

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
HYDERABAD

CP (IB) No.125/10/HDB/2017

U/s 10 of the IBC, 2016 and Rule 7 of I&B
(Application to Adjudicating Authority) Rules, 2016

In the matter of:

M/s Neutrino Power Systems Private Limited
(Formerly M/s SLG Power Controls Private Limited)
Plot # 4/2, Road No. 2, IDA,
Nacharam, Hyderabad – 500 076.
Telangana

...Petitioner/Corporate Debtor

Versus

Bank of Bahrain & Kuwait
6-3-550, L.B. Bhawan, Ashganga,
Somajiguda, Hyderabad – 500 082
Telangana.

...Respondent/Financial Creditor

Order Pronounced on: 22.01.2018

CORAM:

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

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels Present:

For the Petitioner: Shri V. K. Sajith, Advocate along with
Shri Yashvardhan, Advocate

For the Respondent: Shri V.V.S.N. Raju, Advocate along with
Shri D.V.A.S. Ravi Prasad, Advocate

Per: Ravikumar Duraisamy, Member (Technical)



ORDER

1. The Present Company Petition is filed by Neutrino Power Systems Private Limited U/s 10 of IBC Code, 2016 R/w Rule 7 of 1 & B (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Company for an total Outstanding amount of Rs.7,34,98,028.59/- owed by the Petitioner Company to the Financial Creditor as on 30.06.2016.



M/s Neutrino Power System Private Limited, Corporate Debtor is a Private Limited Company incorporated on 27.08.2001. The Authorized Share Capital of the Company is Rs.2,50,00,000/- and Paid up Capital of the Company is Rs.1,32,76,750/- .

3. The Board of Directors of Neutrino Power Systems Private Limited in their Board Meeting held on 10.07.2017 resolved to authorize Mr. Mallikarjuna Rao Yelavarthi, Director of the Company to file application before the NCLT, Hyderabad Bench for initiation of CIRP under Section 10 of IBC, 2016 and to appoint interim resolution professional etc. As per the records submitted, the Corporate Debtor, had sundry debtors amounting to Rs.28,82,20,639.97 as on 30.06.2017 and operational creditors amounting to Rs.43,39,36,600/-. The Corporate Debtor had 3 (three) directors and 11 (eleven) shareholders as on 31.03.2016. Reserves and surplus of the Corporate Debtor as at 31.03.2017 was Rs.17,55,56,330 (negative) and as per the provisional balance sheet as at 30.06.2017, Rs.16,33,26,453 (negative).

4. The Respondent (Financial Creditor) has filed its reply on 16.10.2017 by stating the following:
- The present petition has been filed merely as a ploy to obtain a stay on the pending proceedings before the Hon'ble Debts Recovery Tribunal (DRT), Hyderabad initiated by the Respondent not only against the Petitioner but also against the Directors and Promoters of the Petitioner company who have stood as Personal Guarantors to the working capital credit facilities availed by the Petitioner.
 - The Petitioner approached this Respondent in the year March 2012 for availing working capital facilities. As per the request of the Petitioner, this Respondent agreed to sanction the working capital facilities and accordingly issued a sanction letter dated 09.03.2012
 - The facilities which were issued to the Petitioner were revised and reviewed subsequently vide sanction letters dated 16.09.2013 and 26.03.2015.



5. Below are the details of the facilities extended to the Petitioner as per the last sanction letter in March 2015:

Facility	Limit (in March 2015) (In INR)
Sales Bill Discounting	5,00,00,000
Letter of Credit	2,00,00,000
Total Limit	7,00,00,000

6. **Securities furnished by the Petitioner:**

As security towards availing of the above-mentioned credit facilities, the Petitioner has provided:

- Exclusive Charge on all existing and future current assets and movable fixed assets of the Petitioner; and

- b. Personal Guarantees of Mr. Ekambareswara Rao, Smt. M. Parvathi, Mr. G. Venkat Reddy, Mr. Y. Mallikarjun Rao and Mr. D. Sridhar.

