayment of the Loan was rephased vide letter dated 23.09.2014. The Corporate Debtor was unable to fulfil the repayment obligations in accordance to rephasing letter. Following the default in payment on 01.06.2018, the Corporate Debtor's account became NPA in the books of EXIM Bank on 30.08.2018.

13. Further it was submitted by the Learned Counsel for the Financial Creditor that in accordance to the terms of the Rephasing Letter, the rephasing and concessions afforded to the Corporate Debtor was revoked and as per the prudential norms of RBI, the Corporate Debtor's Account was classified as NPA (i.e., on 29.08.2014) in the books of EXIM Bank with retrospective effect. It is relevant to point out that the Corporate Debtor had also executed letter acknowledging the debt on 18.05.2018.

14. It was further submitted by the Learned Counsel for the Financial Creditor that the Applicant issued a Recall Notice dated 23.01.2019, calling up on Respondent to repay the principal under the loans together with interest accrued thereon immediately. However, no

payments were received by the Applicant and the Applicant was constrained to crystallize the foreign currency due in INR. The Applicant again on 15.02.2019 issued another letter calling upon the Corporate Debtor to repay the entire amount i.e. Rs.86,98,95,085.12/- The Corporate Debtor issued a reply on 26.02.2019 expressing its difficulties which was followed by another letter dated 07.03.2019.

15. It was averred in the Application that the details of amount claimed to be in default is annexed at Annexure -I. Therefore to recover the outstanding debt, the Applicant is left with no other option rather to approach this Tribunal for initiation Corporate Insolvency Resolution Process against the Corporate Debtor.

16. The Learned Counsel for the Corporate Debtor submitted that the Applicant failed to disburse the entire project amount for the establishment of 25MW of windmill and resulting in only a 8 MW windmill having been commissioned and generating the income from the project asset which has to be paid to the Applicant under the Escrow Arrangement under the Trust and Retention Account. Further, the Corporate Debtor disputed the claims made by the Financial Creditor.

17. The Learned Counsel for the Corporate Debtor further submitted that the liability of the Respondent registered by the Applicant with the

information utility namely NeSL is disputed by the Corporate Debtor and further submitted that the Petitioner has suppressed the entry in the information utility with regard to the dispute.

18. The Learned Counsel for the Corporate Debtor in para 3 of the Counter raised various grounds wherein it was stated that the application is barred by limitation as the default is stated in the application to be on 29.08.2014 and the same is also reflected in the Report of the Information Utility and further the Corporate Debtor has instituted a Commercial suit bearing C.S.No.647 of 2019 before the Hon'ble Bombay High Court seeking various reliefs including for an alternate relief of Rs.55 Crore from the Applicant and the same is pending. Thus, the liability to the applicant itself is disputed and the applicant cannot take shelter under the provision of Section 7 of the IBC, 2016.

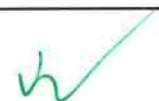
19. The Learned Counsel for the Corporate Debtor further submitted that the Applicant failed to comply with the RBI Guidelines dated 01.07.2015 and 15.07.2014 for rescheduling the debt. The Corporate Debtor relied on a Decision given by Mumbai NCLT in the matter of *Indus Biotech Private Limited vs Kotak India Venture Fund-1* which has been upheld by the Supreme Court, the Adjudicating Authority has got powers to examine the attendant circumstances and reject the petition



if there is no default. Therefore the Corporate Debtor seeking dismissal of the Present application.

20. The Learned Counsel for the Financial Creditor had filed Rejoinder to the Counter wherein the Financial Creditor refuted the allegations made by the Corporate Debtor in para 4 of the Rejoinder wherein it was contended that the Corporate Debtor themselves had stated that the dispute continues and as per their books, the outstanding is Rs.71.94 crores and that the Corporate Debtor have a claim on the Applicant Bank up to Rs.52 Crores and thus it shows that the Corporate Debtor admitted the outstanding amount of Rs.71.94 Crores. As far as the claim of upto Rs.52 Crores is concerned there is no adjudication and hence the same cannot be considered.

