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

CP/IB/197/CHE/2022

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of Array Land Developers Private Limited

Suzlon Global Services Limited

Suzlon One Earth
Opp. Magarpatta City
Hadapsar,
Pune- 411 028

... Operational Creditor

-Vs-

Array Land Developers Private Limited

Old No. 19&20/12, New No. 38/12
Venkataraman Street,
T. Nagar, Chennai- 600 017.

...Corporate Debtor

Order Pronounced on 05th July 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: S.Kaushik Ramaswamy, Advocate

For Corporate Debtor : Dr.M.Sathya Kumar, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

(Hearing conducted through VC)

Under Adjudication is CP/IB/197/CHE/2022 which has been filed by

SUZLON GLOBAL SERVICES LIMITED (hereinafter referred to as '**Operational**

Creditor) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **ARRAY LAND DEVELOPERS PRIVATE LIMITED** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor. It is stated that the Operational Creditor is a Public Unlisted Company which was incorporated under the Companies Act, 1956 on 25.05.2004 with CIN No: U27109GJ2004PLC044170. Part-II of the Application gives all the particulars of the Corporate Debtor. It is stated that the Corporate Debtor is a Private Limited Company with CIN: U01111TN2008PTC067849 and was incorporated on 22.05.2008 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Old No.19&20/12, New No.38/12, Venkataraman Street, T. Nagar Chennai-600 017. In Part III of the application, the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint anyone from the panel of Insolvency professionals maintained by IBBI.

3. The Affidavit verifying the application is placed at Page No- 21-22 of the Application typeset and one Mr.B.Saravanan, has sworn the Affidavit as the authorized signatory of the Operational Creditor. The Power of Attorney authorizing Mr. B. Saravanan is appended as "Annexure-II (2)" of the Application typeset.

4. In Part-IV of the Application, it is stated that a total sum of Rs.9,32,17,794.35 /- (Rupees Nine Crore Thirty Two Lakhs Seventeen Thousand Seven Hundred and Ninety Four Thirty five Paise only) is being claimed by the Operational Creditor as the Operational debt. The total amount claimed is a total of Rs.6,37,76,535.40 principal amount and Rs.2,94,41,258.95 as interest (The workings of the interest payable is appended as Annexure II-7). The Operational Creditor has also mentioned the date of default to be 18.08.2021 in respect of the entire amounts involved.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt'

6. **APPLICANT SUBMISSIONS:**

It is submitted by the Ld. Counsel for the Applicant

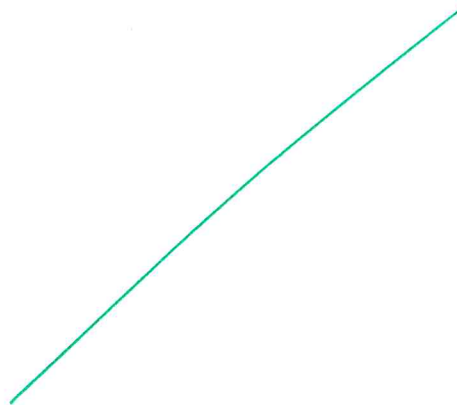
- i) That the Operational Creditor is involved in the business of operating, managing and maintaining wind farm projects for

generation of wind energy by means of Wind Turbine Generators (hereinafter 'WTG').

- ii) That the Respondent Corporate Debtor Viz., Array Land Developers Private Limited has set up or taken over multiple wind farm projects/sites for generating electricity using wind energy i.c. WTGS at different locations across the state of Tamil Nadu.
- iii) That, at the request of the Corporate Debtor, the Operational Creditor had agreed to maintain WTGS at various sites by entering into Maintenance Agreements (for parts and consumables) and Operation & Management Agreements (for services) [for brevity the "Agreements"] on various dates. The details of the Agreements concluded by the Operational Creditor are as below:

S. NO	EFFECTIVE DATE
1.	30.09.2014
2.	30.09.2014
3.	20.06.2016
4.	20.06.2016
5.	25.11.2016
6.	25.11.2016
7.	01.10.2018

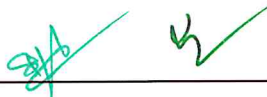
- iv) That, the Operational Creditor and the Corporate Debtor entered into the above Agreements for operation & management of WTGS and for supply of spare parts and consumables in respect of thirteen (13) WTGS installed at five different locations i.e. Parmeshwarapuram, Sankaneri, Amuthapuram, Devarkulam, and Radhapuram all situated in the state of Tamil Nadu. The Agreements entered by the Operational Creditor and the Corporate Debtor is appended as **Annexure II-3** .
- v) That based on the agreements stated *Supra* the Operational Creditor raised 40 invoices from September 2018 to May 2021 amounting to Rs.6,37,76,535.40. The copies of the invoices are appended as **Annexure II-4** of the Application typeset. The tabular column of the invoices due and payable is as follows:-



Invoice No.	Invoice Date	Invoice Amount	Due Date for payment
1842002929	12-09-2018	3901890.75	30-09-2018
1842002930	12-09-2018	3542752.75	30-09-2018
1842005934	04-03-2019	3901890.75	30-03-2019
1842005935	04-03-2019	3542752.75	30-03-2019
1942003340	05-09-2019	4096896.65	30-09-2019
1942003341	05-09-2019	3723138.4	30-09-2019
1942007043	03-03-2020	4096896.65	30-03-2020
1942007044	03-03-2020	3723138.4	30-03-2020
1842006530	20-03-2019	1359735.59	19-03-2019
1842006531	20-03-2019	700557.66	19-03-2019
1942007041	03-03-2020	1428484.13	19-03-2020
1942007042	03-03-2020	735569.66	19-03-2020
1942000225	03-04-2019	1235788.1	01-04-2019
1942000226	03-04-2019	1961623.86	01-04-2019
2042000218	15-04-2020	1297594.52	01-04-2020
2042000219	15-04-2020	2061245.48	01-04-2020
2142000775	29-05-2021	1362449.4	01-04-2021
2142000776	29-05-2021	2065929.54	01-04-2021
1842005567	27-02-2019	349398	30-09-2018
1842005568	27-02-2019	618752.93	30-09-2018

1842005932	04-03-2019	349398	30-03-2019
1842005933	04-03-2019	618752.93	30-03-2019
1942000227	03-04-2019	404471.56	01-04-2019
1942000228	03-04-2019	394880.2	01-04-2019
1942004331	04-10-2019	424695.13	01-10-2019
1942004332	04-10-2019	415020.63	01-10-2019
2042000220	15-04-2020	424695.13	01-04-2020
2042000221	15-04-2020	415020.63	01-04-2020
1842002539	06-09-2018	838640.72	30-09-2018
1842002540	06-09-2018	582330	30-09-2018
1842005930	04-03-2019	838640.72	30-03-2019
1842005931	04-03-2019	582330	30-03-2019
1842002541	06-09-2018	1560756.26	30-09-2018
1842002542	06-09-2018	1287703.54	30-09-2018
1942003342	05-09-2019	1638758.7	30-09-2019
1942003343	05-09-2019	1353390.82	30-09-2019
1842002931	12-09-2018	1287703.54	30-09-2018
1842002932	12-09-2018	1560756.26	30-09-2018
1942003344	05-09-2019	1353390.82	30-09-2019
1942003345	05-09-2019	1638758.7	30-09-2019
	TOTAL PRINCIPAL	6,37,76,535.40	

- vi.) That the Operational Creditor has not paid even a single penny against the invoices listed *Supra* despite the acceptance of goods, i.e. spares and consumables and maintenance services rendered by the Operational Creditor.
- vii) That on repeated communication sent by the Operational Creditor to the Corporate Debtor for repayment of the outstanding amount Rs.6,37,76,535.40 no response was given by the Corporate Debtor. Further the representatives of the Operational Creditor visited the Corporate Debtor's office for discussion of the payment of outstanding amount. As a result of the meeting held on July 2021 both the Corporate Debtor and the Operational Creditor came to a consensus of the payment terms and the same was codified as MoM (Minutes of Meeting) dated 18.08.2021.
- viii) That as per the MoM dated 18.08.2021, the Operational Creditor agreed to OTS option of Rs. 540.51 lakhs as payment against the due and payable amount of Rs. 640.51 Lakhs.
- ix) That as per the terms and conditions agreed upon by both the Operational Creditor and the Corporate Debtor in the MOM the repayment was to be made in the following manner:-



- i. Milestone 1: Rs.100 lakhs immediately
- ii. Milestone 2: Rs.100 lakhs after restoration and restarting of all WTGs
- iii. Milestone 3: Balance Rs.340.51 lakhs will be paid over 18 months as mentioned below:
 - Rs.56 lakhs – January 2022
 - Rs.56 lakhs – April 2022
 - Rs.56 lakhs – July 2022
 - Rs.56 lakhs – October 2022
 - Rs.56 lakhs – January 2023
 - Rs.60.51 lakhs – March 2024

x) That the Corporate Debtor despite repeated reminders defaulted in repayment of the outstanding amount as per the MoM mentioned *Supra*. Further, as per Clause 1.3.8 of the Agreements mentioned in para iii *Supra*, the Corporate Debtor is also liable to pay interest on the above principal amounting to Rs.2,94,41,258.95 (Rupees Two Crore Ninety-Four Lakhs Forty-One Thousand Two Hundred and Fifty-Eight and Ninety- Five Paise only) calculated at **2% above the Prime Lending Rate (12.75%) compounded monthly on the outstanding amounts** as agreed upon.

xi) That, the Corporate Debtor is liable to pay the Operational Creditor the principal amount of Rs.6,37,76,535.40 (Rupees Six Crore Thirty Seven Lakhs Seventy Six Thousand Five Hundred Thirty Five and Forty Paise only) being the O&M charges raised by the Operational Creditor for the period

from September 2018 till April 2020 as per the various O&M agreements executed between the Corporate Debtor and the Operational Creditor along with interest at the rate of 12.75% + 2% compounded monthly on the outstanding dues amounting to Rs.2,94,41,258.95 (Rupees Two Crore Ninety-Four Lakhs Forty-One Thousand Two Hundred and Fifty-Eight and Ninety-Five Paise only) cumulatively amounting to Rs.9,32,17,794.35 (Rupees Nine Crore Thirty-Two Lakhs Seventeen Thousand Seven Hundred and Ninety-Four and Thirty Five Paise only).

xii) That no pre-existing dispute is pending between the Corporate Debtor and the Operational Creditor. The Operational Creditor on **29.07.2022** issued **Section 8 Demand Notice** to the Corporate Debtor in Form-3 and the same was delivered to the Corporate Debtor on 30.07.2022. In response to the demand notice issued by the Operational Creditor, an undated reply was received by the Ld. Counsel for the Operational Creditor on 20.08.2022.

7. RESPONDENT SUBMISSIONS

- i) The Respondent in this matter has filed a reply/Counter statement vide SR. No 391 dated 24.01.2023.
- ii) In para 5 of the reply statement it is stated that complaint has been filed against Corporate Debtor and officers responsible for its affairs for having committed the offence of Theft, Criminal Breach of Trust,

Cheating, Unauthorised and fraudulent removal of private property, Criminal Conspiracy vide complaint dated 16.07.2022 filed before The Superintendent of Police (Rural), Tirunelveli District.

- iii) In para 7&8 of the reply statement it is averred that the Operational Creditor for its narrow selfish reasons has kept the power requirements of the entire state at stake and given two hoots to the directives of Ministry of Renewable Energy that operation of windmills should not be stalled for financial reasons as it would impact the generation of the power of the entire grid resulting in power deficit for the state. Further a representation has been made to the Chief Minister Public Grievance Redressal Cell, Chennai on 29th July, 2022 regarding the same as the Operations of the Corporate Debtor have been shut down.
- iv) It is stated that there is a pre-existing dispute in light of the police complaint dated 16.07.2022, hence this petition is not maintainable and liable to be dismissed.
8. The Operational Creditor has filed a rejoinder in response to the counter statement filed by the Corporate Debtor vide SR No. 1025 dated 03.03.2023. In para 14 of the rejoinder it is stated that closure report of the police complaint has been filed in which no prima facie

case has been made out. The copy of the closure report is appended as page 7 of the rejoinder filed.

9. The Ld. Counsel for the Applicant submitted that the Corporate Debtor is deliberately misleading this Tribunal by painting the police complaint as a pre-existing dispute. The debt and default of the Corporate Debtor cannot be disputed by virtue of the MoM (Minutes of Meeting) dated 18.08.2021 in which the Corporate Debtor has admitted the debt. The Ld. Counsel submitted that Corporate Insolvency Resolution Process may be initiated against the Corporate Debtor.
10. Heard the submissions made by both the parties and perused the pleadings and documents placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default have been proven beyond reasonable doubt based on the MoM dated 18.08.2021 in which the Corporate Debtor has acknowledged the outstanding dues payable to the Operational Creditor. The same is extracted as follows:-



18th Aug 2021

Minutes of Meeting

Participants:

Array Land Developers Pvt Ltd. (Array)

1. Director
2. Manager

Suzlon Global Service Ltd (SGSL):

1. Mr. Santosh Mahadik – VP BD OMS
2. Mr. Animesh Sinha DGM BD OMS
3. Mr. Chitbabu – AGM BD OMS TN
4. Mr. Saravanan - CRM

Venue: Array Land Developers office at Chennai

Date: Meetings on 8th July'21, 19th July'21 and subsequent telecom discussions

Subject: Discussion of existing issues pertaining to the restoration of WTGs.

The meeting was held for resolving and the restoration of WTGs..

The following points were discussed and amicably resolved.

Project Status:

- Total number of WTGs: 13 nos (23.05 MW)
- Operational WTGs: 4nos (5.85 MW)
- Service withdrawn: 9nos (17.20 MW)

Further discussed the restoration plan for 9 WTGs.

Payment:

Group A: Old Outstanding

The outstanding amount is Rs.640.51 lacs as of reconciled accounts tallied as on 31st July 2021.



11. It is seen from the records of the proceedings placed before us that, settlement talks were prevalent between the Operational Creditor and the Corporate Debtor but the same did not fructify. The claim of the Corporate Debtor based on the police complaint that there is a pre-existing dispute in the lines of *Mobilox Innovations Private Limited-Vs-Kirusa Software Private Limited*, [2018] 1 SCC 353 does not hold any water as the complaint closure report has been filed before this Tribunal.

12. It is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic. Hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, 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.

13. In continuum, the Hon'ble Supreme Court in various landmark judgements has reiterated that, the adjudicating authority is merely to see the records and other evidence produced and satisfy itself that a default has occurred in IBC cases relating to Section 7 and Section 9. The Adjudicating authority applying the principal of 'preponderance of probabilities' in this present case is of the considered view that, there is an "existence of a debt and default" and the same is sufficient to trigger the CIRP against the Corporate Debtor herein Viz., **Array Land Developers Private Limited**.

14. Taking into consideration the facts and circumstances of the case as well as the position of Law, we admit the Petition, as filed by the Operational Creditor, under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between **July 2023 – December 2023** appoints

Truvisory Insolvency Professionals Private Limited, with Reg No: IBBI/IPE-0103/IPA-2/2022-23/50020 (e.mail:contactanshulgupta@gmail.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. 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 Code and file his report within 20 days before this Bench. 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.

15. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the 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;

16. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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.

17. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (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.

18. The Operational Creditor is directed to pay a sum of **Rs.3,00,000 /-** (*Rupees Three Lakh only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. Based on the above terms, the Application stands **admitted** in terms of Section 9(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 Operational 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.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Technical Member Sameer Kakar on behalf of the Bench Comprising of Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical)


court officer.