

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 19.06.2020

**THROUGH VIDEO CONFERENCING**  
**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 390/BB/2019	For Pronouncement of orders	Sec 7 of I&B code 2016	M/s Kajaria Iron & Steel Co., Pvt Ltd	Saji P John, Advocate	Bhoruka Power Corporation Ltd	Samarth Sreedhar

ADVOCATE FOR PETITIONER/s:

*Saji P. John*

ADVOCATE FOR RESPONDENT/s:

*Shashi Kiran Shetty Sr. Counsel  
Samarth Sreedhar*

**ORDER**

Heard Mr. Saji P. John, learned Counsel for the Petitioner and Mr. Shashi Kiran Shetty Sr. Counsel along with Mr. Samarth Sreedhar, learned Counsel for the Respondent through Video Conferencing.

C.P.(IB) No.390/BB/2019 is disposed of by separate order.

*[Signature]*  
**MEMBER (T)**

Amar

*[Signature]*  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C. P. (IB) No.390/BB/2019  
U/s 7 of IBC, 2016  
R/w Rule 4 of I&B (AAA) Rules, 2016

**IN THE MATTER OF:**

**Kajaria Iron & Steel Co. Private Limited**  
Registered office at 27, Sailender Road,  
Liluah, Howrah,  
West Bengal – 711 204.

- Petitioner/Financial Creditor

**Versus**

**Bhoruka Power Corporation Limited**  
48, Lavelle Road,  
Bangalore – 560 001.

- Respondent/Corporate Debtor

**Order Pronounced on: 19<sup>th</sup> June, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Mr. Saji P. John, Advocate  
For the Respondent : Mr. Shashi Kiran Shetty, Sr. Advocate  
Mr. Samarth Shreedhar, Advocate

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. C.P. (IB) No.390/BB/2019 is filed by Kajaria Iron & Steel Co. Private Limited (hereinafter referred to as 'Petitioner/Financial Creditor') U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of Bhoruka Power Corporation Ltd. (hereinafter referred to as 'Corporate Debtor/ Respondent') on the ground that the Corporate Debtor has committed a default of Rs.1,17,80,822/- (Rupees One Crore Seventeen Lakh Eighty Thousand Eight Hundred and Twenty Two Only) as on 31.10.2019, which includes interest of Rs.17,80,822/- (Rupees Seventeen Lakh Eighty Thousand Eight Hundred and Twenty Two only) calculated @16% p.a. on principal amount of Rs.1,00,00,000/- (Rupees One Crore only).



2. It is submitted by the Petitioner that loan vide seven Inter Corporate Deposits of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh only) granted to the Respondent vide Bank Transfer from 15.12.2016 to 14.06.2017. The Respondent has confirmed the receipt of the Loan and executed Demand Promissory Note in favour of the Petitioner. It is submitted by the Petitioner that the said loans were renewed from time to time as the Respondent was regular in payment of interest. It is submitted that the Respondent has repaid Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh only). However, it is stated by the Petitioner that the Respondent was irregular in payment of interest from August 2018.
3. It is submitted that the Respondent defaulted in repayment of the loan amount from August 2018 onwards making the financial debt Rs.1,17,80,822/- (Rupees One Crore Seventeen Lakh Eighty Thousand Eight Hundred and Twenty Two Only).
4. The Respondent through its Managing Director, Mr. S. Chandrashekar has filed Affidavit dated 28.01.2020, stating that the Company is a leading renewable energy developer in Karnataka, employing over 200 employees across its 21 power generation projects and having total revenue of Rs.177.50 Crore.
5. It is admitted by the Respondent that the ICD has not been repaid within the stipulated period. However, the major secured creditor, L & T Finance, is providing working capital funds to settle the outstanding dues of the Petitioner at an agreed settlement rate. Also it is submitted that various State Electricity Distributors owe Rs.98,66,82,995/- to the Respondent. Copy of Sundry Debtors of the Company as on 20.01.2020 is annexed to the Petition.
6. It is further submitted by the Respondent that it has settled the dues amounting to Rs.36,81,38,388/- (Rupees Thirty Six Crore Eighty One Lakh Thirty Eight Thousand Three Hundred and Eighty Eight only) to over 24 Financial and Operational Creditors who have approached this Bench. The Respondent has sought for some additional time stating that the dues of the Petitioner will be settled at the earliest.
7. Heard Mr. Saji P. John, learned Counsel for the Petitioner and Mr. Shashi Kiran Shetty, learned Senior Counsel for the Respondent through video conference.



We have carefully perused the pleadings of both the parties and provisions of the Code.

8. The Corporate Debtor, has admitted its liability to repay the debt amount and is willing to pay the same. However, it sought for additional time for clearing the financial dues of the Petitioner.
9. On a perusal of records, there is no doubt that there is an admitted debt and a default as per the agreed terms between the two parties. The Petitioner admits that the present loan was renewed from time to time as the Corporate Debtor had been repaying the interest up to the date of default, and also that Rs 1,50,00,000/- has already been repaid by the Corporate Debtor. Thus, there is a running account between the two and the Corporate Debtor has given an undertaking that it has made arrangements for paying the debt and only requires some more time to settle the debt. Payments of about Rs 98,66,82,995/- are due to it from the State Electricity Distributors, and L&T Finance is providing working capital funds, out of which its debts shall be repaid. It has already settled debts worth Rs.36,81,38,388/- to several creditors who have approached this Tribunal. Since the Corporate Debtor is in the business of generating and selling power, its liabilities are paid out of its periodical receipts.
10. It is also relevant to note that the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*<sup>1</sup> has inter alia held that the I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. It is also pertinent to mention that the Hon'ble Supreme Court in the case of *K. Kishan v. Vijay Nirman Company Private Limited*<sup>2</sup> clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures. No case has been made out by the Petitioner that the Respondent has become insolvent or has lost its substratum such that it cannot pay its debts or run its business. On the other hand, the Corporate Debtor is a leading renewable energy developer in Karnataka, and employs over 200 employees across its 21 power generation projects, with a total

---

<sup>1</sup> 2018 (1) SCC 353

<sup>2</sup> (C A) No.9597 of 2018 dated 23<sup>rd</sup> October, 2018, ( 147 CLA 112 (SC)

revenue of Rs.177.50 Crore. Hence, it would defeat the purpose of the Code, if a going concern generating good revenue and having a huge number of employees is subjected to the rigours of corporate insolvency resolution process.

11. We may add that the impact of the present financial distress caused by the global novel corona virus pandemic necessitating a nationwide lockdown, cannot be ignored. Major decisions have been taken to protect Industry from its effects, to inject economic stimulus and to revive the economy. More specifically, on 24.03.2020 the Legislature increased the minimum threshold of default from Rs.1 Lakh to Rs. 1 Crore so that the Code is not used merely for recovery of debt. Modifications and suspension of various provisions of the Code have been initiated so that companies facing financial stress due to the pandemic can be supported rather than be pushed into CIRP, else in the present scenario they may end up in liquidation and lose value further, which is the not objective of the IBC or other enactments. Steps have also been taken to ensure availability of more funds in the hands of businesses so that they can cope with the present economic scenario and restart their business.
12. In light of the above grim economic scenario and the facts of the instant case as brought on record and discussed above, we are of the considered view that the Corporate Debtor's plea that it be given some more time to repay the debt needs to be accepted, and the Respondent/Corporate Debtor be directed to settle the debt at the earliest in consultation with the Petitioner/Financial Creditor. The Ld. Counsel for the Petitioner has insisted that the Corporate Debtor may be directed to clear the debt within 10 days. However, considering the amount involved and the present economic scenario, we are of the view that it would be fair to allow the Corporate Debtor some more time.
13. In the result, C.P. (IB) No.390/BB/2019 is disposed of by directing the Respondent to repay the balance debt or the amount as settled with the Petitioner, within a period of 90 days, failing which the Petitioner would be at liberty to file a fresh petition before this Tribunal. No order as to costs.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

Aparna

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**