

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.137 of 2020

[Arising out of Order dated 28.11.2019 passed by National Company Law Tribunal, Mumbai Bench in CP No.4260/IB/NCLT/MB/MAH/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Sunil Amarlal Chawla
S/o Amarlal,
Ex-Promoter,
Spark Green Energy
(Satara) Ltd.
1201, Everest
Co-operative Housing
Society Ltd.,
164 (Part B) Hill Road,
Bandra (West)
Mumbai – 400 050

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Appellant

Versus

1. Union Bank of India
LA-Avanti, Jn. of,
S.V.Road & Main Avenue,
Santacruz (W),
Mumbai – 400054

Financial Creditor/
Petitioner/Applicant

Respondent No.1

2. Spark Green Energy
(Satara Limited)
Through its Interim
Resolution Professional
Shri Anil Rajkotia
501, Balkrishna
Co-op Housing Society,
Tilak Road, Next to
Asha Parekh Hospital,
Santacruz (West)
Mumbai – 400 054

Corporate Debtor/
Respondent

Respondent No.2

For Appellant: Shri Vikram Nankani, Sr. Advocate with Shri Ashish Rao, Advocate

**For Respondents: Shri Purusharth Bisht, Advocate (R-1)
Ms. Savita Nangare, Advocate (R-2)**

ORAL JUDGEMENT

(Virtual Mode)

24.08.2020 This Appeal has been filed by the Appellant against Impugned Order dated 28.11.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP No.4260/IB/NCLT/MB/MAH/2018. The Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) was filed by Respondent – Union Bank of India – Financial Creditor. The Application was admitted and hence this Appeal.

2. The Respondents have not filed Replies. Counsel for Appellant requested that if the Replies have not been filed in spite of opportunity, the Appeal should be heard. Accordingly, we have heard the learned Counsel for the Appellant.

3. The learned Counsel for the Appellant submits that the Financial Creditor had granted term loan of Rs.30 Crores. It was sanctioned on 23rd August, 2011 for Rs.30 Crores but the disbursement took place only on 26th July, 2013. According to the learned Counsel, there was delay in laying the power lines which were to be set up by MSETCL. There was resistance from the villagers to the land acquisition and hence the Corporate Debtor could not start the operations. The loan was taken from the Financial Creditor with an understanding that the repayment will be linked to commercial operations. It

is stated that as commercial operations did not start, the loan could not be repaid and it is stated that there may be debt but default is not there because the commercial operations did not start. It is the case of the Appellant that there was consortium of banks which included the Bank of India, Bank of Baroda and Union Bank of India. It is stated that the consortium did not act as required under the arrangement between the parties. The Financial Creditor – Union Bank of India had sanctioned two term loans. The learned Counsel pointed out document at Annexure A-10 to point out the consortium arrangement where for additional term loan and term extension of DCCO (Date of Commencement of Commercial Operations) from 31.07.2016 to 30th November, 2016 was shifted to 31st August, 2016 to 31st December, 2016. The learned Counsel referred to Page - 232 of the Appeal Paper Book where Annexure A-10 refers that project must achieve COD as projected and that COD was 30th November, 2016 (which means Date of Commercial Operations). The learned Counsel accepts that this target was not achieved. The reason given is as mentioned of opposition by the villagers to land acquisition and although by 2016, land was handed over but there was delay in construction of transmission line, which was to be done by MSETCL. For all such reasons, the learned Counsel states that it cannot be said that there was default.

4. It is also stated that the date of repayment was 31st December, 2016 but the Bank recalled loan on 5th December, 2016 and thus the Recall Notice of Bank was also premature.

5. We have heard the learned Counsel for the Appellant and we have gone through the matter. There is debt due is not in dispute but the dispute is whether there is default. It is clear from the document pointed out by the learned Counsel for the Appellant that the project was to achieve COD as projected by 30th November, 2016. In any case, the time has lapsed much beyond 2016 and the Application under Section 7 was filed in 2018. For the purpose of processing Application under Section 7 of IBC, the scope for Adjudicating Authority is very limited as has been pointed out by the Adjudicating Authority in Para – 16 of its Judgement relying on the Judgement of **“Innoventive Industries Ltd. V. ICICI Bank & Anr.”** [Civil Appeal Nos.8337-8338 of 2017]. In Para – 17 of the Impugned Order, the Adjudicating Authority observed as under:-

“17. In this case, all the three pre-requisites for admission of this petition have been met. The debt is supported by substantive evidences and the evidences corroborate to the amount claimed. Moreover, the Corporate Debtor has acknowledged its liability by sending a reply as confirmation to the letter dated 05.12.2016. the Corporate Debtor has further acknowledged the debt including the same in its financial statements for the three consecutive financial years i.e. FY 2013-14, FY 2014-15 and FY 2015-16. The Balance Sheet of the Corporate Debtor as at 31.03.2016 and 30.03.2015 clearly reflect the Long Term Borrowings from Union Bank of India to the tune of ₹48,18,73,388/- and ₹37,22,33,333/- respectively. Hence, the debt reflected in the Financial statements of the Corporate Debtor is a clear cut acknowledgement of debt and there is no doubt about establishment of ‘debt’ and ‘default’ in the present case.”

5. Adjudicating Authority recorded that loan amount was not sanctioned as agreed by consortium is not a valid defence. It appears to us that putting

blame on others, cannot help the Appellant or the Corporate Debtor to say that the default has not taken place. It was for the Corporate Debtor to pursue the concerned authorities and the Banks cannot be blamed for the same. If date fixed for commencing commercial operations is not met and payments are not made, default is there. We find ourselves in agreement with the Adjudicating Authority for admitting the Application under Section 7. There is no reason to interfere in the Appeal.

The Appeal is dismissed. No Orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md