



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 204
IB-526/ND/2024

IN THE MATTER OF:

KSS Petron Private Limited

Swastik Chambers, 6 Floor,
Sion Trombay Road, Chembur, Mumbai – 400071

**... Applicant/
Financial Creditor**

Versus

Bhubaneshwar Expressways Private Limited

Shop No. 119/First Floor,
Sector 7, ISC-III, Vardhaman Star Citi Mall,
Dwarka, New Delhi- 110077

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 09.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sandeep Bajaj, Adv. Soayib, Adv. Rishabh Dua

For the Respondent : Adv. Amar Bajpayee

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

Present application has been preferred by a Liquidator qua KSS Petron Pvt. Ltd. i.e. Financial Creditor. According to Ld. Counsel for the Liquidator, the Financial Creditor and Corporate Debtor are related parties. The amount of debt is Rs. 63,29,41,500/- (Rupees Sixty-Three Crores Twenty-Nine Lakhs Forty-One



Thousand and Five Hundred Only) and date of default is 16.02.2024, as mentioned in part-4 of the application.

2.	AMOUNT CLAIMED TO BE IN DEFAULT	Rs. 63,29,41,500/- (Rupees Sixty-Three Crores Twenty-Nine Lakhs Forty-One Thousand and Five Hundred Only) The breakup of the claimed amount is provided in the table below:												
		<table border="1"><thead><tr><th>S.NO.</th><th>NATURE</th><th>AMOUNT (Rs.)</th></tr></thead><tbody><tr><td>1.</td><td>Inter Corporate Deposits</td><td>30,54,00,000</td></tr><tr><td>2.</td><td>Accrued Interest @13% from 01.04.2016 to 22.07.2024</td><td>32,75,41,500</td></tr><tr><td></td><td>Total</td><td>63.29.41.500/-</td></tr></tbody></table>	S.NO.	NATURE	AMOUNT (Rs.)	1.	Inter Corporate Deposits	30,54,00,000	2.	Accrued Interest @13% from 01.04.2016 to 22.07.2024	32,75,41,500		Total	63.29.41.500/-
S.NO.	NATURE	AMOUNT (Rs.)												
1.	Inter Corporate Deposits	30,54,00,000												
2.	Accrued Interest @13% from 01.04.2016 to 22.07.2024	32,75,41,500												
	Total	63.29.41.500/-												
3.	DATE ON WHICH DEFAULT OCCURED	The Corporate Debtor defaulted on 16 th February 2024, when the Corporate Debtor replied to the notice dated 14.12.2023 issued by the Financial Creditor, thereby admitting its liability towards the Financial Creditor. The liability was also acknowledged by the Corporate Debtor in its annual reports.												

2. Having drawn our attention to Annexure-13 (Pg. 82) of the application, the Ld. Counsel for the Liquidator/Financial Creditor could indicate the disbursement of the amount of debt to the Corporate Debtor. The relevant entry in the financial statements reads thus:-



Bhubaneshwar Expressways Private Limited
Notes forming part the Financial Statements as at March 31, 2020

(9) Equity Share Capital

I. Share capital

Particulars	(Amount in Rs. 000)	
	As at March 31, 2020	As at March 31, 2019
Authorised		
10,50,00,000 (March 31, 2019: 10,50,00,000 equity shares of Rs. 10 each	10,50,000	10,50,000
	10,50,000	10,50,000
Issued, Subscribed and fully paid up		
Equity Shares - 10,33,70,000 (March 31, 2019: 10,33,70,000 of Rs. 10 each)	10,33,700	10,33,700

(a) Reconciliation of the number of shares outstanding

Shares outstanding as at the beginning of the year	10,33,70,000	10,33,70,000
Changes during the year	-	-
Shares outstanding as at the end of the year	10,33,70,000	10,33,70,000

(b) Terms/ rights attached to the equity shares

The Company has only one class of equity shares having par value of Rs. 10 per share. Each holder of equity shares is entitled to one vote per share. The Company declares and pays dividend in Indian rupees. The dividend proposed by the Board of Directors is subject to the approval of the shareholders in the ensuing Annual General Meeting.

In the event of liquidation of the Company, the holders of equity shares will be entitled to receive remaining assets of the Company, after payment of all liabilities. The distribution will be in proportion to the number of equity shares held by the shareholders.

(c) Shares held by holding/ultimate holding Company and/or their subsidiaries/associates

Out of Equity Shares issued by the Company, shares held by its Holding Company, Ultimate Holding Company and their Subsidiaries/ Associates, are as below:

Particulars	(Amount in Rs. 000)	
	As at March 31, 2020	As at March 31, 2019
Kazstroy Service Investment Pte. Ltd., Singapore (Fellow Subsidiary Company)	4,96,17,600	4,96,17,600
KSS Petron Private Limited (Holding Company)	5,37,52,400	5,37,52,400

(d) Details of each shareholder holding more than 5% shares

Name of the shareholder	No. of shares held as on 31-03-2020	% Holding in the class	No. of shares held as on 31-03-2019	% Holding in the class
Equity shares of Rs. 10 each fully paid				
KSS Petron Private Limited	5,37,52,400	52.00	5,37,52,400	52.00
Kazstroy Service Investment Pte. Ltd., Singapore	4,96,17,600	48.00	4,96,17,600	48.00

(e) In last 5 years, there was no bonus issue, buy back and / or issue of shares other for cash consideration.

(9A) Other Equity

Particulars	Share Application Money Pending Allotment	Capital Reserve in the nature of Equity	(Amount in Rs. 000)	
			Retained Earnings	Surplus in P/L Statement
As on March 31, 2018	1,000	19,22,378	(15,79,917)	3,43,461
Profit for the year	-	-	(21,482)	(21,482)
Other Comprehensive Income (Net of Taxes)	-	-	-	-
Other Comprehensive Income (Net of Taxes), if any	-	-	-	-
As on March 31, 2019	1,000	19,22,378	(16,01,399)	3,21,979
Profit for the year	-	-	(40,254)	(40,254)
Other Comprehensive Income (Net of Taxes)	-	-	-	-
Other Comprehensive Income (Net of Taxes), if any	-	-	-	-
As on March 31, 2020	1,000	19,22,378	(16,41,653)	2,81,725



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Long-term borrowings

Particulars	As at March 31, 2023		As at March 31, 2022	
	Non Current	Current	Non Current	Current
(I) Secured				
PNB	-	-	-	-
AXIS	-	-	-	-
-	-	-	-	-
From FI:				
IIFCL	-	-	-	-
JM Financial ARC	-	-	-	-
-	-	-	-	-
From Others:				
Arcelormittal India Private Limited	-	4,09,61,84,963.00	-	4,09,61,84,963.00
	-	4,09,61,84,963.00	-	4,09,61,84,963.00
(II) Unsecured				
Loan-Kazstroyservice Investment Pte Ltd.	-	20,92,50,000.00	-	19,22,50,000.00
Loan-KSS Petron Pvt. Ltd.	-	30,54,00,000.00	-	30,54,00,000.00
-	-	51,46,50,000.00	-	49,76,50,000.00

Provision For Expenses

Particulars	FY 2022-23	FY 2021-22
Provision For Expenses	85,94,625.20	85,94,625.20
	85,94,625.20	85,94,625.20

Other Current Liabilities

(I) Statutory Dues	FY 2022-23	FY 2021-22
TDS Interest	57,43,398.00	57,43,398.00
TDS Payable-Professional	(7,800.00)	250.00
TDS Payable - Salary	(534.00)	(534.00)
PF Payable	(2,724.28)	(2,724.28)
P W Fund Payable	1,242.33	1,242.33
	57,33,582.05	57,41,632.05

(II) Interest Accrued & Due	FY 2022-23	FY 2021-22
Loan - Kazstroyservice Investment Pte. Ltd.	2,93,60,925.00	2,93,60,925.00
Loan - KSS Petron Pvt. Ltd.	12,56,67,897.00	12,56,67,897.00
	15,50,28,822.00	15,50,28,822.00

(III) EPC Cost & Other Creditors	FY 2022-23	FY 2021-22
Agarwal Jetley & Company	1.00	1.00
Anoop Kumar Kaul	5,87,962.00	5,87,962.00
Arkitechno Consultant (India) Pvt Ltd	27,96,600.72	27,96,600.72
Credit Analysis And Research Limited	1,54,575.00	1,54,575.00
Csd And Co Llp	21,600.00	21,600.00
Divya Agarwal	435.00	435.00
Feed Back Brisa Highways Omt Pvt Ltd	1,60,42,806.20	1,60,42,806.20
Halcrow Consulting India Private Limited	3,09,224.00	3,09,224.00
Iifcl	63,000.00	63,000.00
Ivalue Advisors Pvt. Ltd	2,87,500.00	2,87,500.00
Kssiipl	2,98,515.00	2,98,515.00
Kssiipl-(General A/C)	34,64,336.00	34,64,336.00
Maruti Tyres	11,000.00	11,000.00
National Highway Authority Of India	1,29,865.00	1,29,865.00
Naveen Kumar	8,010.00	8,010.00
Pranab Kumar Mahakul	24,889.00	24,889.00
Reimbursement Towards Utility Shifting	10,54,940.00	10,54,940.00
R.Rath & Associates & COM	1,800.00	1,800.00



3. The aforementioned amount was payable within five years of agreement i.e. 03.12.2014. However, the Corporate Debtor failed to repay the same. Ld. Counsel for the Corporate Debtor submitted that the amount of debt could not be re-paid as there was lapse on the part of NHAI. The plea may not be relevant to the issue involved. In the present proceedings we need to satisfy ourselves about the disbursement of the amount of debt, default in repayment of the same and pendency of proceedings against the IP proposed by the Applicant to be appointed as Resolution Professional. Additionally, we need to see whether the application is complete or not. From the aforementioned documents we could decipher that there was a disbursement of amount of loan. The Ld. Counsel for the Corporate Debtor categorically admitted that the Corporate Debtor could commit default in repayment of the same and the amount of debt has not been repaid. Such is also the stand taken by the Corporate Debtor in the reply filed by it in para- 6 to 8 of the reply which reads thus:-

“6. I state that owing to the above stated defaults on the part of NHAI, the Corporate Debtor incurred cost overrun and the Corporate Debtor approached the Financial Creditor to secure a loan to the tune of Rs. 35,00,00,000/- (Rupees Thirty-Five Crore only) out of which an amount of Rs. 30,54,00,000/- (Rupees Thirty Crore Fifty-Four Lakhs only) was disbursed to the Corporate Debtor. I state that the Corporate Debtor had approached the Financial Creditor in the anticipation that the said loan would be fully repaid post construction and operation of the toll plaza. I state that an Agreement dated 03.12.2014 was also executed between the parties. I further state that in terms of the Agreement, the Corporate Debtor had agreed to repay the loan after a period of 5 years along-with interest @13% p.a.. I state that the Agreement dated 03.12.2014 has been annexed by the Financial



Creditor as Annexure A-3 and the Corporate Debtor seeks permission to rely upon the same.

7. I state that owing to the defaults of the NHAI in releasing payments and dues of the Corporate Debtor arising from the Concession Agreement, the Corporate Debtor was unable to repay its dues to the lenders and the Corporate Debtor.

8. I state that NHAI terminated the Concession Agreement March-2017 on account of which the Corporate Debtor has been in great financial difficulty and was unable to service the debt. in-fact, owing to the illegal termination by NHAI, the Corporate Debtor invoked arbitration against NHAI. I state that the Corporate Debtor and NHAI were in a legal battle since a long time and only recently the Corporate Debtor was able to secure a settlement with NHAI. I further state that the Corporate Debtor has received payments by NHAI, however, the same is not sufficient to repay the outstanding loan of the Financial Creditor. I further state that the Corporate Debtor does not have a revenue source of income.”

4. From the Form-2 placed on record at page 188 to 191 it can be seen that the IP has declared that no proceedings are pending against him. Clause iv of the concerned Form reads thus:-

“iv. certify that there are no disciplinary proceedings pending against me with the Board or Indian Institute of insolvency Professionals of ICAI;”

5. From the aforementioned it is clear that the requirements of Section 7(3) and (5) of IBC, 2016 are satisfied. In the wake, we are left with no option but to admit the application.



6. **In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

7. As proposed by the Petitioner **Ms. Monika Agarwal**, having Registration IBBI/IPA-001/IP- P01137/2018-19/11866 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against her and disclosures as required under IBBI Regulations, 2016 are made by her within a period of one week from this Order. It is further ordered that Ms. Monika Agarwal shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extent provisions of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



8. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
9. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.
10. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-

**(SUBRATA KUMAR DASH)
MEMBER (T)**

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**

Iqraa Wasi/Nikhil