

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.P (IB) No. 20/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 INDUSTRIES PRIVATE LIMITED**

Order delivered on **dated 18<sup>th</sup> August 2017**

**Coram:** Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**M/s Aegan Industries Private Limited,  
No. 715, 10<sup>th</sup> A Main Road,  
4<sup>th</sup> Block, Jayanagar,  
Bengaluru-560011 -**

**PETITIONER**

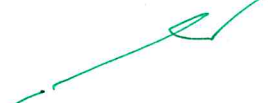
For the Petitioner (s) : Mr. S. Peer Mohamed, Advocate – for Petitioner  
Mr. Rajesh S, Advocate – for Secured Creditor

**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. Applicant being corporate debtor filed **Form 6** dated 18th 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. 20/2017. Applicant/Corporate debtor has given the objects of the company and its registered office. The name of the Applicant/Corporate debtor company is **Aegan Industries Private Limited** and the registered office of the Applicant/Corporate debtor company is situated at No.715, 10th A Main Road, 4<sup>th</sup>Block Jayanagar Bengaluru -560011.

The details of the Directors are Mr. T. Arun Kumar and Mrs. A. Bhadra Devi. The Applicant/Corporate debtor company was incorporated on 30th December 2008. The share capital of the company is Rs.40,00,00,000/- divided

into 4,00,00,000 Equity shares of Rs.10/- each and paid up share capital is Rs. 39,80,00,000 divided into 3,98,00,000 Equity shares of Rs.10 each.

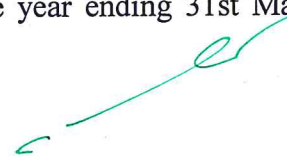
It is the case of Applicant/Corporate Debtor Company that it has committed default in repaying the loans sanctioned by State Bank of India and IDBI Bank.

The Applicant/Corporate debtor relied on:-

- (1) Notice issued under section 13(2) of SARFAESI Act, 2002 dated 27th March 2017.
- (2) Notice for Recall of the Advance Letter dated 23rd February 2017 and
- (3) Notice Recalling loans dated 15th March 2017. The amount of default is around Rs.95,00,00,000/-.

Applicant/Corporate debtor relied on Annexure (1)(a) dated 15th March 2017 which is Notice Recalling Loans issued by IDBI Bank to the Applicant/Corporate debtor under Section 13(2) of SARFAESI Act 2002

Applicant/Corporate debtor further relied on Annexure (1)(a) which is Notice Recalling Loan issued by IDBI Bank showing the total amount due to the bank was Rs.37,77,22,096/-. Applicant/Corporate debtor relied on annexure (1)(c) dated 23<sup>rd</sup> February 2017 Notice for recall of the advance issued by State Bank of India, Erode, Tamilnadu and amount due was shown as Rs.56.58 Crores. This demand notice issued by the bank 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/IBA-002/IP/N00009/2016-2017/10013**, who gave consent for appointment as Interim Resolution Professional (IRP) in this case, shown as **Annexure IVA**. The Applicant/Corporate Debtor has relied upon ledger account for the period from 1st April 2015 to 31st March 2017 with State Bank of India term loan (TUF Scheme). The closing balance under this scheme was Rs.19,52,676/- Applicant/Corporate debtor also relied on bank statement of State Bank of India term loan (non TUF scheme) and outstanding balance was Rs.21,24,187/- Applicant/Corporate debtor also relied on the bank statement of State Bank of India, Erode for the period from 01.04.2015 to 31.03.2017 (PCFC). The balance was Rs.33,97,25,495/- shown as in **ANNEXURE IV-B**. The Applicant/Corporate debtor also relied on financial statement for the year ending 31st March 2017.

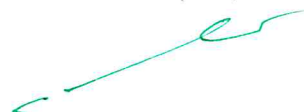





Applicant/Corporate debtor filed several documents as **Annexure V to XI** in support of the contention that it had committed default in repaying loan amount availed from State Bank of India and IDBI.

Applicant/Corporate Debtor relied on resolution passed by the board of directors appointing the counsel to appear on behalf of Applicant/Corporate debtor. State Bank of India, the financial creditor 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 16th February 2010. It is further stated IDBI bank also advanced loan to the Applicant/Corporate debtor. The loan was secured and outstanding. It is further stated outstanding balance to the bank by the Applicant/Corporate debtor was Rs.54.62 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.70.55 crores. 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 company had 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 filed 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. 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 Industrial



Development Bank of India (IDBI). Therefore Applicant/Corporate debtor has complied all the provisions and petition 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”

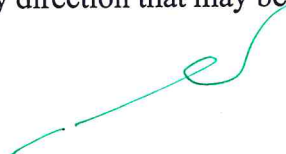
Section 6 of I & B Code provides that, the Corporate Debtor can initiate Corporate Insolvency Resolution Process. Section 10 deals with initiation of Corporate Insolvency Resolution Process by Corporate Applicant. The question whether Applicant/Petitioner satisfied the conditions laid down under Section 10 to initiate Corporate Insolvency Resolution Process. It is an undisputed fact that, Applicant avail loan from State Bank of India and also from IDBI. 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 conditions requisite for initiation of Corporate Insolvency Resolution Process by Corporate Debtor has satisfied.

The objections raised by State Bank of India that Applicant Company is solvent and that bank has initiated proceedings under SARFAESI Act. Therefore, the contentions of the Counsel for Bank that, Applicant Corporate cannot maintained this petition.

The Secured Creditors (including State Bank of India having outstanding balance of Rs 54.62 Crores as on 28<sup>th</sup> June 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.





On the other hand, the counsel for petitioner would contend that, there is no power 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 petition 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.

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 petition who has given his written confirmation for which no tenable objections raised by the State Bank of India. Therefore, petition is to be admitted. The petition is accordingly admitted and the following order of moratorium is passed.

- 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.
- 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 18<sup>th</sup> 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, 2<sup>nd</sup> Floor, North Masi Street, Madurai-625001 Registration No. IBBI/PA-002/IP-N00009/2017/10013** as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016 immediately.

Accordingly, this Petition is admitted.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL