

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.05.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.21/7/AMR/2021		7 of IBC	Srivathsa Power Projects Pvt Ltd Vs Coastal Infrastructure Pvt Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP(IB) No.21/7/AMR/2021 is admitted, vide separate orders.

sd/

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD**

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CP (IB) No. 21/7/AMR/2021

**In the matter of a Petition under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AND**

**In the matter of
M/s. COASTAL INFRASTRUCTURE PRIVATE LIMITED**

BETWEEN

M/s. Srivathsa Power Projects Private Limited,
G-2, Concorde Apartments,
#6-3-658, Somajiguda, Hyderabad - 500082

... Financial Creditor

AND

M/s.Coastal Infrastructure Private Limited,
Door No.5-135/6, Plot No.36,
Sy.No.87/12, Yendada Village,
Ward No.06, Visakhapatnam -530045

... Corporate Debtor

Date of pronouncement of orders: 10.05.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. T.V.P.Sai Vihar, Advocate.

For Corporate Debtor : Mr.R.S.Sravan Kumar, Advocate

ORDER

1. This Application is filed by M/s. Srivathsa Power Projects Private Limited (“hereinafter referred to as Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Coastal Infrastructure Private Limited (“hereinafter referred to as Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The facts as stated in the synopsis filed by the Financial Creditor are briefly as follows:
 - a) The Financial Creditor is a Private Limited Company, registered and incorporated under the Provisions of Indian Companies Act, 1956. The Financial Creditor is into generation of power through natural gas. The Corporate Debtor is a Private Limited Company registered and incorporated under the Provisions of Companies Act, 1956, engaged in the business of manufacturing- metals & Chemicals and products, etc.

- b) On 31.07.2017, the Corporate Debtor entered into Inter Corporate Deposit (ICD) Agreement with Financial Creditor for the purpose of obtaining emergency funds from the Financial Creditor. Hence, the Corporate Debtor availed loan amount of Rs.17.42 Crores on various dates and the Corporate Debtor had only paid a part-amount of Rs.1,50,000/- to the Financial Creditor on 23.06.2019 and no further amount was repaid against the loan amount by the Corporate debtor.
- c) The Corporate Debtor, itself had sought 3 extensions for the timeline for repayment of the Inter-Corporate Deposit Loan amount from time to time till 30.09.2011 and further the Corporate Debtor acknowledged the debt and sought time till 31.12.2011, to repay the ICD amount, but the Corporate Debtor failed in the same. The Financial Creditor has been making demands for repayment of the amounts from 31.12.2011 to till date. In order to facilitate the Corporate Debtor to repay the outstanding amount, the Financial Creditor also extended an olive branch by seeking repayment of interest only to the extent of Rs.5,79,61,133/- relating to interest payable from the Financial Year 2007-08 to 2011-12 and after the Financial Year 2011-12, the Corporate Debtor incorrectly stopped reflecting the interest amount in its books of Account. However, no amounts were forthcoming. Despite repeated

requests of Financial Creditor, the Corporate Debtor has failed to discharge its liabilities as per the agreement.

- d) The outstanding due amount is Rs.34,61,13,133/-, consisting of Principal Amount of Rs.15,92,000/- and interest of Rs.18,69,13,133/- till the Financial Year 2020-21 and the Corporate Debtor had consistently admitted and acknowledged its liability for payment of the principal amount and interest as charged till Financial Year 2011-12 and the Corporate Debtor vide letter dated 01.04.2019, in favour of the Financial Creditor, acknowledging its debt. The Corporate Debtor failed to repay the debt. Hence this Petition.
3. The Corporate Debtor filed counter, denying the contents of the Petition but however, not disputing the ICD loan amount, seeking extension of time for repayment and admitting that the interest payments were charged only for Financial Year 2007-08 to 2011-12 and further contending that the Financial Creditor issued a letter SPPL/HYD/2018-19 dated 31.03.2019 to the Corporate Debtor, categorically and without any force has stated that the total ICD outstanding, along with interest, is Rs.21,71,61,133/- and further contended that the Financial Creditor has not revealed the reason to the Tribunal for freezing interest from Financial Year 2011-12 and contended that it is because the Corporate Debtor has made certain transactions on behalf of Financial Creditor by the instructions of the Financial Creditor and these transactions are carried out in lieu

of payment of interest and principal and the Corporate Debtor dated 25.05.2011 acknowledged the outstanding interest is Rs.4,36,33,133/- as of 31.03.2011 and the same was confirmed by the Corporate Debtor vide letter dated 01.04.2014 and further confirming that the outstanding amount of interest for the Financial Years 2013-14 to 2018-19. It is further submitted that even the letters sent by the Financial Creditor also showed the outstanding amount of interest is Rs.4,36,33,133/- from FY 2011-12 and the Financial Creditor never asked to calculate the interest for the remaining periods even though the ICD has a specific clause that Corporate Debtor will pay interest on the balance due @10% P.A. quarterly until the Corporate Debtor repays the ICD and the Financial Creditor has not charged the interest on outstanding because the Corporate Debtor has carried out several transactions on the instructions of Financial Creditor from time to time and further stated that the final outstanding amount that needs to be paid by the Corporate Debtor needs to be ascertained only after carrying out of reconciliation of books of accounts and the Corporate Debtor has asked the Financial Creditor for several times to come for negotiations to finalize the accounts. It is further stated that the Financial Creditor in his letter requested the Corporate Debtor to confirm the unpaid balance due, for the purpose of an audit of their books of accounts, in the ordinary course of business and the Financial Creditor also categorically stated that the confirmation of unpaid balance is no way treated as a request for payment. Due to

several transactions undertaken by Corporate Debtor on behalf of Financial Creditor, there exists no debt, as on date and it needs a detailed trail by examining each of the transactions made by the Corporate Debtor on behalf of Financial Creditor. It is further stated the Corporate Debtor requested the Financial Creditor to appoint an arbitrator to settle all outstanding pending issues regarding payment of ICD and settling the transactions carried out by the Corporate Debtor on behalf of the Financial Creditor. The Corporate Debtor seeks the Tribunal to dismiss the Petition.

