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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

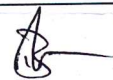
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.08.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.407/7/HDB/2018
NAME OF THE COMPANY	Enviro Power Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Enviro Power Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G. Bhupesh	Adv	9966622805	
V. Sheshath Suresnder	Adv.		

ORDER

Orders passed vide separate orders.

Petition is admitted.


Member (Technical)


Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

CP (IB) No. 407/7/HDB/2018

U/s 7 of IBC, 2016
R/w Rule 4 of I&E (AAA) Rules, 2016

In the matter of:

State Bank of India
Stressed Assets Management Branch
Red Cross Building, Montienth Road
Egmore, Chennai

...Petitioner /
Financial Creditor

VERSUS

M/s PPS Enviro Power Private Limited
97/A, Road No.18, Phase-1, IDA
Jeedimetla, Hyderabad – 500055

...Respondent/
Corporate Debtor

Date of order: 13.08.2019

Coram:

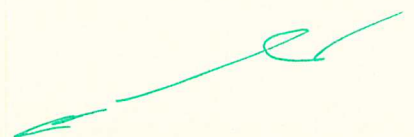
Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / Counsels Present:

For the Petitioner: Shri Saini Keshav Rao, along with
Shri G.P. Yashvardhan, Shri Anil
Kumar and Ms Grishma, Advocates

For the Respondent: Shri G. Bhupesh, Advocate

over



Heard on: 29.07.2019

ORDER

(PER: SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL))

BRIEF OF THE CASE

1. Under consideration is the Petition filed under Section 7 of Insolvency and Bankruptcy Code R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by SBI, which is the Financial Creditor stating that M/s PPS Enviro Power Private Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. 237,94,44,380.77, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional (IRP) as prescribed under the Code and Rules thereon.

AVERMENTS:

2. The averments germane to the Petition filed in Form-I are as follows:-
 - (1) The Financial Creditor granted various terms Loans, availed Cash credit facility, Corporate Loan and Letter of Credit on various dates from the year 2010 to 2016 to the tune of Rs. 225.94 crores and the total amount claimed to be in default is Rs. 237,94,44,380.77 (Rupees Two Hundred and

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Thirty Seven Crores Ninety Four Lakhs Forty Four Thousand Three Hundred and Eighty and paise Seventy seven only).

- (2) The ten accounts of Corporate Debtor as mentioned at page 4 of the Petition were declared Non-Performing Assets (NPA) on 26.12.2015. The Petitioner / Financial Creditor filed voluminous documents to prove its case.
- (3) Despite various reminders, the Corporate Debtor failed to repay the debt due to the Financial Creditor.
- (4) The Financial Creditor / Petitioner has suggested the name of Shri Anurag Kumar Sinha as IRP and filed consent of IRP in Form-2.

COUNTER

3. Counter is filed by Corporate Debtor. The objections in reply in brief are:-

- (1) The Corporate Debtor denies the debt and default of Rs. 237.94 crores as stated by the Financial Creditor and further stated that the Financial Creditor has no locus standi to file Application under Section 5 (7) of IBC and that the Petitioner / Financial Creditor concealed the facts entirely. The Corporate Debtor in turn was on the verge of taking steps to initiate action against Financial Creditor at the appropriate forum.

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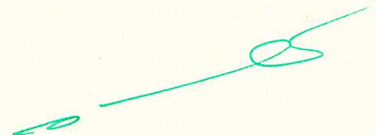
- (2) It is contended that since Financial Creditor already initiated action under Recovery of Debt Due to Banks & Financial Institutions Act, (RDDBFI), this petition is not maintainable.
- (3) It is not in dispute that Corporate Debtor is banking with Financial Creditor since beginning and availed working capital and long term financial assistance from various banks under a consortium of lending arrangements. It is further stated the Corporate Debtor settled term loans availed from Syndicate Bank, Development Credit Bank Ltd and Shamrao Vithal Co-operative Bank Ltd (SVC).
- (4) The Corporate Debtor stated that it was sanctioned term loan of Rs.60 lakhs in 2005 which was increased year on year and the last credit sanctioned by the SBI / Financial Creditor was Rs. 163.05 on 05.04.2013.
- (5) The Corporate Debtor further contends that there was an Evacuation Transformer failure leading to a complete loss of revenue. It is also alleged, the Banks / Financial Creditor failed to come out with right solution.
- (6) The Corporate Debtor narrated several instances wherein Financial Creditor delayed the opening of Letter of Credit due to which Corporate Debtor incurred huge losses.

