

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 4260/IBC/NCLT/MB/MAH/2018

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

Union Bank of India

..... Financial Creditor
(Petitioner/Applicant)

V.

Spark Green Energy (Satara) Limited.

..... Corporate Debtor
(Respondent)

Pronounced on: 28.11.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner : Advocate Bindu Bhatia i/b Ezy Laws

For the Respondent : Advocate Reshmi S Nair i/b Apex Law Partners

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioner/Applicant viz. 'Union Bank of India' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 01.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Spark Green Energy (Satara) Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be A-53, MIDC, Lonand Industrial Area, Near Mariachiwadi Village, Taluka Khandala, Satara, Maharashtra.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹47,00,00,000/-, and the amount claimed to be in default is ₹56,96,11,926/- as on 30.09.2018. The date of default is stated to be 31.08.2016. The loan account of the Corporate Debtor was declared as Non-Performing Asset on 31.01.2017.

SUBMISSIONS BY THE FINANCIAL CREDITOR

3. The Financial Creditor has sanctioned two Term Loan Facilities amounting to ₹30,00,00,000/- (Term Loan I) and ₹17,00,00,000/- (Term Loan II) vide Sanction Letter dated 23.08.2011 and 20.03.2015 respectively.. The Term Loan I was sanctioned on 10.08.2011 and disbursed on 26.07.2013. The Term Loan II was sanctioned on 20.03.2015 and disbursed on 30.03.2015. The sanction letters dated 23.08.2011 and 20.03.2015 for the loan of ₹30 crore and ₹ 17 crore respectively, revalidation letter dated 20.10.2012, Modification letters dated 12.04.2013 & 14.06.2013 and Renewal letters dated 20.03.2015 & 14.03.2016 for both the term loans, issued by the Financial Creditor to the Corporate Debtor pursuant to the sanction/renewal of the above mentioned credit facilities have been produced on record.

4. The Financial Creditor submits that the claimed amount of ₹56,96,11,926/- has been arrived at in the following manner:

Term Loan I

Outstanding principal as on 30.09.2018 - ₹28,77,60,827/-

Penal Interest - ₹5,16,041/-

Uncharged Interest - ₹7,39,30,690/-

Total I- ₹36,22,07,558/-

Term Loan II

Outstanding principal as on 30.09.2018 - ₹16,52,77,778/-

Penal Interest - ₹3,26,160/-

Uncharged Interest - ₹4,18,00,430/-

Total II - ₹20,74,04368/-

Total I + Total II = ₹ 56,96,11,926/-

5. The Petitioner submits that the loan facility was secured by various documents listed below:

- a. Two General Term Loan Agreements dated 22.03.2016 for the two facilities.
- b. Indenture of Mortgage dated 11.07.2013.
- c. Term Loan Agreement (Hypothecation of Movable) dated 22.03.2016 (INR 30 crore)
- d. Term Loan Agreement (Hypothecation of Movable) dated 22.03.2016 (INR 17 crore)
- e. Composite Hypothecation Deed dated 22.03.2016

- f. Letter of Guarantee dated 22.03.2016
6. The Petitioner submits that the Corporate Debtor has issued Demand Promissory Notes dated 22.03.2016 in favour of the Financial Creditor to secure the aforesaid loan.
 7. The Financial Creditor had issued a loan recall letter dated 05.12.2016 for the repayment of dues, which was replied by the Corporate Debtor confirming and acknowledging the balance due. The letters are duly annexed in the petition.
 8. The petitioner states that the debt was duly disbursed. The Corporate Debtor failed to repay the loan amount. Hence, loan account of the Corporate Debtor was declared NPA on 31.01.2017.
 9. The Financial Creditor has produced on record the Financial Statements of the Corporate Debtor for the years 2014, 2015 and 2016 which reflect the debt payable to Financial Creditor for all the three consecutive years.
 10. The Petitioner draws the attention of this Bench towards the Bank Statement of Account of the Corporate Debtor to corroborate the amount claimed. Relevant certificates under section 2(a) of the Bankers' Book Evidence Act, 1891 has also been produced on record.
 11. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

12. The Corporate Debtor submits that on 29.09.2016, the Petitioner bank sanctioned ₹35,02,00,00/- instead of ₹44,00,00,000/- agreed and committed in the Joint Lenders Meeting. Further the loan amount of ₹18,92,00,000 to be sanctioned by Bank of Baroda was not sanctioned till the end of April 2017 which was also to be shared by the Petitioner along with Bank of Baroda's loan share of ₹16,10,00,000/-
13. The contention of the counsel for the Corporate Debtor was that originally the loan was to be provided by a Consortium of Banks including Bank of India, Bank of Baroda and Union Bank of India as the lead bank. The consortium had agreed to sanction ₹57,00,00,000/- by 20.10.2014, but they failed to release the amount. The Petitioner bank from their share sanctioned ₹17,00,00,000/- on individual documentation basis. It was

due to the failure of the consortium banks to sanction the agreed amount that the Corporate Debtor was unable to repay the amount.

14. The Corporate Debtor further submits that had the Petitioner bank sanctioned the amounts as sought by the Respondent, the Respondent would have been in a position to repay the loan amount as agreed. However, due to non-compliance on the part of Petitioner, the Corporate Debtor suffered losses and incurred a loss of more than ₹50,00,00,000/- invested by the Respondents out of its own pockets.
15. The Corporate Debtor states that it has already filed its claim against the Petitioner Bank, Bank of Baroda and Bank of India claiming an amount of ₹265,34,00,000/- before the DRT Mumbai in the Securitisation Application (L) No. 534 of 2018.

FINDINGS

16. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the contention of the Corporate Debtor that loan amount was not sanctioned as agreed by the Consortium, is no valid defence to this petition. The Corporate Debtor has not disputed the amount taken as loan from the Financial Creditor. The Hon'ble Supreme Court in the case of *Innovative Industries Ltd. V. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 OF 2017]*, order dated 31.08.2017, has been very clear that to admit a petition under section 7 of the I&B Code, the Adjudicating Authority's scope is restricted only to the ascertainment of 'debt', 'default', and whether the petition is complete or not. Hence, the only contention of the Corporate Debtor holds no water, hence rejected.
17. In this case, all the three pre-requisites for admission of this petition have been met, the debt is supported by substantive evidences and the evidences corroborate to the amount claimed. Moreover, the Corporate Debtor has acknowledged its liability by sending a reply as confirmation to the letter dated 05.12.2016. The Corporate Debtor has further acknowledged the debt by including the same in its financial statements for the three consecutive financial years i.e. FY 2013-14, FY 2014-15 and FY 2015-16. The Balance Sheet of the Corporate Debtor as at 31.03.2016 and 30.03.2015 clearly reflect the Long Term Borrowings from Union Bank of India to the tune of ₹48,18,73,388/- and ₹37,22,33,333/- respectively. Hence, the debt reflected in the Financial statements of the

- Corporate Debtor is a clear cut acknowledgement of debt and there is no doubt about establishment of 'debt' and 'default' in the present case.
18. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.
 19. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.
 20. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
 21. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Anil Vrijdas Rajkotia, having registration No. IBBI/IPA-001/IP-P01045/2017-18/11718, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
 22. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
 23. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

24. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
25. The Petition is hereby “Admitted”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
26. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Dated : 28.11.2018

J

sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)