



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**CP (IB) No. 48/CB/2022**

***In the Matter of:***

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016;

***In the Matter of:***

**State Bank of India**, Stressed Assets Management Branch, Bhopal State Bank Building, 1<sup>st</sup> Floor, Plot No. 1 Arera Hills, Bhopal- 462 001, Madhya Pradesh;

**... Financial Creditor/Applicant**

**-Versus-**

**Shree Vishnu Power and Energy Pvt. Ltd.**, At registered Office at Lakholi Road, City-Rajnandgaon, Chhattisgarh;

**...Corporate Debtor/Respondent**

***Appearances: -***

For Applicant:

Mr. Subrat Mishra, Advocate.

For Respondents.

Ms. Prachi Johri, Adv.

Mr. Sabyasachi Panda, Adv.

**Order reserved on: 09.05.2023**

**Order pronounced on: 15.05.2023**

Coram:

Shri P. Mohan Raj

:

Member (Judicial)

Shri Satya Ranjan Prasad

:

Member (Technical)

**ORDER**

***Per P. Mohan Raj, Member, (Judicial)***

1. This petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of Insolvency and bankruptcy (Application to Adjudication Authority) Rules 2016.

2. In the petition it is submitted that the respondent/corporate debtor was banking with financial creditor and was enjoying various credit facilities



—through Bhilai Branch. The credit facility to the extent of Rs.40 crores was sanctioned on 15.01. 2014. Thereafter at the request of corporate debtor the limit was enhanced on 08.02.2016 to Rs.46.50 crores. The supplement agreement was executed on 10.02.2016. The limit was further enhanced to Rs.49.50 crores by sanction letter dated 10.02.2017. The renewed/enhanced finance agreement was entered on 15.02.2018. Later the corporate debtor failed and neglected to pay the instalment in term loan in utter violation of the terms of the sanction letters. The account of the corporate debtor became NPA on 28.07.2019. The financial creditor issued notice under section 13(2) of SARFAESI Act, 2002. The corporate debtor by letter dated 29.06.2020 admitted the default and liability to pay Rs.48.70 crore as on the said letter dated 29.06.2020. The corporate debtor submitted letter dated 29.06.2020 for settlement proposal, the settlement proposal was accepted by the financial creditor on 10.09.2020. When the corporate debtor failed to pay the amount as per the settlement, by letter dated 29.01.2022 the settlement was recalled. The corporate debtor was liable to pay a sum of Rs. 54,35,07,847/- as on 15.09.2022. The earlier petition T.P. No. 105/CTB/2019 filed under section 9 of IBC 2016 was ended as withdrawn on 21.06. 2021. The petitioner in part IV (2) of the petition stated that the total days of default is 857 days when calculated from letter dated 29.06.2020 of settlement of corporate debtor.

3. The corporate debtor filed reply raising several pleas inclusive of maintainability. The petition is suffering from major incurable defects. The petition is hit by section 10A of IBC 2016. In the case the petitioner crystallised date of default as 23.06.2020 (correct date is 29.06.2020). The said date lies within the excluded period between 25.03.2020 and 24.03.2021. The section 10A of IBC 2016 is interpreted by the Apex court in Ramesh Kymal vs M/s Siemens Gamesa Renewable Power Pvt Ltd (2021) Manu/SC/0061/2021. Thus, the petition is not maintainable.

**The point for consideration is:**

1. Whether the petition is hit by section 10A of IBC 2016?



4. In the petition part IV (2) the date of default is given as “Total days of default 857 days when calculated from letter dated 29.06.20 of settlement of Corporate debtor” (*page 82 of petition*). In para 28 page 64 of petition, it is mentioned as Days of Default 857 days as per letter of settlement dated 29.06.20 of corporate debtor. Thus, the petition is filed on the basis of date of default as 29.06. 2020. No petition under Section 7,9, and 10 IBC, 2016 can be filed for the default falls between 25.03.2020 to 24.03.2021 in view of specific bar provided in first Proviso to Section 10A of IBC,2016 read with Notification S.O. 4638 (E) dated 22.12.2020.

5. The petitioner filed an application I.A.No.116/CB/2023 to amend the date of default as 29.01.2022, the said amendment application is dismissed today. In the circumstances since the petition is filed on the basis of date of default as 29.06.2020 it is answered that the petition is hit by section 10A of IBC 2016 and in consequence the petition is not maintainable.

6. In the circumstances in view of legal bar, the petition is not maintainable in consequence this petition is **DISMISSED**.

7. In view of dismissal of this main petition I.A. No. 50/CB/2023 is **DISMISSED** as infructuous.

8. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

9. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.05.15 16:01:37 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2023.05.15 14:14:14 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 15<sup>th</sup> day of May, 2023.

Kaushal P.S.