21. Further it was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor has filed claims against the Financial Creditor before the Hon'ble Bombay High Court and the same is pending for Adjudication. In addition to that, a suit has filed by the Respondent's Group Company and the Shareholder Loyal Credit and Investments Limited and the Corporate Guarantor to the Applicant's Loan before the Hon'ble Madras High Court in OA.No.442/2020 in C.S.No.242/2020 wherein it was held that the suit was re-litigation and re-agitation of issues already filed in the Bombay High Court and the



order of the Hon'ble Madras High Court is placed at Annexure- A3 of the typed set of the Rejoinder filed by the Applicant.

22. With regard to the Limitation aspect of the present application raised by the Corporate Debtor that the Corporate Debtor omitted to take in to account the foot note at page 17 Volume 1 of the Applicant's Compilation wherein it was stated that date of default as per CRILC Report as averred in Part-IV of the Application is 01.06.2018. Furthermore the Applicant stated that the Respondent has admitted the dues in the balance confirmation letter dated 23.04.2019 and also in the Audited Financials of the Corporate Debtor for the year ended on 31.03.2021 which is placed at Annexure A1 & A2 of the typed set of the Rejoinder filed by the Applicant.

23. It was Further submitted by the Learned Counsel for the Financial Creditor that the Judgement, *Indus Biotech Private Limited vs Kotak India Venture Fund-1* relied by the Corporate Debtor will not be applicable in the present facts of the case. With respect to the Escrow Arrangement under the Trust and Retention Agreement (TRA) is concerned, the Corporate Debtor has not complied with the Escrow Arrangement wherein the project receivables are directly credited by the Power purchaser such as KERC and BESCO and in addition to that the Respondent has not completed the Escrow Arrangement to the satisfaction of the EXIM Bank.

24. Albeit, the Applicant is not a party to the Power Purchase Agreement has written a letter to KERC only for the benefit of the Applicant and the Copy of the letter written by the Applicant to IREDA to include EXIM Bank as a party to the Escrow Arrangement dated 07.02.2018 is placed at Annexure- A5 of the typed set of the Rejoinder filed by the Applicant.

25. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven beyond reasonable doubt. Furthermore, the Balance Confirmation letter dated 23.04.2019 and audited financial statements of the Corporate Debtor for the year ended on 31.03.2021 reflects the outstanding amount.

26. It can be seen from the records of the proceedings placed before us that, settlement talks were prevalent between the Financial Creditor and the Corporate Debtor but the same did not fructify. The Corporate Debtor had admitted the outstanding amount in the balance confirmation letter and the audited financial statements which reflected the default made by the Corporate Debtor. Further it is also required to be noted that the Hon'ble Supreme Court in the matter of **Asset Reconstruction Company (India) Limited -Vs- Bishal Jaiswal & Anr.** in *Civil Appeal*

No.323 OF 2021 has categorically held that the entries made in the balance sheet would amount to acknowledgment of debt. The date of default / NPA is 30.08.2018. Therefore, the Application is well within the period of limitation.

27. It has been brought to our Notice that the Corporate Debtor has filed two applications bearing IA/212/2022 for reopening the main application i.e. IBA/650/2020 and IA/213/2022 is filed for receiving the Additional documents. Albeit, the above applications has been filed by the Corporate Debtor, we are of the considered view that there is no dispute in the debt and further it is seen from the records that it is manifestly made clear that there is a debt and default on the part of the Corporate Debtor. Merely because, the entire sanctioned amount was not disbursed, does not hold good as defence for default of the debts and terms and conditions of loan.

28. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an

application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

29. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present

case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

30. 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;

31. 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.

32. 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.

33. The Financial Creditor has proposed the name of **Mr. Ramakrishnan Sadasivan ([sadasivanr@gmail.com](mailto:sadasivanr@gmail.com))**, **Reg. No. IBBI/IPA-001/IP-P00108/2017-18/10215** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 10.11.2022.

34. 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.

35. 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. 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.

36. 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.

37. 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.

38. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to 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 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.

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

40. Post this IBA/650/2020 for hearing on **23.05.2022**.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Sriram Ananth.V*