

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.30/7/HDB/2018
U/s 7 of IBC, 2016
R/W 4 of I&B (AAA) Rules, 2016

In the matter of

PTC India Financial Services Limited
7th Floor, Telephone Exchange Building
8 Bhikaji Cama Place
New Delhi – 110066

... Petitioner
Financial Creditor

Versus

NSL Nagapatnam Power and Infratech Limited
NSL Icon, 4th Floor, Door No. 8-2-648/2/A
Plot No. 1 to 4, Road No.12, Banjara Hills
Hyderabad - 500 034
Telangana

...Corporate Debtor

Date of order: 30.01.2018

Coram:

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

Parties / Counsel present

For the Financial Creditor: Shri Mayank Mishra along
with Shri H. Rajesh Kumar,
Advocates

For the Corporate Debtor: Shri Naresh Kumar Sangam,
along with Shri D. Narendar
Naik, Advocates

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing CP (IB) No. 30/7/HDB/2017 is filed by PTC India Financial Services Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of I & B (Application to



Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of NSL Nagapatnam Power & Infratech Limited (Corporate Debtor).

2. Brief facts, leading to filing of the present Company Petition, are as under:-

(a) PTC India Financial Services Limited (hereinafter referred to as Financial Creditor), is registered with the Reserve Bank of India (RBI) as a Non-Banking Financial Company (NBFC). It is a non-deposit taking NBFC classified as an Infrastructure Finance Company by the RBI and is listed on the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited. The Petitioner is engaged in a private commercial financing activity of making investments in and financing all kinds of projects in the energy sector of India.

(b) NSL Nagapatnam Power & Infratech Limited (Corporate Debtor) is a company incorporated under the Companies Act, 1956. CIRP has already been initiated against the Corporate Debtor /Petitioner and IRP is also appointed in CP No.306/10/HDB/2017.

(c) The Petitioner / Financial creditor has sanctioned a Bridge Loan vide its sanction letter dated 05.02.2014 for an amount of Rs.125,00,00,000/- (Rupees One Hundred and Twenty Five Crores only) for implementing 2 X 660 MW Tentulei Thermal Power Project in Odisha, which was amended from time to time and executed the agreement relating to the said Bridge Loan on 10.03.2014 and later on the said agreement was amended on 28.12.2015 rescheduling the repayment schedule. Financial Creditor has



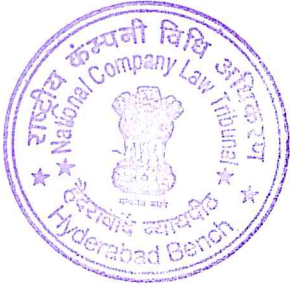
disbursed the said Bridge loan of Rs. 125 Crores on 12.03.2014. Prior to the sanction of Bridge Loan, Financial Creditor has also sanctioned long term loan of Rs. 150 Crores vide its letter dated 07.06.2013.

- (d) The consortium of lenders comprising of Rural Electrification Corporation Limited (REC), Power Finance Corporation Limited (PFC), Financial Creditor and Axis Bank Limited have sanctioned Long term debt of Rs.5,847.58 Crores during the period from June 2012 to Nov 2013 for implementation of the Project subject to compliance of several pre-disbursement conditions (including signing of Fuel Supply Agreement and Power Purchase Agreement).
- (e) The Corporate Debtor submits that the Long term debt of Rs. 5,847.58 Crores (which includes Financial Creditor sanctioned long term loan of Rs. 150 Crores) was not disbursed because of non-signing of Fuel Supply Agreement (FSA) & Power Purchase Agreement (PPA) by the Corporate Debtor.
- (f) The signing of FSA with Mahanadi Coalfields Limited, a subsidiary of Coal India Ltd. under Ministry of Coal and signing of PPA with State Power Discoms are dependent on government policy decisions which are delayed due to changes in the power sector.
- (g) Accordingly, the Corporate Debtor tried its level best to convince the consortium of long term lenders to provide time bound relaxation of pre-disbursement conditions of signing the FSA and PPA as they are beyond the control of the Corporate Debtor and the lenders did not agree for the same, resulting the Corporate Debtor could not repay the Bridge loan in question. The Corporate Debtor also offered /



suggested several offers in order to clear the outstanding amount. The Financial Creditor on 13.02.2017 has also sent a detailed reply stating that the decision on conversion is subject to successful completion of due diligence.

- (h) The Corporate Debtor has also taken various steps within powers to comply with the terms and conditions as envisaged by the Financial Creditors and ultimately when the Corporate Debtor was unable to pay the amount in question, a demand letter dated 25.12.2017 was issued, in which the amount due as on 31.12.2017 is Rs. 167,29,23,507/-
- (i) The Financial Creditor is invoking pledge of equity shares of NSL Energy Ventures Private Limited (NEVPL) Group Company of the Corporate Debtor pledged in the Financial Creditor's favour by Mandava Holdings Private Limited (MHPL). The total amount of claim will be reduced accordingly.
- (j) Further submitted that the Financial Creditor has issued a notice dated 25.04.2017 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the Corporate Debtor to discharge its liabilities within sixty (60) days of the date of the notice. The Corporate Debtor submits that as per the said SARFAESI notice dated 25.04.2017 issued by the Financial Creditor, the outstanding amount payable to Financial Creditor stands at Rs.111,85,65,811/- (Rupees One Hundred and Eleven Crores Eighty Five Lakhs Sixty Five Thousand Eight Hundred and Eleven only)



- (k) The Petitioner submits that on 15.06.2017, the Corporate Debtor replied to the notice issued by Financial Creditor under Section 13(2) of SARFAESI. The Financial creditor has sent their reply vide its letter dated 10.07.2017 to the reply letter of the Corporate Debtor dated 15.06.2017.
- (l) On 17.02.2017, the Corporate Debtor requested the Financial Creditor to initiate the sale of project to NTPC and offered to repay the loans to the Financial Creditors from the proceeds of the said sale and requested to consider the payments to employees and statutory liabilities before adjusting the proceeds against their loans. In furtherance to the said letter for sale of project the Corporate Debtor once again sent a letter dated 21.06.2017 requesting the Financial Creditor to appoint land valuer for the purpose of sale of project to NTPC. The Financial Creditor sent its reply vide its letter dated 18.07.2017, inter alia stating that the sale of the project is the best option available to both parties.
3. Heard Shri Mayank Mishra and Shri Rajesh Kumar, Ld. Counsels for the Petitioner / Financial Creditor and Shri D. Narendar Naik and Shri Naresh Kumar Sangam, Learned Counsels for the Corporate Debtor.
4. The Learned Counsel for the Petitioner, while reiterating the pleadings made in the Petition and also documents relied upon, has submitted that there is no iota of doubt that there is a default committed by the Corporate Debtor and it is unable to pay the debt and initiating CIRP under the provisions of the IBC, 2016 is the only option available to them.



5. Shri Mayank Mishra, Learned Counsel for the Financial Creditor submit that since the CIRP has already been initiated by an order in CP No. 306/10/HDB/2017 dated 30.01.2018, he requested to permit him to withdraw the Company Petition with a liberty to approach the IRP with Form "C".
6. In the light of above facts and circumstances of the case, the Company Petition bearing CP (IB) No. 30/7/HDB/2018 is disposed of as withdrawn, with a liberty to the Petitioner to approach the IRP with its claim in appropriate Form. No order as to costs.



Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
RAJESWARA RAO VITTANALA
Member (Judicial)

for G. Anandha Kumar
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रतिलिपि
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP(1B) No. 30/7/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT 30.1.2018
प्रतिलिपि तैयार किया गया तारीख
COPY MADE READY ON 2.2.2018