

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

CP(IB) No.264/7/HDB/2018

**In the matter of:- JALPOWER CORPORATION
LIMITED**

Power Finance Corporation Limited
Urjanidhi, 1-Barakhamba Lane,
Connaught Place,
New Delhi - 110001.

...Financial Creditor

Vs

Jalpower Corporation Limited
Having Registered Office at:
Road #07, Flat #B2, Film Nagar,
Jubilee Hills,
Hyderabad - 500033, Telangana.

...Corporate Debtor



Order Pronounced on: 09.04.2019

Parties / Counsel Present:

For the Petitioner:

Mr.P.Ravi Charan, Advocate

Mr.L.Venkateshwar Rao, Advocate

For the Respondent/Corporate Debtor:

Mr.Ambati Sudhakara Rao, Advocate

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Per: K.ANANTHA PADMANABHA SWAMY, MEMBER
JUDICIAL

ORDER

1. Under consideration is a Company petition filed by M/s. Power Finance Corporation Limited, a Government of India Undertaking having its registered office at Urjanidhi, (in short Petitioner/Financial Creditor) against MNo. Barakhamba Lane, Connaught Place, New Delhi - 110 001 against M/s. Jalpower Corporation Limited, a Company registered under the Companies Act, 1956 and having its registered office at Road # 07, Flat #B2, Film Nagar, Jubilee Hills, Hyderabad - 500 033 (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 Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short, 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/Financial Creditor sanctioned a rupee term loan of Rs. 387,65,00,000/- to the Respondent/Corporate Debtor on 23.10.2009 and the other lender M/s. Punjab National Bank had also sanctioned Rs. 193,82,00,000/- to the Corporate Debtor and in aggregate Rs. 581,47,00,000 was sanctioned to the Respondent/Corporate Debtor. Subsequently the



(Signature)

Board of Directors of the Respondent/Corporate Debtor passed a resolution on 09.03.2010 resolving to obtain a debt, execution of loan documents and creation of security and accordingly passed a special resolution by its shareholders on 22.03.2010 for the said purpose. In view of the resolution passed by the Company the Petitioner/Financial Creditor entered into a Common Loan Agreement (CLA) with the Respondent/Corporate Debtor on 25.03.2010 for a consortium loan amount of Rs. 581,47,00,000/-. The Agreement was entered between the Respondent/Corporate Debtor, the Financial Creditor and other lender viz. Punjab National Bank. In compliance with the Agreement, the Petitioner/Financial Creditor commenced the disbursement of loan from 31.03.2010 and as on 26.11.2014 it has disbursed a total amount of Rs. 386,23,10,679/- to the Respondent/Corporate Debtor. The then promoter M/s. Coastal Projects Limited was to bring in requisite equity and the said promoter could not bring in committed amount of equity which resulted into the liquidity problem. The Respondent/Corporate Debtor failed to maintain financial discipline in terms of CLA and defaulted the repayment of loan and as on 08.03.2018 the due was 660,13,86,272/. Since the Respondent/Corporate Debtor failed to repay the loan amount as per the terms and conditions of the Agreement, it has become NPA on 15.01.2015 and it was informed to the Respondent/Corporate Debtor on



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16.10.2017., The Petitioner/Financial Creditor issued demand notices from 14.03.2017 and the last notice was issued on 05.01.2018.

4. That the M/s. Coastal Projects Limited (Major promoter of present Corporate debtor) in a Joint Lender Meeting held on 24.01.2018 informed the petitioner/financial creditor that the NCLT Kolkata Bench admitted a petition under IB Code, 2016 against Coastal Projects Limited and also informed that there is neither any plan for revival nor will be able to clear the pending dues. Therefore, the Petitioner/Financial Creditor recalled the entire loan amount vide recall notice dated 08.03.2018.

5. The learned Counsel for the petitioner/Financial Creditor reiterated the above facts and submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore it has no other option except approaching this Adjudicating Authority under I & B Code seeking an order for commencing the Corporate Resolution Process and prayed for an appointment of IRP to take over the affairs of the Respondent/Corporate Debtor.

6. In order to prove his claim the learned counsel for the Petitioner filed the following documents:-

- A copy of the loan recall notice dated 8th March 2018.
- Copy of the common rupee term loan agreement (CLA) and other relevant agreements, viz., Trust & Retention Account Agreement and Inter Creditors Agreement as

executed in relation to the debt.



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- Commercial creditor information report and Commercial ACE report both dated 22nd March 2018 issued by TransUnion CIBIL Limited and CRIF High Mark Credit Information Services Pvt. Ltd. respectively.
- Copies of relevant extracts from the ledger book maintained by the Financial Creditor along with certificate issued by the Financial Creditor under the Bankers Book Evidence Act, 1891.
- Copy of the letter dated 16th October 2017 issued by the Financial Creditor classifying the loan account of Corporate Debtor as NPA.

