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

IBA/630/2020

*(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 **Pesco Beam Environmental Solutions Private
Limited***

Bank of India

Having its Head Office at
Star House, C-5, "G" Block
Bandra Kurla Complex
Bandra East
Mumbai- 400 051

And having its Asset Recovery Branch at
Door No.30/17, Star House,
4th Floor, Errabalu Street
Chennai- Tamil Nadu- 600 001.

... Applicant/Financial Creditor

-Vs-

Pesco Beam Environmental Solutions Private Limited

Having its registered office at
S.No 147/4D, 4E, 4F, 4G, 136,
Thodukadu Village,
Sriperumbudur,
Tamil Nadu- 602 105.

...Respondent/Corporate Debtor

Order Pronounced on 21st March 2022

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Mr. T. Ravichandran, Advocate
For Corporate Debtor : Mr. Pawan Jabakh, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This Application has been filed by **Bank of India** (hereinafter referred to as 'Financial Creditor') on 21.06.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **Pesco Beam Environmental Solutions Private Limited** (hereinafter referred to as 'Corporate Debtor') seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The Applicant Financial Creditor was established by virtue of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. The present Application is executed by one Mr. K.N.V Rama Rao, in the capacity as the Chief manager of the Financial Creditor, Asset Recovery Branch, Chennai by virtue of a power of Attorney dated 19.09.2019 which is placed at Annexure No.I(1) in the Application typeset and the verifying affidavit to that effect is placed at Page No 7 and 8 of Application typeset.



3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private Limited company incorporated under the Companies Act, 1956 on 21.05.1993 with CIN:U28920TN1993PTC025103. The registered office of the Corporate Debtor as per the Application is stated to be at S.No 147/4D, 4E, 4F, 4G, 136, Thodukadu Village, Sriperambadur, Tamil Nadu- 602 105.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Mr. Ebenezar Inbaraj with Registration No: *IBBI/IPA-001/IP-P00754/2017-2018/11286* as the Interim Resolution Professional (IRP)

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.33,69,88,758.50/- as on 09.09.2020 which is due and payable by the Corporate Debtor. The table of detailed computations of the debt owed is placed at Annexure I (4) of the Application Typeset. Further, it can be seen from Part IV, that the date of NPA is 30.06.2016. The Applicant Financial Creditor has stated in Part-IV that the Corporate Debtor had defaulted payment as per the OTS (One Time Settlement) approved on 29.09.2018, therefore the same was revoked vide letter dated 22.02.2019.



6. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default and the same is enumerated hereunder:-

- i. Copy of the Sanction Letter
- ii. Copy of the demand promissory Note
- iii. Copy of the Hypothecation cum loan agreement
- iv. Copy of the Trust Receipt
- v. Copy of the Memorandum of deposit of title deeds
- vi. Copy of Notice issued under S.13(2) of SARFESI Act
- vii. Daily Order of Adjudicating Authority in CP/899/IB/2018.
- viii. Acceptance of the OTS proposal by the Applicant
- ix. Copy of the Memo filed by the Petitioner before the NCLT
- x. Final order of the Adjudicating Authority in CP/899/IB/2018
- xi. Payments made by the Corporate Debtor
- xii. Emails exchanged between the bank and the Corporate Debtor
- xiii. OTS Revocation letter
- xiv. Memo filed on behalf of the Petitioner before the DRT- II
- xv. Copy of the Lok Adalat Settlement
- xvi. Memo filed on behalf of the Petitioner before the DRT- II
- xvii. Copy of the Letter written by the Corporate Debtor
- xviii. Copy of Letter written by the Petitioner to the Corporate Debtor.

7. It was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor is engaged in the business of designing, engineering and manufacturing complete systems used

for oil refining, solvent recovery, bio fuel production, petroleum sludge treatment etc.

8. It was submitted by the Learned Counsel for the Financial Creditor that the Applicant had sanctioned through letter dated 20.09.2014, fund based limits to the tune of Rs. 25 crores to the Corporate Debtor and had also executed Hypothecation cum loan agreement Annexure I-(11) dated 27.11.2014, and created a charge over the movable assets of the Corporate Debtor. Further, the Learned Counsel submitted that the Corporate Debtor had not adhered to the terms of the Sanction letter dated 20.09.2014 and committed a default in the repayment and in view of the same the Account of the Corporate Debtor was classified as NPA on 30.06.2016 in accordance to the RBI Norms and Guidelines.

