

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

CP No. 1951/IBC/NCLT/MB/MAH/2019

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

Vejas Power Projects Limited  
..... Financial Creditor  
(Petitioner/Applicant)

V.

Vaayu Infrastructure LLP.  
..... Corporate Debtor  
(Respondent)

Heard on: 28.08.2019

Pronounced on: 30.08.2019

**Coram :**

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

Hon'ble Chandra Bhan Singh, Member (T)

**For the Petitioner :**

Advocate Priyanka Shetty i/b Argus Partners.

**For the Respondent :**

None Present.

*Per: Chandra Bhan Singh, Member (T)*



**ORDER**

1. The Petitioner/Applicant viz. 'Vejas Power Projects Limited' (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 27.05.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Vaayu Infrastructure LLP' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be 1102(2), 11<sup>th</sup> Floor, Fortune Terrace, New Link Road, Andheri (W), Mumbai.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹210,00,00,000/-, and the amount claimed to be in default is ₹2,68,88,44,690/- as on 01.04.2019. The Petitioner states that the Corporate Debtor has defaulted in making payment on 08.02.2018

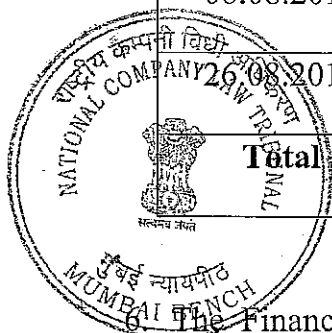
**Brief History of the case:**

3. IL&FS Financial Services Ltd. (IL&FS) had provided Wind World Wind Farms (MP) Private Limited (WWWFPL) with financial assistance for an amount of ₹100,00,00,000/- (Facility 1) and ₹110,00,00,000/- (Facility 2) vide Facility Agreements dated 27.06.2014 and 24.09.2014 respectively.
4. The IL&FS had assigned its debt in favour of the Financial Creditor herein pursuant to the Assignment Agreement dated 30.12.2015. The Corporate Debtor is the guarantor of WWWFPL for it had executed irrevocable and unconditional guarantees in respect of the Facilities granted to the WWWFPL. This Petition is filed by an assignee of a debt against the guarantor of the borrower.

**Submissions by the Financial Creditor**

5. The Financial Creditor in its Form 1 submits that amounts under Facility 1 and Facility 2 are disbursed on different dates as given below:

Facility 1- ₹100,00,00,000/--		Facility 2- ₹110,00,00,000/--	
Date	Amount Disbursed	Date	Amount Disbursed
30.06.2014	42,00,00,000	27.06.2014	45,00,00,000
11.07.2014	25,00,00,000	29.09.2014	40,00,00,000
08.08.2014	10,00,00,000	30.09.2014	25,00,00,000
26.08.2014	23,00,00,000		
<b>Total</b>	<b>100,00,00,000</b>	<b>Total</b>	<b>110,00,00,000</b>



The Financial Creditor contends that an amount of ₹1,26,24,68,685/- is due and payable in respect of Facility 1 and an amount of ₹1,42,63,76,004/- is due and payable in respect of Facility 2.

7. The Loan facilities are secured by hypothecation of various movable properties, the Corporate Guarantee given by the Corporate Debtor vide letters of Guarantee dated 27.06.2014 and 24.09.2014 for the two facilities respectively, the Corporate Guarantee given by the Vish Wind Infrastructure LLP vide letters of Guarantee dated 27.06.2014 and 24.09.2014 for the two facilities respectively, Personal Guarantees of Mr. Ajay Mehra and Mr. Yogesh Mehra. The security documents have been produced on record and duly perused by this Bench.
8. The Financial Creditor herein issued a recall Notice dated 29.01.2018 to the WWWFPL for an outstanding amount of ₹254,72,62,584/- as on 28.01.2018, but nothing fructified. The Financial Creditor thereafter issued a letter dated 07.02.2018

to the Corporate Debtor for invocation of guarantee issued to the Financial Creditor for the debt of WWWFPL, in respect of the default committed in repayment.

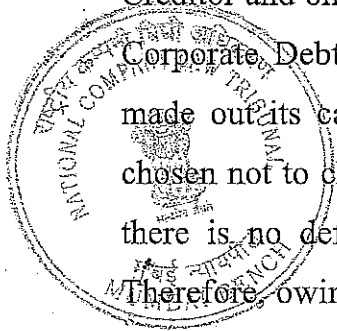
9. The Financial Creditor has established the outstanding debt by producing on record its Statement of Account by Axis Bank and HDFC Bank, which corroborate to the claim of the Financial Creditor. The financial statements of WWWFPL reflect the amount borrowed from IL&FS to the tune of ₹210,10,07,800/- as on 31.03.2018.
10. The Financial creditor submits that its statement of accounts annexed in the petition and the financial statements of WWWFPL is an ample proof that the loan amount has been duly disbursed. The Bank statement is corroborating to the computation of claim of the Financial Creditor. However, the Corporate Debtor has neither repaid the loan amount till date nor it has replied to the correspondences sent by the Financial Creditor calling for the repayment of loan.

**No Submissions by the Corporate Debtor :**

11. The Corporate Debtor has not appeared before this Bench despite a number of opportunities being given. Notices for intimation of dates of hearing have also been sent and affidavit of service has been produced on record by the Financial Creditor. The same has been duly perused. No reply has been received on record till date. The Corporate Debtor has nowhere denied his liability to pay the amount claimed.

**Findings :**

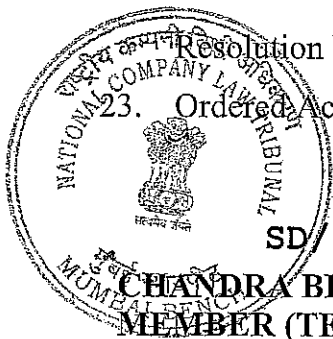
12. On going through the submissions made by the Learned Counsel for the Financial Creditor and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Financial Creditor has made out its case with ample evidences for his claim. The Corporate Debtor has chosen not to challenge this petition by not filing an affidavit in reply. It seems like there is no defence left with the Corporate Debtor with regard to this petition. Therefore, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
13. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
14. 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.
15. 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**'.

16. Further that, I 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.
17. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
18. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Shailen Shah, having registration No. IBBI/IPA-001/IP-P00408/2017-18/10724, address at 5<sup>TH</sup> Floor, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
19. 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.
20. 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.
21. 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.
22. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

23. Ordered Accordingly.



SD/-  
CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)

Dated : 30.08.2018

Certified True Copy

Copy Issued "free of cost"

On 11/9/19 SD/-

M.K. SHRAWAT  
MEMBER (JUDICIAL)  
Assistant Registrar

National Company Law Tribunal Mumbai Bench