

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P (IB) No. 21/BB/2017

IN THE MATTER OF COMPANIES ACT, 2013

AND

**IN THE MATTER OF SECTION 10 OF
INSOLVENCY & BANKRUPTCY CODE**

**READ WITH SECTION UNDER SUB-RULE (1) OF RULE 7 OF THE
INSOLVENCY & BANKRUPTCY CODE**

(APPLICATION TO ADJUDICATING AUTHORITY) RULES 2016

AND

IN THE MATTER OF AEGAN BATTERIES LIMITED

Order delivered on **dated 18th August 2017**

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

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**M/s Aegan Batteries Limited,
No. 715, 10th A Main Road,
4th Block, Jayanagar,
Bengaluru-560011 -**

APPLICANT

For the Petitioner (s) : Mr. S. Peer Mohamed, Advocate – for Petitioner

Mr. Rajesh S, Advocate – for Secured Creditor

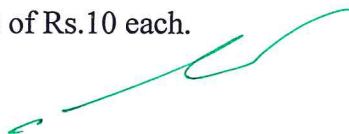
Per: Hon'ble Shri Ratakonda Murali, Member (Judicial) - Author

ORDER

This application is filed under Section 10 of the Insolvency & Bankruptcy code by which the Applicant/Corporate debtor is initiating Insolvency Resolution process. The Applicant being the Corporate Debtor filed **Form 6** dated 24th April 2017 as required under sub-rule (1) of rule 7 of the Insolvency & Bankruptcy Code (Application to Adjudicating authority) Rules 2016 and numbered as C.P (I.B) No. 21/2017. The Name of the Applicant/Corporate Debtor Company is **AEGAN BATTERIES LIMITED**. The Applicant/Corporate debtor has given the Objects of the Company.

The Registered Office of the Applicant/Corporate Debtor Company is situated at No.715, 10th A Main Road, 4th Block, Jayanagar, Bengaluru -560011.

The details of the Directors are Mr. T. Arun Kumar, Mr. T. Raj Kumar and Mrs. R.Chitra. The Applicant/Corporate debtor company was incorporated on 22nd October 2010. The share capital of the company is Rs.28,00,00,000/- divided into 2,80,00,000 Equity shares of Rs.10/- each and paid up share capital is Rs.28,00,00,000/- divided into 2,80,00,000 Equity shares of Rs.10 each.

It is the case of Applicant/Corporate Debtor Company that it has committed default in repaying the loans sanctioned by State Bank of India, Canbank Factors Ltd., IDBI Bank and State Bank of Travancore.

The Applicant/Corporate debtor relied on:-

- (1) Notice issued under section 13(2) of SARFAESI Act, 2002 dated 27th September 2016.
- (2) Winding up Notice dated 17th March 2017 and
- (3) DRT Notice dated 10th April 2017 from State Bank of Travancore. The amount of default is around Rs. 89,00,00,000/-.

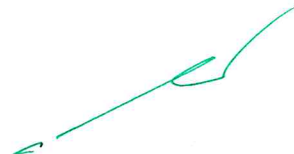
The Applicant/Corporate debtor relied on Annexure-1(a) dated 17th March 2017 Winding up Notice issued by Canbank Factors Ltd to the Applicant/Corporate Debtor.

The Applicant/Corporate debtor further relied on Annexure-1 (b) U/s 13(2) of SARFAESI Act, 2002 issued by State Bank of India, Erode showing the total amount due to the bank was Rs.68,84,18,259/-. This notice was issued by the State Bank of India, Erode to the Applicant/Corporate debtor. The Applicant/Corporate debtor further relied on written communication given by Interim Resolution Professional marked as Annexure III by Shri S. Muthu Raju, Insolvency Resolution Professional having Registration No. **IBBI/IPA-002/IP-N00009/2016-2017/10013**, who gave consent for appointment as Interim Resolution Professional (IRP) in this case. The Applicant/Corporate Debtor has relied upon ledger account for the period from 1st April 2015 to 31st March 2016 with State Bank of India, Commercial Branch, is order as Annexed IV (A) - term loan. The closing balance under this scheme was Rs.27,04,81,744/- Applicant/Corporate debtor also relied on bank statement of State Bank of Travancore Term loan and outstanding balance was Rs. 1,27,12,888/- shown as Annexure IV-B. The Applicant / Corporate Debtor relied on Account sheet of State Bank of India, Cash Credit Account and balance shown as Annexure-IV. The Applicant/Corporate Debtor has filed several documents shown as **Annexure V to XI** in support of the contention that it had committed default in repaying loan amount availed from State Bank of India and State Bank of Travancore.

The Applicant/Corporate Debtor relied on resolution passed by the board of directors appointing the counsel to appear on behalf of Applicant/Corporate debtor.