9. The Learned Counsel for the Financial Creditor submitted that SARFAESI Notice under Section 13(2) was sent to the Corporate Debtor claiming the repayment of Rs. 26,90,98,138.71/- along with interest as on 16.07.2015. Since no reply came from the Corporate Debtor, the Applicant had proceeded and filed O.A. No.390/2017 before the DRT-II, Chennai which was referred to Lok Adalat proceedings and in the said proceedings it has been agreed between the parties that the Corporate Debtor will pay a sum of



Rs. 12.97 Crore and based on the said terms, the Lok Adalat passed the award on 05.01.2019.

10. Resultantly, the OTS Proposal submitted by the Corporate Debtor was accepted by the Applicant vide letter dated 29.09.2018, as per which the Corporate Debtor shall pay Rs.12.97 crores to the Applicant as full and final settlement. However Learned Counsel stated that, the Corporate Debtor had paid only Rs.2.59 Crore in two instalments and defaulted to pay the remaining outstanding as per the OTS Schedule.

11. In the interim period, the Financial Creditor had revoked the OTS dated 29.09.2018 granted to the Corporate Debtor, vide letter dated 25.06.2019 as the payment terms was not honoured by the Corporate Debtor.

12. The Learned Counsel for the Financial Creditor submitted that, CP/899/IB/2018 filed by the Applicant to initiate Corporate Insolvency Resolution Process against the Corporate Debtor which came to be 'dismissed as withdrawn' by this Tribunal vide order dated 08.10.2018 based on the memo of compromise filed by the Financial Creditor dated 05.10.2018.



13. The Learned Counsel submitted that the Corporate Debtor had not honoured the OTS 29.09.2018. Thus, the Financial Creditor is constrained to file this Application under Section 7 of the IBC, 2016 to initiate CIRP against the Corporate Debtor.

14. The Respondent/ Corporate Debtor had filed the Counter/Reply statement in this matter. The Learned Counsel for the Corporate Debtor submitted that the debt amount claimed is erroneous in nature as the OTS dated 29.09.2018 was for Rs. 12,97,00,000/-, whereas the Financial Creditor has claimed a default of Rs.33,69,88,758.50/-

15. Further the Respondent had averred in para 4 of the Counter statement that fresh OTS proposal was under discussion between the Financial Creditor and the Corporate Debtor towards which Rs.10,00,000/- and Rs.90,000/- was paid on 10.01.2020 and 18.09.2020 to a 'No Lien Account' and consequently a fresh OTS proposal was made by the Respondent to the Financial Creditor on 18.09.2020 and 03.02.2021 which is still under consideration.

16. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the existence of a 'debt' and 'default'

had been proven beyond reasonable doubt by the Financial Creditor based upon the OTS proposal given by the Corporate Debtor. However, the main contention of the Corporate Debtor is that the Financial Creditor has claimed the 'debt' amount in excess to the amount of Rs. 12,97,00,000/-, as agreed upon in the OTS (One Time Settlement) by both the parties. Since the OTS has miserably failed, the Applicant Bank is entitled to claim the entire outstanding. Further, since the debt is more than one Crore, the Application is maintainable on pecuniary jurisdiction.

17. It can be seen from the records of the proceedings placed before us that, settlement talks were prevalent between the Financial Creditor and the Corporate Debtor but the same did not fructify. The Corporate Debtor had admitted that there is an outstanding debt in the oral arguments and the same can be evidenced from the Lok Adalat award dated 05.01.2019.

18. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.



28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 sub-section (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.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

19. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

20. 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 respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

21. 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going

concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

22. 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.

23. The Financial Creditor has proposed the name of **Mr. Ebenezar Inbaraj, Reg. No. IBBI/IPA-001/IP-P00754/2017-2018/11286** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 24.03.2022.

24. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. 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 IBC, 2016 and file his report 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

27. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also



communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

29. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

30. Post this IBA/630/2020 for hearing on **23.05.2022**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Varshini