



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 13th DECEMBER, 2024, 02:30 P.M.

**IA (IBC)/72/GB/2022
In CP (IB)/14/GB/2022**

Present: 1. Hon'ble Member (Judicial), Shri Deep Chandra Joshi
2. Hon'ble Member (Technical), Shri Balraj Joshi

In the Matter of	M/s Shree Salasar Properties & Finance Pvt. Ltd. 2. M/s Krishna trade & Commerce Pvt. Ltd. Vs M/s Everest Infra Energy Ltd.
Under Section	U/s 7 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. S. Jain, Adv.

ORDER

CP (IB)/14/GB/2022, IA (IBC)/72/GB/2022

Order Pronounced through VC *vide* separate sheets.

Sd/-
Balraj Joshi
Member (Technical)

Sd/-
Deep Chandra Joshi
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP(IB)/14/GB/2022

And

IA(IBC)/72/GB/2022

CP(IB)/14/GB/2022

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

M/s. Shree Salasar Properties & Finance Private Limited (CIN: U70101WB1991PTC052415), a company incorporated under the provision of Companies Act, 1956 having its registered office at 4A Clive Row Kolkata, West Bengal—700001;

...Petitioner No. 1

-And-

M/s. Krishna Trade And Commerce Private Limited (CIN: U51909WB1991PTC052421), a company incorporated under the provision of Companies Act, 1956 having its registered office at 4A Clive Row Kolkata, West Bengal—700001;

...Petitioner No. 2

-Versus-

M/s. Everest Infra Energy Limited (CIN: U45203AR2006PLC008234), a company incorporated under the provision of Companies Act, 1956 having its registered office at Everest Engineering House A Sector Naharlagun AR— 791110;

...Corporate Debtor/Respondent

IA(IBC)/72/GB/2022

In the matter of:

Sd—

Sd—

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**CP(IB)/14/GB/2022
And
IA(IBC)/72/GB/2022**

An application under Rule 11 of National Company Law Tribunal Rules, 2016;

-And-

In the matter of:

Everest Infra Energy Limited, a company incorporated under the provision of Companies Act, 1956 having its registered office at Everest Engineering House A Sector Naharlagun AR— 791110;

...Applicant/Corporate Debtor

-Versus-

Shree Salasar Properties & Finance Private Limited & Anr., a company incorporated under the provision of Companies Act, 1956 having its registered office at 4A Clive Row Kolkata, West Bengal—700001;

...Respondent/ Financial Creditor

Coram:

Shri Deep Chandra Joshi : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. S. Jain (Adv.)

For Respondent : Mr. K. Mullick, (Adv.), Mr. S. Agarwal, CA

Order pronounced on: 13.12.2024

Per: Balraj Joshi, Member (Technical)

Sd—

Sd—

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP(IBC)/14/GB/2022
And
IA(IBC)/72/GB/2022

COMMON ORDER

1. CP(IBC)/14/GB/2022 has been filed by Shree Salasar Properties & Finance Private Limited ("Petitioner No. 1") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Everest Infra Energy Limited ("Respondent"/"Corporate Debtor") for an unresolved Financial Debt of Rs. 1,60,00,000/- as principal debt and interest at different rates, for different financial creditors(s) jointly amounting to Rs. 70,07,671.23/- and TDS amount received but interest amount not paid for an amount of Rs. 1,75,686/-. The date of default for Petitioner No. 1 and Petitioner No. 2 in the present application is 11.01.2022 and a computation of the default is annexed as "Annexure P8".
2. IA(IBC)/72/GB/2022 in CP(IBC)/14/GB/2022 has been filed under Section 11 of National Company Law Tribunal (NCLT) Rules, 2016, by Everest Infra Energy Limited ("Applicant"), challenging the maintainability of CP(IBC)/14/GB/2022, filed by Shree Salasar Properties & Finance Private Limited. The Applicant herein prays for the following reliefs:
 - a) *Pass an order dismissing CP(IBC)/14/GB/2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 preferred by the Respondent/Financial Creditor as not maintainable;*
 - b) *Such further order/orders be made and/or direction/directions be given as to this Hon'ble Board may deem fit and proper.*
3. Since, the issues for consideration germane to the above matters are common, both the matters are hereby decided through this common order.
4. The averments of the Petitioners in CP(IBC)/14/GB/2022 are set out hereunder –
 - 4.1 Petitioner No. 1 granted a loan of Rs. 2,00,00,000/- (Two Crores only) to the Corporate Debtor at an interest rate of 15% per annum in two tranches i.e. Rs.

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP(IBC)/14/GB/2022

And

IA(IBC)/72/GB/2022

1,00,00,000/- (One Crore only) on 31.07.2014 and Rs. 1,00,00,000/- (One Crore only) on 12.08.2014, both initially for 120 days respectively.

- 4.2 The first loan (dated 31.07.2014) was renewed multiple times until 01.04.2018 for 122 days, and was repaid on 11.04.2017. Similarly, the second loan (dated 12.08.2014) was also renewed multiple times, and the last renewal on 01.04.2018 set the repayment date for 31.07.2018.
- 4.3 Nonetheless, the Corporate Debtor failed to repay the loan by the due date which was 31.07.2018. Subsequently, Petitioner No. 1 sent a Reminder Notice dated 27.12.2021 through Speed Post and via E-mail on 24.12.2021 inter alia calling upon the Corporate Debtor to repay the principal loan amount along with the interest due till date by 10.01.2022 and the said notice was delivered to the Corporate Debtor on 28.12.2021.
- 4.4 Thereafter, a second (2nd) reminder notice dated 02.02.2022 and a final reminder notice dated 11.03.2022 was sent to the Corporate Debtor but to no avail. Hence, the date of default is calculated as per the date mentioned in the reminder notice dated 27.12.2021 which is 11.01.2022.
- 4.5 It is noteworthy that TDS has been deducted and deposited by the Corporate Debtor until 31.03.2020 while making partial payment towards interest on the loan amount from time to time.
- 4.6 On the other hand, **Petitioner No. 2** had granted a loan of Rs. 1,00,00,000/- (One Crore only) to the Corporate Debtor on 07.10.2017 at an interest rate of 15% p.a., initially for 120 days and the said loan was renewed multiple times, with the final renewal on 04.06.2018 for an additional 120 days. According to the last renewal letter, the due date for repayment was 03.09.2018.
- 4.7 The Corporate Debtor had made a partial payment of Rs. 40,00,000/- in two different tranches *i.e.*, Rs. 15,00,000 on 11.10.2019 and Rs. 25,00,000 on 05.11.2019 towards Petitioner No. 2. Despite these payments, the remaining balance was not cleared by the due date which was 03.09.2018.

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**CP(IB)/14/GB/2022
And
IA(IBC)/72/GB/2022**

- 4.8 Therefore, on 24.12.2021, Petitioner No. 2 sent a Reminder Notice dated 27.12.2021 through speed Post and via E-mail inter alia calling upon the Corporate Debtor to repay the principal loan amount along with the interest due until date by 10.01.2022, which was delivered on 28.12.2021.
- 4.9 Thereafter, a second (2nd) reminder notice dated 02.02.2022 and a final reminder notice dated 11.03.2022 was sent to the Corporate Debtor but to no avail. Hence, the Petitioner reaffirms that the date of default is set as 11.01.2022, as per the first reminder notice and that it does not fall between the suspended period of the provisions as laid down under Section 10A of the Code.
- 4.10 It is noteworthy that TDS has been deducted and deposited by the Corporate Debtor until 31.03.2020 while making partial payment towards interest on the loan amount from time to time.
- 4.11 Nevertheless, Petitioners have already submitted the bank statements and copy of the ledger from the book of accounts of the Financial Creditors (FCs) which clearly indicates the loan amount disbursed by the FC towards the Corporate Debtor and the interest paid thereafter in lieu of the same.
- 4.12 Since the financial debt exists and the Corporate Debtor has defaulted on repayment, both Petitioner Nos 1 and 2 have filed this petition seeking admission by this Bench.
5. On the other hand, the Respondent/Corporate Debtor has filed IA(IBC)/72/GB/2022 challenging the maintainability of CP(IB)/14/GB/2022, filed by the Petitioners. Shorn of unnecessary details, the relevant points of contentions of the Applicant (Corporate Debtor) are as follows:
- 5.1 Applicant while denying Respondent No. 1's claim of Rs. 1,42,76,438.33/- and Respondent No. 2's claim of Rs. 85,55,546.90/- from the Applicant along with the allegation that the default occurred on 11.01.2022, and its continuity, stated that Petitioner No. 1 has knowingly stated the date of default to be 11.01.2022 whereas from the TDS records and ledger submitted by the Respondent show that the last transaction occurred on 31.03.2020, which establishes that the date

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**CP(IB)/14/GB/2022
And
IA(IBC)/72/GB/2022**

of default is 31.03.2020.

- 5.2 Thereafter, the Applicant referred to Section 10A of the Code, which states that “*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:* *Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*”
- Relying upon the above-mentioned section of the Code, the Applicant reiterated that petition No. “CP(IB)/14/GB/2022”, having been filed for an alleged default made with the purview of the said period is not maintainable.
- 5.3 The Applicant further submits that the Respondents sought to recover a time-barred debt through the said petition and the joint petition has been filed without proper authority and power as the same can be observed from the board resolution filed by the respondents and that Respondent No. 1 does not have the *locus standi* to file joint petition and the sole purpose for doing so is in order to settle the account.
- 5.4 The Applicant submitted that the Respondent has concealed material facts, as the ledger annexed (page 147 of C.P(IB)14/GB/2022) omits transactions for the accounting year 01.04.2020 to 31.03.2021. Nonetheless, the objective of the Code is not to penalize solvent companies for temporary defaults in debt repayment. In this case, the Applicant is financially sound and has never defaulted on any debts and that the Respondent is making false claims with malicious intent to coerce payment from the Applicant. Therefore, the Petition is not maintainable, as the Code's primary purpose is to protect stakeholders, not to recover money from solvent companies.
- 5.5 Applicant stated that it has been part of several power projects under the scheme

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IB)/14/GB/2022

And

IA(IBC)/72/GB/2022

of State and Central Government which are of immense importance to this region and has performed several projects for various electricity distribution and generating companies which were of essential nature to these companies, further stating that the Applicant is scheduled to take up other similar projects and therefore any disruption in its day-to-day functioning with replacement of key personnel overseeing its daily operations would severely disrupt ongoing projects and negatively affect future projects. This would hinder development in project areas, ultimately impacting the public interest.

- 5.6 Applicant further stated that it has successfully completed several projects, with a total of Rs. 25.80 Crores due after their completion which has already been addressed to the concerned authorities, and photocopies of the correspondence are annexed as "Annexure E."
- 5.7 For the sake of argument, Applicant submitted that Section 7(5)(a) of the Code grants the Tribunal discretion to reject a petition, even if a debt exists, for any reason deemed appropriate to serve justice and achieve the overall objective of the Code, pertaining to company revival and value maximization. The primary objective of the Code is to revive and not liquidate the company, and this purpose must be considered when exercising powers under or interpreting Section 7 of the Code.
- 5.8 It is further submitted that if CIRP is initiated against the Applicant, all current and future projects will collapse, and the sums owed will become irrecoverable which will directly or indirectly affect public interest, as the Applicant is involved in many projects under Central and State Government schemes, hence C.P(IB)14/GB/2022 should be rejected at this stage.
- 5.9 Applicant lastly asserts that, in the said petition, it can be seen that the alleged debt was never disbursed against the consideration for the time value of money

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IBC)/14/GB/2022

And

IA(IBC)/72/GB/2022

which denotes that it is malafide, frivolous, harassing, and an abuse of the Tribunal's process. Therefore, it is not maintainable in fact or law and should be dismissed in limine.

6. Heard both the sides at length and perused the material available on records. Before passing any order, it is pertinent to delve into the relevant provision of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is reproduced hereunder:

"Application by financial creditor—(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

(3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

(4) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf."