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- (7) It is further case of Corporate Debtor that on 19.01.2015 properties belonging to one Mr. N. Kishore Patel was sold to it by SBH (now SBI) for a consideration of Rs. 2 crores through an auction and alleged that the Bank did not clear sales tax dues before transfer of property to Corporate Debtor.
- (8) SBH (now SBI) / Financial Creditor sanctioned term loan of Rs. 35.70 on 15.05.2014 and as "interim collateral Security", three properties were pledged. But the same were sold in an e-auction held on 08.02.2018 due to which Corporate Debtor incurred loss of Rs.12 crores.
- (9) Various factors and Government policies on the renewable energy industry since 2014, non-renewal of temporary credit facilities, reducing of working capital facilities are the reasons stated by the Corporate Debtor which contributed to the huge loss of Corporate Debtor Company.
- (10) It is contended loan accounts of SBI were classified under Special Monitoring Accounts (SMA-2) category and Corporate Debtor was put through Corrective Action Plan under the Joint Lenders Forum. The credit dispensation sought for in the meeting was not available to the Corporate Debtor. The total amount committed by Bank in the JLF was Rs. 117.62 crores and the cost incurred by the

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Corporate Debtor due to non-co-operation from the Bank is estimated at Rs.176.44 crores. It is further contended, the Bank / Financial Creditor recovered arbitrary penalties amounting to Rs. 24.27 crores on account of irregularities, non-adjustment etc.

(11) The Bank issued notice under SARFAESI Act on 14.11.2017 demanding payment of outstanding to the tune of Rs. 234,87,62,756.59. The amount due is stated to be in dispute for which no clarity is given by Financial Creditor.

(12) It is further alleged the Financial Creditor is resorting to forum shopping and prayed this Tribunal to reject the Petition.

REJOINDER:

4. Rejoinder is filed by Petitioner / Financial Creditor.

The averments in the rejoinder in brief are:-

(1) It is contended the submissions made and the material documents filed by the Corporate Debtor in the counter would establish that Financial Creditor has locus standi to file the Petition. When Corporate Debtor availed loans and defaulted in not repaying the loans, the Financial Creditor stated that it has the right to file petition under Section 7 of IBC. Further Corporate Debtor has not denied availing loans from the Financial Creditor but only disputing quantum of loans, which would

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be decided by IRP / RP when CIRP is initiated against Corporate Debtor.

- (2) The Financial Creditor/Petitioner denies the contention of Corporate Debtor that it has claim to the tune of Rs. 420.54 crores against the Financial Creditor and that is why it did not act against Corporate Debtor for such a long period.
- (3) It is also further held by Hon'ble NCLAT that proceedings pending under SARFAESI Act or RDDBFI Act shall not be the ground for rejection of the petition and Petitioner further stated that the grounds narrated in the counter /reply would not come to the rescue of the Corporate Debtor from initiating proceedings under IBC, 2016.
- (4) The case of Financial Creditor that it has filed material papers to prove that there is a debt and Corporate Debtor committed default in not repaying the debt due to the Financial Creditor and prayed this Tribunal to admit the petition.

5. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor. This is an Application filed under Section 7 of IBC. The Financial Creditor / Petitioner herein has to establish that it disbursed loans and Corporate Debtor committed default. We have gone through the reply filed on behalf of Corporate Debtor. The question is whether Financial Creditor has established that it has





sanctioned loan to the Corporate Debtor and Corporate Debtor had committed default. The Corporate Debtor on the other hand alleged that fault lies with the Financial Creditor and that it decided to proceed against the Financial Creditor to recover money of Rs.420.54 crores.

