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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA – MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.01.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 672/7/HDB/2018
NAME OF THE COMPANY	RVK Energy And Infrastructure Pvt Ltd
NAME OF THE PETITIONER(S)	L & T Infrastructure Finance Company Ltd
NAME OF THE RESPONDENT(S)	RVK Energy And Infrastructure Pvt Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
D. Nalendar Naik	Adv	9849387366	
Vikram C. Pattapaga	Adv	9160876539	Vikram

Counsel for Respondent(s):

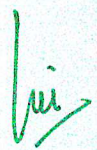
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
SVAS Rajgund. Nitha.	Adv	9440234074	Rajgund

ORDER

Orders pronounced in open court. CP admitted vide separate order.


MEMBER TECHNICAL

AS


MEMBER JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.672/07/HDB/2018

U/s. 7 of the Insolvency and Bankruptcy Code, 2016,
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of:-

M/s. RVK Energy Private Limited

Between:

M/s. L & T Infrastructure Finance Company Ltd,
Brindavan, Plot No. 177, C.S.T Road,
Kalina, Santacruz (East),
Mumbai City – 400098,
Maharashtra.

...Petitioner/
Financial Creditor

And

M/s. RVK Energy Private Limited,
6-3-1109/A/1, 3rd Floor,
Navabharat chambers, Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082.
Telangana

...Respondent/
Corporate Debtor

Date of Order: 06.01.2020

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsel Present:

For the Petitioner/
Financial Creditor:

Mr. D. Narendar Naik,
Mr. Vikram C Puttapaga,
Counsels

For the Respondent/
Corporate Debtor:

Mr. DVAS Ravi Prasad,
Mr. Nitish Bandary,
Counsels.


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Per: Dr. Binod Kumar Sinha, Member Technical.

ORDER

1. Under consideration is company petition filed by M/s. L & T Infrastructure Finance Company Ltd (in short, "**Petitioner/Financial Creditor**") against M/s. RVK Energy Private Limited (in short, "**Respondent/Corporate Debtor**") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules, 2016**).
2. The background facts of the case are as hereunder:
 - a) That the Financial Creditor is a Non-Banking Finance Company, carrying on the business of providing various kinds of financial services and facilities, duly registered with the Reserve bank of India and incorporated under Companies Act, 1956, and having its registered office at Mumbai, Maharashtra.
 - b) That the Corporate Debtor i.e., RVK Energy Private Limited is a Company Limited by shares incorporated under the Companies Act, 1956 having its Regd. Office at 6-3-1109/A/1,3rd Floor, Navabharat chambers, Raj Bhavan Road, Somajiguda, Hyderabad – 500 082, Telangana. The promoters of Corporate Debtor incorporated a Special Purpose Vehicle under the name of RVK Energy (Rajahmundry) Private Limited for developing a 30 MW gas based power plant in

Rajahmundry District of Andhra Pradesh. During the month of December, 2009, RVK Energy (Rajahmundry) Private Limited and its promoters i.e., M/s. KVK Energy & Infrastructure Pvt Ltd., approached the Financial Creditor i.e., L&T Infrastructure Finance Company Limited with a request for Rupee term Loan facility for a sum of Rs.60,00,00,000/- (Rupees Sixty Crores Only) for the development of 30 MW gas based power plant in Rajahmundry District of Andhra Pradesh. The Financial Creditor after considering the request of RVK Energy (Rajahmundry) Private Limited and M/s. KVK Energy & Infrastructure Pvt Ltd. sanctioned a Rupee term loan of Rs. 47,50,00,000/- (Rupees Forty Seven Crores and Forty lakhs Only) and disbursed loan amount of Rs. 40,56,00,000/- (Rupees Forty Crore Fifty Six Lakhs Only) till 30th March, 2013 being the last disbursement date. The mentioned term loan facility was granted on revolving basis. The tenure of the said Facility Agreement is 16 years (45 months of Construction (including 36 months for gas allocation)+ 6 months of moratorium + 11.75 years for repayment). The said tenure was amended as per the Facility Agreement amendment dated 28th December, 2011.

- c) That, in consideration of the above Loan Facility sanctioned by L&T Infrastructure Finance Company Limited, RVK Energy (Rajahmundry) Private Limited executed/submitted, *inter alia*, the following documents to the Financial Creditor i.e. a) Demand Promissory Note dated 31st March, 2010; b) Deed of Hypothecation dated 31st March,

2010, c) Assignment Agreement dated 31st March, 2010, d) Pledge Agreement dated 31st March, 2010, e) Shortfall Undertaking Agreement, f) Pledge Agreement dated 31st March, 2010, g) Corporate Guarantee by M/s. KVK Energy and Infrastructure Private Limited dated 31st March, 2010, and h) Personal Guarantee by Mr. K. Vijaya Kumar dated 31st March, 2010.