7. From the plain reading of the aforementioned provision, it is evident that in terms of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Corporate Debtor's assertion that the Petitioner No. 1 has no *locus standi* to file the joint petition is incorrect, as it has duly filed Form 1 and also served a copy of the application to the Corporate Debtor. Furthermore, the Corporate Debtor never denied on the allegation of occurrence of default or existence of debt and only contended that the Application is not maintainable in view of Section 10(A) of Code.

Sd—

Sd—

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IBC)/14/GB/2022

And

IA(IBC)/72/GB/2022

8. However, it is pertinent to note that the amount pertaining to the alleged default and the date of such default, specified in tabular form which has been duly annexed as "Annexure-P8" in the petition, denotes that the interest was received till July 2019 and the date of default is 11.01.2022, which is after the period specified under Section 10A of the Code, which establishes that the Corporate Debtor having failed to make the payment in the mentioned period has committed default. Therefore, Section 10A is not applicable in the present case.
9. It is observed that the date of default as stated by Petitioner No. 1 is 11.01.2022, whereas the Corporate Debtor contends that from the submitted TDS records and ledger, it is seen that the last transaction occurred on 31.03.2020, which establishes that the date of default should be 31.03.2020. However, after perusing the copies of ledger of the Corporate Debtor in the books of Petitioner No.1 and Petitioner No.2, for the period commencing from 31.07.2014 to 30.06.2022, annexed as "Annexure P18" and 07.10.2017 to 30.06.2022, annexed as "P27" respectively, it becomes clear that the Corporate Debtor post the Section 10A period till date has admittedly not paid the interest on the principal amount. The principal amount due and payable is more than One Crore altogether and hence the same is not hit by pecuniary jurisdiction. The debt clearly establishes that there is continuous default during the period of Section 10A and post period of Section 10A to till date. Hence, the 'debt' and 'default' is proved.
10. Further, we are supported by the judgment of the Hon'ble Supreme Court in the *Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407*, which clearly held that:

"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority. 30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IB)/14/GB/2022

And

IA(IBC)/72/GB/2022

the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise". Therefore, we are satisfied that the present petition is maintainable and that the financial debt is due and there is a default in payment of debt.

11. In light of the above facts and circumstances, the Petition bearing CP(IB)14/GB/2022 filed by Shree Salasar Properties & Finance Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate CIRP against M/s. Everest Infra Energy Limited, the Respondent/(CD), is hereby **admitted**.
12. Subsequently, there shall be a moratorium under Section 14 of the IBC, regarding the following:
 - (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 Debtor 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium:

Sd -

Sd -

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IBC)/14/GB/2022

And

IA(IBC)/72/GB/2022

- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
13. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the IB Code.
14. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
15. The petitioners earlier proposed an Interim Resolution Professional's (IRP) name, one Mr. Shyam Saraogi, but he had expressed some personal difficulty and has refused to stay in that position. Thus, the petitioners had proposed for a new IRP **Mr. Jitendra Lohia, CA, Registration No. IBBI/IPA-001/P00170/2017-18/10339**, having address at Vasundhara Building, 2/7 Sarat Bose Road, 2nd floor, Kolkata -700020; Email: jitulohia@knjainco.com, who is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC.
16. The Financial Creditors shall deposit an amount of **Rs. 2,00,000/- [Rupees Two Lakh]** towards the initial CIRP cost. The amount, however, is subject to adjustment upon approval by the Committee of Creditors .
17. Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to

Sd-

Sd-

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP(IB)/14/GB/2022

And

IA(IBC)/72/GB/2022

follow. Thereafter, the IRP shall convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

18. As a consequence of the Petition CP(IB)14/GB/2022 being admitted in terms of Section 7 of the Code, the Application bearing IA(IBC)72/GB/2022 stands **rejected** and consequently **dismissed**.
19. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
20. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

**Balraj Joshi
Member (Technical)**

Sd/-

**Deep Chandra Joshi
Member (Judicial)**

Signed this on 13th day of December 2024.

Nabanita S. [LRA]