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

IBA/757/2019

*(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 M/s. Coastal Energen Private Limited

State Bank of India

Stressed Assets Management Branch
"Red Cross Buildings"
No.32, 2nd Floor, Red Cross Road,
Egmore,
Chennai – 600 008
Represented by its Authorized Officer
Mr. M. K. Kannan

... Financial Creditor

-Vs-

Coastal Energen Private Limited

CIN: U40102TN2006PTC060009
Reg. Off:-
No.5, Moores Road,
Chennai – 600 006

...Corporate Debtor

Along with

**IA(IBC)/143(CHE)/2021, IA(IBC)/210(CHE)/2021,
IA(IBC)/619(CHE)/2021 & IA(IBC)/476(CHE)/2021**

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of the NCLT Rules)*

In the matter of M/s. Coastal Energen Private Limited

Coastal Energen Private Limited,

No.5, Moores Road,
Chennai 600 006.

... Applicant/Corporate Debtor

-Vs-

State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, Montieth Road,
Chennai-600 008

... Respondent/Financial Creditor

Order Pronounced on 4th February 2022

CORAM :

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

For Financial Creditor : E. Om Prakash, Senior Advocate
Vipin Warriar, Advocate
Vidyalakshmi Vipin, Advocate

For Corporate Debtor : G. Dhanalakshmi, Advocate
R. Padmanabhan, PCS

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under Adjudication is IBA/757/2019 which has been filed by **State Bank of India** (hereinafter referred to as '**Financial Creditor**') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Coastal Energen Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process

against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is body Corporate constituted under the State Bank of India Act, 1955 and the Registered office as per the Application is stated to be at Corporate Centre at Madame Cama Road, Nariman Point, Mumbai – 400 021.

3. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number U40102TN2006PTC060009 incorporated on 29.05.2006 and registered office of the Corporate Debtor as per the Application is stated to be at #5, Moores Road, Chennai – 600 006. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Abhijit Guhathakurtha, however subsequently, the Financial Creditor has proposed the name of one Mr. Radhakrishnan Dharmarajan as to act as the Interim Resolution Professional.

4. Part IV of the application signifies the amount of debt to the tune of ₹2923,62,42,864.46/- (Rupees Two thousand nine hundred and twenty-three crore sixty-two lakhs forty-two thousand eight hundred and sixty-four and paise forty-six only) and the date of

default is the date on which the accounts were classified as NPA which is mentioned as 31.03.2017. The present Application is filed before this Tribunal on 03.10.2018. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor had availed financial facilities from Consortium of fifteen banks and Financial Institutions including the Financial Creditor herein and the erstwhile State Bank of Mysore, State Bank of Patiala and State Bank of Hyderabad, for setting up of a Coal Based Thermal Power Plant with 1200 MW capacity at Tuticorin in the State of Tamil Nadu. It was submitted that the original cost of the project was estimated to be Rs.4297 Crore (with debt of Rs.3323 Crore and Equity of Rs.859 Crore), however due to over-run the project cost got revised to Rs.7870 Crore (with debt of Rs.6296 Crore and Equity of Rs.1574 Crore).

6. It was submitted that the lenders of the Financial Creditor have agreed to render financial assistance to the Corporate Debtor, however the promoters have failed to bring in the stipulated equity amount. Further, it was submitted that the Financial Creditor along with other lenders also supported the Corporate Debtor to fund the cost overrun of the project by providing additional finance and with

the financial support of the lenders, the Unit I of the Corporate Debtor was commissioned on 23.12.2014 and Unit II on 13.01.2016.

7. The Learned Counsel for the Financial Creditor submitted that in the meantime, the Corporate Debtor was already suffering on account of failure of its promoter to infuse the requisite amount of equity and hence went into financial distress. It was submitted that the Corporate Debtor has committed defaults under the financial assistance so much so that the accounts of the Corporate Debtor declared as Non – Performing Asset (NPA) on 31.03.2017 as per the applicable guidelines of RBI.

8. The Learned Counsel for the Applicant submitted that the present Application was filed before this Tribunal on 03.10.2018 under Section 7 of IBC, 2016 for a default of a sum of ₹2923,62,42,864.46. It was submitted that during the pendency of the proceedings the Corporate Debtor had approached the Financial Creditor and the consortium of lenders number of times for a One Time Settlement (OTS) of its dues and the initial OTS proposal submitted vide letter dated 15.05.2019 as amended and modified was acceded to by the consortium of lenders for a one-time settlement of Rs.3,100 Crores while retaining 15% equity and such other conditions as prescribed. It was submitted that pursuant to the same, the instant application was withdrawn vide memo dated

19.12.2019 with a liberty to reopen the proceedings in the event of default.

9. Subsequently, it was submitted that the Corporate Debtor could not keep up with its commitment and miserably failed and breached the OTS. Hence the Applicant Financial Creditor was left with no other option than to revive the present proceedings to initiate the Corporate Insolvency Resolution Process as against the Corporate Debtor and accordingly filed MA/827/2020 for restoration of IBA/757/2019 which came to be allowed by this Tribunal vide order dated 28.12.2020.

10. The following documents are relied on by the Financial Creditor in order to prove that there is a debt and default on the part of the Corporate Debtor:

- a. Third Amended and Restated Common Loan Agreement dated 05.07.2016 concluded between the Corporate Debtor with consortium of lenders and SBICAP Trustee Company Limited appointed as the trustee in respect of the facilities availed.
- b. Third Amended and Restated Subordinate Loan Agreement dated 05.07.2016 concluded between the Corporate Debtor with consortium of subordinate lenders and SBICAP Trustee Company Limited appointed as the trustee in respect of the facilities availed.
- c. Working Capital Facility Agreement dated 18.12.2015 concluded between Corporate Debtor with consortium of working capital lenders.



- d. Additional Working Capital Facility Agreement dated 23.02.2017 concluded between Corporate Debtor with the Applicant.
- e. Corporate Guarantee executed by M/s. Fossil Logistics Pvt. Ltd. In favour of Trustee dated 05.07.2016.
- f. Personal Guarantee executed by Mr. Ahmed A R Buhari dated 03.03.2017
- g. Statement of Term Loan Accounts
- h. Information Utility NESL filed on 18.12.2020.

11. The Respondent has filed counter and the Learned Counsel for the Respondent submitted that the Corporate Debtor is operating as a going concern and the plant is operating without further sanction of working capital by bankers. Further, it was submitted that the Corporate Debtor has made a turnover of Rs.1700 Crore average since 2017. It was submitted that the Corporate Debtor plant is a national asset serving the power needs of the State under the most challenging circumstances. Though the Corporate Debtor was sanctioned the One Time Settlement twice in 2018 and 2019, however it could not honour the same for some or the other reasons.

12. Further, it was submitted that major amounts of CD were locked with TANGENDCO of which more than 50% was realized during 2020 and 2021 and were used to pay towards the OTS even

without investor support. The Learned Counsel for the Corporate Debtor prayed for dismissal of the present Application on the ground that OTS was a better option than insolvency at this stage.

13. We have heard the submission made by the Learned Counsel for the parties and perused the records, including the documents placed on file. From the averments made in the Application it is seen that the Corporate Debtor has committed default in repayment of its credit facilities which it had availed from the Financial Creditor by way of various credit facilities sanctioned, granted and disbursed by the Applicant. The record from the Information Utility also posits the same fact, as the same shows as "Deemed to be Authenticated". Further, it may be seen that the Financial Creditor has classified the accounts of the Corporate Debtor as NPA on 31.03.2017 and thus under the provisions of IBC, taking into consideration the decision of the Hon'ble Supreme Court in **Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr.** in *Civil Appeal No.4952 of 2019* and **B.K. Educational Services Private Limited -Vs- Parag Gupta and Associates;** (2018) SCC Online SC 1921, the right to sue accrues for the Financial Creditor to sue the Corporate Debtor on 31.03.2017, the date on which the account of the Corporate Debtor was declared as NPA and from the records it is evident that the Financial Creditor has filed the present petition on 03.10.2018 which is well within the 3 years period of limitation.

14. Further, we are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Consortium of Bankers and in the instant case to the Applicant Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of IBC, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, (*since increased to Rs.1 Crore w.e.f. from 24.03.2020*) this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence or set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. Thus, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh. Also, the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016

15. During the hearing the Learned Counsel for the Applicant was asked to clarify the present position of default taking into consideration the payments made by the Corporate Debtor during pendency of the present Application, Learned Counsel for the Applicant stated during hearing on 24.01.2022 that the present default is nearly Rs. 1458 Crores. The same was admitted by the Learned Counsel for the Respondent. Learned Counsel for the Respondent vehemently stated during the hearing on 24.1.2022, that there is no default, when questioned, the basis of the same, our attention was drawn towards the payments made by the Respondents during the intervening period by the Corporate Debtor to the Applicant more particularly during the financial year 2020 to date. During the hearing a question was put by the Bench to the Learned Counsel "whether the account of the Respondent is NPA in the books of the Applicant Bank?" The Learned Counsel for the Respondent refused to answer and directed the same to be answered by Learned Counsel for the Applicant. Learned Counsel for the Applicant replied that the account of the Respondent is NPA with the Applicant and the amount of default at present is Rs. 1458 Crores. Learned Counsel for the Respondent could not oppose this answer.

16. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this

Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

17. The Financial Creditor has proposed the name of **Mr. Radhakrishnan Dharmarajan**, with Registration Number: *IBBI/IPA-001/IP-P00508/2017-18/10909* (email id:- *dharma67@gmail.com*), whose Authorization for Assignment (AFA) as per IBBI site is valid till 30.11.2022, as the Interim Resolution Professional (IRP) who has also filed his written consent in Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. 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 Code and file his report within 30 days 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.

18. 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;



19. 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.



20. 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.

21. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into 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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.



INTERLOCUTORY APPLICANTS (IA) FILED BY THE RESPONDENTS:

22. Respondents have filed the following IA's before this Tribunal:

- i. IA/143/2021
- ii. IA/210/2021
- iii. IA/619/2021
- iv. IA/476/2021

All the above IA's were filed u/s 60 (5) of the IBC, 2016 seeking thereof to take on record certain additional documents filed by the Corporate Debtor. Through these IA Respondent has stressed upon the OTS proposal made to the lenders and brought to the notice of this Tribunal the payments made so far to the lenders. We are very clear that this Tribunal has no authority under IBC, 2016 to direct any of the parties to admit the OTS proposition put forth by a borrower. On the contrary, in our view, the Respondent has admitted existence of debt through all the above IA's. Since the Application under Section 7 of IBC, 2016 is allowed and as the Corporate Debtor is admitted, as a consequence to this all the above IA's stand **closed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond