

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

CP (IB) No.306/10/HDB/2017
U/s 10 of IBC, 2016
R/W 7 of I&B (AAA) Rules, 2016 and
Rules 11 and 34 of NCLT Rules 2016

In the matter of

NSL Nagapatnam Power and Infratech Limited
NSL Icon, 4th Floor, Door No. 8-2-684/2/A,
Plot No. 1 to 4, Road No.12, Banjara Hills
Hyderabad - 500 034
Telangana

...Petitioner/
Corporate Debtor

Versus

PTC India Financial Services Limited
7th Floor, Telephone Exchange Building 8
Bhikaji C. Place, New Delhi-110066

...Financial Creditors

Date of order: 18.01.2018

Coram:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties / Counsel present

For the Petitioner:

Shri Narendar Naik & Shri Naresh
Kumar Sangam, Advocates

For the Financial Creditor: Mr.Mayank Sharma, Senior Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company petition bearing CP (IB) No. 306/10/HDB/2017(which is referred to as Petition) is filed by NSL Nagapatnam Power & Infratech Limited, (Petitioner / Corporate Debtor) under Section 10 of the Insolvency and



Bankruptcy Code, 2016, R/w Rule 7 of I & B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of NSL Nagapatnam Power & Infratech Limited (Corporate Debtor)

2. Brief facts, leading to filing of the present Company petition, are as under:-

- (a) PTC India Financial Services Limited (hereinafter referred to as Financial Creditor), has sanctioned a Bridge Loan vide its sanction letter dated 05.02.2014 for an amount of Rs.125,00,00,000/- (Rupees One Hundred and Twenty Five Crores only) for implementing 2 X 660 MW Tentulei Thermal Power Project in Odisha, which was amended from time to time and executed the agreement relating to the said Bridge Loan on 10.03.2014 and later on the said agreement was amended on 28.12.2015 rescheduling the repayment schedule. Financial Creditor has disbursed the said Bridge loan of Rs. 125 Crores on 12.03.2014. Prior to the sanction of Bridge Loan, Financial Creditor has also sanctioned long term loan of Rs. 150 Crores vide its letter dated 07.06.2013.
- (b) The consortium of lenders comprising of Rural Electrification Corporation Limited (REC), Power Finance Corporation Limited (PFC), Financial Creditor and Axis Bank Limited have sanctioned Long term debt of Rs.5,847.58 Crores during the period from June 2012 to Nov 2013 for implementation of the Project subject to compliance of several pre-disbursement conditions (including signing of Fuel Supply Agreement and Power Purchase Agreement).
- (c) The Long term debt of Rs. 5,847.58 Crores (which includes Financial Creditor sanctioned long term loan of Rs. 150 Crores) was not disbursed because of non-



signing of Fuel Supply Agreement (FSA) & Power Purchase Agreement (PPA) by the Applicant. The signing of FSA with Mahanadi Coalfields Limited, a subsidiary of Coal India Ltd. under Ministry of Coal and signing of PPA with State Power Discoms are dependent on government policy decisions, which are delayed due to changes in the power sector.

- (d) Accordingly, the Petitioner tried its level best to convince the consortium of long term lenders to provide time bound relaxation of pre-disbursement conditions of signing the FSA and PPA as they are beyond the control of the Petitioner and the lenders did not agree for the same, resulting the petitioner could not replay repay the Bridge loan in question. The Corporate Debtor also offered / suggested several offers in order to clear the outstanding amount. The Financial Creditor on 13.02.2017 has also sent a detailed reply stating that the decision on conversion is subject to successful completion of due diligence.

- (e) The Petitioner has also taken various steps within its powers to comply with the terms and conditions as envisaged by the Financial Creditors and ultimately when the Corporate Debtor was unable to pay the amount in question, a demand letter dated 26.10.2017 was issued, in which the amount due as on 01.11.2017 is Rs. 1,61,5802,384/- (including TDS amount of Rs. 3,65,80,240/- on the Interest due which is already shown under Operational Creditor as due to Government). Accordingly, the net amount due was Rs. 157,92,22,144/-

- (f) The Petitioner further have Operational Creditors to the tune of Rs.54,75,97,082/- of which an amount of Rs. 45,62,40,198/- is payable to 32 Trade Creditors and



Rs. 98,97,394/- is payable to 12 employees of the Applicant and Rs. 8,14,59,490/- is payable towards Statutory Dues consisting of Provident Fund, Professional Tax and TDS payable.

- (g) The Financial Creditor has issued a notice dated 25.04.2017 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the Applicant to discharge its liabilities within sixty (60) days of the date of the notice. As per the SARFAESI notice dated 25.04.2017 issued by the Financial Creditor, the outstanding amount payable to Financial Creditor stands at Rs.111,85,65,811/- (Rupees One Hundred and Eleven Crores Eighty Five Lakhs Sixty Five Thousand Eight Hundred and Eleven only) The Petitioner replied to the notice issued by Financial Creditor under Section 13(2) of SARFAESI. The Financial creditor has also sent their reply vide its letter dated 10.07.2017 to the reply letter of the petitioner dated 15.06.2017.

- (h) On 17.02.2017, the petitioner Applicant requested the Financial Creditor to initiate the sale of project to NTPC and offered to repay the loans to the Financial Creditors from the proceeds of the said sale and requested to consider the payments to employees and statutory liabilities before adjusting the proceeds against their loans. In furtherance to the said letter for sale of project, the Applicant once again sent a letter dated 21.06.2017 requesting the Financial Creditor to appoint land valuer for the purpose of sale of project to NTPC. The Financial Creditor sent its reply vide its letter dated 18.07.2017, inter alia stating that the sale of the project is the best option available to both parties.



- (i) The Corporate Debtor on 12.07.2017, has also offered a onetime settlement of dues to Financial Creditor, however the offer was refused by Financial Creditor and demanded immediate repayment of all the dues. Subsequently, the Financial Creditor vide its letter dated 28.07.2017 rejected the offer of the Petitioner.
- (j) It is stated that according to the Ministry of Power's Report of the Working Group on Power constituted by the Planning Commission for 11th and 12th plan, Coal was considered as India's major source of energy and was expected to remain the mainstay of future energy requirement and thereby super critical units were promoted aggressively. Considering the encouraging environment for setting up super critical Thermal Power Projects, this Project was conceived by the petitioner and it proceeded to acquire the land, obtain water allotment and obtained long term Coal linkage from the Ministry of Coal. The Government of Odisha offered incentives for setting up Coal based Thermal Power Projects in their state and extended full support in acquiring land for the Project, water allotment, conducive business environment etc. and entered into a MoU promising to provide all required support for the Project.
- (k) The Corporate Debtor has acquired the required private land of 763.88 acres through Nodal agency IDCO (Odisha Industrial Infrastructure Development Corporation) as per the Land Acquisition Act 1894 and other rules and procedures of the Govt. of Odisha (GoO), obtained all the approvals for water, fuel as well as environmental clearance from the Ministry of Environment & Forest (MoEF) along with consent for establishment (CFE) from the State Pollution Control Board of Odisha for establishing a 1320 MW thermal



power project. The total project cost was estimated at Rs. 7,797 Crores in year 2012 during the financial closure (FC) with a debt of Rs. 5,847 Crores funded by consortium of lenders led by REC and comprising other members like PFC, Financial Creditor and Axis Bank. The project cost was estimated considering the benefits of the Mega Power Projects (MPP) Policy based on which the Applicant considered exemption of customs duty, excise duty, and other taxes. Subsequently, due to change of the MPP policy vide Ministry of Power Memorandum dated 06.08.2012 and notifications of Ministry of Finance customs and central excise dated 10.09.2012, the project cost had to consider the taxes due to which the project cost increased and the revised cost is projected to be around Rs. 9,000 Crores with debt of Rs. 6,750 Crores and equity of Rs. 2,250 Crores. The promoters of the Applicant Company brought in Rs. 377 Crores and envisaged equity investments to meet the balance Rs. 1,873 Crores which was a common practice at that point of time in the thermal power sector.

- (I) During the middle of 12th plan period (2012-17), there was significant policy shift in favour of development of renewable energy projects, especially wind and solar whereby the target renewable energy capacity addition by year 2022 has been increased to 175 GW from 30 GW set in the beginning of 12th plan which was then formulated vide Central Electricity Authority's (CEA) draft National Electricity Plan for Generation December, 2016. The change in policy weighed heavily on the thermal power growth. While initially it was planned to add 63,000 MW of thermal power capacity during the period of 2017-2022, however in CEA's Draft National Electricity Plan released in Dec 2016, it is



projected that no additional coal based capacity is required during the years 2017-2022.

- (m) It is stated that there are very few projects which are getting added as compared to the total capacity requirement in the country. There is every likelihood that in the near future there is an important need for quickly adding thermal power capacity and therefore, it is essential for the Applicant to keep the project in a stage to take up construction as soon as the demand revives. As such, this project can get constructed in a short period of 4 years. The Corporate Debtor is in distressed financial situation and unable to repay the Bridge loan and other liabilities and the petitioner is looking at various options of bringing in equity investment for execution of the Project, or sale/transfer of Project assets to prospective buyer and has approached several entities in this regard.

- (n) It is further stated that the Project is highly advantageous project and considering its economic value, it deserves every opportunity for revival by any prospective buyer of the company as a going company. The Applicant is contemplating ways to arrange required funds to settle the outstanding dues of Financial Creditor and Operational creditors. There is also bright chance of attracting equity investment into the Applicant due to the increasing demand of thermal power which is natural due to the slowdown in the last 5 years and hence an opportunity may be given the Petitioner to find ways so that the project which is in the interest of the nation and also which creates employment should not fail.

- (o) The Petitioner has also given so many options to the financial creditors as under:-





- a. One time settlement by paying Rs. 72.15 Crores (being the balance of the principal amount after deducting the amount of Rs. 52.85 already paid by the Applicant to the Financial Creditor) within a period of one year.
 - b. One time settlement of payment of Bridge loan amount of Rs. 125 Crores within three years with a moratorium of one year and 8 equal instalments thereafter.
3. Heard Shri D. Narendar Naik & Naresh Kumar Sangam Learned Counsel for the Petitioner / Corporate Debtor and Shri Mayank Mishra and Shri Rajesh, learned Counsels for the Respondent.
4. The Learned Counsel for the Petitioner, while reiterating the pleadings made in the Petition and also documents relied upon, has further submitted that since the petitioner/Applicant could not repay the rule loans in question to the financial creditor, it has approached the financial creditor on 25.08.2016 and 05.10.2016 with request the convert the bridge loan into already sanction loan. There are various reasons as not to commence the project in question and those reasons are beyond the control of petitioner. Therefore, the petitioner is not in a position to honour the financial commitment to its financial operation creditors. The financial creditor has also initiated action under SARFAESI Act. The petitioner tries to offer various alternatives in order to settle the issue in question. The projects and considering its economic value, it deserve every opportunity for revival for any prospective buyer of the Company as a going concern. It is also trying/Contemplating ways to arrange require funds to settle the outstanding dues of financial creditors and

operational creditors. There is an also bright chance of attracting equity investments into the applicant into the company due to the increasing demand of thermal power which is natural due to slow down in the last five years.

Therefore, the learned counsel for the Petitioner/Corporate Debtor has committed a default as define under Sec.3 (12) of IBC and the Company has furnished required information with regard to the default in question and also proposed a resolution professional for consideration of the Tribunal for his appointment.



5. Shri Mayank Mishra, Learned Senior Counsel for the Corporate Debtor representing PTC India Financial Services Limited (Financial Creditor) submit that, though he has raised several contentions, he has admitted debt and default committed by the corporate debtor and it is a fit case to admit the case under the provisions of IBC. However, the learned counsel disputed the amount of default committed by the corporate with regard to Power Corporation India ltd (Financial Creditor) its loan and default. In fact he has also, filed a petition for initiating CIRP against the Corporate which is yet to be posted for admission. They have also filed a similar Company Petition which is yet to be listed.

Mr. Mayank Sharma, Ld Counsel's contention that his claim as stated in the present company petition may also be looked into by the Resolution Professional and by this Tribunal also.

6. It is not in dispute that the IBC promulgated for maximization of value of assets and it is the only institution available in order to resolve the insolvency issue of the Companies by initiating CIRP. It is not in dispute that while initiating CIRP, this Adjudicating Authority would not decide the quantum of amount of the respective claimants and the



respective claimants are entitled to make their claim before the IRP/RP at the appropriate time after issuing public notice. It is also to be pointed out here there is only one CIRP in respect of Company, which can be initiated either at the instant of operation theatre/Corporate Debtor/Financial Creditor. Once the process of CIRP is initiated, the IRP/RP will take care of all the claims of the respective parties under the Supervision of Committee of creditor and the Committee of operation creditor, in case there is no financial creditor in a Company under insolvency proceedings.

7. We have examined the instant Application/Petition along with all the supporting documents filed by the Corporate debt. We found this Application/Petition is filed along with r required information relating to the debt and default in question. The petition is complete in all respect including proposing name of Interim Resolution Professional. Therefore it is a fit case to admit the Petition/Application U/s.10 (4) of IBC 2016 and after satisfying that no disciplinary proceedings are pending against the proposed Insolvency Resolution Professional, we are inclined to appoint Insolvency Resolution Professional and grant moratorium under Insolvency and Bankruptcy Code, 2016.
8. By invoking the powers under Sections 10,12,13,14,15,16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, the Bench passes the following orders :-
 - (a) Hereby admitted the CP (IB) No.306/10/HDB/2017.
 - (b) We hereby appointed Shri Venkateswarlu Kari, #R/o Flat No.406, Everest Block (Block-C), Aditya Enclave, Beside Mytri Vanam, Opp: Saradhi Studios, 7-1-618, Ameerpet, Hyderabad - 500038 (Certificate No.

IBBI/IPA-001/IP-P00052/2017-2018/10126 as
Interim Resolution Professional by exercising powers
under section 16 of IBC, 2016;

(c) We hereby declare the following Moratorium by
prohibiting the following actions:-

- i) 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;
- ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii) 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);
- iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- v) Supply of essential goods or services to Corporate Debtor shall not be terminated or suspended and interrupted during the moratorium period.
- vi) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on www.ibbi.gov.in (designated website of





Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in their Official website.

- vii) We direct the Interim Resolution Professional to constitute a Committee of Creditors, after collation of all claims received against the Corporate Debtor and determination of financial position of Corporate Debtor, as per Section 21 of IBC. The First meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of the IBC.
- viii) Direct the personnel of its promoters or any other person associated with the management of NSL Nagapatnam Power and Infratech Limited to assist and cooperate with Interim Resolution Professional to provide access to documents and records of NSL Nagapatnam Power and Infratech Limited and management of the affairs of the Company.
- ix) We direct the Interim resolution professional to strictly adhere to all extant provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and shall report his actions promptly to this Tribunal by way of sworn affidavit (s).

x) Post the case on 12.02.2018.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

G. Anantha Subramanian
For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CP(1B) No. 306/10/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *12.1.2018*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *29.1.2018*