

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CP (IB) 474/MB/C-I/2022

Under section 10 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

SES Energy Services India Private Ltd.
(CIN No: U74900MH2014FTC255441)
1st Floor, Unit 101, A- Wing, Reliable Tech
Park, Plot No.-31, Thane Belapur Road,
Airoli, Navi Mumbai- 400708.
...Corporate Applicant

Order Delivered on 25.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Corporate Applicant : Adv. Ravi Kadam, Senior Counsel,
Mr. Rohan Rajadhyaksha, Counsel
a/w Mr. Nishant Upadhyay and Ms.
Mrudula Dixit i/b AZB & Partners.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed by SES Energy Services India Private Limited, under section 10 of the Insolvency & Bankruptcy Code, 2016 ("the Code"), through Mr. Devashish Marwah, director of the

applicant for initiation of Corporate Insolvency Resolution Process in respect of itself i.e. SES Energy Services India Private Limited.

2. The Corporate Applicant was incorporated on 11.06.2014 having a paid up share capital of INR 1,53,52,60/- (Rupees Fifteen Lakh Thirty Five Thousand Two Hundred and Sixty) was engaged in providing services and equipment at different stages in the process of oil and gas exploration, extraction, and transportation.
3. Its Board of Directors of the Corporate Applicant in its meeting held on 08.03.2022 passed a resolution to file a Petition under section 10 of the Code for initiation of CIRP. Mr. Devashish Marwah, director, has been authorized to sign and submit the same.
4. During the year ended 31.03.2020, the Corporate Debtor incurred losses amounting to INR 45,60,15,562 and as at year ended 31.03.2020 the Corporate Debtor had accumulated losses aggregating to INR 251,29,20,574. Further, during the year ended March 31, 2019, the Corporate Debtor had accumulated losses aggregating to INR 2,05,69,05,012.
5. Since the Corporate Debtor's inception in 2014, it has invested in excess of USD 40 Million (approx. INR 300 Crores) in attempting to establish a viable and profitable company. However, in spite of best commercial efforts made, the Corporate Debtor has been unsuccessful in generating a profit and consistent positive cash flow. Due to the lack of success, the Corporate Debtor had to borrow funds from its owners

and group companies and engage in operations with them. Even in such cases, the Corporate Debtor has not been able to repay the funds. In addition, the Corporate Debtor had to delay payments made to its suppliers with an attempt to meet its working capital cycle.

6. In conjunction with the Corporate Debtor's lack of success in running a profitable business, there were projects/contracts/matters that exacerbated the financial situation of the Corporate Debtor. The Corporate Debtor entered into a subcontract with the project office of an affiliated Dutch company ("Contractor") who held a multi-year, multi-service contract with a major Indian company, Essar Oil & Gas Exploration & Production Limited ("Essar"). Essar breached the contractual payment terms in the main contract causing the Contractor to be unable to pay its subcontractor, the Corporate Debtor, and therefore inflicting further financial distress to the Corporate Debtor. Non-payment by Essar continued while the Corporate Debtor as subcontractor continued to complete its contractual obligations. It was not until 2021 that the Contractor was able to reach a court settlement with Essar at a substantial reduced amount which caused grave prejudice to the finances of the Contractor and consequently the Corporate Debtor. Even the settlement payments have been delayed due to cash flow issues being experienced by Essar.
7. The Corporate Debtor entered into a multi-year, multi-service contract with the Oil and Natural Gas Corporation ("ONGC").

However due to financial and operational difficulties, the Corporate Debtor was unable to fulfill its contractual obligations and committed a default in May of 2021. As a result of the default, the performance bond supplied by the Corporate Debtor was called upon and ONGC has decided to no longer engage the Corporate Debtor on its projects. This ineligibility will further hinder the Corporate Debtor in its quest to become profitable. Further, the Corporate Debtor entered into a multi-year, multi-location contract with a major India oil company, Vedanta Limited for production equipment and services. Due to financial and operational difficulties, the Corporate Debtor was unable to complete the contract leading to heavy losses and thereafter, even the performance bond supplied by the Corporate Debtor was encashed by Vedanta. These losses lead to additional financial burden on the Corporate Debtor.

8. As mentioned above, the losses incurred in the financial year ending 2021 have been prohibitively high and have gravely affected the ability of the Corporate Debtor to continue as a going concern.
9. The Corporate Debtor had engaged the services of CSI Technologies LLC ("Operational Creditor") for its testing services where in the Corporate Debtor had provided the Operational Creditor with various formulations of cement for testing to check their performance in wells. These testing services have been elaborated below:
 - Expansion Test - The autoclave expansion test (ASTM C 151) is used to provide an index of potential delayed expansion

caused by the hydration of calcium oxide and magnesium oxide in hydraulic cements. Chemical compositional influences on periclase (magnesium oxide) formation and the resistance of cement or concrete to expansion are also identified.

- Testing with and without mechanical properties - mechanical properties testing provides information on strength, ductility impact resistance, hardness and fracture toughness. Testing for mechanical properties is performed under various conditions such as tension and elevated temperature.
- Third party transportation - charges for cement from the supplier to be delivered to the testing lab.

10. The Operational Creditor sent four invoices for the services it provided with the amounts payable being USD 246,951.33 (Dollar Two Hundred and Forty-Six Thousand Nine Hundred and Fifty-One and Cents Thirty Three) equivalent to INR 1,85,02,161,63 (Rupees One Crore Eighty Five Lakhs Two Thousand One Hundred and Sixty One and Paise Sixty Three) as per the prescribed exchange rate of 1 USD/74.9223 INR as on 18.02.2022. Below are the details of the invoices and the breakdown of the amount due under each:

Sr. no.	Invoice No.	Amount	Due Date
1.	5071	USD 148,046.82	19.10.2016

2.	5145	USD 91,491.60	13.01.2017
3.	5162	USD 6,142.50	20.01.2017
4.	5242	USD 1,270.40	16.03.2017

11. However, the Corporate Debtor had been experiencing financial distress due to significant losses and inadequate cashflows. As a result, the Corporate Debtor has been unable to service these invoices. The total dues under the invoices mentioned is USD 246,951.33 (Dollar Two Hundred and Forty-Six Thousand Nine Hundred and Fifty-One and Cents Thirty Three) equivalent to INR 1,85,02,161.63 (Rupees One Crore Eighty Five Lakhs Two Thousand One Hundred and Sixty One and Paise Sixty Three) as per the prescribed exchange rate of 1 USD/74.9223 INR as on 18.02.2022 as per the website of Financial Benchmarks India Private Limited ("Outstanding Amount"). The Outstanding Amount payable to CSI Technologies LLC has been duly acknowledged in the latest audited balance sheet of the Corporate Debtor for the financial year 2020-2021.
12. In light of the aforesaid, the Corporate Debtor has now resolved to file the present application under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency resolution process before this Tribunal.

13. The Corporate Applicant has enclosed the following to the Petition.
- a. The names and addresses of the directors and promoters of the company in Part IV.
 - b. The shareholding pattern in the company (Pg 249).
 - c. Copy of its Certificate of Incorporation dated 11.06.2014 (Pg 333).
 - d. Copy of the its Memorandum of Association. (Pg 305)
 - e. Copy of Board Resolution dated 08.03.2022 (Pg 302) and Special Resolution dated 09.03.2022 (Pg 304) approving the filing of the present Application.
 - f. Details of Operational Creditor with names, address, total debts and amount in default (Pg 14-21).
 - g. Copies of audited financial statements of the Corporate Debtor for the last two financial years i.e. 2019-20 and 2020- 21. (Pg 118-119)
 - h. The provincial financial statements for the current financial year up to 28.02.2022 (Pg 143).
14. This Bench has gone through the Petition and heard the submissions of the learned counsel and has come to a conclusion that the Corporate

Applicant is unable to make payment to the operational creditor and thus it has defaulted in making payments of its debt.

15. On reading the petition and the supporting documents annexed with the Petition, it is noticed that the Petitioner Corporate Applicant has submitted all relevant particulars and information, supported by relevant documents, to meet the requirement of the I&B Code. Hence the present I&B Petition is found complete and its filing is found in order in all respect.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 474/MB/C-I/2022** filed by **SES Energy Services India Private Limited**, the Corporate Applicant, under section 10 of the IBC is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Applicant.
- (c) Notwithstanding the above, during the period of moratorium:-
 - (i) The supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Applicant under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Ms. Dipti Atul Mehta**, Registration No. IBBI/IPA-002/IP-N00134/2017-18/10350 and having address at 201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Avobe

Corporation Bank, Worli, Mumbai, Maharashtra- 400018, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Applicant to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Corporate Applicant shall deposit a sum of Rs.3,00,000/- (Three Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) Registry is directed to communicate this Order to the Operational Creditor, the Corporate Applicant and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data

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of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

(k) Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

25.11.2022

DSB

Sd/-

JUSTICE P.N. DESHMUKH
Member (Judicial)