- d) That the said Facility was secured by way of creating a first pari passu charge by way of mortgage over the project land, building, constructions and other immovable properties and hypothecation of all the movables together with present and future assets of RVK Energy (Rajahmundry) Private Limited to Financial Creditor, hypothecation of all present and future books debts, bills, monies receivable, cash flows and /or other consumables and general stores, including a charge on bank accounts of the M/s. RVK Energy (Rajahmundry) Private Limited along with project term loan and working capital. The Facility was further secured by assigning and creation of security interest in all the rights, title, interest, benefits, claims and demands whatsoever of the RVK Energy (Rajahmundry) Private Limited in the project documents, clearance, insurance claims/proceeds, relating to the project. Further, a pledge of 51% shareholding in the Corporate Debtor held by the promoter was created in favour of the Financial Creditor. The Facility was to be secured by way of a charge on Debt Service Reserve Account (DSRA) and Trust and Retention Account (TRA). A Corporate Guarantee was

also provided by M/s.KVK Energy and Infrastructure Private Limited and a personal Guarantee of Mr. Vijay Kumar (Promoter) was also given to the Financial Creditor under the said Facility Agreement and other subsisting documents.

- e) That the Corporate Debtor as per the Agreement was required to commission the project on or before 1st January, 2014 and was liable to repay the loan in 141 structured monthly installments starting from 1st July, 2014 with interest @ 14.50% per annum and (L&T Infra PLR – 1.25%) payable monthly at the time of disbursement.
- f) However, pursuant to the Order dated 27.06.2012 in CP No. 197 of 2011 and CP No. 198 of 2011 passed by the erstwhile Hon'ble High Court of Andhra Pradesh, the gas based power plant of 486MW was demerged from RVK Energy (Rajahmundry) Private Limited into RVK Energy Private Limited with effect from April 1, 2011. Accordingly, the Financial Creditor entered into an Amendment Agreement dated 13.06.2015 with the Corporate Debtor i.e. RVK Energy Private Limited which has, *inter alia*, agreed and undertaken to become liable and responsible for all obligations and liabilities of RVK Energy (Rajahmundry) Private Limited under the loan transaction.
- g) Thus pursuant to the said Order dated 27.06.2012 passed by the Hon'ble High Court at Hyderabad sanctioning the demerger of the gas based power project of RVK Energy (Rajahmundry) Private Limited to RVK Energy Private Limited with effect from 01.04.2011, the loan


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account of RVK Energy (Rajahmundry) Private Limited with the Financial Creditor was transferred to RVK Energy Private Limited.

- h) Though the project was completed in 2013, the Corporate Debtor has till date not started its operations and the Corporate Debtor has not repaid the loan amounts availed from the Financial Creditor. On account of default and non-payment of debt the account was classified as Non-Performing Asset (NPA) as per the guidelines of Reserve Bank of India (RBI).
- i) That out of the said disbursed loan amount of ₹ 40.56 Crores, the outstanding principal sum is ₹ 19,84,41,045/- and interest as on 25.07.2018 is ₹11,13,45,947/-. Thus the total outstanding amount as on July 25, 2018 is ₹30,97,86,992/- (Rupees Thirty Crores Ninety Seven Lakhs Eighty Six Thousand Nine Hundred and Ninety Two only). That, the Financial Creditor also got issued legal notice dated 05.09.2017, 28.09.2017, 06.04.2018 and 18.05.2018 calling upon the Corporate Debtor to pay the outstanding debt, failing which the Financial Creditor would initiate appropriate legal proceedings against the Corporate Debtor.

3. The Operational Creditor filed the following documents to prove the existence of financial debt.

- i. Loan Sanction Letter dated December 07, 2009 r/w December 12, 2011 and Facility Agreement dated 31.03.2010 and Note of Amendment dated 20.05.2010 and Amendment Agreement dated 28.12.2011 and Amendment Agreement dated 13.06.2015.

- ii. A statement showing the computation of amount and days of default.
- iii. The Assignment Agreement dated 31.03.2010 and connected Irrevocable Power of Attorney dated 31.03.2010.
- iv. A copy of the Pledge Agreement dated 31.03.2010 and connected Irrevocable Power of Attorney dated 31.03.2010.
- v. A copy of the Corporate Guarantee dated 28.12.2011 by KVK Energy and Infrastructure Private Limited.
- vi. A copy of the Personal Guarantee dated 28.12.2011 by Mr. K. Vijaya Kumar.
- vii. A copy of the Shortfall Undertaking Agreement dated 31st March 2010.
- viii. A copy of the Demand Promissory Note dated 31st March, 2010 executed by RVK Energy (Rajahmundry) Private Limited in favour of Financial Creditor.
- ix. Copy of Board Resolutions of M/s. KVK Energy & Infrastructure Pvt Ltd. dated 29.03.2010 and 27.12.2011 in relation to the loan obtained by RVK Energy (Rajahmundry) Private Limited.
- x. Copy of Board Resolutions of RVK Energy (Rajahmundry) Private Limited dated 10.12.2010 and 27.12.2011 in relation to the loan obtained from the Financial Creditor.
- xi. The copies of certificates of registration of charges with respect to the aforementioned securities created for the benefit of the Financial Creditor.


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- xii. Copy of the Loan Account Statement and entries in the banker's book in accordance with the Bankers Books Evidence Act, 1891 for M/s. RVK Energy Private Limited for the period 14.05.2010 to 25.07.2018.
- xiii. Copy of the legal notices served on dated 06.04.2018, 05.09.2017, 28.09.2017 and 18.05.2018 M/s. RVK Energy Private Limited and M/s. KVK Energy & Infrastructure Pvt Ltd to pay the outstanding debt.

Reiterating the above averments, the counsel for the Financial Creditor prayed to admit the petition.

4. Respondent filed counter dated 13.12.2019, inter-alia, stating that all the allegations made in the company petition are false and not maintainable on the following grounds:

- a) That the Financial Creditor has not filed record of default along with the company petition from the information utility as contemplated under Section 7(3) (b) of the Insolvency and Bankruptcy Code 2016. (hereinafter "IB Code")
- b) That the Financial Creditor has suppressed the facts of the case and has approached this Tribunal with unclean hands.
- c) That the Interim Resolution Professional did not file disclosure in terms of regulation (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons Regulations) 2016
- d) That the present petition is filed against the Corporate Debtor misusing the provisions of the code.



- e) That there are no dues as settlement is entered between the parties.
- f) It is stated that the Corporate Debtor has already paid ₹3 Crores to the Financial Creditor and said parties have entered into a full and final settlement agreement dated 19.08.2019.

Reiterating the above contentions, the counsel for the Corporate Debtor prayed to dismiss the present petition.

5. The present petition was filed on 29.08.2018 and after scrutiny by the registry, the same was first listed on 27.11.2018 and the Petitioner was directed to issue notice to the Respondent for appearance and reply. The matter was adjourned to 18.12.2018.
6. During the hearing held on 18.12.2018, the counsel for Respondent requested time for filing the counter and the matter was adjourned to 30.01.2019.
7. During the hearing held on 12.03.2019, the counsel for the Respondent stated they are intending to settle the matter with the Financial Creditor and prayed time. Thereafter, both sides took several adjournments on 04.04.2019, 29.04.2019, 06.06.2019, 26.06.2019, 10.07.2019, 06.08.2019, 21.08.2019, 27.08.2019, 06.09.2019, 16.09.2019, 27.09.2019, 15.10.2019, 28.10.2019, 14.11.2019, 27.11.2019, 02.12.2019, 09.12.2019, and 12.12.2019 claiming progress in relation to the settlement and for filing a joint memo of settlement.
8. At last, during the hearing held on 13.12.2019, the counsel for the Respondent filed his counter. This Adjudicating Authority heard the matter at length and reserved for orders.
9. Perused the material papers and written submissions filed by both parties.

10. In the instant Petition, the Petitioner has proved its case by placing documentary evidence viz., Copies of Facility Agreements and sanction letters, date and details of all disbursements of the facilities etc., and copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) which proves that a default has occurred for which the present Corporate Debtor was liable to pay. In their counter affidavit, the Respondents have raised objections regarding the existence of 'financial debt' and 'default' committed by the Corporate Debtor stating that the matter was already settled between parties by the Settlement Agreement dated 19.08.2019 and a sum of ₹3 Crore was paid as full and final settlement

11. A reference to the above stated settlement agreement dated 19.08.2019 shows that the said Agreement contains in clause 3, the following terms of payment by the Corporate Debtor:

A. *"An amount of Rs. 11,95,00,000/- (Rupees Eleven Crores Ninety Five Lakhs Only) shall be paid by the Borrower and/or Guarantors to the Lender in tranches, commencing from the effective date with the last tranche falling due on or before March 31, 2020 ("**Facility Repayment**") as full and final settlement of the Facilities the following manner toward full and final settlement of entire Outstanding Dues (**Settlement Amount**) accrued under the Transaction Documents in respect of the Facilities availed by the Borrower and guaranteed by the Guarantors:*

a) **Rs. 1,75,00,000/-**(Rupees One Crore Seventy Five Lakhs only) toward 1st tranche shall be paid to the Lender by the Borrower and/or Guarantors on the Effective Date by way of a demand draft, Cheque or electronic transfer in favour of the Lender, as may be accepted to the Lender.

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- b) **Rs. 3,00,00,000/-** (Rupees Three Crore only) towards 2nd tranche shall be paid to the Lender by the Borrower and/or Guarantors on or before September 30, 2019 by way of a demand draft, Cheque or electronic transfer in favour of the Lender, as may be acceptable to the Lender:
- c) **Rs. 3,25,00,000/-** (Rupees Three Crore Twenty Five Lakhs only) towards 3rd tranche to be paid to the Lender by the Borrower and/or Guarantors on or before December 31, 2019 by way of a demand draft, Cheque or electronic transfer in favour of the Lender, as may be acceptable to the Lender.
- d) **Rs. 3,95,00,000/-** (Rupees Three Crore Ninety Five Lakhs only) towards 4th and final tranche to be paid to the Lender by the Borrower and/or Guarantors on or before March 31, 2020 by way of a demand draft, Cheque or electronic transfer in favour of the Lender, as may be acceptable to the Lender.
- B. The Borrower shall submit 4 (four) post-dated cheques ("**PDC**") for securing the payment of each installment/tranche, under sub-points (a)-(d) as above in favour of the Lender. The Obligors, jointly and severally confirm that the PDC's shall be honoured on their respective due dates. In case the payment of the Installments/tranches is made through RTGS, the lender would submit back the PDC's to the Borrower, after obtaining a confirmation in relation to the successful credit of funds in the Lender's account, within the stipulated timelines.
- C. The Obligors, jointly and/or severally agree and confirm that on the happening of an event of default under this agreement or the Transaction Documents and/or termination of this agreement, the payments received by the Lender in terms of the schedule mentioned hereinabove, shall be appropriated in the following manner:

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- a) *Firstly, to meet any costs and expenses incurred by the Lender, which as per the terms of this Agreement and the other Transaction Documents are to be reimbursed, paid or borne by the Obligors, and such payments have not been met;*
- b) *Secondly, towards payment of the applicable contractual rate of interest and default interest payable in terms of this Agreement and the other Transaction Documents;*
- c) *Thirdly, towards outstanding principal dues under the original Facility Agreements.*
- d) *The Payment schedule mentioned hereinabove shall be subject to the terms and conditions mentioned in Clause 4 below.”*

12. Further clause 4(1) of the said Settlement Agreement clearly stipulates that it shall become effective only upon the successful receipt of ₹ 1,75,00,000/- on the date of execution of the agreement as stipulated in clause 3 of the agreement, and thereafter, subsequent installments are to be paid on or before 31.03.2020.
13. Clause 5(b) of the Agreement stipulates that if there is any breach or default under any of the terms of agreement, the Financial Creditor shall be entitled to forthwith terminate the agreement and shall be reinstated to the original position.
14. During the hearing on 09.12.2019, the learned counsel for the Financial Creditor stated that the Financial Creditor has not received any payment in terms of the settlement Agreement dated 19.08.2019 either by the Corporate Debtor or by the corporate guarantor. The claim of payment of Rs.3 Crore by the Corporate Debtor in accordance with the Settlement Agreement is not correct as the same amount was recovered by the Financial Creditor on account of sale of assets of the Corporate Debtor much before the date of Settlement Agreement. Hence, a default is clearly committed.



15. Considering the facts and circumstances of this case, this Adjudicating Authority is of the considered view that there has been existence of financial debt and a default has been committed by the Corporate Debtor, as it failed to comply with the terms of the settlement agreement as a result of which the same got terminated.
16. The Hon'ble Supreme Court, while deciding the matter in the case of *INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.*, in Civil Appeal Nos. 8337-8338 of 2017, held as under:
- ".....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*
17. In the present case, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor regarding existence of 'financial debt' and occurrence of 'default'. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.
18. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
19. This Adjudicating Authority hereby appoint Mr. Koteswara Rao Karuchola, having IP Regn. No. IBBI/IPA-003/IP-N00039/2017-18/10301 (IRP) as the

name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.

20. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

- a) 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;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

21. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
22. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
23. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
24. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
25. The Registry is also directed to send a copy of this order to concerned RoC for updating the status of the Corporate Debtor in the MCA website.
26. The address details of the IRP are as follows:-


Mr. Koteswara Rao Karuchola
Reg. No: IBBI/IPA-003/IP-N00039/2017-18/10301.
K.K. Rao & Associates Cost Accountants,
2-B Samrat Residential Complex, # 5-9-12,
Opp. A. G s Office, Saifabad,
Hyderabad - 500004, Telangana.
Email ID: kkraoalp@gmail.com.

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27. The present Petition bearing CP (IB) No.672/7/HDB/2018 is hereby admitted.


06.01.2020
Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

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