S.No.2

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **23-12-2022** AT **01:30 PM** THROUGH VIDEO CONFERENCE

CP (IB) No. 275/7/HDB/2022
u/s. 7 of IBC, 2016.

IN THE MATTER OF:

M/s. SunEdison Energy India Private Limited **…Financial Creditor**

Vs

M/s. KSK Energy Company Private Limited **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SHRI. AJAY DAS MEHROTRA, HON'BLE MEMBER (TECHNICAL)

O R D E R

Order in CP IB No.275/7/HDB/2022 pronounced, recorded vide separate sheets.

In the result, Company Petition is admitted and the corporate debtor is put under CIRP as per the terms and conditions mentioned in the order.

SD
MEMBER (T)

SD
MEMBER (J)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

CP (IB) No. 275/7/HDB/2022

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

BETWEEN:-

M/s. SunEdison Energy India Private Limited
CIN: U74110TN2002PTC049676
R/o. No. 1/171, Old Mahabalipuram Road,
Thiruporur, Kancheepuram, Tamil Nadu – 603110.
C/o. 11th Floor, Bascon Futura Towers,
New No. 10/2 Old No: 56L, Venkatanarayana Road,
T Nagar, Chennai – 600017. **… Financial Creditor**

Versus

M/s. KSK Energy Company Private Limited
R/o. 8-2-293/82A/431A, Road No. 22,
Jubilee Hills, Hyderabad – 500033. **… Corporate Debtor**

Date of Order: 23.12.2022

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. AJAI DAS MEHROTRA, HON'BLE MEMBER (TECHNICAL)

PARTIES/COUNSELS APPEARANCE:-

For the Financial Creditor: Shri. Rekhala Prabhakar, Counsel
For the Corporate Debtor: Shri. M Maharshi Vishwaraj, Counsel

Date of Order: **23.12.2022**

PER: BENCH

1. This is a Petition filed by M/s. SunEdison Energy India Private Limited (hereinafter referred to as "Financial Creditor") under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through its authorised signatory Mr. Dinesh Kumar Agarwal, duly authorised vide Board Resolution dated 29.08.2022, with a prayer to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against M/s. KSK Energy Company Private Limited (hereinafter referred to as "Corporate Debtor").

2. The Financial Creditor is a limited company incorporated on 22.01.2010 duly registered with the Registrar of Companies, Tamil Nadu with CIN: U74999TN2010PTC074345 having registered office at No. 1/171, Old Mahabalipuram Road, Thiruporur, Kancheepuram, Tamil Nadu – 603110. The Corporate Debtor is a Private Limited company incorporated on 25.10.2005 duly registered with the Registrar of Companies, Telangana with CIN: U40109TG2005PTC047934 having registered office at 8-2-293/82A/431A, Road No. 22, Jubilee Hills, Hyderabad – 500033. The Corporate Debtor is engaged in the business of development and investment in power projects and support infrastructure projects.

3. It is submitted by the Financial Creditor that, M/s. Sherisha Technologies Private Limited expressed interest and sought assignment of the loan in favour on as is where is basis and by way of an Tripartite Assignment Agreement dated 28.04.2022 the receipt of the outstanding Loan amount of INR 81, 23, 59, 995/-

(Rupees Eighty One Crores Twenty Three Lakhs, Fifty Nine Thousand Nine Hundred and Ninety Five Only) owed by the Corporate Debtor was assigned by one Dalmia Family Holdings LLP in favour of M/s. Sherisha Technologies Private Limited. The rights, title and interest under the financing documents along with the underlying security interest, pledges, and/or guarantee in respect of the loan was also assigned to the Financial Creditor on as is where is basis.

4. It is further submitted that a Scheme of Amalgamation of M/s. Sherisha Technologies Private Limited and SunEdison Energy India Private Limited under Section 230 to 232 of Companies Act, 2013 read with applicable rules, was approved by Hon'ble NCLT, Chennai Bench vide order dated 21.07.2022. Accordingly, the amalgamated entity namely SunEdison Energy India Private Limited who is the Financial Creditor herein is pursuing the above mentioned loan.

5. It is further submitted by the Financial Creditor that, Loan Agreement dated 27.06.2016 was executed between Dalmia Family Holdings LLP and Corporate Debtor for Rs. 40, 00, 00, 000/- for a period of 90 days from the date of disbursal i.e., 29.06.2016 and a deed of Personal Guarantee by Mr. S Kishore, who is the Promoter of the Corporate Debtor in favour of Dalmia Family Holdings LLP. Thereafter, to rectify the discrepancy on period of loan, addendum to Loan Agreement was made on 08.09.2016. The said Loan Agreement was renewed on 21.10.2016 wherein the period of loan extended by 90 days and on 20.01.2017 the parties mutually agreed to renew the outstanding loan of Rs. 29, 00, 00, 000 (Rupees Twenty Nine Crores) for a further period of 432 days i.e., up to 31.03.2018.

6. It is further submitted that the Corporate Debtor made repayment of Rs. 11, 00, 00, 000/- and interest thereon up to April 2018 and thereafter the Corporate Debtor failed to repay. Thereafter Dalmia Family Holdings LLP filed a Section 7 Petition towards the outstanding loan amount of Rs. 81,23, 59, 995/- as on 31.03.2022 before this Adjudicating Authority and after the Tripartite Assignment Agreement the said Section 7 Petition filed by Dalmia Family Holdings LLP was withdrawn.

7. It is further submitted by the Financial Creditor that, after entering into the Tripartite Assignment Agreement, the Financial Creditor issued a notice of demand to Corporate Debtor on 28.08.2022 and requested the Corporate Debtor to repay the outstanding loan with interest. However, no reply was given by the Corporate Debtor. Hence, the Financial Creditor has filed the present Company Petition under Section 7 of the Code.

