

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
***(through web-based video conferencing platform)***

**C.P. (IB) No.47/BB/2022**  
**Under Section 7 of the IBC, 2016**  
**r/w Rule 4 of the I&B (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Indian Renewable Energy Development Agency Limited**  
India Habitat Centre, 1<sup>st</sup> Floor, East Court  
Core 4A, Lodhi Road,  
New Delhi-110003... Financial Creditor

**VERSUS**

**Bhadragiri Power Private Limited**  
83, Venkatadri Complex  
2<sup>nd</sup> Floor, Richmond Road  
Bangalore-560025... Corporate Debtor

**Order delivered on 2<sup>nd</sup> December 2022**

**Coram:** 1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri. Abhishek Kumar

For the Respondent : None

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This present Company Petition has been filed on 28.01.2022 by **Indian Renewable Energy Development Agency Limited** (for brevity 'Financial Creditor') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against Bhadragiri Power Private Limited (hereinafter called as 'Corporate Debtor'), on the ground that

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it has committed default for total amount of Rs.71,88,32,068 /-(Rupees Seventy One Crores Eighty Eight Lakhs Thirty Two Thousand and Sixty Eight Only) as on 31.12.2021.

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
  - I. It is stated that the Corporate Debtor approached the Financial Creditor for the purpose of obtaining a loan for up of 3 MW Gondi Small Hydro Project to be set up on Bhadravathi River near Chikkagoppanahalli Village, Bhadravathi (Tehsil), Shimoga (District), Karnataka (Project No.1823). The Financial Creditor based on sanction letter dated 05.12.2007 sanctioned a term loan of Rs.13,87,50,000/- (INR Thirteen Crores, Eighty Seven Lakhs and Fifty Thousand Only) to the Corporate Debtor.
  - II. It is submitted that , a loan agreement dated 12.03.2008 was executed between the Financial Creditor and the Corporate Debtor, whereby the Financial Creditor agreed to disburse the total loan amount of Rs.13,87,50,000/- (Rupees Thirteen Crores Eighty Seven Lakhs and Fifty Thousand only) to the Corporate Debtor subject to the terms and conditions mentioned in the loan agreement.
  - III. It is submitted that, under the loan agreement total amount of Rs.13,59,30,259/- (Thirteen Crores Fifty Nine Lakhs Thirty Thousand Two Hundred and Fifty Nine Only) was disbursed by the Financial Creditor to the Corporate Debtor on various dates between March,2008 to December 2009. subsequently, the provisions relating to interest payable on the term loan were modified vide letter dated 27.10.2008 after the mutual discussion and agreement between the parties.
  - IV. Subsequently, at the repeated requests of the Corporate Debtor, the Financial Creditor , vide its letter dated 30.12.2010, rescheduled the period for loan repayment, and extended the time period for such repayment upto 30.09.2021. it is stated that IREDA also agreed to fund the interest due and payable by the Corporate Debtor on the loan amount for the period from June ,2010 upto September 2011 i.e., the aggregate amount of Rs.2,97,23,000/- (Rupees Two Crores Ninety Seven Lakhs and Twenty Three Thousand only). The Corporate Debtor vide its letter dated 17.01.2011, duly conveyed its acceptance to the above arrangement.
  - V. It is stated that, due to the failure of the Corporate Debtor to repay the financial debt the account of the Corporate Debtor was declared NPA by the Financial Creditor on 31.03.2012. the Financial creditor recalled the loan facility vide a recall notice dated 9/13.08.2012, and

- the Corporate Debtor was asked to pay the financial debt of Rs.18,24,69,308/- which had fallen due as on 30.06.2012.
- VI.** It is submitted that the Corporate Debtor vide its letters dated 31.08.2012 and 18.01.2013 acknowledged its liability to pay the loan amount and requested for time up to September 2013 for repayment of the financial debt. The request of the Corporate Debtor for withdrawal of the recall notice was rejected by the financial creditor vide letter dated 12.02.2013.
- VII.** Further, the financial creditor issued a demand notice dated 24.02.2015 to the guarantors calling upon them to pay to the Financial Creditor an amount of Rs.25,99,05,876/- due as on 31.12.2014.
- VIII.** It is stated that, vide letter dated 18.08.2016, while acknowledging its financial debt, the Corporate Debtor requested the Financial Creditor to release the corporate guarantee provided by M/s Sai Spurthi Power Pvt Ltd. However, such request was refused by the Financial Creditor vide letter dated 12.09.2016
- IX.** It is stated that the Financial Creditor vide its letter dated 28.07.2017, *inter alia* requested the Corporate Debtor to submit the status of the payment of interest to be made to them on regular basis, as committed by the Corporate Debtor in a Special Review meeting held on 28.07.2017. The Corporate Debtor *vide* its letter dated 25.09.2017 assured to communicate the progress on the status of the payment to be made to the Financial Creditor shortly.
- X.** It is submitted that the Corporate Debtor once again defaulted, and the Financial Creditor was constrained to issue a notice dated 31.07.2018 under section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor and its Guarantors demanding an outstanding amount of Rs. 43,20,49,144/- due and payable as on 30.06.2018 within a period of 60 days. Further, the Corporate Debtor vide its letter dated 01.10.2018 admitted its liability to pay the outstanding debt and undertook to commence repayment of dues from April/May 2019.
- XI.** It is stated that, on failure of the Corporate Debtor to pay the outstanding debt, the Financial Creditor proceeded to issue a notice dated 19.02.2019 under section 13(4) SARFAESI Act, 2002 to the Corporate Debtor and Guarantors.
- XII.** It is submitted that the Corporate Debtor, vide its letter dated 21.10.2019 while admitting its liability to pay the outstanding loan amount along with interest, proposed a onetime settlement to the Financial Creditor, thereby offering to pay only the Principal amount

and that also in multiple instalments, which was rejected by the Financial Creditor vide its letter dated 18.03.2020.

- XIII.** Further, the Financial Creditor issued another Demand Notice dated 11.05.2020 to the Corporate Debtor to pay the Financial Debt of Rs. 55,83,21,239/- due and payable as on 31.03.2020.
- XIV.** It is stated that the Corporate Debtor has acknowledged the Financial Debt due to the Financial Creditor in its Balance Sheets for the FYs 2011-2012 to FY 2017-2018.
- XV.** It is stated that no payment has been made by the Corporate Debtor or the Guarantors even after issuance of Demand Notice dated 11.05.2020 till date. Further a separate notice was issued to the Guarantors invoking on 27.05.2020 to clear the outstanding dues of RS. 55, 83, 21, 239/- fallen due as on 31.03.2020 within 15 days of receipt of notice. However, no payment has been made either by the Corporate Debtor or its Guarantors.
- XVI.** It is submitted that as on 31.12.2021, the total Financial Debt due and outstanding under the loan facilities granted to the Corporate Debtor by the Financial creditor is Rs. 71,88,32,068/- , which is payable the Corporate Debtor.
- 3.** Heard Mr.Abhishek Kumar, learned Counsel for the Financial Creditor and none for the Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder. The Corporate Debtor has not filed its Reply in the matter. The Court Notice was issued to the Respondent on 28.03.2022, which was not served. Subsequently, vide order dated 04.05.2022, this Tribunal allowed substitute mode of service by way of paper publication. The Financial Creditor has made newspaper publication on 05.07.2022 clearly intimating the next date of hearing to the Corporate Debtor. The matter was listed on 27,07.2022, 19.09.2022 and 21.10.2022. However,the Corporate Debtor failed to appear and right to file the reply in the matter was forfeited on 19.09.2022. Hence, the matter was finally heard and reserved for orders on 21.10.2022.
- 4.** On 21.10.2022, the Petitioner was directed to file two page note regarding the limitation issue, NPA Order with proper index and pagination of the relevant documents relied upon. The compliance to the above order was filed vide diary no 4662 dated 31,10.2022,in which it was explained as under:-

*“Corporate Debtor duly acknowledged its liability to repay the financial debt owned to FC in its balance sheets filed from the FY 2011-2012 to 2017-2018. The liability is also acknowledged by CD in its balance sheet for FY 2020-*

2021, a copy of which was made available by CD to FC. In addition to the above, the CD vide its various letter dated 31.08.2012 (pg.237/Vol.II), 18.01.2013 (pg.239/Vol.II), 26.03.2014 (pg.245/Vol.II), 18.08.2016 (pg.266/Vol.II), 01.10.2018 (Pg.285/Vol.II) and 21.10.2019 (Pg.295/Vol.II) had also acknowledged its liability to pay the outstanding debt including interest. It is apparent from the above that the CD had continuously acknowledged its debt in its balance sheets upto 2020-2021 as well as in its letters mentioned above including the letter dated 21.10.2019. Accordingly, the present application having been filed on 25.01.2022, is, well within the period of limitation.”.

In this regard the Petitioner relied on the following judgements:-

- I. *Asset Reconstruction Company India Ltd (ARCIL) v. Bishal Jaiswal*; (2021) 6 SCC 366
- II. *MA No.21/2022 in MA No.665/2021 in Suo Motu Writ Petition (C) No.3/2020*

5. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
6. In Part III of Form 1, Mr. Vishal Ghisulal Jain, Registration No. IBBI/IPA-001/IP-P00419/2017-2018/10742 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 21.12.2021 has been filed along with the C.P at Page Nos.376-377. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.
7. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Vishal Ghisulal Jain and there is nothing adverse against him. In view of the above, we appoint Mr. Vishal Ghisulal Jain, bearing Registration No. IBBI/IPA-001/IP-P00419/2017-2018/10742, registered address at OFFICE No.502,G Square Business Park,Opp. Sanpada Station, Sector-30A,Vashi,Navi Mumbai, Maharashtra-400703, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
8. The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
9. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

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10. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(**MANOJ KUMAR DUBEY**)  
**MEMBER (TECHNICAL)**

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(**KISHORE VEMULAPALLI**)  
**MEMBER (JUDICIAL)**