

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-360(ND)/2021

IN THE MATTER OF:

Indian Renewable Energy Development Agency Limited

Registered Office at :

India Habitat Centre Complex,
1st Floor, Core-4A” East Court,
Lodi Road, New Delhi – 110003

...Applicant/Financial Creditor

VERSUS

Taxus Infrastructure and Power Projects Private Limited

Registered Office at :

Unit No.102, Vardhman Centre,
Plot No.3, First Floor,
BH Block, LSC,
Shalimar Bagh
Delhi-110088

...Respondent/Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 10.10.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Karan Grover, Adv.

For the Respondent : None

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ORDER


PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Indian Renewable Energy Development Agency (IREDA) Limited (the '**Applicant/Financial Creditor**') through its Authorised Representative Mr. Anudeep Yadav has filed the present application, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Taxus Infrastructure & Power Projects Private Limited (the '**Respondent**').

2. The Respondent namely, M/s. Taxus Infrastructure and Power Projects Private Limited is a Company incorporated on 29.01.2009, under the provisions of erstwhile Companies Act, 1956 with CIN U45400DL2009PTC187069, having its registered office at Unit No.102, Vardhman Centre, Plot No.3, First Floor, BH Block LSC, Shalimar Bagh West Delhi DL-110088, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 2,00,00,000/- and Paid-up Share Capital is Rs. 1,94,50,000/- as per the master data.

3. It is stated that the Applicant sanctioned a credit facility of Term Loan of Rs.44,30,00,000/- to the respondent on 29.07.2011 for setting up a 5 MW Solar Photovoltaic Grid connected Power Project at Village Rapar, Khokhara, Taluka Anjar, District Kutch, Gujarat. The

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Respondent had executed the necessary security and financial documents/agreements in favour of the applicant on 21.11.2011. The Applicant then, disbursed an amount of Rs.37,10,00,000/- between 07.01.2012 and 30.06.2014 to the Respondent. Amendatory Agreement to Loan Agreement was executed between the Applicant and the respondent on 10.09.2012 reducing the Loan Amount to Rs.37,10,00,000/-.

4. Subsequently, vide letter dated 23.03.2017, the applicant approved a new secured loan of Rs. 5.00 Crore, which was disbursed to the Respondent on 10.07.2017. Thus, the Applicant has disbursed an aggregate amount of Rs.42,10,00,000/- to the respondent.

5. It is further submitted that the Respondent had continuously defaulted in timely servicing of interest and in repayment of installments fallen due. The Applicant repeatedly apprised the Respondent of the defaults committed by it but despite such regular follow up, the Respondent failed to adhere to the extended / rescheduled repayment timelines of principal as well as the interest of the loan. Resultantly, the Respondent Company's account became sub-standard as per the prudential 'Income recognition and asset classification' norms and its account was classified as a Non-Performing Asset (NPA) w.e.f. 30.09.2018.

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6. That the details of the total amount of debt/default and the date of default are mentioned in the Part IV of the application, which are reproduced below, for the sake of convenience :

PART IV

PARTICULARS OF FINANCIAL DEBT:

1.	TOTAL AMOUNT OF DEBT GRANTED FOR DATE(S) FOR DISBURSEMENT	(i) The Petitioner vide its sanction letter dated 29.07.2011 sanctioned an amount of Rs. 4430.00 lakhs (Main Loan) to the Respondent on the terms and conditions stipulated therein for the project No. 1956. A copy of the Sanction Letter dated 29.07.2011 of the petitioner is annexed and marked as ANNEXURE-P/1 In terms of the said sanction and on execution of the stipulated financial / security documents, the petitioner disbursed to the Respondent the aggregate amount of Rs.37,10,00,000.00 in Loan Account No. 1956 on various dates from 07.01.2012 to 30.06.2014. (ii) Thereafter, in terms of sanction letter dated 23.03.2017 a further amount of Rs.5,00,00,000.00 was sanctioned and
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		<p>disbursed to the Respondent in Loan Account No. 1956-1 on 10.07.2017. A copy of the Sanction Letter dated 23.03.2017 of the petitioner is annexed and marked as ANNEXURE-P/14</p> <p>Thus, the total amount disbursed by the petitioner to the Respondent in the aforesaid 2 loans is Rs.42,10,00,000.00.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	<p>Rs. 62,92,99,088.00 (Rupees Sixty Two Crores Ninety Two Lakhs Ninety Nine Thousand eighty eight only) as on 31.05.2021 which became payable and defaulted. The initial default occurred on 30.09.2018, the date when the account was classified as Non Performing Asset (NPA).</p> <p>The present amount of default is comprising of the following accounts:-</p>