7. **Terms and Conditions of sanction of the Credit Facilities:**

As per the sanction letters, a few key terms accepted by the Petitioner are as follows:

- a. The Borrower has to bank with Respondent exclusively (except for salaries / other statutory payments) and all the cash received and sale proceeds and any other credits should be routed only through the Respondent.
- b. The Petitioner shall convert then existing share application money of INR 7.75 million and unsecured loans from the promoters of INR 6.86 million to be converted into equity before 31.03.2013 and 31.03.2014 respectively.
- c. During the currency of the facilities, in case there are any over dues with the Respondent, the Petitioner shall not, without the consent of the Respondent, inter alia:
 - i. Undertake any major capital expenditure;
 - ii. Invest, lend or advance fund to or place deposits with any other concern

8. The Petitioner not only violated the terms specified above, but also failed to repay the credit facilities availed by it. The sales discounting facility remained overdue since 12.06.2015 and letter of credit facility remained due for payment since 9.07.2015 and consequently, due to continued non-payment, the account of the Petitioner was categorized as a Non-Performing Asset and the



Petitioner was declared as a willful defaulter in January 2016 as per the guidelines of Reserve Bank of India.

9. It is submitted that the present Petition may be disposed of based on the following grounds as the same is an abuse of process of law and is tainted due to concealment of material facts:

- a. The Petitioner has approached this Hon'ble Tribunal with unclean hands. The bill discounting facility extended by the Respondent to the Petitioner fell overdue because the bills raised by the Petitioner on Servomax remained unpaid after the due dates and the said bills were duly accepted by Servomax. Further, the Petitioner made investment of Rs.6,00,00,000/- (Rupees Six Crores) into Servomax and the same was done despite the fact that in the said year ended March 2014, the Petitioner incurred a loss of Rs.39,78,495/- (Rupees Thirty Nine Lakhs Seventy Eight Thousand Four Hundred Ninety Five Only). Thus, inspite of being a loss-making entity, the Petitioner had, without intimating or taking the prior consent of the Respondent, made an investment of Rs.6,00,00,000/- (Rupees Six Crores Only) in Servomax (which is reflected as "Non-Current Investment" in the Balance Sheet). The same continues to be reflected in the balance sheets filed by the Petitioner for the years ended 31.03.2014; 31.03.2015; 31.03.2016 and 31.03.2017. It was submitted that instead of using the credit facility given by the Respondent for working capital facilities, in the year 2014, the same was diverted by the Petitioner for other purposes through Servomax. The funds provided by this Respondent were siphoned off by diverting the same to Servomax. In the said email, it was admitted by the Petitioner that, as Servomax Working Capital Account was in the process of Debt restructuring and account is in hold on



operations the material procured on behalf of Servomax from the market to complete the orders given by Servomax and to supply to the end clients to protect the end user/clients/ and Protecting market credibility/share of Servomax was shown as an investment as on 31.03.2014 the same was cleared/squared by Servomax promoter Director during First Quarter of 2014-15.

Hence, in view of the explicit admission regarding siphoning of funds, the conduct of the Petitioner is questionable and the Petitioner has not approached this Tribunal with clean hands. The Respondent also prays the Hon'ble Tribunal to direct the Promoters of Servomax also who have siphoned off the funds lent to the Petitioner to honor and pay the Sale Bills discounted by the Respondent and accepted by Servomax.



- b. The Promoters of Petitioner/Petitioner failed to convert the unsecured loans into Equity as per the agreed sanction terms and conditions and Promoters have withdrawn the funds from the Petitioner to defraud the Respondent.
- c. The present Petition made by the Petitioner is defective and incomplete. Though the list of sundry debtors has been included by the Petitioner, it failed to include the acknowledgement letters from two of its five sundry debtors, i.e., Servomax and Serwel Electronics Private Limited with a malafide intent to absolve these two major Debtors and their Promoters of any liability despite they siphoning off the Respondents funds lent for working capital of the Petitioner. It is submitted that as of 30.06.2017, Servomax owed an amount of Rs.9,70,46,116.18

and Serwel Electronics Private Limited owed an amount of Rs.29,64,303.00

- d. As per the list of pending disputes of the Petitioner filed by it, it appears that criminal proceedings have been initiated by the Registrar of Companies which are currently pending before the Hon'ble VIII Additional Metropolitan Sessions Judge for Economic Offences Cases. However, the details of the allegations or nature of offences with which the Petitioner was charged have not been furnished in the Petition.



