

**In the National Company Law Tribunal  
Single Bench, Chennai**

**CP/558/(IB)/CB/2017**

Under Section 7 of the IBC, 2016

**In the matter of**

Indian Bank

V/s

M/s. Infinitas Energy Solutions Pvt. Ltd.

Order delivered on: 18.09.2017

For the Petitioner/OC: Shri N. Chandra Raj, Advocate

For the Respondent/CD: Shri Karthik Ranganathan, Advocate

Shri T.S. Sundaram, Advocate

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. Under Consideration is a Company Petition filed by Indian Bank (in short, '**Petitioner/Financial Creditor**') against M/s. Infinitas Energy Solutions Pvt. Ltd. (in short, '**Respondent/Corporate Debtor**') under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. The Petitioner/FC is a Banking Company incorporated under the Companies Act, 1956 and now is a nationalised Bank having its Branch office at Indian Guindy Branch, No. 131, GST Road, Chennai-14 whereas the Respondent/CD is a Private Unlimited Company in the business of renewable energy sector, claiming to be India's first professional end-to-end renewable power infrastructure solution provider having its registered office at No. 480, Anna Salai, Khivraj Complex-1, 2<sup>nd</sup> Floor, Tamilnadu- 600035.
4. It is also pertinent to mention herein that name of the Respondent/CD was changed from M/s. Trishe Renewable Energy Solutions P. Ltd. to M/s. Infinitas Energy solutions Private Limited by a fresh certificate of incorporation no. U45400TN2010PTC078050 on 12.02.2014.
5. Shri N. Chandra Raj, the learned counsel appearing on behalf of the petitioners/FC submitted that the respondent approached to the petitioner for availing loans and the petitioner granted loans as mentioned in the petition. Accordingly, the petitioner issued sanction letters dated 14.06.2013 & 23.07.2013 to the respondent for the facilities of OCC Rs. 1500 Lakhs and LC limit Rs. 2500 Lakhs respectively. It is further submitted that the petitioner has executed all the loan documents independently to the

petitioner by providing independent collateral security and by executing independent mortgage deeds. A few other banks also funded the respondent in a consortium with Punjab National bank as its lead bank.

6. It is also submitted that the respondent executed all the loan documents on 23.07.2013 including the Promissory Notes and several Agreements of Guarantee. Afterwards, the sanctioned amounts were disbursed to the respondent on 24.07.2013 and subsequent dates by the petitioner. It is further submitted that to secure the financial assistance granted to the respondent, the Guarantors have deposited the originals of the title documents as collateral security and also given the Letter confirming deposit of title deeds and creation of equitable mortgage by borrowers & guarantors and also executed and registered memorandum of deposit of title deeds on various dates. The respondent and M/s. Trishe EPC P. Ltd. executed the Corporate Guarantee on 02.08.2013 guaranteeing the facilities availed by the Respondent/CD and Agreement of Guarantee dated 24.10.2013 was executed by M/s. Trishe Infrastructure Services P. Ltd. in favour of the petitioner.
7. It is further submitted that the respondent also executed the acknowledgement of Debt cum Security on 01.03.2016 to the petitioner acknowledging a sum of 18,70,45,042.04/- as

outstanding in OCC Account and a sum of Rs. 23,80,46,584.18/- as outstanding in Devolved LCs Account as on 31.12.2015.

8. The learned counsel submitted that the above said condition as admitted by the CD was not adhered to and the CD had defaulted in conforming to the terms as agreed, hence the final sanction letter was not issued. It is also submitted that a letter dated 02.05.2017 from the petitioner to the CD clearly indicated that the restructuring scheme had failed therefore, the petitioner proceeded to recover its dues as fell due on 30.04.2017 with further interest thereon.
9. The learned counsel further submitted that as per the Annual Report and Audited Balance Sheet dated 20.09.2013 of the respondent for the year 2015-16, the total outstanding borrowing of the Respondent/CD from the Petitioner/FC is Rs. 41,47,46,380/-.
10. The learned counsel submitted that when the Corporate Debtor was unable to pay its Financial Debt which became due and payable on various dates, then petitioner, having been left with no other option approached this Adjudicating Authority claiming the payment of Rs. 1500 Lakhs towards OCC and Rs. 2500 Lakhs towards LC Limits against the Corporate Debtor in capacity of a Financial Creditor under the provisions of the

IB Code 2016. In view of the foregoing, the learned counsel for the petitioner finally submitted that the Respondent/CD is commercially insolvent due to its inability to pay its debts and thus prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

11. Shri Karthik Ranganathan, the learned counsel for the Respondent/CD vehemently opposed the contentions raised by the counsel for petitioner and submitted that the instant petition is not maintainable in law and in facts as the same is premature and is liable to be rejected in limine.

12. It is submitted that the petitioner has filed an application under SARFAESI Act, 2002 in OA No. 379/2017 before the Hon'ble DRT- II, Chennai for the very same cause of action of recovery of the dues from the respondent and the DRT was pleased to issue summons to the respondent on 18.07.2017. He placed his reliance on section 10 of CPC submitting that it is well settled principle that any party to any proceeding cannot file two different applications before two forums against the same party for the same cause of action and if such a proceeding is initiated then the subsequent and latest proceeding has to be stayed.

13. He further submitted that Punjab National Bank, lead bank of consortium, has also filed an application before the DRT- II,

Chennai though no summons have been served on the petitioner yet. Therefore, this petitioner cannot file the present petition as it is well settled principal of law that some parties or one of the parties cannot institute multiple proceedings on the same cause of action against the same respondent. This is clearly barred by section 10 of CPC and the jurisprudence of Res Judicata is equally applicable to this Adjudicating Authority also and allowing the petitioner to continue with simultaneous proceedings before various forums would be a clear case of abuse of process of law and against the public policy. He also placed his reliance on a judgement passed by the Hon'ble Supreme Court in *Aspi Jal Anr. Vs. Khushroo Rustom Dadyburjo, Civil appeal No. 2908 of 2013* wherein it was held that subsequent proceedings should be stayed until the first set of proceedings are concluded.

14. With regard to the above submissions, the learned counsel for the petitioner submitted that there are a catena of judgements passed by the Hon'ble Supreme Court wherein it has been held that section 10 of CPC is not applicable on Tribunals and the DRT is not a "court" thus the proceedings before the DRT cannot be considered a "suit". Therefore, the Adjudicating Authority has to adjudicate the matters keeping in view the inherent power entrusted and principle of natural justice. It is

further submitted that suit filed before the DRT and the petition filed before this Adjudicating Authority are on different footing as the OA filed before the DRT relates to recovery proceedings whereas the instant petition before this Adjudicating Authority pertains to initiation of Corporate Insolvency Resolution Process and declaring the Corporate Debtor insolvent. Moreover, if such a peculiar situation is permitted then the very authority of insolvency code will come at stake and there will be no finality of judgment. To further support his claim, the learned counsel relied on a recent judgement passed by the Hon'ble Supreme Court in *M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., Civil Appeal Nos. 8337-8338 of 2017* wherein and whereby it was held that the IB Code 2016 would prevail over the Maharashtra Act, 1956. He finally submitted that in view of the above, the IB Code would prevail over SARFAESI Act, 2002 and there is no bar if the Corporate Insolvency Resolution Process is initiated.

15. The learned counsel for the respondent further submitted that the amount of the claim made by the petitioner is specifically denied and there is dispute with regard to the quantum of the claim and prayed that the quantum of the amount has to be first determined before the application is admitted as the same

cannot be done before the IRP & Committee of Creditors (CoC) because they are not empowered to determine the quantum of the claim. He further submitted that though there is no dispute that there is a debt, even though the quantum is in dispute, therefore the instant petition should be rejected at threshold in view of dispute in existence.

16. In relation to above submission, the learned counsel for the petitioner submitted that there is no any dispute regarding the quantum of amount and the amount claimed by the petitioner is based on various documentary evidence placed on record. Moreover, the IRP is empowered to ascertain the claim under the provisions of the IB Code 2016 and finally submitted that the plea of dispute raised by the counsel for respondent is nothing but a moonshine defence.

17. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules formed thereunder.

18. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence viz. Agreement of Guarantee, Corporate Guarantee, Letter confirming deposit of

title deeds, Acknowledgement of Debt cum Security, CIBIL Reports, OCC & LC Account Statements and entries in Bankers Book under the Bankers Books Evidence Act, 1891 that default has occurred which the Corporate Debtor was responsible to pay. Therefore, I am of the opinion that the objections raised by the counsel for petitioner are not a valid ground of rejection of the instant petition.

19. Moreover, the petitioner bank, no doubt, filed its claim before this Adjudicating Authority after preferring the OA before the DRT. If the reasoning of the learned counsel for the respondent, that a concurrent proceeding before DRT and NCLT is abuse of process of law, are to be affirmed, then a piquant situation would be permitted where an Adjudicating Authority, exclusively created by the legislature to decide insolvency matters filed by the Financial/Operational Creditors would have to await decisions of other tribunals/courts, thus frustrating the very purpose of parliamentary intention at quick resolution of insolvency matters. The public purpose underlying the creation of Adjudicating Authority would thus be easily countenanced and such a decision cannot be plainly approved. In the circumstances, I am inclined to admit the instant application.

20. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

21. I appoint Mr. R. Venkatakrishnan as Interim Resolution Professional (**IRP**) proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

22. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

*(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 the corporate debtor.*

**23.** The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

**24.** The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.

**25.** The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of

the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

**26.** The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

**27.** The address details of the IRP are as follows: -

Mr. R. Venkatakrisnan  
Regn. No: (IBBI/IPA-01/IP-0087/2017-2018/10250)  
1/4<sup>th</sup> Rangas, 4<sup>th</sup> Main Road, R A Puram, Chennai- 28  
E-Mail- rvk@rvkassociates.com



**K. ANANTHA PADMANABHA SWAMY**  
**Member (J)**

**RLS**