

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

CP (IB) No.814/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

Suzlon Gujarat Wind Park Limited

[CIN: U40108GJ2004PLC044409]

...Operational Creditor

v/s.

Sri Maruti Wind Park (India)

Private Limited

[CIN: U74900PN2011PTC138862]

...Corporate Debtor

Order Delivered on: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner :

Ms. Prachi Wazalwar a/w
Mr. Manvedra Kane and Ms. Amruta
Thakur i.b W. S. Kane & Co.,
Advocates.

For the Respondent :

None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Suzlon Gujarat Wind Park Limited, ("the

Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sri Maruti Wind Park (India) Private Limited (“the Corporate Debtor”), [CIN: U74900PN2011PTC138862].

2. The Corporate Debtor is a company incorporated on 14/03/2011 under the Companies Act, 1956, as a Private Company Limited by Shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U74900PN2011PTC138862. Its registered office is at Lunkad Sky Vista, Unit No.804, S. No. 230, A/3, Lohegaon Road, Viman Nagar, Pune, Maharashtra-411016. Therefore, this Bench has Jurisdiction to deal with the present Petition.
3. The present petition was filed on 30.07.2021 by Ms. Sakshi Shaha, Authorised Representative of the Operational Creditor vide its Authority Letter dated 10.05.2021 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.2,83,60,000/- (Rupees two crore eighty-three lakh sixty thousand only).
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is engaged in the business of developing wind and solar power projects across India on behalf of its customers. The Corporate Debtor is engaged inter alia in the business of acquiring land and providing other allied services for the development of wind and/or solar farms across India.
 - b) In January 2016, the Corporate Debtor represented to the Operational Creditor that it has experience, and is in possession etc. for setting up and developing wind power projects. Based on the said representations, the Operational Creditor executed a Term Sheet dated 29.01.2016 with the Corporate Debtor. The scope of work as per the Term Sheet was

procurement of lands, permissions and approvals for Power Evacuation Infrastructure for a minimum Release Order of 50 Mega-Watts per annum for the State of Gujrat and a minimum Release Order of 100 MW per annum for the State of Maharashtra.

- c) Thereafter, on 01.03.2016, the Operational Creditor released an advance of Rs.10,00,000/- (Rupees ten lakh only) as contemplated in the Term Sheet to the Corporate Debtor to expedite the project.
- d) Upon discussions between the parties, the Corporate Debtor, by an E-mail dated 30.04.2016 submitted its Price Offer to the Operational Creditor for the proposed 150 MWs Wind Power Project at Sadala site land for locations on Government Waste Land and also related pathways on Government Waste Land or Private Land. The scope of the Price Offer included lease in the name of the Corporate Debtor and sublease in the name of the Operational Creditor or its nominee.
- e) On 03.05.2016, the representative of the parties held a meeting to discuss the Commercial Offer of land and permissions and approval of the wind power project at Sadala site. In the said meeting, the responsibilities of the Parties as well as the payment schedule were discussed and recorded in the Minutes of the Meeting in terms of a Land Agreement and Permission Service Agreement to be entered into between the Parties. The minutes of the said Meeting were formally approved by the Corporate Debtor on 09.06.2016.
- f) Based on the Price Offer forwarded by the Corporate Debtor and the Minutes of the Meeting held on 03.05.2016, the parties entered into a Revenue Land Agreement dated 13.05.2016 for 200 MW Project-Gujrat for 104 locations. The Revenue Land Agreement recorded the scope of

services to be provided by the Corporate Debtor to the Operational Creditor, the payment terms, including advance payments, milestone payments, etc. The Revenue Land Agreement was initially to be valid for 12 months, however, the same was subsequently extended by the conduct of parties.

