

6/5/19/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 675/7/HDB/2018  
U/s 7 of IBC, 2016  
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF M/S. KSK ENERGY VENTURES LIMITED

M/s. IFCI Limited

REGISTERED OFFICE:

IFCI Tower, 61, Nehru Palace,  
New Delhi- 110019.

... Petitioner / Financial Creditor

VERSUS

M/s. KSK Energy Ventures Limited,

REGISTERED OFFICE:

House No.8-2-293/82/A/431/A,  
Road No.22, Jubilee Hills, Hyderabad- 500033.

... Respondent / Corporate Debtor

Date of order: 04.09.2019

Coram:

Hon'ble Shri RatakondaMurali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner: Shabbeer Ahmed, Advocate.

For the Respondent: M.S.Trivikrama Rao, Advocate.

Per: **Hon'ble Shri Narender Kumar Bhola, Member (Technical)**

Heardon: 09.07.2019,25.07.2019,14.08.2019,22.08.2019.



MBH

ORDER

1. This petition is filed by M/s. IFCI Limited, which is the Financial Creditor stating that M/s KSK Energy Ventures Limited, Corporate Debtor had defaulted in repaying a sum of **Rs.51,87,77,388/-** (Rupees Fifty One Crores Eighty Seven Lakhs Seventy Seven Thousand Three Hundred and Eighty Eight Only) This petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules there under.
2. The brief averments made in the Application are as follows:
  - a) The Financial Creditor sanctioned Rupee Term Loan of Rs.100,00,00,000/- to the Corporate Debtor vide Sanction Letter dated 26.05.2015 and Letter of Revalidation dated 12.01.2016 pursuant to which a Facility Agreement dated 13.01.2016 was executed between Financial Creditor and Corporate Debtor. Thereafter, an amount of Rs.50.00 crores was disbursed to the Corporate Debtor and the balance amount of Rs.50.00 crore stood cancelled.
  - b) The tenure of loan as per the Facility Agreement is 6 years from the date of first disbursement and the loan is repayable in 20 equal quarterly instalments of Rs.5.00 Crores each, commencing from the end of 15th month from the date of first disbursement.
  - c) The Corporate Debtor has started defaulting in terms of repayment of instalments due to which the account of the Corporate Debtor was classified as Non-Performing Asset on 31-03-2018 in books of accounts of Financial Creditor. Pursuant thereto, the Financial Creditor has



*[Handwritten Signature]*

issued a recall notice dated 06.09.2018 to Corporate Debtor recalling the entire loan and calling upon it to pay the outstanding amounts within 15 days from the date of the said notice. However, the Corporate Debtor failed to comply with the demand of Financial Creditor.

- d) The outstanding as on 31.08.2018 is Rs.51,87,77,388/- (Rupees Fifty One Crores Eighty Seven Lakhs Seventy Seven Thousand Three Hundred and Eighty Eight Only).
- e) Mr. Zubair Khan, authorized representative of the Financial Creditor and working as Manager (Law), IFCI Limited, has preferred this Application on behalf of Applicant for initiation of CIRP against the Corporate Debtor.
- f) The Applicant has relied upon the following documents to prove its claim:
- i. Letter of Intent/ Sanction dated 26.05.2015 as Annexure 6.
  - ii. Letter of Revalidation of Sanction dated 12.01.2016 as Annexure 7.
  - iii. Corporate Loan Agreement dated 13.01.2016 as Annexure 8.
  - iv. Corporate Guarantee issued by KSK Energy Ltd., (Mauritius) dated 13.01.2016 as Annexure 9.
  - v. Corporate Guarantee issued by V.S.Lignite Power Pvt.Ltd. dated 13.01.2016 as Annexure 10.
  - vi. Memorandum of Entry dated 23.01.2016 as Annexure 11.
  - vii. Memorandum of Entry dated 10.02.2016 as Annexure 12.
  - viii. Copy of Notice of Recall of Loan dated 06.09.2019 as Annexure-13.



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ix. Copy of Demand Notice issued Under Section 13(2) of SARFESI Act, dated 10.09.2018 as Annexure-14.

3. The brief averments made in the Counter are as follows:

a) It is averred that the Financial Creditor has issued Demand Notice dated 10.09.2018 under Section 13(2) of SARFESI Act, 2002 demanding the Company and its guarantors for repayment of outstanding dues of Rs. 51,87,77,388/- as on 31.08.2018. The Financial Creditor initiated steps for sale of secured asset for recovery of its dues.

b) It is averred the Financial Creditor filed an Application OA No. 928 of 2018 before Hon'ble Debt Recovery Tribunal, Hyderabad under Section 19 of The Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 for recovery of Rs. 51,87,77,388/-. The Financial Creditor has already initiated proceedings for recovery of its dues.

c) It is averred that the Corporate Debtor fully committed towards repayment of money to the Financial Creditor. The revenues of the company were not upto the estimates as submitted initially to the Financial Creditor in view of the partial operation of various SPVs which is very much within the knowledge of the Financial Creditor.

4. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor. Perused the Material on Record.

5. The Financial Creditor filed this Application under Section 7 of the Code to trigger CIRP against the Corporate Debtor. In order to prove its claim the Financial Creditor has relied on Annexure-1 to Annexure -14 filed along with the Application.



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6. The Learned Counsel for Financial Creditor would contend that Financial Creditor granted term loan to the Corporate Debtor. The Counsel contended the Corporate Debtor committed default of Rs. **Rs.51,87,77,388/-** (Rupees Fifty One Crores Eighty Seven Lakhs Seventy Seven Thousand Three Hundred and Eighty Eight Only).The contention of Counsel the Corporate Debtor admits availing term loan sanctioned by Financial Creditor and Corporate Debtor further admits non-payment of debt but alleged various grounds as to why it failed to service the debt.
7. The Corporate Debtor has raised mainly the following objection:
- a) The Financial Creditor cannot maintain the present petition under Section 7 of IBC on the ground that already Financial Creditor initiated proceedings before DRT and the matter is still pending before the DRT.
8. It is well settled that the pendency of DRT proceedings and initiation of action under SARFESI Act cannot be an impediment or bar to initiate the Corporate Insolvency Resolution Process under Section 7 of the Code.
9. The Applicant has placed various documents in relation to the disbursement of term loan. The material on record and loan documents clearly depict that the loan was sanctioned, disbursed and the loan agreements were properly executed. The corporate debtor admitted default. The Petition is not barred by limitation. The Financial Creditor is no way responsible for happening of certain events which causes delay in implementation of the Project. Thus, there is no valid objection raised for admission of the Petition.
10. The Financial Creditor suggested the name of IRP and there is no compliant against proposed IRP. The financial creditor has fulfilled all the requirements as contemplated under Code. The petition is in order. Therefore the petition is fit for admission.



*MLW*

11. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

- a) The Bench hereby prohibits 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; 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 04.09.2019 till the completion of the 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 Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.



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f) That this Bench hereby appoints Mr. K.S.Ramesh having registration number IBBI/IPA-001/IP-P00910/2017-18/11510 residing at Plot No.6-B, Beside TDP Office, Road No.2, Banjara Hills, Hyderabad- 500034 with effect from 04.09.2019.

Accordingly, this Petition is admitted.



*NK*  
4.9.2019  
**(NARENDER KUMAR BHOLA)**

(Member Technical)

*RS*  
4.9.19  
**(RATAKONDA MURALI)**

(Member Judicial)

Viswaraj (LRA)

*Viswaraj*

**Dy. Regr./Asst. Regr/Court Officer/**  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
**CERTIFIED TRUE COPY**

केस संख्या

CASE NUMBER

निर्णय का तारीख

DATE OF JUDGEMENT

प्रति तैयार किया गया तारीख

COPY MADE READY ON

(P.B) No: 6757/H022018

4/9/2019.

5/9/19