	<p>1. Principal amount in acct nos. 1956 and 1956-1: Rs. 42,58,23,683.00.2. Interest overdue : Rs. 19,01,07,677.00.3. Liquidated Damages: Rs. 1,32,81,000.00.4. Incidental Expenses: Rs. 86,728.00.</p> <p>The statements of accounts and the workings for computation of defaulted/due amount are attached as Annexure-P/ 21 (colly.)</p>
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7. Thus, the Applicant has claimed Rs. 62,92,99,088/- only as final amount of debt inclusive of interest, further interest and liquidated damages as on 31.05.2021. On turning of the Loan account as NPA, it had issued Demand notice dated 18.06.2018 to the Respondent asking for repayment of over dues in the term loan account. It is further submitted that finally, it had issued a loan Recall Notice dated 02.06.2021 to the Respondent asking it to make payment within 15 days i.e., on or before 17.06.2021. However, no payment has been made by the Respondent. Default has been notified to Information Utility, NeSL on 01.06.2021. Default has also been recorded with credit Information company CIBIL. Hence, in view of the default committed by the Respondent, the Applicant has prayed for initiating the CIR Process against the Respondent.



8. The Financial Creditor has relied on the following documents to prove the existence of financial debt -

- a) Sanction letter of Applicant dated 29.07.2011 of term loan of Rs. 44,30,00,000/-
- b) Loan Agreement dated 21.11.2011; Deed of Hypothecation dated 21.11.2011; Assignment deed dated 21.11.2011
- c) Charge certificate dated 18.01.2012 issued by RoC.
- d) Amendatory Agreement to Loan Agreement dated 10.09.2012, whereby the Loan Amount was reduced to Rs. 37,10,00,000/-.
- e) Letter dated 23.03.2017 by the petitioner to respondent regarding approved secured loan of Rs.5.00 Crore.
- f) Recall notice dated 02.06.2021 issued to respondent to make payment on or before 17.06.2021.
- g) Defaults Reports to Information Utility dated 01.06.2021.
- h) The Report of CIBIL dated 02.06.2021 in respect of corporate debtor.

9. It is seen from the record that vide order dated 16.07.2021, notice was issued to the Respondent, followed by the last chance given vide order dated 16.09.2021 to cause appearance and file reply. But no one appeared on behalf of the respondent despite opportunities. Therefore, vide order dated 05.01.2022, the respondent was proceeded ex-parte. The relevant extract of that order is reproduced below:

“Heard the Ld. Counsel for the Applicant, it appears that notice is duly served to the Respondent even then none appeared for the Respondent. Therefore, the Respondent is

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proceeded ex-parte. List the matter for hearing on 24th February, 2022.”

10. Since the Respondent has neither appeared nor filed any reply, it is presumed they have nothing to say in the matter.

11. We have perused the documents available on record and heard the Ld. Counsel for the Applicant. The Applicant, through its documents and arguments, has been able to satisfy this Bench that it had provided Financial/Credit facility to the Respondent/Corporate Debtor, which was in the nature of 'Financial Debt'. Despite constant follow up, reminders, demand notice dated 18.06.2018 and loan Recall Notice dated 02.06.2021, the Respondent failed to repay outstanding amount of loan and interest as evident from the documents. The default of the financial debt on the part of the Respondent is also evident from the "Record of Default" Information Utility, NeSL dated 25.05.2021 and "Commercial Credit Information Report" dated 02.06.2021 of CIBIL placed by the Applicant on record.

12. In the given facts and circumstances, the present Application being complete and the Applicant having established the default in payment of the Financial Debt for the default amount being committed above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) &

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(d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.”

13. As proposed by the Financial Creditor, this Bench appoints Mr. Darshan Singh Anand as IRP having Registration No. IBBI/IPA-002/IP-N00326/2017-18/10931 (Email: dsanand57@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this order. This Adjudicating Authority orders that :


***“Mr. Darshan Singh Anand, IRP having Registration
No. IBBI/IPA-002/IP-N00326/2017-18/10931, (E-mail***



ID: dsanand57@gmail.com) is directed to take charge of the CIR process of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

14. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

15. A copy of this order shall immediately be communicated to the Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.


10.10.22
(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)