8. The Corporate Debtor filed affidavit in reply stating that Corporate Debtor herein is one of the shareholders of M/s. KSK Mahanadi Power Company Limited which was admitted into CIRP and at present Liquidation process is going on.

9. It is further submitted that due to policy decision of the then governments or demand and supply factors, cash flow from the projects handled by the Corporate Debtor and the existing SPV's are also under financial stress due to non-payment from the respective DISCOMS, which is having cascading effect on the Corporate Debtor, the Corporate Debtor is not in a position to meet its responsibilities towards its creditors.

10. In the light of the above contentions the point emerges for consideration is:

Whether a financial debt as claimed by the Financial Creditor is due and payable by the Corporate Debtor, if so, whether the Corporate Debtor defaulted in repayment of the same?

11. We have heard Shri. Rekhala Prabhakar, Counsel for Financial Creditor and Shri. M Maharshi Vishwaraj, Counsel for Corporate Debtor. Perused the record.

12. According to the Learned Counsel for the Financial Creditor, in terms of the Tripartite Assignment Agreement dated 28.04.2022, execution of which is not disputed by the corporate debtor, the corporate debtor had agreed to discharge the sum payable under the said agreement, however committed default of total sum of Rs.81,23,59,995/-, as such the present application has been filed for initiation of CIRP against the corporate debtor. Learned Counsel further submits that the corporate debtor though filed counter, there is no denial of execution of the Tripartite Assignment Agreement and relevant loan agreements, referred and relied on in the Application, and also the default in repayment of the debt.

13. In support of this plea, the Learned Counsel invited our attention to para's 5,6& 9 of the counter filed by the corporate debtor, wherein it has been stated that "*that a Loan Agreement was executed between Dalmiya Family Holdings LLP ("Dalmiya") and respondent on 27.06.2016 for Rs.40,00,00,000/- for a period of 90 days from the date of disbursal i.e 29th June, 2016. The amount was disbursed in two tranches on 28th June, 2016 (Rs.22,00,00,000/-) and on 29th June, 2016(Rs.18,00,00,000/-). An Addendum dated 08.09.2016 to the Loan Agreement dated 27.06.2016 was executed (from 90 to 120 days) to rectify the discrepancy on period of loan. Subsequently, a Renewal to the Loan Agreement dated 27.06.2016 was also*

executed wherein the period of loan was extended wherein an extension by 90 days was provided. During this period some amount was already repaid and the outstanding amount was Rs.35 Cr. KSKECPL/Respondent had repaid a sum of Rs.11 Crores between 2016 and 2017 in instalments to Dalmiya. Thereafter, Second Renewal to the Loan Agreement was executed wherein the period of loan was extended further-extension by 432 days, upto 31.03.2018 and the amount outstanding was Rs.29 Cr. It is further submitted that a Scheme of amalgamation of M/s. Sherisha Technologies Private Limited and SunEdison Energy India Private Limited under Sections 230-230 of the Companies Act, 2013 read with applicable rules, was approved by order dated by order dated 21st July, 2022 by the Hon'ble National Company Law Tribunal, Chennai, (NCLT). Accordingly, the amalgamated entity namely M/s.SunEdison Energy India Private Limited i.e Petitioner is pursuing the loan repayment in the capacity of financial creditor".

14. Thus a bare perusal of the Counter, categorically establishes that corporate debtor had admitted not only availing of credit facilities but also part payment of said amount.

15. Hon'ble Supreme Court in *Vidarbha Industries Power Limited* v. *Axis Bank Limited* [Civil Appeal No.4633 of 2021], had held as follows:

"88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award

or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative".

16. We, therefore, in the light of the above ruling carefully examined whether the Corporate Debtor had made out any ground against admission of the present application for initiation of the CIRP against the Corporate Debtor, and found none.

17. The Financial Creditor has also fulfilled all the stipulations as required under the provisions of the Code, 2016, for the purpose of initiating the Corporate Insolvency Resolution Process. Further, we found due compliance of the requirements in terms of Section 7(3) of the Code, 2016, by the Applicant, and this Adjudicating Authority in terms of its power under Section 7 (4) ascertained the existence of debt and default, as alleged on the part of the Corporate Debtor from the record placed by the Applicant, under sub-section (3) of Section 7 of the Code, 2016. We are fully satisfied that the present Application under sub-section (2) of Section 7 of the Code, 2016, is complete in all aspects. The debt is due, within limitation and Corporate Debtor has defaulted in repayment. In these circumstances, this Adjudicating Authority is inclined to admit the instant Application.

18. Accordingly, the Company Petition is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed:

A. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

B. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

C. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

D. That the order of moratorium shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

E. That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under Section 13 of Insolvency and Bankruptcy Code, 2016.

F. The Financial Creditor proposed the name of Shri Krishna Komaravolu as Interim Resolution Professional and he has given his consent in Form-2 dated 15.09.2022 and Authorization for Assignment is valid up to 27.12.2022. There are no disciplinary proceedings pending against the proposed Resolution Professional. Accordingly, this Adjudicating Authority hereby appoints Shri Krishna Komaravolu having Reg. No. IBBI/IPA-002/IP-N00562/2017-18/11699, whose contact details are:

e-mail ID: kkvolu@gmail.com
Address: H.No. 7-1-214, Flat no. 409,
Vamsikrishna Apartments, Dharam Karan Road,
Ameerpet, Hyderabad – 500 016

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency &Bankruptcy Code.

16. The Financial Creditor is directed to send a Copy of this Order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

17. Accordingly, this Company Petition is admitted.

SD	SD
AJAI DAS MEHROTRA	**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Vismaya (LRA)/
Pavani (Steno)