- e. It is submitted that this Respondent had initiated proceedings before the Hon'ble Debts Recovery Tribunal (DRT), Hyderabad (being O.A. No. 520 of 2016) against the Petitioner and the Directors/promoters of the company who have given personal guarantees towards repayment of the facilities. The matter is currently posted for hearing in Interim Application filed by the Respondent for attachment before judgment over properties held by the guarantors. The Petition before this Hon'ble Tribunal is filed by the Petitioner with an ulterior motive to stall the Respondent from enforcing its securities as the process of injunction petition(s) are at an advanced stage. The Respondent also issued notice under SARFEASI Act for recovery of dues.
- f. It is submitted that the M/s G S Madhava Rao & Co, Chartered Accountants reported vide their report dated 21.01.2016 that the funds were diverted by the Petitioner and they are unable to form an opinion regarding purchases and sales of the Petitioner due to transactions recorded but no physical payments are done

to Sellers and no amounts are claimed/received from sales made to M/s Servomax.

10. It is submitted that filing of the present Petition is nothing but a gross abuse of process of law and is against the principles of law. The Directors and Promoters of the Petitioner have given their personal guarantee to ensure repayment of the credit facilities availed by the Petitioner. This Respondent has initiated recovery proceedings against such Guarantors as well before the Hon'ble DRT. The present Petition has been filed merely as a measure to shield the directors/promoters from any adverse orders being passed against them by the Hon'ble DRT.



11. On 08.11.2017, a memo was filed on behalf of the Financial Creditor with regard to the Order of the Hon'ble Tribunal dated 20.10.2017, directing both the Petitioner and Respondent to file the papers pertaining to the DRT, Civil Court and Economic Offence Court.

12. As directed, the Respondent submitted the status of DRT and Civil Court matters as stated below:

S. No	Case No	Particulars	Parties	Status
1.	O.A.No.1622/2017 (Old O.A.No.520/2016) [I.A.Nos.3394/2016, 3395/2016 & 3396/2016 are filed by Respondent/Financial Creditor herein]	Hon'ble Debt Recovery Tribunal, Hyderabad	Bank of Bahrain & Kuwait B.S.C Vs M/s Neutrino Power Systems Pvt. Ltd. and 5 Others	Posted to 22.11.2017 for Hearing in I.A.Nos.3394/2016, 3395/2016 & 3396/2016
2.	O.S.No. 38/2016	Hon'ble Ind Senior Civil Judge, City Civil Courts, Hyderabad.	M. Ekambareswara Rao	Posted to 15.12.2017 for Trial. Plaintiff (Petitioner/Corporate Debtor

				herein) not ready for trial and the Hon'ble Court stated that no further time will be given for Trial).
3.	O.S.No. 39/2016	Hon'ble 11nd Senior Civil Judge, City Civil Courts, Hyderabad.	M/s Neutrino Power Systems Pvt. Ltd. and 5 Others Vs Bank of Bahrain & Kuwait B.S.C	Posted to 15.12.2017 for Trial. Plaintiff (Petitioner/Corporate Debtor herein) not ready for trial and the Hon'ble Court stated that no further time will be given for Trial).

13. On 08.11.2017, the Corporate Debtor has filed a memo regarding details of Disputes of Corporate Debtor Before Courts as stated below:

S. No.	CASE No.	Court	Parties	Stage	Date
1	O.A. 520 of 2016	Debt Recovery Tribunal Hyderabad (DRT)	Bank of Bahrain and Kuwait V/s M/s. Neutrino And Ors	Trial	
2	O.S. No. 39 of 2016	1 st Senior Civil Judge City Civil Court Hyderabad	M/s. Neutrino And Ors V/s Willful Defaulters Committee & Ors	Trial	15.12.2017
3	C.C No. 184 of 2017	VIII AmsjSpl. Judge for EO cases	Registrar of Companies V/s M/s. Neutrino Power System Pvt Ltd	Appearance	17.11.2017

14. The case was first listed on 28.07.2017 and the Adjudicating Authority observed that the objections raised by Registry have not complied with by the Petitioner/Corporate Debtor and granted

seven days time to comply with the same and posted the case on 04.08.2017. On 04.08.2017, heard Shri Yashvardhan G.P, the Ld. Counsel for the Petitioner and he submitted that he has complied with all the objections raised by the registry and on the request of the Counsel the case was posted to 07.08.2017.

15. During the hearing held on 07.08.2017, heard Shri V.K. Sajith the Ld. Counsel for the Petitioner and he filed necessary documents in the Registry. The case was posted on 09.08.2017.



During the hearing held on 09.08.2017, the Ld. Counsel for the Petitioner sought two days time. The Bench permitted the Petitioner for two days to comply with. The case was posted on 11.08.2017 and again posted to 14.08.2017 as none appeared for the Respondent on 11.08.2017. The case was further posted to 21.08.2017.

17. During the hearing held on 21.08.2017, the Ld. Counsel for the Respondent submitted that he was filing his vakalath and reply today and requested short time. The case was posted to 01.09.2017.
18. During the hearing held on 01.09.2017, it was recorded that "admittedly the Petition was incomplete even though it was pointed out by the Bench on the earlier occasions. However, the Ld. Counsel for the Petitioner has not complied with and has not filed comprehensive petition incorporating all the details as required under the Section. Given one more opportunity for incorporating the objections raised by the Bench. Returned the

bundle (3 sets) for complying with the objections” and the case was posted on 16.10.2017.

19. During the hearing held on 16.10.2017, the Ld. Counsel for the Petitioner submits that he is filing his reply on the question of admission. The case was posted for admission/hearing on 20.10.2017.

20. During the hearing held on 20.10.2017, after hearing the case at length, Bench directed both the parties to file copies of the petitions filed in DRT, City Civil Court and Economic Offence Court as mentioned at Page No.48 of the CP and submit the status/stage of the case in various courts. The case was posted on 08.11.2017.

21. The Ld. Counsel for the Respondent submits that in pursuant to the directions given by the Bench, he complied with all the objections raised by the Registry and the copies also been served to the others. The case was posted on 13.11.2017, and again on request of the Counsels the case was posted to 23.11.2017.

22. During the hearing held on 23.11.2017, Bench directed both the Counsels to furnish required information by next date of hearing. The case was posted to 29.11.2017 and on request of Counsels, posted to 05.12.2017 and again to 19.12.2017.

23. On 19.12.2017, the Corporate Debtor has filed a memo regarding the Resolution plan requesting its Operational Creditors to convert its debt into equity and few of its Operational Creditors



have evinced interest in converting the debt owed to them by the Operational Creditors agreeing in principle to the proposal of the Corporate Debtor for conversion of debt into equity.

24. Serwel Electronics Private Limited submitted a letter dated 13.12.2017 addressed to Neutrino Power Systems Private Limited, stating that they confirm the debt of Rs.14,95,06,844/- (Rupees Fourteen Crores Ninety Five Lakhs Six Thousand Eight Hundred and Forty Four only) and accepting and to enter into an agreement as per mutually agreed terms and conditions. Giving their consent the same into equity, consent to enter into as per resolution passed by board of Directors.

25. Altair Electronics Limited submitted a letter dated 13.12.2017 addressed to Neutrino Power Systems Private Limited stating that:

- a. Your Company is in need of some time to pay our dues. In this respect as per your recent letter dated 10.12.2017, we Altair Electronics Limited in principle confirm that, your Company owes to us Rs.10,56,67,496.31/-.
- b. We in principle agree to support you by way of converting our due amounts mentioned above as equity as per the calculations to be discussed later date. Please note that we have to enter a separate share purchase agreement to this effect and the company has right to sell the shares allotted to us in lieu of our debit balances been issued based on your repeated requests and your company financial position and understood your inability to pay us our due amounts.
- c. We have reserved all the rights to accept and reject at any time.



