

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

**IBA/624/2019** 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 Energy Private Limited**

**Indian Overseas Bank**

*... Financial Creditor*

-vs-

**M/s. Coastal Energy Private Limited**

*... Corporate Debtor*

**Coram:**

**R. VARADHARAJAN,  
Hon'ble Member (Judicial)**

**ANIL KUMAR B,  
Hon'ble Member (Technical)**

*For Financial Creditor : Rajendran Raghavan, Counsel*  
*For Corporate Debtor : Anant Merathia, Counsel*

**ORDER**

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

*Order pronounced on 6<sup>th</sup> January, 2020*

1. This Application has been filed by **Indian Overseas Bank** (hereinafter referred to as 'Financial Creditor') 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, against **M/s. Coastal Energy Private Limited** (hereinafter referred to as 'Corporate Debtor').

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard Learned Counsel for the Financial Creditor and Corporate Debtor and perused the documents filed by the parties.

3. The Financial Creditor has claimed the total amount of Rs.1,77,28,94,303.93p as outstanding against the



Corporate Debtor as on 14.03.2019. Clause 2 of Part-IV of the Application discloses the details of the loan amounts due to the Financial Creditor by the Corporate Debtor in various loan accounts.

4. The case of the Financial Creditor is that the Corporate Debtor is engaged in the business of import of coals on stock and sale basis or high seas basis, ocean freight forwarding, appointment of stevedoring agents, cargo dispatching at wharf, import documentation, inland transportation as well as energy optimization consultancy. The Corporate Debtor approached the Financial Creditor for availing various credit facilities. Accordingly, the Corporate Debtor was initially sanctioned an overall Credit Facilities to the tune of Rs.100 Crores with a sublimit of Rs. 24 Crores as Cash Credit and Rs.10 Crores as Letter of Guarantee in the year 2005 against the Hypothecation of Stocks and Book Debts of the Corporate Debtor on *Pari Passu* basis with other financial lenders.



5. At the request of the Corporate Debtor, the credit facilities were periodically renewed with enhancement to a tune of Rs.140 Crores in the year 2008 with a sublimit increase of Rs.30 Crores towards Cash Credit. In consideration of the said enhanced credit facility, the Corporate Debtor had executed necessary loan documents on 12.05.2008.

6. Again the Sub Limit of Letters of Guarantee was enhanced to Rs.110 Crores vide Sanction dated 12.01.2010 and the said credit facilities were periodically renewed and the last sanction was as on 26.01.2014. The Corporate Debtor had promised to repay the amounts availed by it together with interest at various rates as applicable from time to time. Further, the amounts availed under Cash Credit is to meet Working Capital requirement and agreed that the Demand Promissory Notes executed by the Corporate Debtor in favour of the Financial Creditor and the agreement are to operate as a

continuing security for the ultimate balance with interest thereon that may be payable to the Financial Creditor upon the said Cash Credit account.

7. The Corporate Debtor also agreed that the securities held under the loans shall extend and also to be held as security for any other loans or liability of the Corporate Debtor to the Financial Creditor including ad-hoc facilities/temporary accommodation/exceeding the sanctioned limit granted at the request of the Corporate Debtor, until the entire dues to the Financial Creditor are repaid in full. The Corporate Debtor also in and by various letters and undertaking promised to indemnify the Financial Creditor against any loss. The Corporate Debtor also agreed that the Financial Creditor shall have the right to recall the entire loan amount together with interest and other charges or any part thereof and/or withdraw the concessions, if any, such as reduced rate of interest, subsidy, in case the loan amount has been used for any purpose other than for which it has been

sanctioned.

8. The Corporate Debtor executed an agreement of Hypothecation of Book Debts and also an undertaking that they will not create a further mortgage or lien or any charge over the hypothecated securities. The Corporate Debtor in evidence and security of availing the ILC executed an Agreement for Inland Letter or Credit (For Full Limit) in favour of the Financial Creditor.

9. The Corporate Debtor further executed an Agreement for Hypothecation of Goods received under Letter of Credit agreeing that the Corporate Debtor shall comply with all the terms and conditions, pre-requisites as prescribed and that may be prescribed by the Financial Creditor from time to time in the matter of issuing Letters of Credit with DA usance drawn thereunder. The Corporate Debtor also agreed and undertaken that it shall be liable to pay all amounts due to sellers/purchasers as and when they fell due and at no



time, the Corporate Debtor shall default in making payments of full amounts due from time to time and in the event of failure on its part of its own accord and/or on demand by the Financial Creditor, the Financial Creditor shall on account of the obligations entered into on behalf of the Corporate Debtor in terms of the said agreement without further reference or without any demur on any count either as notified by the Corporate Debtor or anybody on its behalf or anybody claiming under it, shall pay to the debt of Corporate Debtor's account amounts due as determined with interest, if any on account of non-payment by the Corporate Debtor in time or on due dates.

10. In addition, the Corporate Debtor executed a Consent Letter in favour of the Financial Creditor consenting for disclosure by the Financial Creditor of all or any such information and date relating to Corporate Debtor and the information or date relating to any credit facility availed of/to be availed by it and default, if any



committed by it in discharge of their such obligation.

11. After availing the loan facilities and executing various loan documents in favour of the Financial Creditor, the operation of loan account started to be highly irregular and asymmetrical from the year 2016. Since the Corporate Debtor had heavily defaulted in repayment of the dues to all the financial lenders, the Corporate Debtor had agreed to give an additional security and executed a Simple Mortgage dated 29.06.2016 on the property belonging to one M/s. Fossil Logistics Private Limited in favour of all financial lenders including the Financial Creditor.

12. It is stated that several Joint Lenders Meetings were held however, the Corporate Debtor did not come out with any concrete proposal for revival of the Company. The Bank Guarantees were also invoked within its validity period and the Financial Creditor had honoured the same and debited to the Cash Credit account of the Corporate

Debtor. The Financial Creditor has made all efforts to persuade the Corporate Debtor to regularize the loan accounts under various facilities availed by it and to repay the astronomical dues. The Financial Creditor had made several demands to the Corporate Debtor to repay the amount borrowed and the earnest efforts of the Financial Creditor went in vain. The Financial Creditor had been accommodating the Corporate Debtor in times of difficulty and to tide over the situation had been giving it helping hands by extending the time for repayment and also by sanctioning required facility to bail out from the distress situation. However, the Corporate Debtor did not keep its promises and failed to keep the account regular. Hence, the account was classified as Non-Performing Assets (NPA) on 30.06.2016. In spite of repeated reminders and requests, the Corporate Debtor did not take any steps to regularize the account both to the Financial Creditor as well as other financial lenders under arrangement.



13. Since the Corporate Debtor failed to honour their commitments and evading the repayment, the Financial Creditor was constrained to file the Original Application in OA No.88/2017 under Section 19 (1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (RDDB& FI Act) against the Corporate Debtor and others, for recovery of amounts before Debts Recovery Tribunal-I, Chennai. Besides that, the Financial Creditor also initiated proceedings under SARFAESI Act, 2002 and pursuing the same for recovery.

14. In the meantime, the DRT-I, Chennai passed Final Order in OA No. 88/2017 on 30.10.2018 granting the Financial Creditor a Recovery Certificate to recover the amounts from the Defendants therein. Copy of OA has been placed at pages 12 to 25 of the typed set filed with the Application.



15. A perusal of records shows that the Corporate Debtor did not choose to file any Counter Affidavit in the instant Application. Instead, it has filed a Memo/Submissions on 04.10.2019, wherein it is stated that the Corporate Debtor was enjoying banking facilities with five Banks which includes IDBI Bank, Indian Overseas Bank, Corporation Bank, Jammu & Kashmir Bank and State Bank of India under multiple banking arrangements for about Rs.455 Crores and the entire Working Capital (WC) Limits are currently overdue with the Bank. It is stated that except for IDBI Bank, all other banks are part of the consortium of banks led by State Bank of India who have funded the power project of C&O group under the name Coastal Energen Private Limited (Coastal Energen).

16. It is stated that the Corporate Debtor was performing multiple government contracts and stock and sale orders, on index linked and fixed price basis and had sufficient cash flow and good margins from those



contracts. On the basis of the margins, companies net worth, adequate supplier credit available in system, a certain sum of credit was advanced by the Corporate Debtor to Coastal Energen as loan in order to complete the power project on time to achieve Commercial Operations Date and since there was a 24-50 months delay by banks including the 7.65% share of Indian Overseas Bank disbursal of which was delayed by around 40 months, causing around revenue losses to the tune of around Rs.10,400 Crores.

17. It is stated that Coastal Energen being a group company, the Corporate Debtor has supported the project in times of need since there were inordinate delays in sanctioning their share of Term Loan for the project, which would have otherwise become Non-Performing Assets.

18. The Corporate Debtor states that the reasons for the current situation is due to extreme rupee depreciation

and International Coal Price Correction resulting in a huge operational loss of about Rs.220 Crores; the disputes with customs department with MMTC holding on to about Rs.62 Crores; restrictions on import of coal; reduction in sales volume and delays in recovery of receivables, inadequate working capital, outstanding to be recovered from Coastal Energen which went into Strategic Debt Restructuring and consequent classification of account as NPA leading to further stress in the cash flows.

19. It is stated that Joint Lender Forum of the Coastal Energen had decided to initiate Scheme for Sustainable Structuring of Stressed Assets Scheme as per RBI Guideline to make the project viable. As the conditions were not suitable for implementation of the said Scheme, the Lenders had decided to initiate Strategic Debt Restructuring (SDR) Process as prescribed by the RBI through Circular No. RBI /2014-15 / 627 DBR.BP.BC.No.101 /21.04.132 /2014-15 dated



08.06.2015 and the Joint Lenders had decided that as per the SDR Scheme the Lenders shall hold 51% or more equity shares and accordingly decided to convert part of the debt into equity so as to hold 51% stake in the project company. As per the Scheme, the State Bank of India acting on behalf of the lenders was required to identify an investor to acquire their 51% stake and take over the management. While the lenders lead by State Bank of India were in the process of identifying the potential investor to take over the management of the Corporate Debtor, the RBI through its circular dated 12.02.2018, have discontinued all the existing restructuring schemes including SDR Schemes.

20. It is stated that the Banks for re-running the process in which a couple of restructuring bids have been received and the Promoter of Coastal Energen has submitted a restructuring offer with Price Waterhouse Coopers acting as financial advisers and in the meantime, the Promoter has also submitted a One Time Settlement

offer for a sum of Rs.3000,00,00,000/-(Rupees Three Thousand Crores Only) and the Banks are in process of evaluating the same. While Coastal Energen was undergoing the SDR Process, the Financial Creditor viz., Indian Overseas Bank had filed the present Application under Section 7 of the I&B Code, 2016 against the Respondent herein, who is a coal trading arm of Coastal Energen.

21. It is stated that the market provides ample opportunities for the coal trading; however, the Corporate Debtor was not in a position to explore those options in view of the severe stress on cash flow experienced by the Corporate Debtor during the past few years and mainly due to lack of working capital. It is in discussion with State Bank of India, the lead banker for the consortium of banks for Coastal Energen to monitor the resolution process and arrive at the final resolution plan and complete the same at the earliest, and in such a case, the new Promoter can repay the dues with an OTS settlement



to all banks.

22. It is further stated that based on the advisory from the consortium of Banks, an initial payment of Rs. 150 Crores being the 5% of the total OTS amount was remitted before 15.06.2019 and the same has been fulfilled by the consortium. It is further submitted that on 24.06.2019, a meeting was conducted by the Consortium to consider the OTS proposal and was requested to issue a Letter of Intent (LOI) to initiate the settlement process.

23. It is further stated that State Bank of India, the lead lender of Coastal Energen has sought the support of all the lenders to initiate the resolution process proposition to go through a Swiss challenge route against the base bid received from promoters of Coastal Energen. It is further averred that the approval from the lenders is awaited as the Resolution Plan proposed by State Bank of India is expected to attract bids from the prospective



investors competing with the base bid on hand. It is stated that Coastal Energen being in an advanced stage towards implementation of a Resolution Plan, will be completely prejudiced if any legal action is being taken against it and the Corporate Debtor would affect the interests of the stake holders at large including the consortium of member banks.

24. It is stated that OTS is proposed to settle around Rs.175 Crores of the outstanding principal of all banks of around Rs.446 Crores as on date over the next four years whereby Rs.107 Crores by Coastal Energen once the resolution plan of Coastal Energens is implemented, steps would be taken to obtain commitment from Coastal Energen under the new investor to liquidate the amount of Rs.107 Crores due from Coastal Energen against the unsecured loan provided to it. Considering the surplus cash flow expected to accrue to Coastal Energen against full scale operations, the Coastal Energen would be able to clear the outstanding to the Corporate Debtor herein



over a four year period from the date of resolution plan is implemented. It is also stated that the Corporate Debtor also proposes to settle the bank dues through recoveries from Government of India's Mini Ratna MMTC and others by way of settlement by recovery from Debtors Rs.68 Crores. Therefore, the Corporate Debtor has urged to consider the proposal for OTS and to support the resolution process initiated by the lenders of Coastal Energen and not to initiate any legal proceedings that would jeopardise the resolution and revival process and potential of OTS, and hence has prayed to keep the present Application filed in IBA/624/2019 in abeyance until the completion of the resolution process and has been initiated by the lenders of Coastal Energen Private Limited.

25. We have carefully considered the rival submissions as well as the pleadings and the documents as filed by the Counsel for parties before this Tribunal. During the course of arguments, the Counsel for the Financial



Creditor has brought to the notice of this Authority the admission made by the Corporate Debtor for having availed the credit facilities from the Financial Creditor and other consortium of Bank, and also default in repayment of the said amount by the Corporate Debtor before the DRT-I Chennai.

26. As seen from the records, nowhere has the Corporate Debtor denied the existence of a 'debt' and its 'default'. Further, as consistently held by 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 I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP). The plea



of the Corporate Debtor that restructuring efforts are afoot with the consortium of bankers cannot be made a ground for delaying the initiation of CIR Process or to keep in abeyance the instant Application as sought for as this Tribunal is required in case of a 'financial debt' which is due and in the event of default as defined under I&B Code, 2016 is perforce required to admit the Application and the parties including the Corporate Debtor can have recourse during CIR process to submit a plan for restructuring if otherwise not disqualified.

27. Thus taking into consideration the facts and circumstances of the case as well as the position of law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

28. The Financial Creditor has proposed the name of **Mr. S. Rajagopal**, having Registration Number IBBI/IPA-002/N-00082/2017 - 2018/10223, as Interim



Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP, who is appointed as the IRP to 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 Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

29. As a consequence of the Application being admitted in terms of Section 7 of the I&B Code, 2016, 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 Corporate Debtor 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 Corporate Debtor 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 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;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.”



30. 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 such transactions, agreements or other arrangements as may be notified by the



Central Government in consultation with any financial sector regulator or any other authority.”

31. 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.”

32. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the I&B Code, 2016 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 IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)