4. Rejoinder is filed, by the Financial Creditor contending that the Corporate Debtor attempted to mislead the Tribunal by making false submissions and stated that the Corporate Debtor has admitted the execution of the Inter-Corporate Deposit Agreement (ICD) and that it has received the amount and admitted that the Corporate Debtor has sought for extension of time for repayment of the Inter-Corporate Loan from time to time. It is further submitted that though the Corporate Debtor had promised to repay the principal and interest from time to time, it failed to repay the same. After the Corporate Debtor had failed to repay the amounts, it had merely stopped accounting for the interest amounts as Corporate Debtor had incorrectly stopped recognising the same in their books nor paying the said amount and whereas the Financial Creditor is offering interest amount and paying the tax on the same. However, this does not amount to any waiver. When the amounts are repaid,

the same would be received and the tax payable is to be adjusted. As per the terms of the ICD Agreement, it is clearly stated the interest is payable from the date of default till payment, hence the Financial Creditor is eligible for the same. The Financial Creditor, clarified the same to the Corporate Debtor through letters. The Financial Creditor has denied the contentions made by the Corporate Debtor in its counter and further contended that the Financial Creditor has charged interest up to 2011-2012 in its books which have been confirmed by the Corporate Debtor from time to time. The Corporate Debtor also admits in his counter that as per the ICD clause, the Corporate Debtor is liable to pay interest on the balance until the Corporate Debtor repays the ICD amounts. The Corporate Debtor has falsely concocted a premise that there has been a waiver by the Financial Creditor in relation to the interest amounts. But there was no such correspondence between the parties in this regard. All the accusations made by the Corporate Debtor are vague and lack backing. Hence, in view of the above, the Petition shall be allowed.

5. Heard the counsel for both the sides. In the counter, there is a clear admission that the Corporate Debtor has received the money and that they asked for extension of time for repayment of the ICD amount on 30.07.2008, 30.07.2009 & 25.07.2010. The contention of the Corporate Debtor's Counsel is that the Financial Creditor, in his pleadings, admitted that interest payments were charged only till

the Financial Year 2011-12. It is contended that the Financial Creditor is claiming different amounts as outstanding. On one hand in his letter addressed to the Corporate Debtor on 31.03.2019, it is stated that the total ICD outstanding along with interest is Rs.21,71,61,133/-, on the other hand the amount claimed in the petition is Rs.34,61,13,133/-. It is contended that the Financial Creditor has not revealed the reasons for freezing interest from Financial Year 2011-12 and the contention is that the Financial Creditor did not charge interest on outstanding because the Corporate Debtor has carried out several transactions, on the instructions of Financial Creditor from time to time.

6. At the time of hearing, the counsel for the Corporate Debtor submitted that the Corporate Debtor would settle the matter with the Financial Creditor, on which this Tribunal posted the matter for settlement by 07.05.2022 and facilitating the Corporate Debtor to settle the matter by 07.05.2022 if it so chooses. But no settlement was reported on 07.05.2022 and even today, when the matter was called. As regards the dispute with regard to the interest, it is well settled that the NCLT shall admit the claim when once it is found that the Corporate Debtor has admitted the claim, which is beyond the threshold limit. In support of the said reasoning a judgment of the NCLAT, Principal Bench, New Delhi in *Company Appeal (AT) (Ins) No.718/2020 between Mr.Joseph Jayananda Vs. M/s.Navalmar (UK) Limited and others* can be looked into. It was

categorically held therein that when Corporate Debtor owes a debt of more Rs.1 Lakh which is above the threshold limit and committed default in discharging the same and if there is no pre-existing dispute it is not for the Adjudicating Authority to ascertain, investigate or fix the exact amount of liability at the admission stage. After the admission of the Petition, it is a duty of the Resolution Professional (RP) to collate the claims and ascertain the liability. In the said judgment the Corporate Debtor's main contention was that the amounts paid by the Operational Creditor and its financial statements do not match. In this case, by virtue of the letter dated 01.04.2019, the Corporate Debtor has acknowledged the due amount as Rs.20,28,33,133/-, which is beyond the threshold limit.

7. Hence from the above, it is evident that the Corporate Debtor is due a debt to the Financial Creditor which is admittedly beyond Rs.1 Crore. In these circumstances, there cannot be any other option for the Tribunal, except to order for Corporate Insolvency Resolution Process (CIRP).
8. Hence I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Financial Creditor has suggested one name i.e., Mr.Pradeep Kumar Sravanam (IBBI/IPA-003/IP-N00100/2017-2018/11009) as Insolvency Resolution Professional (IRP).

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. Mr.Pradeep Kumar Sravanam (IBBI/IPA-003/IP-N00100/2017-2018/11009), having office at 6-40, Plot No: 101, Suprabhat Township, Venture-2, Kachavani, West Marredpally, Telangana-500088; e-mail: 12283kumar@icmaim.in; Mobile: +91 8008882331 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

- v. The Registry shall communicate the order to the Financial Creditor and the Corporate Debtor forthwith.
- vi. The Financial Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu