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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL



ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.421/7/HDB/2018
NAME OF THE COMPANY	Surya Chakra Power Corporation Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Surya Chakra Power Corporation Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Soumya Roy	Advocate	souroy@gmail.com 983113543	
R. prashakar	Advocate	prashakar.rphela@gmail.com	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Srideep Rao	Advocate	Srideeprao@gmail.com 9177664185	
Neha Pandey	Advocate	9701528046	

ORDER

Case admitted and IRP appointed vide separate orders.


Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 421/7/HDB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

In the matter of
State Bank Of India
Stressed Assets Management Branch II
Jeevandeep Building,
Ist Floor 1, Middleton Street,
Police Station: Shakespeare Sarani,
Kolkata- 700 071.

... Petitioner/
Financial Creditor

VERSUS

Suryachakra power Corporation Limited
Suryachakra House, Plot No. 304-L-III
Road No. 78, Jubilee Hills,
Hyderabad,
Telangana- 500 033.

...Corporate Debtor/
Respondent

Date of order: 03.10.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Petitioner: Shri Sowmya Roy, Advocate

For the Respondent: Shri Srideep Rao along with Ms. Neha Pandey,
Advocates


Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on 09.08.2018,30.08.2018,20.09.2018

ORDER

1. This petition is filed by State Bank Of India which is the Financial Creditor, stating that Suryachakra Power Corporation Limited, the Corporate Debtor had defaulted in repaying a sum of Rs. 50,77,10,634.82/- inclusive of the principal loan amount of Rs. 17,08,16,034.10/- and unpaid interest of Rs.33,68,94,600.72 and hence this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The averments made in brief by the Petitioner/Financial Creditor are:
 - a. The Petitioner/ Financial Creditor is a statutory body constituted under the provisions of the State Bank of India Act, 1955. The Corporate Debtor had a long banking relation with the Petitioner/ Financial Creditor and the Corporate Debtor was enjoying line of credit from the bank for a long time i.e since 1999.
 - b. The Corporate Debtor Company has set up a power plant for supplying electricity exclusively to Andaman and Nicobar Administration as per terms and conditions set out in power purchasing agreement (PPA) dated 20.11.1997 and after some modifications the power plant started commercial production since 01.04.2003.
 - c. The Financial Creditor initially sanctioned a term loan of Rs. 13.69 crores and a foreign currency term loan of 15.05 crores in the year 1999 to the Corporate Debtor for setting

up the project. The Corporate Debtor also availed foreign currency term loan of Rs. 19.18 crores under Consortium Arrangement from SREI Infrastructure Finance Ltd for the same purpose.

- d. Subsequently the account was declared as NPA with effect from November 26, 2011 due to failure of compliance of payment terms as agreed in between the parties and in accordance with rules framed by Reserve Bank of India as amended from time to time. Further, the Corporate Debtor failed to observe other terms and conditions on which the Petitioner/ Financial Creditor granted loans. Despite directions from the Financial Creditor, the Corporate Debtor failed to comply with the payment schedule as agreed between the parties.
 - e. Thereafter the Petitioner/Financial Creditor issued Notices to the Corporate Debtor but the Corporate Debtor failed and neglected to regularize the said financial facilities and/or failed to repay the said dues or any part thereof to the Petitioner/ Financial Creditor.
3. The Corporate Debtor filed reply/objections:
- a. It is contended that the Financial Creditor diverted funds from the TRA and committed breach of agreed terms in TRA dated 21.06.2000 which was entered into between SBI, Industrial Finance Branch, Kolkata and the Corporate Debtor.
 - b. The Corporate debtor mainly contented that due to various reasons the project cost was escalated. There was also delay and default by electricity department of Andaman & Nicobar Islands Administration in payment of the dues owed by them. It is the case of the Corporate Debtor that overall operation of the plant got damaged due to Tusnami on 26.12.2004. Further, Government of India also delayed in giving approvals.
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- c. The Corporate Debtor further alleged that it suffered losses due to violation of the agreed terms of TRA by the Financial Creditor. Further Corporate Debtor brought out the contractual defaults to the notice of the Financial Creditor and also requested them to follow the waterfall mechanism as set out in the TRA but the Financial Creditor did not heed to the requests of the Corporate Debtor.
 - d. It is the case of Corporate Debtor that it is willing for a resolution plan that is agreeable to both the Corporate Debtor and the Financial Creditor for which the Corporate Debtor would need to continue as a going concern.
 - e. Further it is the case of Corporate Debtor that even though the value of the assets of the Corporate Debtor has significantly reduced, it believes that the Interim Resolution Process would help the Corporate Debtor Company to reconstruct and rehabilitate and to maximize its valuation.
4. The Petitioner / Financial Creditor filed rejoinder to the reply/objections pleaded by Corporate Debtor:
- a. The Financial Creditor denied most of the contentions made by the Corporate Debtor including that it diverted funds from the TRA or committed any breach of the terms as set out in the TRA dated June 21,2000.
 - b. The Financial Creditor further denied that Corporate Debtor was deprived of Rs. 30,00,00,000/- due to fault on the part of the Financial Creditor.
 - c. It is also the case of Financial Creditor that the Corporate Debtor did not place any contemporaneous material to show that the Financial creditor had violated any of the contractual defaults and made any appeals to follow the alleged waterfall mechanism as set out in the TRA.
 - d. The Financial Creditor further contended that it made its claim after considering the repayments made by the Corporate Debtor at the correct rate of interest and denied

the contention of Corporate Debtor that only Rs.16,20,00,000/- is payable to the Financial Creditor as against the claim made by Financial Creditor of Rs.50,77,10,634.82.

- e. Further the Financial Creditor denied that it initiated proceedings against the Corporate Debtor under SARFAESI Act in Kolkata, whereas it has initiated proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act 1993 and as such the Financial Creditor is entitled to initiate the present proceedings before this Tribunal.

5. I have head the Counsels for the Financial Creditor/Petitioner and the Corporate Debtor.
6. The Petitioner/Financial creditor filed this Petition under Section 7 of IBC, 2016 (herein after referred to as "Code") to trigger CIRP against the Corporate Debtor. In order to prove its claim the Financial Creditor/Petitioner has relied on Annexure-1 to Annexure-47. They are filed in six volumes.
7. The Financial Creditor established the debt due by Corporate Debtor through documentary evidence. Thus, it is not in dispute that Corporate Debtor availed various types of loans from Financial Creditor. The Corporate Debtor admitted default and alleged that default occurred due to happening of certain unforeseen events.
8. The Petitioner/Financial Creditor alleged sanction of loan to the Corporate Debtor such as Term Loan of Rs. 13.69 crores and Foreign Currency Term Loan of Rs. 15.05 crores in the year 1999 for establishing Power Plant in Andaman & Nicobar Islands. It is also the case of Financial Creditor that Corporate Debtor availed Foreign Currency Term Loan of Rs. 19.18 crores under Consortium Arrangement from SREI Capital Infrastructure Finance Limited. It is also the case of Financial Creditor that a sum of Rs. 4 crores was sanctioned by City

Bank, which was subsequently take over by the Financial Creditor/Petitioner. The Financial Creditor has established through various documents about sanction of loan to the Corporate Debtor. The Financial facility was secured by way of equitable mortgage of properties. The loan was also secured by Corporate Guarantee as well as personal guarantee against various securities of movable and immovable assets.

9. The Corporate Debtor also executed balance confirmation on 18.07.2017 and Corporate Debtor also executed revival letter dated 18.07.2017. Thus, Corporate Debtor acknowledged debt and account was subsequently declared as NPA wef 26.11.2011 following default.
10. On the other hand, the case of Corporate Debtor, default occurred due to various reasons and as a result project cost was escalated. There was delay for payment to the Corporate Debtor by the Electricity Department of Andaman & Nicobar Islands.
11. It is also the case of Corporate Debtor that there was damage to the plant due to Tsunami on 26.12.2004. It is also the case of Corporate Debtor that Govt. of India delayed in giving permission. So, these are the reasons which are beyond the control of Corporate Debtor which resulted in causing loss to the Corporate Debtor.
12. One of the contentions raised by the Corporate Debtor there was breach of terms of TRA. Secondly, the Financial Creditor already approached DRT, Kolkata in respect of loans. Proceedings before DRT is not a bar to initiate action under the Code. The question whether Financial Creditor/Petitioner is able to establish Financial debt due by the Corporate Debtor. Sanctioning loan and further committing default is not in dispute. The case of Corporate Debtor that default occurred due to happening of unforeseen events. In effect, the Corporate Debtor has admitted default. The Financial Creditor is no way responsible for happening of certain events which Corporate

Debtor claimed to have caused loss. Thus, there is no valid objection raised for admission of the Petition.

13. The Financial creditor has suggested that name of IRP who has given consent in FORM 2 and there is no disciplinary proceedings pending against present IRP. The Account of Corporate Debtor was treated as NPA and there are grounds to admit the Petition.
14. 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 notified by the Central Government in consultation with any financial sector regulator.
 - (d) That the order of moratorium shall have effect from 03.10.2018 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 Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- (f) That this Bench hereby appoints Mr. Anup Kumar Singh, having registration number IBBI/IPA-001/IP-P00153/2017-18/10322 residing at Trinity Towers, Suit No.3G 226/1, A.J.C.Bose Road, Kolkata- 700 020 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


3.10.16
RATAKONDA MURALI
Member (Judicial)

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