IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-863(PB)/2020

IN THE MATTER OF:

ICICI BANK LIMITED. .... **FINANCIAL CREDITOR**

Vs.

ESSAR POWER M.P LIMITED.....**CORPORATE DEBTOR**

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order dictated on: 29.09.2020

Order delivered on: 03.10.2020

CORAM:

SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

&

SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (TECH.)

PRESENTS:

For Financial Creditor : Ms. Misha, Mr. Siddhant Kant & Mr. Nikhil Mathur

For Corporate Debtor : Mr. Sumesh Dhawan, Mr. Nishant Rao & Mr. Himanshu Satija

ORDER

B.S.V. PRAKASH KUMAR, ACTG. PRESIDENT

1. It is Company Petition filed under Section 7 of the Code against the corporate debtor for initiation of CIRP on the terms the corporate debtor defaulted in making repayment of Rs. 1923,03,16,034.73/- as on 15.03.2020.The applicant counsel submits that the corporate debtor approached the financial creditor with the request to provide fund-based as well as non-fund based financial assistance for the development of a coal based thermal power plant with an installed capacity of 1200 MW (2X600) in Singrauli, Madhya Pradesh (for brevity 'the End-Use Project') pursuant to which various credit arrangement letters were executed by the corporate debtor. In pursuance of understanding between the corporate debtor and the creditor on 22.04.2020 a letter of credit facility agreement was executed between the corporate debtor and the financial creditor for an amount of Rs. 950,00,00,000/- for setting up the End-use Project. The Particulars of financial debt are mentioned below in part IV of the main petition:-

PART – IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The total principal amounts disbursed to the Corporate Debtor by the Applicant under all the facilities availed by it as set out in this application ("**Facilities**") is Rs. 1304,39,85,804.90 (Rupees Thirteen Hundred and Four Crores Thirty Nine Lakhs Eighty Five Thousand Eight Hundred and Four and Ninety Paise). The break-up of the same vis-à-vis each facility is set out below:

Facility	**Principal Amounts Disbursed by the Applicant to the Corporate Debtor**
END USE PROJECT FACILITIES	
Rupee Facility ("**RTL 1 Facility**")	690,24,49,999.94 (Rupees Six Hundred and Ninety Crores Twenty Four Lakhs Forty Nine Thousand Nine Hundred and Ninety Nine and Paise Ninety Four)
Working Capital Facility	Rs. 191,39,41,284.96 (Rupees One Ninety One Crore Thirty Nine Lakhs

("**WC Facility**")	Forty One Thousand Two Hundred Eighty Four and Paise Ninety Six)
NEW FUEL PROJECT FACILITIES	
Rupee Facility ("**RTL 2 Facility**")	Rs. 161,00,00,000 (Rupees One Hundred and Sixty One Crores)
Invoked BG Facility ("**BG Facility**")	Rs.261,75,94,520 (Rupees Two Hundred and Sixty One Crores Seventy Five Lakhs Ninety Four Thousand Five Hundred and Twenty)
TOTAL	**Rs. 1304,39,85,804.90 (Rupees Thirteen Hundred and Four Crores Thirty Nine Lakhs Eighty Five Thousand Eight Hundred and Four and Ninety Paise)**

The Financial Creditor has disbursed the above amounts to the Corporate Debtor through various facilities (*as listed out in point 5 Part V of this Application*) which have been amended and restated from time to time. A short summary of the Facilities granted to the Corporate Debtor,*inter alia*,by the Financial Creditor is annexed herein as **ANNEXURE 5**.

		The details regarding the disbursement made by the Financial Creditor to the Corporate Debtor with respect of the Facilities listed in Point 5 of Part V of this Application and undertaken to be repaid by the Corporate Debtor are annexed herewith as **ANNEXURE6.** It may be noted that the Financial Creditor has filed this application for initiating Corporate Resolution Process against the Corporate Debtor based on financial contracts executed by the Financial Creditor with respect to the Indian Rupee denominated facilities. The Financial Creditor also has other non-rupee denominated facilities such as external commercial borrowings aggregating to an amount of about USD 175,000,000/- (United States Dollar One Hundred and Seventy Five Million) granted to the Corporate Debtor. The Financial Creditor craves the leave of this Hon'ble Tribunal to file claims for financial default in accordance with Sections 13 and 15 of the Insolvency and Bankruptcy Code, 2016 to enable the Interim Resolution Professional to perform his duties under Section 18(1)(b) and other relevant provisions of the Insolvency and Bankruptcy Code, 2016. This application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is being filed without prejudice to the rights of the Financial Creditor available under Sections 13 and 15 of the Insolvency and Bankruptcy Code, 2016.

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The Facilities availed from the Financial Creditor by the Corporate Debtor are overdue and total amount in default as on 15March 2020 with respect to the Indian Rupee denominated facilities is Rs. 1923,03,16,034.73 (Rupees One Thousand Nine Hundred Twenty Three Crores Three Lakhs Sixteen Thousand andThirty Four and Paise Seventy Three) (*including the principal amounts, accrued interest and additional/default interest, as applicable*) The details regarding the date, amount and the days of defaults with respect to the Facilities granted by the Financial Creditor to the Corporate Debtor are also being annexed along with the present Application as **ANNEXURE 7**. It may be noted that the Financial Creditor has classified the account of the Corporate Debtor as non-performing asset as on 31 March 2017, with effect from 26 June 2015. It would also be pertinent to highlight that pursuant to the recall notices dated 7 August 2017 (*Annexure 13*), the Financial Creditor has accelerated all the Facilities granted to the Corporate Debtor and declared all amounts payable under the said Facilities with respect to End Use Project and the New Fuel Project.

2. Therefore, in view of the table mentioned above, the counsel for the corporate debtor having admitted the existence of debt as well as default, on perusal of the documents placed on record by the creditor, this petition is hereby admitted by appointing Mr. Ashish Chhawchharia, having Registration No. IBBI/IPA-001/IP-P00294/2017-18/10538, Email: ashish.chhawchharia@in.gt.com as IRP with the directions as follows:-

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 **29.09.2020** 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 **Mr. Ashish Chhawchharia, and having Registration Number [IBBI/IPA-001/IP-P00294/2017-18/10538] and the Address: Grant Thornton 10 C Hungerford Street, Kolkata, West Bengal, 700017 and the e-mail: ashish.chhawchharia@in.gt.com** 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/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)