7. The learned Counsel for the Respondent/CD filed counter and inter-alia submitted that the petition is not maintainable for the reason that the recall notice dated 08.03.2018 was issued on the basis of CLA with Punjab National Bank whereas the application is filed by single member of the consortium. He further submitted that the default was due to the increase in cost on account of geological problems and resultant delays in the project. The Company was talking to its lenders and at that point of time the RBI has issued a circular on 25.08.2017 whereby the Banking Regulation Act, 1949 was amended. By this amendment the Central Government was empowered to direct the RBI to issue directions to the Banks to initiate insolvency proceedings in respect of a default under the IB Code, 2016. The Petitioner/Financial Creditor without going to its consent



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of revised proposals, in its hurry and utter haste to abide the dictates of RBI filed the present petition before this Tribunal by ignoring the object underlying the IB Code. He also submitted that the Petitioner is not a Financial Creditor and it is non-banking financial company in power sector. The petitioner has also not implemented the RBI Restructuring norms according to the RBI letter dated 11.04.2017 in true spirit. It is stated that Petitioner Company has not done classification of NPA as project wise and the present petition is not maintainable under section 3 of the Interest Act. The learned Counsel further submitted that the similar cases have been filed before the various High Courts and all the matters are transferred to the Supreme Court and Hon'ble Supreme Court on 11.09.2018 passed an order to maintain status quo. Besides the above, he has submitted that the application is in complete and therefore prayed for dismissal of the petition. The Respondent/Corporate Debtor has also filed a memo dated 29.03.2019 wherein it has stated that it is not in position to repay the loan disbursed by the financial creditor and also stated that the Respondent/Corporate Debtor is neither a party in the batch matters pending before the Hon'ble Supreme Court nor it is a member in the power association. In view of his submissions, the learned Counsel for the Respondent/Corporate Debtor prayed for the dismissal of the petition in the interest of justice.

8. Heard both the parties and perused the pleadings.



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9. It is on record that the petitioner provided fund to the Respondent and it is not disputed by the Respondent, whereas it is admitted the receipt of the loans from the petitioner. Further it has also sent a letter dated 16.01.2018 to one Chartered Accountant and a copy of which was also endorsed to the Petitioner, wherein the Respondent confirmed the outstanding loans to the petitioner. In the memo filed on 29.03.2019 the Respondent/Corporate Debtor has categorically stated that it is not in position to repay the dues and it is neither a party before the Hon'ble Supreme Court nor it is a member in the power association. It is pertinent to note that a letter dated 22.03.2019 was addressed to the Advocate of the Petitioner which is filed along with the memo dated 22.03.2019 wherein it is stated that the Respondent/Corporate Debtor has no objection to the petition being admitted.
10. In view of the above, the petitioner has made out a case and also satisfied the Adjudicating Authority in admitting the petition and the Financial Creditor has fulfilled all the requirements of Law and has also proposed the name of IRP after obtaining the written consent in Form 2. It is also proved that there is a debt due payable by the Respondent. In these circumstances, I am inclined to admit the instant petition.
11. Therefore, the instant petition is admitted and I order commencement of the Corporate Insolvency Resolution



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Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

12. I appoint Sanjay Kumar Dewani, (Registration No. IBBI/IPA-001/IP-P423/2017-2018/10746), having office at 133, Bhagirathi Apartments, Plot No. 13/1, Sector 9, Rohini, Delhi - 110 085 as Interim Resolution Professional (IRP) proposed by the Petitioner. There are 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 of the copy of this order is received and call for submissions of claim in the manner as prescribed.

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

(i) 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.

(ii) Transferring, encumbering, alienating or disposing of by the corporate debtors any of its assets or any legal right or beneficial interest therein;



(iii) 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)

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(v) 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 414 shall not apply to such transactions, as notified by the Central Government.

14. The IRP so appointed 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.

15. The petitioner/FC as well as the Registry is directed to send the copy of this order to IRP on his appointment so that he could take charge of the Corporate Debtor's assets etc and make compliance with this order as per the provisions of the I & B Code, 2016.



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16. The Registry is also directed to communicate this order to the Financial Creditor and the Corporate Debtor.
17. The details of the IRP are as follows:
 Mr. Sanjay Kumar Dewani,
 IBBI/IPA-001/IP-P00423/2017-18/10746.
 133, Bhagirathi Appts., Plot No.13/1,
 Sector - 9, Rohini,
 Delhi - 110085.
sanjaydewani@gmail.com
18. The instant Petition is hereby admitted.



K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Dy. Registrar
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
 CERTIFIED TRUE COPY
 केस नम्बर
 CASE NUMBER: CP(CS) No. 264/17/HDB/2018
 निर्णय का तारीख
 DATE OF JUDGEMENT: 9/14/19
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON: 10/14/19