

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

IBA/967/2019 filed 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 ***M/s. Bhadreshwar Vidyut Private Limited***

Syndicate Bank

Asset Management Branch
Door No.15/38,
SIC Building, 1st Floor,
Anna Salai,
Chennai – 600 002

... Financial Creditor

-Vs-

M/s. Bhadreshwar Vidyut Private Limited

(formerly OPGS Power Gujarat Pvt. Ltd.)
Terra 2A, Flat No.404,
No.2/5, Lavender Street,
Mugalivakkam, Porur
Chennai – 600 125

... Corporate Debtor

Order Pronounced on 27th January, 2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : *T. Ravichandran &
D. Elavarsi Advocate*

For Corporate Debtor : *K. S. Ravichandran, PCS
S. Manjula Devi, Advocate*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed by **Syndicate Bank** (hereinafter referred to as 'Financial Creditor') on 30.07.2019 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, against **M/s. Bhadreshwar Vidyut Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard Learned Counsel for the Financial Creditor and Authorized Representative for the Corporate Debtor and perused the documents filed by the parties.

3. The Financial Creditor has claimed the total amount of Rs.32,22,50,660.16p as outstanding against the Corporate Debtor as on 29.07.2019. Clause 2 of Part-IV of the Application discloses the details of the loan amount due to the Financial Creditor by the Corporate Debtor.

Submissions of Financial Creditor

4. The case of the Financial Creditor is that the Corporate Debtor namely Bhadreshwar Vidyut Pvt. Ltd. (formerly known as OPGS Power Gujarat Pvt. Ltd.) operates and develops power generation assets in India and currently has 414 MW in operation principally under the Group Captive Model and 62 MW of solar assets. The Corporate Debtor had approached the Punjab National Bank, the Financial Creditor herein namely Syndicate Bank, Indian Bank, Vijaya Bank (now Bank of Baroda) and State Bank of Hyderabad (now State Bank of India) for financial assistance. The Punjab National Bank was the lead Bank and it was referred to as 'PNB Consortium', for working capital needs.

5. It is averred that the Corporate Debtor sought financial assistance for the purpose of meeting working capital needs in relation to 2 x 150 MW coal based captive power plant of the Corporate Debtor situated at Bhadreshwar village, Mundra Taluk, Kutch, Bhuj District, Gujarat. Pursuant to the request made by the Corporate Debtor, the competent authority of the Financial Creditor has sanctioned Fund Based limit of Rs.31 Crores and Non-Fund Based limit of Rs.105.00 Crores, totaling Rs.136 Crores to the Corporate Debtor. Copy of Sanction Letter dated

16.11.2015 is placed at pages 45 to 54 of the typed set filed with the Application. The Corporate Debtor accepted the conditions of the sanction in its Board Meeting held on 14.12.2015, copy of which is placed at page 55 of the typed set filed with the Application.

6. It is averred that in order to secure the loan sanctioned by the Financial Creditor, the Corporate Debtor executed Working Capital Consortium Agreement dated 17.12.2015 in favour of the PNB Consortium which included the Financial Creditor, Indian Bank, Vijaya Bank (now Bank of Baroda), Punjab National Bank and State Bank of Hyderabad (now State Bank of India), copy of which is placed at pages 60 to 112 of the typed set filed with the Application. By virtue of the said Working Capital Consortium Agreement, the Corporate Debtor had agreed to repay the said loan as per the amortization schedule set out in the Loan Agreement. Under Article II of the said Working Capital Consortium Agreement, the Corporate Debtor had agreed that the loan sanctioned would be secured by i) *pari-passu* first charge by way of hypothecation of the Corporate Debtor's current assets, namely stocks of raw materials, semi-finished goods, finished goods, by-products, stores and spares, bills



receivables and book debts and all other movables, ii) *pari-passu* second charge by way of hypothecation of the Corporate Debtor's movable fixed assets of Unit 1 and 2, ranking after the charges created or to be created in favour of the Term Lenders of Term Loans and the balance lying under Trust and Retention Account and iii) *pari-passu* second charge by way of hypothecation/assignment/creation of security interest of/on all rights, title, interest, benefits, claims and demands whatsoever of the Corporate Debtor in the project documents/contracts, in any letter of credit, guarantee, performance bond provided by any party to the project and all insurances contracts etc. Further, Corporate Debtor executed a *pari-passu* second charge by way of mortgage in respect of the property belonging to the Corporate Debtor.

7. In addition, the Corporate Debtor executed Joint Deed of Hypothecation dated 17.12.2015, in favour of the PNB Consortium by creating i) a *pari-passu* first charge by way of hypothecation of whole of the current assets of the Corporate Debtor namely stocks of Raw Materials, stores and spares not relating to plant and machinery (consumable stores & spares), Bills Receivable and Book Debts and all other movables of the



Corporate Debtor both present and future as related to Units 1 and 2 both present and future; i) a *pari-passu* second charge by way of hypothecation of a) the whole of Corporate Debtor's Movables fixed assets (other than current assets) of Units 1 and 2 both present and future, pertaining to projects viz., Coal based Captive Power Plants Units 1 and 2 situated at Bhadreshwar Village, Mundra Taluk, Kutch-Bhuj District, Gujarat owned by the Corporate Debtor. b) the balance lying in Trust and Retention Account both ranking after the Charges created and /or to be created in favour of the Term lenders for Units 1 and 2 of the Corporate Debtor; iii) Second charge by way of Hypothecation/Creation of Security Interest of/on all rights, title, interest, benefits, claims and demands whatsoever of the Corporate Debtor viz., a) In the project documents/contracts, as amended, varied or supplemented from time to time, b) In the clearances relating to the project and c) in any letter of credit, guarantee, performance bond provided by any party to the project ranking after the charges creating and/or to be created in favour of the Term lenders for Units 1 and 2 of the Corporate Debtor.



8. Besides above, the Corporate Debtor had executed a Letter of Undertakings for compliance of pre release terms and conditions and post release terms and conditions. Copies of Undertakings dated 17.12.2015 are placed at pages 134 to 136 of the typed set filed with the Application.

9. It is stated that at the request of the Corporate Debtor, the Financial Creditor renewed and sanctioned the credit limits to the Corporate Debtor and under the renewed limits, the Fund Based Limits were kept at Rs.31 Crores and Non-Fund Based Limit of Rs.98 Crores, totaling Rs.129 Crores, copy of Sanction Letter dated 29.06.2017 is placed at pages 137 to 142 of the typed set filed with the Application.

10. It is averred that the Corporate Debtor did not adhere to the terms and conditions of sanction and had failed in making payment of installments due to the Financial Creditor. Thereafter, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.06.2018. Subsequently, the Financial Creditor has sent a letter dated 05.12.2018 to the Corporate Debtor calling upon it to clear the entire outstanding amount immediately. Copy of Recall Notice is placed at page 143 of the typed set filed with the Application.



11. In addition, the Financial Creditor has filed CRILC Report dated 26.07.2019 wherein the status of the Corporate Debtor is shown as moved to default, copy of which is placed at page 146 of the typed set filed with the Application. The Financial Creditor has also filed the Statement of Accounts till 30.06.2019 along with certificate issued by the authorized representative of the Bank, and the balance sheet of the Corporate Debtor as on March, 2018, copy of which is placed at pages 148 to 157 of the typed set filed with the Application.

Submissions of the Corporate Debtor

12. The Corporate Debtor has filed a detailed Reply Affidavit along with typed set of documents wherein it is stated that the present Application filed by the Financial Creditor is premature and not maintainable neither in law nor on facts. It is stated that the Financial Creditor with only 1.64% of the total value of debt has moved this Application against the Corporate Debtor which is a 'going concern' without having due regard to the public interest and interest of the other Financial Creditor.



13. The Corporate Debtor has further submitted that the Corporate Debtor has set up 2 x 150 MW Thermal Power Plant at Bhadreshwar, Kutch, Gujarat at a total project cost of Rs.1996.54 Crores, with Term Loan aggregating to Rs.1497.40 Crores i.e. Term Loan from REC Limited (formerly known as Rural Electrification Corporation Limited) of Rs.998.26 Crores, Punjab National Bank of Rs.252.74 Crores and State Bank of India of Rs.246.40 Crores.

14. The details of the project costs and its source have been given in a tabular form as under:-

Particulars (Rs.Cr)	Original Cost	Cost Overrun-1	Cost Overrun-II	Total Project Cost
Debt	1215.41	175.11	106.88	1497.40
REC Limited	810.27	116.74	71.25	998.26
SBI	200.00	28.81	17.59	246.40
PNB	205.14	29.56	18.04	252.74
Promoter Equity	405.14	58.37	35.63	499.14
Total Project Cost	1620.55	233.48	142.51	1996.54

15. It is stated that the Corporate Debtor has commissioned the project in spite of various delays and difficulties faced by it, in obtaining environmental clearance, statutory clearance, aggregation of land, permission to obtain government lands,

delay in setting up the transmission line by State Transmission Utility and various other litigations. After facing all the pain and stress in setting up the Power Plant, the Corporate Debtor finally developed and implemented a 300 MW (2x150 MW) coal based sub-critical power project in Gujarat under the Group captive power policy.

16. It is further stated that after the commissioning the project, the state DISCOM had raised concerns as a result of which there was a delay of 3 years for grant of captive status by concerned authorities and due to this, the Corporate Debtor's receivable to the tune of Rs.329 Crores got blocked by DISCOM due to non-reimbursement of Cross Subsidy Surcharge (CSS). As on 01.08.2019, about Rs.90 Crores were yet to be reimbursed to the Corporate Debtor and customers on account of CSS. The Corporate Debtor states that with a view to reducing financial loss, the project has commenced supply of power to selected industrial consumers in the States of Gujarat and neighboring states Maharashtra and Madhya Pradesh under short- and medium-term arrangement which resulted in increased costs in transmission and has further resulted in loss of more than Rs.1/- per unit.



17. It is stated by the Corporate Debtor that to meet the Working Capital requirements, considering deduction of equity margin of around 25%, is met by a consortium of 5 lenders namely PNB, State Bank of India, Indian Bank, Syndicate Bank and Vijay Bank in the form of Cash Credit and "Non-fund" based limits. It is further stated that a Working Capital Consortium Agreement was entered into between the Corporate Debtor as borrower and PNB, Indian Bank, Vijaya Bank, State Bank of Hyderabad and the Financial Creditor as PNB Consortium for Working Capital, on 17.12.2015 for extending Working Capital Finance of Rs.565 Crores to the Corporate Debtor. Further, the said PNB consortium of Working capital lender banks have entered into inter-se agreement dated 17.12.2015 among themselves. The PNB consortium of Working Capital Lender Banks also as the term lenders have executed a "Master Inter Creditor Agreement" dated 26.07.2016 amongst themselves, copy of which is placed at pages 106 to 140 of the typed set filed with the Counter Affidavit. Similarly, all working capital and term lenders have entered into a Trust and Retention Account Agreement (TRA) on 26.07.2016 with the Corporate Debtor, copy of which is placed at pages 141 to 199 of the typed set filed with



the Counter Affidavit. Both these Agreements form the basis of the understanding and agreement between the Consortium Lenders with regard to the accounts of the Corporate Debtor, the allocation of funds and the inter-se obligations between the Consortium Lenders.

18. Subsequently, post sanction and installation of working capital consortium, the Financial Creditor has reduced its Cash Credit (fund based facilities) from Rs.31 Crores to Rs.7.92 Crores and further the Financial Creditor was not releasing from sanctioned "non-fund" based limits and reduced the other limits such as LC limits from Rs.70 Crores to Nil and BG limits to Nil and thereafter, on 05.12.2018, the Financial Creditor totally cancelled the "non-fund" based limits of Rs.98 Crores. The said reduction was done in spite of the availability of non-fund based Working Capital limit and specific requests of the other consortium members to allow opening of letters of credit. The Corporate Debtor has regularly serviced the interest on the Working Capital facilities to the consortium of banks till 31.05.2019.



19. Corporate Debtor states that on 02.05.2018, the Corporate Debtor requested the Financial Creditor to open a Letter of Credit for a sum of Rs.21,25,36,500/- for the purpose of purchase of coal from one AS Bajaj Sales and Marketing Pvt. Ltd., copy of which is placed at pages 230 to 231 of the typed set filed with the Counter Affidavit to which the Financial Creditor refused to allow opening of letters of credit out of the sanctioned limits. This has caused further difficulties and eventually the Financial Creditor had marked the account of the Corporate Debtor as NPA on 30.06.2018. As a consequence, the Corporate Debtor could not plan its operations, sourcing of raw materials, statutory and other payments etc., thereby adversely affecting the entire production and generation.

20. It is stated that during, Working Capital Consortium Banks Meetings and Joint Lenders Meetings held on several occasions, there have been discussions to restructure the loan facilities extended to the Corporate Debtor. Both the Working Capital Consortium Banks and Term Lenders requested the Financial Creditor to permit the Corporate Debtor to utilize the "non-fund" based limit sanctioned by the Financial Creditor as other lenders were permitting the same. At the meeting of



Consortium of Banks held on 04.05.2018, all the lenders including REC Limited objected to the unilateral decision of Financial Creditor and Vijaya Bank and requested all the lenders to support the project to overcome the hurdles, copy of the Minutes of Meeting dated 04.05.2018 is placed at pages 232 to 237 of the typed set filed with the Counter Affidavit. Even during the meeting held on 12.07.2018, the other banks called upon the Financial Creditor and Vijaya Bank to restore the Working Capital limits as per the original working capital assessment and allow full working capital limit for smooth functioning of Plant and also at the meeting held on 06.09.2018, PNB, as working capital lead lender requested the Financial Creditor to allow the Corporate Debtor to utilize the LC limits to the extent of frozen limits of Rs.46.5 Crores.

21. The Corporate Debtor states that in the Working Capital Lenders Meeting held on 07.02.2019, the Financial Creditor replied that since the account was transferred to their Branch, there requires permission from its Head Office to renew and allow the Corporate debtor to use working capital limits as per sanction and requested the Corporate Debtor to share the Power Purchase Agreements (PPAs) with all the lenders. It is stated that from the minutes of the various meetings of the Joint



Lenders and Working Capital Lenders, there was no doubt about the viability and operational efficiency of the Plants of the Corporate Debtor and the Corporate Debtor have been enjoying fullest co-operation and confidence of the lenders.

22. The operational and financial performance of the project since its Commercial Operation Date distinguishes the Corporate Debtor from other contemporaries in the power sector the Corporate Debtor's Plant is fully commissioned, technically capable to run on full capacity and it has been operating continuously since Commercial Operation Date. It is stated that in this situation, the Corporate Debtor is capable of continuing its operations without any interruptions and continues to service the debt of all the lenders including the Financial Creditor on the basis of cash flow provided that adequate and sanctioned working capital limits are disbursed.

23. The details of installments and interest paid to all the lenders during the period from financial year 2016-17 to October, 2019 have been given in a tabular form as under:-



Financial Year	Principal Repaid Rs. in crores	Interest paid Rs. in crores	Total Paid Rs. in crores
2016-17	2.06	195.32	197.38
2017-18	7.06	165.13	172.19
2018-19	6.56	77.29	83.85
2019-20 (upto October 2019)	0.95	61.29	62.24
Total	16.63	499.03	515.66

24. Apart from the above payments made to all the lenders by the Corporate Debtor, the following payments were made to the Financial Creditor:-

(Amount Rs. in Crores)

Financial Year	Interest paid
2016-17	0.84
2017-18	0.61
2018-19	4.58
2019-20 (upto October, 2019) (including Rs.37.15 lakhs paid under HOO from 01.07.2019)	1.15
Total	7.18

25. The Corporate Debtor has referred to the Clause 2 of the Article 1 of the Working Capital Consortium Agreement and Clause 4 of the Joint Deed of Hypothecation entered into between the parties. Further it is contended that the Corporate Debtor Trust and Retention Agreement dated 26.07.2016 with the Consortium Lenders and as per the said Agreement, the Corporate Debtor is

maintaining a Trust and Retention Account (TRA Account) with the lead Bank namely PNB and all the amount of collections on sale of power generated by the Corporate Debtor are received into the TRA account. The lead bank effects payment from the TRA account from the project operations and servicing of the lenders. The Corporate Debtor and the Consortium Lenders are bound by the TRA and the disbursement of funds to all the creditors are outlined in the TRA. The Financial Creditor having agreed to the terms of the TRA will have to make its claims with the other Consortium Lenders. The obligations of the Corporate Debtor have been outlined clearly in the TRA, particularly, the disbursal of funds to the creditors including the Financial Creditor will have to be within the terms of the TRA and further the lenders including the Financial Creditor have agreed to "*equal treatment and pro-rata allocations*" of funds. Having agreed to these terms, the contention of the Financial Creditor that the Corporate Debtor is in default is incorrect; the Authorized Representative expatiated.

26. The Corporate Debtor has referred to the Clause 2.1 and 2.2 (b) (i) of the Master Inter-Creditor Agreement (MICA) dated 26.07.2016 and stated that the Financial Creditor is bound by the provisions of MICA and more particularly, Clause 2.2 (b) states that no enforcement action shall be initiated except after complying with

the procedure and requirement set out therein and any lender intended to take any Enforcement action ("Enforcement Intending Party") shall give notice of its intention to initiate Enforcement Action ("Enforcement Action Notice") to all the other Lenders, the Lenders' Agent. After receipt of notice from the Enforcement Intending Party, a meeting of the Lenders shall be convened and if the course of action proposed by the Enforcement Intending Party in the Enforcement Action Notice or any other course of action is approved by the Lenders holding more than 60% of the then outstanding Secured Obligations, then all the Lenders shall jointly take or cause to be taken by the Lenders' Agent/Security Trustee such approved course of action.

27. It is stated that since the binding agreements contemplate a decision by a prescribed majority, the present action initiated by the Financial Creditor is contrary to the same and any unilateral action would jeopardize the interests of not only the Corporate Debtor but also those of other lenders, and hence, the Application is liable to be rejected.

28. The Corporate Debtor further referred to the Clause 3 (a) and (c) of the *Inter-se* Agreement dated 17.12.2016 which stipulate that all the members (consortium Lenders) shall act in the spirit of



the Consortium and the decisions of the Lead Bank, which will be binding on the other Members of the Consortium, in case of any dispute or differences of view with regard to the accounts and submits that the Financial Creditor revised the instruments granted unilaterally without the approval of the Consortium Lenders, in contravention of Clause 3 (n) (2) of the said Agreement reduced the Working Capital provided to the Corporate Debtor which directly contributed to the cash crunch and other associated liquidity troubles and further in not considering a revival mechanism on the basis of the Resolution Plan being positively considered by the other Consortium Lenders.

29. The initiation of CIRP proceedings by the single lender is premature since the RBI direction dated 07.06.2019 mentions that Resolution Plan should be implemented within 180 days from the Reference Date. However, the Reference Date for the Corporate Debtor as per RBI direction is yet to be announced and any action initiated by the Financial Creditor within such timeline needs to conform to the RBI direction which is binding on them and the Financial Creditor, who has all along been actively participating in the meetings of the Consortium Lenders, has filed the present Application contrary to the RBI direction and hence, the Financial Creditor is *estopped* by law to proceed/ decide otherwise as against



the decisions taken by the majority of the lenders in the correct legal forum of lenders i.e. the Consortium Meeting.

30. It is further stated that on the basis of request of all the lenders, the Corporate Debtor had submitted a resolution plan to the lenders on 29.07.2019 and in the consortium meeting held on 17.08.2019, all the lenders have requested the Corporate Debtor to re-submit a revised proposal including OTS and also requested the Financial Creditor to withdraw the Application filed before the NCLT and accordingly, the Corporate Debtor submitted the revised OTS on 17.09.2019, which is pending consideration by the Joint Lenders.

31. It is stated that the Promoters of the project have an unblemished track record and they are not willful defaulters. Further, the Corporate Debtor has reiterated its contention that when the overwhelming majority of the consortium of bank and lenders request the Financial Creditor not to pursue this Application, it is not fair on the part of the Financial Creditor whose stake is a meager 1.64%. Further, since the Corporate Debtor and the Consortium of Lenders are working out for a proper Resolution Plan which is also the objective of I&B Code, 2016, the action of the Financial Creditor is premature. Therefore, the Corporate Debtor



has prayed this Tribunal that the Application filed by the Financial Creditor may be dismissed with costs.

32. The Corporate Debtor has also filed a Memo on 13.12.2019, wherein it is stated that the policy of the Government of India on joint lending arrangement issued on 30.01.2013 which is based on the report of the Diwakar Gupta Committee and as per letter of Ministry of Finance, the policy is required to be placed before the Board of the respective banks. It is further stated in the Memo that Para 36 of the policy clearly stated that the exit of a member is possible only with the approval of all the members of the joint lending arrangement subject to applicable haircut. Therefore, the action of the Financial Creditor is contrary to the public policy and it should have first approached the joint lenders seeking exit.


33. This Tribunal examined the averments in the documents, terms and conditions contained in the various types of agreements including the Master Inter-Creditor Agreement, Inter se Agreement, Policy of the Government of India including RBI guideline in the matter of Joint Lending Agreement. The Tribunal also evaluated the arguments and points contained therein as expatiated by the Authorized Representative appeared on behalf of the Corporate Debtor and the submissions of the Counsel for Financial Creditor.

34. In the context of the present application submitted by the Financial Creditor viz., Syndicate Bank it is felt appropriate to dwell upon the background a little further. Along with other consortium lenders wherein Punjab National Bank was the lead Bank, the Applicant/Financial Creditor viz., the Syndicate Bank had also participated in the Joint/Consortium Lending Arrangement to the Corporate Debtor viz., Bhadreshwar Vidyut Pvt. Ltd. (formerly known as OPGS Power Gujarat Pvt. Ltd.). On the basis of a sanction letter dated 16.11.2015 the Financial Creditor had sanctioned a fund based limit of Rs.31 Crore and non-fund based limit of Rs.105 Crore aggregating to Rs.136 Crore to the Corporate Debtor and all the applicable agreements and documents were executed by the Corporate Debtor who had accepted the conditions of the sanction in its Board Meeting held on 14.12.2015. The Applicant/Financial Creditor, the Syndicate Bank had entered into necessary agreements including Joint Deed of Hypothecation, Master Inter Credit Agreement [MICA], necessary inter se agreements, Trust and Retention Agreement, etc; as a part of the prescriptions contained in the Consortium Arrangements amongst the participating banks. According to the Financial Creditor the account has fallen as NPA on 30.06.2018 with an amount claimed in default being Rs.32,22,50,660.16.



35. On a perusal of CRILCFGMO which is a Return of defaulted borrowers placed as Annexure 1 in page No.146 and 147 this Authority is satisfied that on 20.07.2018 Syndicate Bank, the Financial Creditor has reported to have moved the borrower into the '**Moved to Default Status**' on 16.07.2018 along with 10 various other lending Banks. Also, the Financial Creditor has issued a recall notice on 05.12.2018 (Copy produced at Page No.143 to 145 of the typed set) to the Corporate Debtor instructing them to clear the dues, failing which recovery action will be initiated including filing before NCLT. A contention is seen to have been made by the Authorized Representative who appeared on behalf of the Corporate Debtor that a Resolution Plan is already under consideration by all other Financial Creditors and only the Applicant / Financial Creditor who is having a negligible 1.64% voting power in the total claim has come forward for the CIRP process.

36. Be it as may; the Committee of Creditors to be constituted once the CIRP is initiated will be competent to decide upon the viability of the Resolution Plan reportedly under consideration. This Authority is concerned only with either admission or rejection of the Petition submitted by the eligible Financial Creditor seeking



Corporate Insolvency Resolution Process against the Corporate Debtor **who is at default.**

37. Further, at this point it is relevant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Dr. Esther Malini Victor – Vs- Oriental Bank of Commerce & Ors.** in *Company Appeal (AT) (Insolvency) No.822 of 2019*, wherein the similar set of issue fell for consideration before the Hon'ble NCLAT and after examining the same, it was held that if the debt and default is proved, the Adjudicating Authority is bound to admit the Section 7 application under I&B Code, 2016 and upheld the decision passed by NCLT, Chennai.

38. In the instant case, the Financial Creditor has complied with all the requirements with respect to initiating the CIRP process against the Corporate Debtor Company and produced all the applicable documents in support of initiating the CIRP process in the prescribed manner. Accordingly, this Adjudicating Authority is satisfied that default has occurred and the application under sub-section 2 of Section 7 of I&B Code, 2016 is complete in all respects notwithstanding the fact that the Financial Creditor has acted against the interest of other lending institutions in violation of the



Joint Lending Arrangements and stipulations contained in various agreement such as Joint Deed of Hypothecation, Master Inter Credit Agreement [MICA], necessary inter se agreements, Trust and Retention Agreement, etc.

39. This Tribunal is required to adjudicate the matter within contours prescribed under Section 7 of the Insolvency and Bankruptcy Code without having regard to any other policy matter or guideline issued by the competent authority with respect to the Joint Lending Arrangement amongst the Bank or similar other documents. This Authority is duty bound to admit this application initiated under Section 7 by a Financial Creditor if a default has occurred and the application is complete in all respect and there is no disciplinary proceeding is pending against the proposed Resolution Professional. Eventhough the stake of the Financial Creditor is only a meagre 1.64% of the total value of debt as against the Corporate Debtor, the claim amount as made in the petition is in excess of Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for approaching this Tribunal by the creditors, in the instant case by Financial Creditor, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as



against the Corporate Debtor. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

40. The Financial Creditor has proposed the name of one **JAYASHREE S IYER** having Registration Number **[IBBI/IPA-002/IP-N00741/2018-2019/12211]** (Email id:- ***jayashree2505@gmail.com***) as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.



41. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under 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 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;
- (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.

42. However during the pendency of moratorium period in terms of Section 14(2) 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.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

43. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.”



44. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond