

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

Coram: Shri Jinan K.R.,
Hon'ble Member (J)
&
Shri Madan B. Gosavi,
Hon'ble Member (J)

CP (IB) NO. 129/KB/2018

IN THE MATTER OF:

An application 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:

SREI EQUIPMENT FINANCE LIMITED, a limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 and having its registered office at 'Vishwakarma' 86C, Topsia Road, Kolkata 700 046, in the state of West Bengal under the aforesaid jurisdiction;

.....Financial Creditor/ Applicant

-And-

IN THE MATTER OF:

MAADURGA THERMAL POWER COMPANY LIMITED, a limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 and having its registered office at CADD Centre Building, 2nd Floor Press Chhak, Madhupatna, Cuttack 753010, in the state of Odisha under the aforesaid jurisdiction;

....Corporate Debtor

Counsels on Record:

Mr. Rishav Banerjee, Advocate]
Mr. Shounak Mitra, Advocate] For the Financial Creditor.
Ms. Vaibhavi Pandey, Advocate]

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Mr. Durga Prasad,

] For the Corporate Debtor

Date of pronouncement of the order: 8th June 2018.**ORDER****Per Shri Jinan K.R., Member (J):**

This is an application filed by the Financial Creditor namely SREI EQUIPMENT FINANCE LIMITED for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short, the Rules) in respect of Corporate Debtor/ MAADURGA THERMAL POWER COMPANY LIMITED. The Financial Creditor had previously proposed the name of Mr. Subodh Kumar Agrawal as Interim Resolution Professional (IRP) having registration No. IBBI/IPA-001/IP-P00087/2017-18/10183 who subsequently withdrew his name as the IRP and the Financial Creditor as a substitute proposed the name of Mr. Rajesh Kumar Agrawal as Interim Resolution Professional.

2. The present application is filed on the basis of default in payment of the debt due to the Financial Creditor till date. The total amount of default as claimed by the Financial Creditor is of Rs. 242,92,24,575/- (Two Forty Two Crores Ninety Two Lakhs Twenty Four Thousand Five Hundred Seventy Five Only) along with overdue charges on the aforesaid claim amount at the rate of Rs. 1 per day for every Rs. 1000/- on monthly rest pursuant to Clause 20.9.4 of the Loan Agreements. The loan provided by the Financial Creditor was vide five loan agreements dated 30.09.2013 for an amount of Rs.40,00,00,000/-, 22.09.2014 for an amount of Rs.13,50,00,000/-, 03.07.2015 for an amount of Rs. 12,70,00,001/-, 22.07.2015 for an amount of Rs. 50,00,00,000/- and 01.10.2015 for an amount of Rs.63,90,00,000/- respectively amounting to

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Rs.1,80,10,00,001/- (Rupees One Hundred and Eighty Crores Ten Lakhs One Only), copies of the Loan Agreements are annexed as Annexure 'A-1' to the Application. The said Financial Assistance was secured by way of Hypothecation of Assets financed by the Financial Creditor. The Certificate of Registration of such charge are annexed to the Application as Annexure 'A-3'.

3. The Financial Creditor, SREI Equipment Finance Limited, was incorporated on 13th June, 2006 and having its registered office situated at 'Vishwakarma', 86C, Topsia Road, Kolkata- 700 046, West Bengal and having its Corporate Office at 6A, Kiran Shankar Roy Road, Kolkata- 700 001. The authorized share capital of the company is Rs.75,00,00,000/- divided into 7,50,00,000 equity shares of Rs.10/- each and paid up share capital of the company is Rs.59,66,00,000/- divided into 5,96,60,000 shares of Rs.10/- each. The Identification Number of the Financial Creditor is U70101WB2006PLC109898.

4. The Corporate Debtor, MAADURGA THERMAL POWER COMPANY LIMITED, having Identification No. U40102OR2008PLC010501 is a company incorporated on 15th December, 2008. The registered office of the Company is situated at CADD Centre Building, 2nd floor, Press Chhak, Madhupatna, Cuttack, Orissa- 753 010. The authorized share capital of the company is Rs.50,00,00,000/- divided into 5,00,00,000 equity shares of Rs.10/- each and paid up share capital of the company is Rs.29,77,93,320/- divided into 2,97,79,332 shares of Rs.10/- each. Both the figures are as on 31st August, 2017.

5. The Financial Creditor contends that the Corporate Debtor failed to repay the loan within the due date as agreed to by the Corporate Debtor and the Financial Creditor. The computation relating to all the defaulted amount and days of default in respect of the facilities provided by the Financial Creditor along with the Statement of Accounts relating to each of the facilities is

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annexed as Annexure 'A-5' to the Application. The applicant further contends that the Corporate Debtor has admitted the debt due to the Financial Creditor and sought further two months time to pay the outstanding amount to the Financial Creditor vide letter dated 31.05.2018. However, by a letter dated 01.06.2018, the Financial Creditor replied to the Corporate Debtor's letter expressing its inability to grant any further time to the Corporate Debtor to pay its admitted outstanding amount because on the Corporate Debtor was causing unnecessary delay by making such false assurances.

6. Upon the said contentions, the applicant prays for initiation of CIRP in respect of the Corporate Debtor under Section 7 of the I&B Code, 2016.

7. The respondent / Corporate Debtor has not filed any reply affidavit opposing the application.

8. Heard Ld. Counsel on both sides. Perused the records.

9. The applicant/financial creditor filed this application contending that an amount of Rs.1,80,10,00,001/- (Rupees One Hundred and Eighty Crores Ten Lakhs One Only) was granted to the Corporate Debtor as a loan vide Five different Agreements agreeing to repay the amount with interest within due date as agreed to by the parties. The Corporate Debtor failed to repay the instalments as per the agreements and admitted the debt due to the Financial Creditor vide letter dated 31.03.2018. The records clearly establishes the default on the part of the Corporate Debtor. The total amount with interest as on the date of filing this application outstanding is Rs. 242,92,24,575/- (Two Forty Two Crores Ninety Two Lakhs Twenty Four Thousand Five Hundred Seventy Five Only).

10. This is a petition filed by a financial creditor under section 7 of the I & B Code. In a case of this nature what is to be looked into is settled by the Hon'ble NCLAT in *Innoventive Industries Ltd. vs. ICICI Bank & Anr.* The Hon'ble NCLAT has laid down that "...for initiation of corporate resolution

process by financial creditor under sub Sec.(4) of Section 7 of Insolvency and Bankruptcy Code, 2016 the adjudicating authority on receipt of the application under sub Sec. (2) is required to ascertain existence of the default from the records of information utility or on the basis of other evidence furnished, the financial creditor under sub-section (3), under sub-section (5) of Section 7 adjudicating authority is required to satisfy where a default has occurred, whether an application is complete and whether any disciplinary proceeding against the proposed Insolvency Resolution Process. Once it is satisfied, it is required to admit the case”.

11. In the light of above said discussions and on perusal of the records, we are satisfied that the Financial Creditor has succeeded in proving that the Corporate Debtor has committed default in making repayment of the loan amount evidently received by the Corporate Debtor plus interest which comes to Rs. 1,80,10,00,001 till 22.08.2017. It is thus clear that the application filed by the Applicant, i.e. SREI Equipment Finance Limited under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor, Maadurga Thermal Power Company Limited is complete in all respects. The applicant proposes Mr. Rajesh Kumar Agarwal of 1, Ganesh Chandra Avenue, 3rd Floor, Room No. 301, Kolkata- 700013, e-mail: rajesh521@yahoo.com as an insolvency professional and produced Form 2 along with written communication. The written communication includes a certificate to the effect that no disciplinary proceedings is pending against him. In this respect, Annexure “B” submitted along with Supplementary Affidavit dated 5th June, 2018 has also been annexed. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is liable to be admitted.

ORDER

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