



## **Volume 03, Number 37 (September 23, 2020)**

### **Park Energy Pvt. Ltd. Vs Syndicate Bank Company Appeal (AT)(Insolvency) No.270 of 2020**

**The onus of proof of default on the part of Corporate Debtor lies on the Financial Creditor and it has to demonstrate that default has occurred on account of failure on the part of Corporate Debtor to discharge its liability.**

#### **Facts of the Case:-**

The Corporate Debtor operates and develops power generation assets in India. The Corporate Debtor has set up a 2 x 150 MW Thermal Power Plant, at Bhadreshwar Kutch, Gujrat at a total project cost of Rs. 1996.54 Crores. For the purposes of setting up the Power Plant, the Corporate Debtor had obtained a term loan aggregating to Rs. 1497.40 Crores, which included Rs. 998.26 Crores from REC Limited; Rs. 252.74 Crores from Punjab National Bank and Rs. 246.40 Crores from State Bank of India. The promoters of the Corporate Debtor had invested towards equity an amount of Rs. 499.14 Crores towards the Power Plant. In order to meet the working capital requirement of the project, the Corporate Debtor entered into a Working Capital Consortium Agreement dated December 17, 2015 (the "WCCA") with Punjab National Bank (as the lead Bank), Indian Bank, Vijaya Bank, State bank of Hyderabad and Syndicate Bank (Respondent No.1).

The Appellant submits that Respondent No. 1 had sanctioned a total of Rs. 31 Crores by way of Fund based limits and Rs. 105 Crores by way of Non-fund based limits. After formation of the PNB Consortium lenders, Respondent No. 1 had unilaterally reduced its sanctioned facilities. Moreover, Respondent No. 1 refused to release even the sanctioned limits and reduced the non-fund based limits from Rs. 105 Crores to 98 Crores vide their sanction letter dated July 29, 2017, and thereafter with effect from December 05, 2018, Respondent No. 1 had reduced its cash credit (fund based facilities) from Rs. 31 Crores to Rs. 7.92 Crores. Furthermore, Respondent No. 1 did not release funds from sanctioned nonfund based limits. Furthermore, the Letter of Credit ("LC") Limit was reduced to nil from Rs. 74 crores, so as the Bank Guarantee limit.





The Respondent No.1 – Syndicate Bank (Financial Creditor) has claimed the total amount of Rs. 32,22,50,6660.16 as outstanding against the Appellant (Corporate Debtor) as on 29.07.2019. The Respondent No.1 – Syndicate Bank (Financial Creditor) has filed an application under Section 7 on 30.07.2019 and the Ld. Adjudicating Authority passed an order dated 27th January, 2020 which is impugned in this.

Corporate Debtor had been subjected to restructuring of credit facilities as well as an inter-creditor agreement and a True Retention Agreement account. In terms of the aforesaid agreements, the Corporate Debtor's deposit would go to the TRA account and before the Corporate Debtor could repay back the financial debt to its various lenders, it had to seek the approval of the Lead Bank i.e. Punjab National Bank. The Lead Bank had insisted that the financial creditor would have to issue a Letter of Credit before it would permit the release of payment by the Corporate Debtor, but the financial creditor refused to issue such a LoC even after the various repeated requests.

### **NCLAT held as follows:-**

After going through the whole case NCLAT observed that non-release of money out of the entire collection of Corporate Debtor does not render the Corporate Debtor liable for default who has performed his part of the contract. The fault lies somewhere else. In the inter-se dispute of Financial Creditors, Respondent No. 1 may have faced discrimination as regards release of money from TRA Account but that would not render the Corporate Debtor accountable for default.

The Corporate Debtor having performed his part of the contract by placing its entire collection in the Trust Retention Account (TRA) in accordance with the terms of the agreement cannot be said to be in 20 Company Appeal (AT) (Insolvency) No. 270 of 2020 default. Release of the amount due to Respondent No. 1 in terms of the 'Punjab National Bank Consortium Inter-se Agreement' read together with Trust Retention Account (TRA) Agreement is an in house contractual arrangement inter-se the Creditors for which the Corporate Debtor cannot be blamed. Initiation of Corporate Insolvency Resolution Process in the facts and circumstances, as noticed, cannot be appreciated as the same falls foul of the mandate of Section 7 of the I&B Code. Viewed thus, the impugned order cannot be supported. The Appeal, therefore, needs to be allowed.

