

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 1633(IB)/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

BANK OF MAHARASHTRA

...Financial Creditor/ Applicant

v/s

**D.S. KULKARNI DEVELOPERS PRIVATE
LIMITED**

...Corporate Debtor

Order Dated 26th September 2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Khushboo Shah Rajani

For the Respondent: Adv. Anuja Bhansali, Adv. Yakshay Chheda and
Adv. Devanshi Sethi.

Per Rajesh Sharma, Member (Technical)

ORDER

1. The Application was heard and admitted vide our order dated 26.9.2019 and Interim Resolution Professional was appointed.
2. This is an application being CP 1633/2019 filed by **Bank of Maharashtra**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **D.S. Kulkarni Developers Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
3. Mr. Prashant R. Khatavkar, Zonal Manager of the Applicant Bank has filed this application, who is duly authorised to do so vide Board Resolution dated 30.11.2017.
4. The Applicant had sanctioned certain credit facilities to the Corporate Debtor aggregating to ₹92,92,06,014/- vide sanction letter dated 24.02.2016. The date of default as per Form 1 is 29.07.2017 and the

amount in default is mentioned as ₹119,48,89,348/- including unapplied interest.

5. The credit facilities were secured and charge was registered in favour of the Applicant and the same is reflected on the MCA website in the list of charges registered as on 10.09.2018.
6. The Applicant has issued Notice under Section 13(2) of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 initiating therein that the account of the Corporate Debtor was classified as Non-Performing Asset on 24.07.2017 and calling upon the Corporate Debtor to repay in full the amount of ₹31,65,15,206.43.
7. The Applicant has also annexed order of the Ld. Debts Recovery Tribunal at Pune dated 15.12.2018 in O.A. 552/2018 wherein the Ld. DRT has directed the Corporate Debtor to pay the Applicant the aggregate sum of ₹74,07,17,601/-.
8. The corporate Debtor has not filed any objections. The Ld. Counsel appearing for the Corporate Debtor has submitted that all the Directors of the Corporate Debtor are in prison and orally submitted that since the SFIO has ceased of the matter, therefore, the present Application under Section 7 of I&B Code shall not be admitted.
9. As per the judgement of Hon'ble Supreme Court in ***Innoventive Industries Ltd. vs. ICICI Bank and Ors., AIR2017SC 4084*** if the debt and default is established, then the Application under section 7 of the I&B Code has to be admitted. Therefore, the contention of the Ld. Counsel of the Corporate Debtor is not tenable and hereby rejected.
10. On perusal of the documents submitted by the financial creditor, it is clear that debt amounting to ₹119,48,89,348/- is due and payable by the Corporate Debtor as on 29.07.2017. The debt granted vide sanction letter dated 24.02.2016 is in default, and the same is established by bank statements of the Corporate Debtor accompanied with the Bank certificate under Banker's Book Evidence Act. Further, the order of Ld. DRT Pune in O.A. no. 552/2018 dated 15.12.2018 also establishes the fact of debt and default of the Corporate Debtor. The Corporate Debtor has not disputed the existence of debt however

has merely raised certain disputes that have been dealt earlier in this judgment and rejected as not maintainable for the reasons mentioned. The outstanding amount that is in default is more than ₹1,00,000/-.

11. The application filed by the financial creditor is on proper form 1 as prescribed under the Adjudicating Authority Rules, and application is complete.
12. The Applicant has proposed the name of Mr. Manoj Kumar Agrawal, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00714/2017-18/11222] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **Bank of Maharashtra**, against **D.S. Kulkarni Developers Ltd.**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
 - III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
 - VI. That this Bench at this moment appoints Mr. Manoj Kumar Agrawal, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00714/2017-18/11222] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)
26th September 2019

Sd/-
V.P. SINGH
Member (Judicial)