

**In the National Company Law Tribunal,
Kolkata Bench,
Kolkata**

**Coram : Shri V. P. Singh
Hon'ble Member (J)
&
Shri Jinan K.R.
Hon'ble Member (J)**

CP (IB) No.507/KB/2017

In the matter of:

Section 7 of The Insolvency & Bankruptcy Code, 2016,
read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

SREI Infrastructure Finance Limited, having its
Registered Office at Vishwakarma, 86C, Topsia
Road (South), Kolkata- 700 046;

...Financial Creditor/Applicant

-Versus-

Confident Solar Private Ltd.

..Corporate Debtor/Respondent

Counsels appeared :

For the Petitioner: 1. Ms.Neha Somani, Pr.CS,

Delivered on 5th January,2018

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Order**Per: Shri V.P Singh, Member (J):**

The Applicant / Financial Creditor, SREI Infrastructure Finance Limited has filed an application under Sec.7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Confident Solar Private Ltd, a debtor in prescribed Form-1.

2. The brief facts of the case, as stated in the application, are that a total financial assistance of Rs.650 crores was granted by SREI Infrastructure Ltd to Confident Solar Private Limited ('CSPL') vide sanction letter dated 21st December 2013, that was further divided into three different loan agreements, namely, SRE 410 for Rs. 2,90,00,00,000/- SRE 455 for Rs.1,35,00,00,000/-; and SRE 469 for Rs.2,25,00,00,000/-(Copy of the said sanction letter dated 21st December,2013 is attached as '**Annexure A-IV**').

The first two loans ,i.e Loan I of Rs.2,90,00,00,000/- and Loan II of Rs.1,35,00,00,000/- had been repaid fully by CSPL.A part of Loan III which amounted to rs.2,25,00,00,000/-is due to the extent of Rs.17,69,37,845/- on account of interest.(Copy of Agreement of Loan III, dated 5th September 2014, for Rs.225 crores loan, is attached as '**Annexure A-V**')

Copy of Demand Promissory Note Amounting to Rs.2,25,00,00,000/- (Rupees Two Hundred and Twenty Five Crores only), dated 5th September 2014 is attached as '**Annexure A-VI.**'

3. The applicant has stated that he has granted a loan to Confident solar Private Limited being UIN NO U51909WB2010PTC155187 and the chargeable interest @12% p.a fixed on the monthly Compoundable basis. Upon such default, the applicant's right to proceed against the corporate debtor for repayment of the loans disbursed to them.

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4. As per '**Annexure A-IX**' annexed with the petition Rs.17,69,37,845 is the total outstanding due/default on the account as on 30/06/2017.
5. The petitioner annexed to the petition as '**Annexure A-VII**' copies of the statement of accounts certified according to Bankers Books of Evidence Act, 1891. The petitioner has also filed copies of balance confirmation letter issued about the loans granted to Confident Solar Private Limited.
6. The petitioner in his application at Part V page 6 has described the particulars of security documents for the loan granted to Confident Solar Private Limited, who is the corporate debtor.
7. The petitioner has also proposed the name of Mr Rakesh Kumar Agarwal, Registration No.IBBI/IPA/001/IP-P00443/2017-18/10786 of 20, N.S Road, Room No.15, Block-A, Kolkata - 700 001 email rakesh202@hotmail.com. To act as interim resolution professional whose details are mentioned above. The petition has been verified by Mr Souren Mukhopadhyay, Senior Vice-President, SREI Infrastructure Finance Limited. Wherein the certified copy of the Board Resolution and the Resolution authorising Mr Souren Mukhopadhyay to apply on behalf of the company is annexed herewith and marked as '**Annexure A-I**'.
8. The corporate debtor has not filed any reply/objection.
9. The petitioner's statement regarding due amount is fully supported by statement of account which is certified as per Banker's Books of Evidence Act, submitted along with the petition **Annexure A-VII**.
10. It also appears from the record that total outstanding due on the corporate debtor on 30/06/2017 was Rs.17,69,37,845/-. By record it is also clear that corporate debtor has committed default in making payment on 30/06/2017 and after that regularly committing default in making payment till date. So, the financial creditor has claimed total outstanding principal amount, and total amount comes to Rs17,69,37,845/- which the corporate debtor failed to pay. Therefore, the financial creditor has applied under Sec.7 of the Code for initiation a corporate resolution process. It is here important to point out that in case of

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Innoventive Industries Ltd. vs ICICI Bank & Anr. the Hon'ble NCLAT has laid down that. “

.....for initiation of corporate resolution process by financial creditor under sub Sec.(4) of Sec.7 of Insolvency and Bankruptcy Code, 2016 the adjudicating authority on receipt of the application under sub Sec. (2) is required to ascertain existence of the default from the records of information utility or on the basis of other evidence furnished, the financial creditor under sub-section (3), under sub-section (5) of Sec.7 adjudicating authority is required to satisfy where a default has occurred, whether an application is complete and whether any disciplinary proceeding against the proposed Insolvency Resolution Process. Once it is satisfied it is required to admit the case..... “

11. In this case, the financial creditor has fully proved that corporate debtor has committed default in making payment of Rs.17,69,37,845/- and the above information is also proved by the bank account statement filed by the petitioner.

12. The Financial creditor has also proposed the name of Mr.Rakesh Kumar Agarwal, Registration No.IBBI/IPA/001/IP-P00443/2017-18?10786 of 20, N.S Road, Room No.15, Block-A, Kolkata - 700 001, to act as interim resolution professional whose details are mentioned above. As per record no disciplinary proceeding is pending against him. Therefore, he also deserves to be appointed as Interim Resolution Professional.

13. Therefore the petition filed by, SREI Infrastructure Finance Limited applicant herein deserves to be admitted.

ORDER

The petition filed by the financial creditor under Sec.7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement by Sec.13 and 15 of the IBC, 2016.

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The moratorium is declared for the purposes referred to in Sec.14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Sec.15 Insolvency & Bankruptcy Code, 2016 shall be made immediately.

Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits 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 Securitization 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 possession of the corporate debtor.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.

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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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.


Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

Mr. Rakesh Kumar Agarwal, Registration No.IBBI/IPA/001/IP-P00443/2017-18?10786 of 20, N.S Road, Room No.15, Block-A, Kolkata - 700 001, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.


The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Certified copy of the order may immediately be issued to the Financial Creditor, Corporate Debtor and IRP.

List the matter on 17th January 2018 for submission of progress report by IRP.



(Jinan, K.R.)
Member (J)


11/1/18

(V. P. Singh)
Member (J)

Signed on this, the 5th day of January, 2018