

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**IBA/546/2019**

*Under Section 7 r/w rule 4 of the IBC, 2016*

**In the matter of M/s. Prabhat Resources Limited**

**M/s. Oriental Bank of Commerce**

**---Financial Creditor**

**V/s**

**M/s. Prabhat Resources Limited**

**---Corporate Debtor**

**Order delivered on: 06.09.2019**

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor: *Shri. S.K. Srinivasan, Advocate*

*Shri. P.P.Saravanan, Advocate*

For the Corporate Debtor : *Shri. P.M. Bakthavatsalam, Advocate*

*Shri.V.V. Ravichandran, Advocate*

**ORDER**

**Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**Order pronounced on: 06.09.2019**

Under Consideration is an Insolvency and Bankruptcy  
Application filed by M/s. Oriental Bank of Commerce, Chennai,  
represented by its Chief Manager (in short, "Financial Creditor")

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against M/s. Prabhat Resources Limited (in short, “**Corporate Debtor**”) under section 7 of the Insolvency and Bankruptcy Code 2016 (in short, ‘**I&B Code 2016**’) r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, ‘**I&B Rules 2016**’). The Applicant/Financial Creditor has prayed for initiating Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor.

2. The Financial Creditor is a scheduled public sector bank governed by the guidelines of Reserve Bank of India. The Corporate Debtor Company engaged in the business of timber and coal trade was incorporated on 17.07.2008 under the Companies Act, 1956 having its registered office at Unit 407, 2/485A, Harbour Bypass Road, Tuticorin - 628006, Tamilnadu. (Corporate Debtor vide letter dated 01.07.2016 addressed to the Financial Creditor informed the change of Company name from M/s.Shinago Infrastructure and Resources Limited to M/s. Prabhat Resources Limited (Vol.II, Page 525 of the typed set).

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3. The Financial Creditor sanctioned various credit facilities to the Corporate Debtor as early as in 2012. Such credit facilities sanctioned to the Corporate Debtor were revised from time to time under a consortium arrangement with Punjab National Bank (PNB) as lead Bank. The Corporate Debtor had executed all the necessary documents and contracts on 27.12.2012 for availing the loan and ever since the year 2012 had been periodically executing loan documents periodically until January 2017 in a running account. The account became NPA on 30.04.2016.

4. The learned counsel for Financial Creditor submitted that the Corporate Debtor (formerly M/s. Shinago Infrastructure & Resources Limited) has executed loan documents on 27.12.2012 including Working Capital Consortium Agreement (Vol.I, Page-65 of the Typed Set); Joint Deed of Hypothecation (Page-99); Guarantee Agreement by Guarantor/Directors of the Corporate Debtor (Page-117); Inter se Agreement (Page-125); Certificate of Registration for Modification of Charge issued under section 76(b) of the Companies Act, 2013 and sub-rule (2) of rule 6 of the

Companies (Registration of Charges) Rules, 2014 (Page-161);  
Registration of Mortgage dated 25.01.2013 in favour of Applicant  
Bank (Page-178); Balance & Security Confirmation issued by the  
Corporate Debtor on 07.03.2013 (Page-186), 31.03.2014 (Page-273)  
and 11.09.2014 (Vol.II, Page-385 ).

5. It is further submitted that a Letter of Undertaking was  
given by the Corporate Debtor to the Financial Creditor on  
27.12.2012 for which the Financial Creditor had given a Letter of  
Authority to PNB on the same day (Vol.I, Page-160). Since the  
Corporate Debtor failed to make payment as per the Letter of  
Undertaking, the Financial Creditor has issued a recall notice on  
02.07.2016 u/s.13(2) of SARFAESI Act, 2002 (Vol.II, Page-492)  
wherein inter-alia demanded pay back of the amount lent, but  
inspite of receiving the recall notice, the Corporate Debtor failed  
to repay the principal amount with interest totalling  
Rs.40,42,31,630.15/- (**revised amount is Rs.32,35,39,938.12**).  
Instead of repaying outstanding debt, the Corporate Debtor filed  
a Writ Petition No.557 of 2017 in the Hon'ble High Court of

4

Madras praying for an order of interim injunction restraining the respondent (Oriental Bank of Commerce) from taking possession of the secured assets of the Corporate Debtor till the disposal of writ petition and on 06.03.2017, the Hon'ble High Court of Madras ordered notice returnable by 14.03.2017 and status quo as on date shall be maintained, till then.

6. It is further submitted that the Creditor Bank, (Oriental Bank of Commerce), as 2<sup>nd</sup> Applicant had filed an application in O.A.No.324 of 2017 in the Hon'ble Debt Recovery Tribunal-II, Chennai and obtained an Order dated 20.11.2018 (Volume-II, Page-580) directing the Corporate Debtor to pay ₹31,37,15,903.13 (Rupees Thirty One Crores Thirty Seven Lakhs Fifteen Thousand Nine Hundred and Three and Paise Thirteen only). But the Financial Creditor made a wrong claim of ₹40,42,31,630 as total outstanding debt. Subsequently, when this matter came up for hearing on 19.08.2019 before this Tribunal for clarification on total outstanding debt, the counsel for Financial Creditor appeared and submitted that the claim amount given in the above application

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pertains to 3<sup>rd</sup> Applicant as per the Order passed by the Hon'ble DRT-II Chennai and that the claim amount was miscalculated due to inadvertence. The Financial Creditor counsel had filed a memo on the same day revising the total outstanding debt as ₹32,35,39,938.12 (Amount due ₹31,37,15,903.13 + interest at 9% per annum ₹98,24,034.99 till 27.03.2019). It is further submitted that the Financial Creditor having waited for a long period of time for legitimate loan amount, has filed the application under section 7 of the IBC, 2016 r/w Rule 4 before this Tribunal and sent notice to the Corporate Debtor on 27.03.2019 and filed proof of the same (Page-595).

7. Upon perusing the material documents placed before this Bench, we are of the view that the Corporate Debtor is deliberately avoiding causing appearance in the matter before this Adjudicating Authority. The Service of notice on the Corporate Debtor is held sufficient and the Respondent was given many opportunities vide orders dated 10.07.2019, 07.08.2019 and 19.08.2019 but they failed to appear before this Tribunal. The

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Petitioner/Financial Creditor counsel submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore he 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 appointment of IRP to take over the affairs of the Respondent/Corporate Debtor. The Petitioner/FC has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.

8. The Petitioner/Financial Creditor filed the present petition under section 7 of the I & B Code, 2016 on the basis of loan documents executed by the Corporate Debtor between 27.12.2012 and 11.09.2014. After hearing submissions of the Petitioner/Financial Creditor counsel and having perused the record, this Adjudicating authority is satisfied that the Petitioner has clearly made out a case by establishing that the Corporate Debtor has defaulted in payment to the Petitioner. Also, the

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Petitioner has proved by placing overwhelming evidence including Working Capital Consortium Agreement, Joint Deed of Hypothecation, Guarantee Agreement by Guarantor/Director of the Corporate Debtor, Inter se Agreement, Certificate of Registration for Modification of Charge issued under section 76(b) of the Companies Act, 2013 and sub-rule (2) of rule 6 of the Companies (Registration of Charges) Rules, 2014, Registration of Mortgage dated 25.01.2013 in favour of Applicant Bank, Balance & Security Confirmation issued by the Corporate Debtor on 07.03.2013, 31.03.2014 and 11.09.2014 which reveal that default have occurred for which the Corporate Debtor was responsible. In the circumstances, we are satisfied with the submissions put forth by the learned counsel for the Petitioner, and hence we hereby **admit** the instant petition. The Financial Creditor has also filed consent letter given by the Insolvency Resolution Professional, henceforth, we hereby declare moratorium with the following directions:

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- I. That Moratorium is hereby declared prohibiting all of the following actions, 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.
- II. That 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) of Section 14 of IBC 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 the date of this Order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Shri Velayudham Jayavel**, having Registration Number [IBBI/IPA-

2

001/IP-PO1012/2017-18/11663], Suite No.108, First Floor, Kavery Complex, No.96, Nungambakkam High Road, Chennai-600034, E-Mail: [velayudhamj@gmail.com](mailto:velayudhamj@gmail.com), Mobile No: 9600055428 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

9. Accordingly, this Petition is **admitted**.
10. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-  
**(S. VIJAYARAGHAVAN)**  
**Member (Technical)**

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-Sd-  
**(B. S.V. PRAKASH KUMAR)**  
**Member (Judicial)**

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