26. Akhila Electronic Products Private Limited submitted a letter to Neutrino Power Systems Pvt Ltd stating proposal for conversion of Debt into equity owed by Neutrino Power Systems Pvt Ltd. As discussed and agreed the conversion of our Credit amount into equity. An amount of Rs.2,15,28,847/- agreed to convert to equity.
27. Though the respondent/financial creditors viz., Bank of Bahrain and Kuwait alleged that the present petition is defective and incomplete, siphoning of funds by the corporate debtor, violated the terms specified in the sanction of credit facilities, failed to repay the credit facilities availed by the corporate debtor etc., failed to convert unsecured loans into equity, pending disputes, criminal proceedings have been initiated by ROC, initiated proceedings before Hon'ble DRT, Hyderabad, Notice issued under SARFASI Act and on the above these grounds also the present company petition be disposed of.
28. Upon perusal of Section 10 of the IBC code, we are satisfied that the corporate debtor itself in the Form stated clearly that Rs.7,34,98,028.59 paise is the amount of default to Bank of Bahrain and Kuwait towards various facilities availed from the Financial Creditor. Upon perusal of the petition, records submitted by the Corporate Debtor, we are satisfied that Section 10(1), (2) and (3) have been complied with by the Corporate Debtor, The Corporate Debtor is also recommended the name of the IRP.
29. Further in the Petition, the list of creditors, the list of operational creditors of the Corporate Debtor is also filed.



30. The financial creditor is also issued a statutory notice dated 27.09.2016 under Section 433 and 434 of the Companies Act, 1956 dated 27.09.2016 calling upon the corporate debtor to pay an amount of Rs.7,34,98,028.59 paise within a period of 21 days from the date of receipt of notice otherwise the Bank shall be constrained to take all remedies available to the Bank including remedy available under Section 433 and 434 of the Companies Act, 1956 etc. The submissions of the financial creditor that the Corporate Debtor has siphoned of facilities availed from the financial creditor through Servomax is of not much relevance at the stage of admission of the Company Petition filed under Section 10 of the IBC Code, 2016. Further it is also observed that the alleged siphoning of funds by the Corporate Debtor took place in the year 2014 and the same continues to be reflected in the Balance Sheet for the years ended 31.03.2014, 31.03.2015 and 31.03.2016.



31. At the stage of admissions, the adjudicating authority has to ensure/satisfy that the corporate debtor has primarily complied with Section 10 of IBC Code.
32. Upon perusal of the Petition and the documents submitted in support by the corporate debtor we are satisfied that the Petition is filed in accordance with Section 10 of IBC and debt and default is also admitted by the Corporate Debtor. Therefore, the Adjudicating Authority is of the considered view to accept the Company Petition filed und Section10 for initiation of CIRP. The Financial Creditor is at liberty to take up all the issues raised in their reply with the IRP/RP.
33. During the final hearing held on 19.12.2017, the Financial Creditor has also consented for initiation of CIRP proceedings of the

Corporate Debtor. The Corporate Debtor has proposed Ms. CS. Sandhya Kothalapuram as Interim Resolution Professional and she given her written consent in Form No.2 dated 18.07.2017.

34. In view of the foregoing discussions, the Company Petition filed under section 10 of the IBC by the Corporate Debtor is admitted and the Interim Resolution Professional is also appointed, and moratorium also imposed as per the details given below:

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 Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority passes the following order:-



- i) Appointed CS. Sandhya Kothalapuram, (Registration No, IBBI/IPA-002/IP-N00186/2017-18/10503) Plot No.18, Chandigarh Colony, Tirumalgiri, Secunderabad – 500 015 to act as Interim Resolution Professional with a direction to initiate appropriate action contemplated in CIRP in accordance with extant provisions of IBC, 2016 and other relevant rules.
- ii) We hereby declare the following Moratorium U/s 14(1) of IBC in respect of the following:
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of Corporate Debtor.
- e) This order of moratorium shall have effect from the date of communication of this order till completion of CIRP or till passing an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- f) Direct to cause a public announcement of the initiation of CIRP 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 IBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in 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 its official website.



g) The IRP is directed to follow all extant Code of IBC and all the Rules and Regulations framed by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following Principles of Natural Justice;

h) Both the Petitioner and Respondent are directed to extend full co-operation to the IRP to discharge his statutory functions;

i) Direct the personnel of Neutrino Power Systems Private Limited, its promoters or any other person associated with the management of Neutrino Power Systems Private Limited, to assist and co-operate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.

iii) Post the case 28.02.2018 with a direction to the IRP to apprise the Tribunal, about steps being taken by him from time to time, in instant CIRP, by way of filing an affidavit.

iv) The IRP is also directed to schedule meeting(s) of concerned parties, verification etc., in such a way that CIRP shall be completed well before the 180 days prescribed under the Code.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP-18/NO/25/10/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT 22/11/2018
प्रति तैयार किया गया तारीख
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