6. The Financial Creditor has filed documents in support of its claim that it had disbursed various types of loan to the Corporate Debtor. The Financial Creditor filed Form-1 with details and also documents. They are altogether in four volumes.
7. There is no dispute that Financial Creditor sanctioned loans to the Corporate Debtor. Originally loans were sanctioned by State Bank of Hyderabad (SBH) which was merged with State Bank of India (SBI). The Financial Creditor sanctioned in all a sum of Rs. 225.94 crores under different types of loans. The details are as follows:-

Facility	Amount Granted (Rs/crores)	Amount disbursed (Rs/crores)
Term Loan (SBH)	8.78	8.78
Term Loan (SBT)	35.00	35.00
Term Loan-1 (SBI)	34.18	34.18
Term Loan-II(SBI)	30.38	30.38
Cash Credit (SBH)	15.00	15.00
Cash Credit (SBI)	30.00	30.00
Corporate Loan (SBH)	3.00	3.00
Corporate Loan (SBT)	4.00	4.00





Letter of credit (SBH)	30.00	30.00
Bank Guarantee / Letter of Credit (SBI)	35.60	35.60
Total	225.94	225.94

8. The Financial Creditor has sanctioned 10 different types of loans under 10 account numbers to the Corporate Debtor and also the dates of disbursement are as follows:-

S.No.	Account No.	Amount (Rs)	Date of disbursement
01.	62131971788	3,30,76,593.75	21.05.2010
02.	62411094312	2,27,05,401.90	27.03.2015
03.	62305798321	41,91,90,154.27	27.09.2013
04.	67186526001	19,41,88,628.00	15.06.2012
05.	67351168660	3,95,00,000.00	24.02.2016
06.	32506801679	31,13,83,711.00	01.09.2012
07.	31236416885	25,04,51,333.00	27.05.2011
08.	30017665227	51,74,95,603.89	07.10.2015
09.	34958991534	2,50,00,000.00	28.05.2015
10.	34963065381	2,50,00,000.00	30.05.2015

The date of default is 26.12.2015. The accounts are declared NPA. In order to prove various types of loans as sanctioned from time to time to the Corporate Debtor, the Financial Creditor relied on Annexures 1 to 117 from pages 22 to 1181 contained in four volumes.

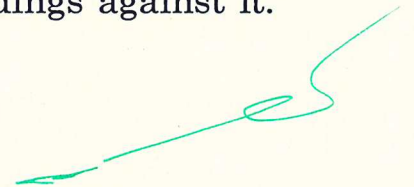
9. We have gone through the documents filed on behalf of Financial Creditor. We are of the view that Financial Creditor has established through various documents about sanctioning of various types of loans to the

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Corporate Debtor from time to time and further Financial Creditor has established that accounts are declared as NPA and thereby Corporate Debtor committed default.

10. The Corporate Debtor is not disputing availing various types of loan. However, it is throwing blame on the Financial Creditor as if Financial Creditor is responsible for Corporate Debtor in running into losses. We do not agree with the contention of the Corporate Debtor that Financial Creditor was responsible for the loss if any sustained by the Corporate Debtor. On the other hand, we have seen various documents under which the Financial Creditor sanctioned various types of loans from time to time which are prima facie reliable evidence. Therefore, the Financial Creditor is in no way responsible for any loss alleged to have been sustained by Corporate Debtor. There is nothing on record to come to a conclusion that Financial Creditor was directly responsible for any loss sustained by the Corporate Debtor.
11. As already stated, the Corporate Debtor is not disputing sanction of various types of loan to it by the Financial Creditor from time to time amounting to Rs. 237,94,44,380.77. The other objection raised by Corporate Debtor that there is variation in the amount claimed and further Financial Creditor already approached DRT and initiated proceedings against it.

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The mere fact that claim is not correct is not by itself a ground to reject the Petition and it is for the IRP / RP to decide the claim of the Financial Creditor and if at all there is any variation, it will be corrected by the IRP /RP. However, the fact remains there is no dispute that the Financial Creditor granted various loans on ten occasions to the Corporate Debtor and accounts were declared as NPA, as such there was default. It is also a fact that even if Financial Creditor already approached DRT, it is not a ground to reject the Petition. Provisions of IBC has overriding effect over the provisions of SARFAESI Act / RDDBI Act. Hon'ble NCLAT held in M/s Unigreen Global Pvt. Ltd Vs. Punjab National Bank & Ors in Company Appeal (AT) (Insolvency) No. 81 of 2017 held that pendency of proceedings before DRT cannot be a ground to deny admission of an Application filed under Section 7 or Section 10 of the IBC. The Counsel further contended, Hon'ble NCLAT has held that proceedings initiated under SARFAESI Act or Recovery of Debts due to Banks and Financial Institutions Act, 1993 cannot be a ground for rejecting the Application filed under Section 7 of IBC. Mere dispute over the amount claimed is not a ground to reject the Petition.

12. Hon'ble NCLAT at paras 21 & 22 in Company Appeal (AT) (Insolvency) No.703 of 2018 in the matter of





Ahluwalia Contracts (India) Limited Vs Raheja Developers Limited held as follows:-

Para 21: "In the present case, it is not in dispute that the arbitration proceeding was initiated by the Respondent vide notice dated 24.05.2018 i.e. after about one month from the date of issuance of demand notice under Section 8 (1) which was issued on 28.04.2018. Therefore, the "Corporate Debtor" cannot rely on arbitration proceeding to suggest a pre-existing dispute. There is nothing on record to suggest that the 'Corporate Debtor' raised any pre-existing dispute relating to quality of work performed by Appellant. The ground of delay in execution of work cannot be noticed to deny admission of Application under Section 9, the 'Corporate Debtor' having allowed the Appellant to execute the work and certified all the bills".

Para 22: The Adjudicating Authority wrongly rejected the claim raised by the Appellant falls within the ambit of disputed claim. Merely disputing a claim cannot be a ground, as held by Hon'ble Supreme Court in "Innoventive Industries Ltd vs ICICI Bank and Anr", wherein it is observed that "claim means a right to payment even if it is disputed. The code gets triggered the moment default is of rupees One Lakh or more (Section 4)".





13. Hon'ble NCLT Principal Bench, New Delhi in CP (IB) No. 438 (PB)/2018 in the matter of Indian Overseas Bank vs Pixion Media Private Limited held in para 25 as under:-

"25. Similarly, the objection on the ground of discrepancies in the amount of claim cannot sustain. The variance in the amount of default is mainly on account of difference of dates. Be that as it may the Corporate Debtor would be entitled to raise objection of mismatching of dues before the resolution Professional / Committee of Creditors. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount due. Mere mismatch of the figures will ipso facto not estop the admission of Corporate Insolvency Resolution Process under Section 7 of the Code."

14. The Financial Creditor filed documentary evidences containing four volumes and thus, it is able to establish sanction of loan, disbursement of loan and further default. Therefore, there are grounds to admit the Petition. No tenable objections are raised by the Corporate Debtor. The Financial Creditor suggested the name of the IRP and filed his consent in Form-2. The petition is complete and therefore deserves to be admitted.

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15. 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

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notified by the Central Government in consultation with any financial sector regulator.

- (d) That the order of moratorium shall have effect from 13.08.2019 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 the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri Anurag Kumar Sinha, #R/o Quest Profin Advisor Pvt. Ltd, 83, Mittal Court, Wing A, Nariman Point, Mumbai – 400021, IBBI Registration No. IBBI/IPA-001/IP-00427/2017-2018/10750 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.

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NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

 13.8.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

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