- g) Thereafter, on 02.06.2016, the parties entered into a Permissions and Approvals – Service Agreement. The Service Agreement envisaged the scope of work in terms of facilitation by the Corporate Debtor to procure/transfer/permit usage of all necessary approvals in the name of the Operational Creditor or its customers in the manner provided in the Service Agreement and as per guidelines of the Government Authorities, including but not limited to all contractual and other rights, permits, consents or licenses required to develop and commission the Connectivity Facility under the Service Agreement. The Corporate Debtor was also made responsible to render usage rights for the said clearances, permissions, approvals and sanctions in favour of the Operational Creditor and/or its nominee(s) within the timelines specified in Annexure A & C of the Service Agreement. The Service Agreement also recorded detailed payment terms with milestone for each sub activities.
- h) Given the certain advance payments were contemplated to be paid by the Operational Creditor under the Revenue Land Agreement, by an E-mail dated 13.06.2016, the Operational Creditor called for the relevant documents from the Corporate Debtor in order to release the said payment. On 25.06.2016, the Corporate Debtor in its E-mail addressed to the Operational Creditor, expressed various difficulties in procuring the documents called for by the Operational Creditor for release of the said payments. However, at the same time, the Corporate Debtor informed

that the Corporate Debtor was unable to move ahead with its deliveries as per the Revenue Land Agreement without release of advance payments from the Operational Creditor.

- i) Despite the Corporate Debtor not providing the relevant documents to the Operational Creditor, with a view to facilitate the Corporate Debtor to perform its obligations under the Revenue Land Agreement, the Operational Creditor from time-to-time, paid advances to the Corporate Debtor with respect to the locations as per the Revenue Land Agreement as under:

Date of Payment	Amount (in Rs.)
8 th July 2016	1,60,00,000/-
26 th September 2016	1,13,60,000/-
Total	2,73,60,000/-

- j) Meanwhile, the Corporate Debtor forwarded 4 tax invoices to the Operational Creditor vide their letter dated 07.06.2016, in the sum of Rs.77,51,000/- (Rupees seventy-seven lakh fifty-one thousand only). However, the same were subsequently rejected by the Operational Creditor on account of failure of the Corporate Debtor to comply with its obligations under the Revenue Land Agreement.
- k) On 18.06.2016, the Operational Creditor informed the Corporate Debtor that the Corporate Debtor was required to submit proof of payment towards processing fees for 52 Revenue locations and the balance locations by 23.06.2016 and 27.06.2016 respectively. The Operational Creditor also asked the Corporate Debtor to update regarding the progress of revenue land acquisitions at regular intervals. In response, vide an E-mail of the same date, the Corporate Debtor committed to the

Operational Creditor that the Corporate Debtor would produce proof of payments for the relevant locations, however, that the Operational Creditor was required to release the balance advance payment so as to help the Operational Creditor to speed up the process.

- l) Despite advance payments for 8 locations being made by the Operational Creditor, there was no progress in execution of the work under the Revenue Land Agreement by the Corporate Debtor. In view of the same, a meeting was held between the parties on 16.09.2016 wherein it was agreed that the Collector Award Letter would be arranged by the Corporate Debtor by 28.11.2016 and 15.01.2017 and that in the absence of such Collector Award Letter, it would not be possible for the Operational Creditor to process for the Operational Creditor to process further payments.
- m) On 17.12.2016, the Corporate Debtor signed a Development Agreement for the Sadala Project to obtain Developer Permission in the name of the Operational Creditor from Gujrat Energy Development Agency. In furtherance of the said Development Agreement, the Corporate Debtor assigned and transferred its rights under the Development Agreement to the Operational Creditor. However, even after execution of the Development Agreement by the Corporate Debtor, none of the permissions were obtained in the name of the Operational Creditor and the scope of work under the Permissions Agreement was not executed by the Corporate Debtor.
- n) Meanwhile under the Service Agreement, the Corporate Debtor was obligated to procure statutory/regulatory clearance and permissions for Connectivity Facility (including power evacuation facility) and to obtain Gujrat Energy Development Agency permission in relation to wind

power project at the timelines provided therein. However, the Corporate Debtor failed to perform the said obligations within the prescribed timelines and the Service Agreement expired on 01.06.2017 by efflux of time.

- o) Accordingly, on 20.06.2017, the Operational Creditor issued a Termination Letter with regard to the Service Agreement and informed the Corporate Debtor that the Operational Creditor has decided to obtain the regulatory clearances, approvals and permissions directly from the Government itself.
- p) In view of the enormous delay by the Corporate Debtor to procure and transfer the lands with clear title to the Operational Creditor in terms of the Agreements referred to above, the Sadala Project was transferred from the Operational Creditor to the then Aspen Infrastructures Limited on 29.05.2017.
- q) On 07.08.2017, the Corporate Debtor vide a letter responded to the Operational Creditor's Termination letter dated 20.06.2017 with respect to the Service Agreement and requested the Operational Creditor to withdraw the same, wrongly contending that the Corporate Debtor was not responsible for the delays and that the Operational Creditor could not deduct or claim any compensation with respect thereto from the Corporate Debtor.
- r) Thereafter, by an email dated 21.08.2017, the Operational Creditor asked the Corporate Debtor for updated on progress of the Right of Way clearance for 2 locations where land was allotted and asked for Demand Note from the Corporate Debtor for 28 locations against which the Operational Creditor was being asked by the Corporate Debtor to make

advance payment. The Operational Creditor expressed that only after the said updates are provided, the Operational Creditor would pay further advance to the Corporate Debtor.

- s) Pursuant thereto, the Operational Creditor vide E-mails dated 20.09.2017 and 12.12.2017, cautioned the Corporate Debtor that the delay in this process would have adverse impact on the proposal and that in the absence of any action or response from the Corporate Debtor's side, the Operational Creditor would presume that the Corporate Debtor does not have the capability to take the project forward. The Operational Creditor indicated to the Corporate Debtor that the Operational Creditor will be compelled to recover the advance paid by the Operational Creditor to the Corporate Debtor in the absence of the Corporate Debtor's reply as 18 months have elapsed since the work order was released from the Operational Creditor to the Corporate Debtor along with an advance and there was no progress from the Corporate Debtor's side.
- t) Pursuant thereto, the parties met, however, Corporate Debtor refused to refund the advance towards the 8 locations. Hence, by a letter dated 18.01.2018, the Operational Creditor issued a notice to the Corporate Debtor for recovery of advance amount paid by the Operational Creditor on account of failure on the part of the Corporate Debtor to perform the services as per the Revenue Land Agreement. However, there has been no reply to the said Notice from the Corporate Debtor has not undertaken any work under the Revenue Land Agreement since the last several months.
- u) In the circumstances given the fact that the Corporate Debtor had failed to perform its obligations under the Revenue Land Agreement and has abandoned the same, the Operational Creditor was constrained to

terminate the Revenue Land Agreement entered into with the Corporate Debtor, in accordance with Clause 7 thereof vide a Termination Notice dated 16.01.2020. Vide the said Termination Notice, the Operational Creditor also called upon the Corporate Debtor to repay the advance paid by the Operational Creditor to the Corporate Debtor under the Revenue Land Agreement. However, there was no reply to the said Termination Notice from the Corporate Debtor.

5. The Operational Creditor has issued Demand Notice dated 12.03.2020 to the Corporate Debtor in Form 3 under section 8 of the Code claiming the total outstanding of Rs.2,83,60,000/- (Rupees two crore eighty-three lakh sixty thousand only). The Demand Notice was served upon Corporate Debtor on 14.03.2020. The Corporate Debtor has not replied to said Demand Notice.
6. The Operational Creditor has filed Invoices issued by the Corporate Debtor which is at pp 247-251 as Annexure 'II/J' of the Petition. The Term Sheet dated 29.01.2016 is placed at pp 171-184 as Annexure 'II/D' of the Petition.
7. The Corporate Debtor did not appear in the matter.

Findings/Observations:

8. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
9. It is observed by the Bench that the matter was listed on 17.09.2021, the Corporate Debtor was issued Court Notice to appear and filed the reply in the matter. The said Court Notice along with the copy of Petition was served upon the Corporate Debtor vide Email on 02.11.2021. Then after the matter was listed on 15.11.2021, the Operational Creditor was directed to take out substituted service of publication of notice in two local newspapers. The said

substituted service was made by the Operational Creditor on 22.12.2021 to calling upon the Corporate Debtor to appear and file the reply in the matter. After giving reasonable opportunity to Corporate Debtor to appear, the Corporate Debtor failed to appear in the matter. Hence, vide order dated 22.02.2022 the Corporate Debtor set ex-parte and the matter was listed on 20.04.2022 for final hearing.

10. Again, the matter was listed on 20.04.2022, the Corporate Debtor did not appear in the matter. On 11.07.2022, Mr. Aslam Ahmed, Ld. Counsel for the Corporate Debtor and submitted that the Corporate Debtor has filed IA for condoning the delay of filing the reply in the matter. This Bench has observed that the IA filed by the Corporate Debtor was never listed. Hence, after giving several reasonable opportunities to the Corporate Debtor, the Corporate Debtor did not file the reply and the matter was Reserved for Orders on 23.11.2022. The Corporate Debtor again did not appear on 23.11.2022.
11. It is case of the Operational Creditor that the Corporate Debtor was required to perform its obligations under the Revenue Land Agreement inter alia for providing land for installation of wind turbine generators along with access roads, common roads, right of way and such other activities and to arrange land for the purpose of setting up of wind power projects situated at villages as set out in Agreements in the State of Gujrat.
12. Pursuant to the agreed terms, the Operational Creditor and the Corporate Debtor entered into the Revenue Land Agreement dated 13.06.2016. For the purpose of work to be done by the Corporate Debtor, the Operational Creditor has advanced money to the Corporate Debtor from time to time in the sum of Rs.2,83,60,000/- (Rupees two crore eighty-three lakh sixty thousand only).

13. The Service Agreement expired on 01.06.2017 by efflux of time. Therefore, on 20.07.2017 the Operational Creditor issued Termination Letter with regard to the Service Agreement. The Corporate Debtor had failed to perform its obligations under the Revenue Land Agreement and had abandoned the same, therefore the Operational Creditor was constrained to terminate the Revenue Land Agreement in accordance with clause 7 thereof vide Termination Notice dated 16.01.2020.

14. The Rental Lease Agreement is in the nature of providing services to the Operational Creditor. The purpose of this Agreement is to avail services for procurement of land. To understand its nature, it is necessary to understand the provisions of the Agreement. Provisions of the said Agreement is as follows:

“1. Company is inter alia engaged in the business of acquitting land and developing wind power projects, across India, on behalf of its customers.

2. Company is desirous of developing a wind power project in State of Gujrat and its desirous of appointing a developer for the procuring land suitable for developing the wind power project.

5. Relying solely on the afore stated representations, warranties and on the basis of the offer made by the Developer, the Company has agreed to appoint Developer for procurement of land together with such additional services as set out in this Agreement, on such terms, conditions and stipulated as hereinafter appearing.”

15. Further, Clause 4 of the Agreement is as follows:

“4. Payment Terms

The Purchase Consideration payable to the Developer for the services rendered by the Developers for procurement of the Location(s), Access Road(s) and/or Common Road(s) shall be...”

16. It observed by the Bench that the Operational Creditor had time and again tried to get the work done by the Corporate Debtor. However, the Corporate Debtor failed to oblige the terms of the said Agreement. It also seen from the records that the Corporate Debtor has acknowledged its debt in its Books of Account for the F.Y. 2016-17 and 2017-18 which is at pp. 287-317 and pp. 318-335 of the Petition respectively.
17. In view of the above observations, this Bench has inclined to admit the Petition under Section 9 of Code filed by the Operational Creditor.
18. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.
19. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
20. The Operational Creditor has not proposed Interim Resolution Professional (IRP) in the matter.

ORDER

21. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing CP (IB) 814/MB-IV/2021 filed by Suzlon Gujarat Wind Park Limited, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sri Maruti Wind Park (India) Private Limited, the Corporate Debtor, 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 Debtor 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 Debtor 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 Debtor 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 Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- (ii) That 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 Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor 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) That this Bench appoints Mr. Nitin Om Kothari, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02310/2020-2021/13477], E-mail: cakotharico@gmail.com, Contact: 9664442266 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- (g) During the CIRP Period, the management of the Corporate Debtor 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 Debtor 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 Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor 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) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data 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.

Sd/-

Manoj Kumar Dubey
Member (Technical)
09.02.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)