The Financial Creditor i.e. State Bank of India, filed its reply to the application through its counsel. The averments in the reply that bank had sanctioned credit facilities to the Applicant/Corporate debtor on 9th September 2011. Subsequently State Bank of Travancore merged with State Bank of India. It is further stated that, Outstanding Balance to the Bank by the Applicant/Corporate debtor was Rs.72.40 crores and there was also security of the lands of the Directors of the Applicant/Corporate debtor for the loan advanced Mortgage was created by the directors individually for their properties. It is further stated value of the mortgage properties was around Rs.52.35 cores. It is further averred in the reply that Applicant/Corporate debtor never approached the bank for any resolution plan. Therefore this Petition is not maintainable under Section 10 of I&B code. It is further stated when Applicant Company have properties then it cannot be treated as insolvent. It is further alleged the Bank had initiated the enforcement of security interest under SARFAESI Act, 2002 for recovery of dues. It is averred the present application was field to avoid initiating proceedings under SARFAESI Act. Thus, Bank has raised objection for initiating Insolvency Resolution process by Applicant/Corporate debtor under Section 10 of I&B Code. The State Bank of India urged the Tribunal to reject the application. The counsel for Applicant/Corporate debtor filed counter reply stating that the Applicant/Corporate debtor has a right to proceed under Section 10 of the I&B code and that the Financial Creditor cannot object the Applicant/Corporate debtor. It is further stated even if proceedings under SARFAESI Act, 2002 was initiated it will not be a bar for this Tribunal to proceed under the provisions of I&B code.

The learned counsel appearing for Applicant/Corporate debtor contended that Section 6 of I&B code provides for initiation of Insolvency Resolution process by Applicant/Corporate debtor whenever it commits default. The Counsel would contend the Applicant/Corporate debtor had openly stated that, it committed default in repaying the loan amount to the State Bank of India (SBI) and State Bank of Travancore and the Applicant/Corporate debtor has complied with all the relevant provisions of the Code. Therefore, Application is to be admitted and Insolvency Resolution Professional to be appointed.



Section 6 of I & B Code herein after referred to as Code provides the persons who may initiate Corporate Insolvency Resolution Process, it reads as follows:-

“Where any corporate debtor commit a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter”

Section 6 of I & B Code provides that, the Corporate Debtor can initiate Corporate Insolvency Resolution Process. Section 10 deals with initiation of Corporate Insolvency Resolution Process by Corporate Applicant. The question whether Applicant/Petitioner satisfied the conditions laid down under Section 10 to initiate Corporate Insolvency Resolution Process. It is an undisputed fact that, Applicant Company has availed the loan from the respective Banks. The debt was not repaid, notices were issued to the Applicant to repay the loan. Admittedly loans are outstanding. Therefore, Applicant Debtor had committed default. Section 3(12) of the code defines default as follows:-

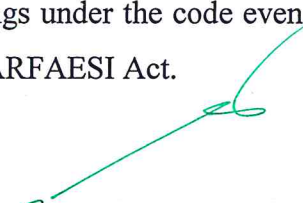

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be”

So the requisite conditions for an initiation of Corporate Insolvency Resolution Process by Corporate Debtor is satisfied.

The objections raised by State Bank of India that Applicant Company is solvent and that bank has initiated proceedings under SARFAESI Act. Therefore, in view of this reason, the contention of the Counsel for the Bank is that the present Application cannot be maintained.

The Secured Creditors is free to participate in the meeting of creditors or where he does not forfeit his right to enforce security he can apply the procedure as enumerated in Section 110 of Insolvency & Bankruptcy Code 2016.

On the other hand, the Counsel for Applicant Company contends that, there is no bar for the Applicant Corporate to initiate proceedings under the code even after any faction is initiated against the Company under SARFAESI Act.



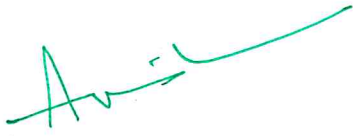
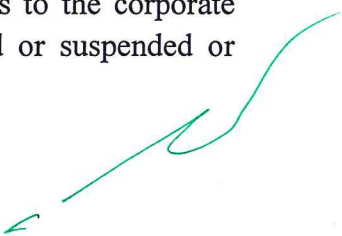
The proceedings under SARFAESI Act if any will remain pending during moratorium period.

It is true if Application is admitted under section 10 of the code then Insolvency Resolution Professional to be appointed and order of moratorium to be passed under section 14 of the code. Section 14 of the code empowers the Adjudicating Authority to pass an order of moratorium prohibiting continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, Arbitration panel or other authority.

Therefore, during moratorium period the Bank cannot proceed against Applicant Company by virtue of provisions of section 14 of the code. Therefore, the objections raised by the bank cannot be sustained.

The Applicant Company named Insolvency Resolution Professional to be appointed if Petition is admitted. The details of Insolvency Resolution Professional are given in **Annexure-III** of the Application who has given his confirmation in writing for which no tenable objections raised by the State Bank of India. Therefore, Petition is to be admitted.

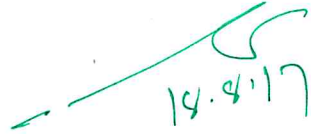
THIS TRIBUNAL DO FURTHER ORDER

- i. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - ii. 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.
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- iii. That 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.
- iv. That the order of moratorium shall have effect from 18th August 2017 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.
- v. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the code.
- vi. That this bench hereby appoints, **Mr. S. Muthuraju, 35, 2nd Floor, North Masi Street, Madurai-625001 Registration No. IBBI/IPA-002/IP-N00009/2017/10013** as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016 immediately.
- vii. State Bank of India being Secured Creditors having outstanding of Rs 72.40 crores as on 28.06.2017, has certain rights and privileges under Section 110 of Insolvency & Bankruptcy Code 2016 is given liberty to approach this Tribunal in the above matter for any direction that may be necessary.

Accordingly, this Petition is admitted.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL