

IRP

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

CP/1353/IB/2018, MA/749/2019 and  
MA/1292/2019 filed under Section 7 of  
the Insolvency and Bankruptcy Code,  
2016 r/w Rule 4 of the Insolvency and  
Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016

In the matter of *M/s. Sri Venkatesa Paper & Board Limited*

**Bank of Baroda**

(Formerly known as Dena Bank Ltd.)

... *Financial Creditor*

-vs-

**M/s. Sri Venkatesa Paper & Board Limited**

... *Corporate Debtor*

**Coram:**

**R. VARADHARAJAN,  
Hon'ble Member (Judicial)**

**ANIL KUMAR B,  
Hon'ble Member (Technical)**

*Senior Advocates for Financial Creditor:* Mr. K. Ravindranath

*Advocate for Corporate Debtor* : Mr. A.G. Satyanarayana  
for M/s. A.K. Mysamy

**COMMON ORDER**

Per: Mr. R. VARADHARAJAN, MEMBER (JUDICIAL)

*Order pronounced on 11<sup>th</sup> of December, 2019*



1. CP/1353/IB/2018 has been filed by Dena Bank Limited on 26.10.2018 for initiation of Corporate Insolvency Resolution Process (CIR Process) against the Corporate Debtor, and during the pendency of the said Application, Ministry of Finance, Department of Financial Services, New Delhi issued a Notification No. G.S.R.2 (E), dated 02.01.2019, for amalgamation of Dena Bank Limited with Bank of Baroda w.e.f. 01.04.2019. In the circumstance, MA/749/2019 has been filed by the Applicant namely Dena Bank Limited for substitution of its name from Dena Bank Limited to Bank of Baroda. The Applicant has placed on record in support of the Application in MA/749/2019 the Notification dated 02.01.2019 issued by the Ministry of Finance at pages 13 to 25 of the Application.

Heard the Learned Senior Counsel for the Applicant, perused the Notification dated 02.01.2019 issued by the Ministry of Finance and upon being satisfied about the amalgamations of the Applicant Bank with Bank of



Baroda, the Miscellaneous Application filed in MA/749/2019 is allowed and Bank of Baroda is substituted in the place of Dena Bank Limited.

2. The main CP/1353/2018 has been filed by **Bank of Baroda** (Formerly known as Dena Bank Limited) (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **M/s. Sri Venkatesa Paper & Board Limited** (hereinafter referred to as 'Corporate Debtor').

The prayer made is to admit the Application, to initiate CIR Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016).

3. From the record of proceedings, it is seen that consequent to the issuance of Notice to the Corporate Debtor, the Corporate Debtor has appeared before this



Tribunal and has also filed its Counter to the Application after providing a copy to the other side. After the pleadings were complete, the case was adjourned from time to time for making final submissions of the parties. On 26.11.2019, there was no representation on behalf of the Corporate Debtor, and hence, based on the available records and after hearing the submissions of the Applicant represented by the Learned Senior Counsel for the Financial Creditor, the order was reserved. Perused the pleadings and Counter.

4. The Financial Creditor has claimed the total amount of Rs.1,16,81,08,629.87p as outstanding against the Corporate Debtor as on 16.10.2018. The statement of calculation which is placed at page 17 of the typed set filed with the Application discloses the details of various loans advanced by the Financial Creditor to the Corporate Debtor.

5. The brief facts of the case of the Financial Creditor is that the Corporate Debtor which is engaged in the



manufacture of Newsprint, Writing and Printing paper from waste paper, had approached the Financial Creditor for availing various credit facilities for its business, on 01.09.1998. Accordingly, the Financial Creditor has sanctioned the following facilities to the Corporate Debtor:-

- i) Open Cash Credit Limit -Rs.80 Lakhs,
- ii) Working Capital Demand Loan-Rs.320 Lakhs,
- iii) Bills Purchase Limit - Rs.100 Lakhs and
- iv) Letter of Credit Limit-Rs.200 Lakhs.

6. In order to secure the above facilities, the Corporate Debtor executed the following documents in respect of Open Cash Credit facility as security for due repayment in favour of the Financial Creditor, on 09.11.1998:-

- i) Demand Promissory Note for Rs.80 Lakhs,
- ii) Letter of Continuity and
- iii) Hypothecation of Goods.

The copies of the documents executed by the Corporate Debtor are placed at pages 53 to 69 of the typed set filed



with the Application.

7. In respect of Working Capital Demand Loan, the following documents were executed by the Corporate Debtor in favour of the Financial Creditor, on 09.11.1998:-

- i) Demand Promissory Note for Rs.320 Lakhs,
- ii) Letter of Continuity and
- iii) Hypothecation of Goods.

The copies of the documents executed by the Corporate Debtor are placed at pages 70 to 87 of the typed set filed with the Application.

8. In relation to Bills Purchase Limit, the following documents were executed in favour of the Financial Creditor, on 09.11.1998:-

- i) Demand Promissory Note for Rs.100 Lakhs,
- ii) Letter of Continuity,
- iii) Hypothecation of Goods,



- v) Letter of Undertaking from Borrower for Supply Bills,
- vi) Inland Bills,
- vii) Form of Power of Attorney for Supply Bills,
- viii) Agreement for Working Capital Demand Loan and
- ix) Hypothecation of Movables Plant, Machineries etc.

The copies of the documents executed by the Corporate Debtor are placed at pages 88 to 109 of the typed set filed with the Application.

9. As regards the Letter of Credit Limit availed by the Corporate Debtor, the following documents were executed on 09.11.1998:-

- i) Demand Promissory Note for Rs.200 Lakhs and
- ii) Letter of Continuity,

The copies of the documents executed are placed at pages 110 and 111 of the typed set filed with the Application.



10. After availing the above loans and executing various documents in favour of the Financial Creditor, the Corporate Debtor has committed default in repayment of the amounts to the Financial Creditor and the account has become irregular.

11. It is contended by the Financial Creditor that the Corporate Debtor thereafter filed a reference before BIFR to declare the Corporate Debtor as sick, and on 03.09.2002, the BIFR declared the Corporate Debtor as sick company and appointed an operating agency to examine the viability of the Company to formulate a rehabilitation scheme.

12. It is averred that subsequently, the Corporate Debtor has submitted One Time Settlement (OTS) proposal for a sum of Rs.160.53 Lakhs and same was accepted by Financial Creditor, however, the Corporate Debtor has failed and neglected to pay the OTS amount.



13. The Financial Creditor issued Legal Notice dated 11.08.2010 to the Corporate Debtor and others calling upon them to pay the outstanding balance amount failing which the Financial Creditor would be constrained to take appropriate legal proceedings for recovery of the amount. Even after the receipt of the said notice, Corporate Debtor had failed and neglected to pay the outstanding amount. Thereafter, the Financial Creditor has filed Original Application in OA-103/2011 under Section 19 (1) of the RDDB&FI Act, 1993, before the DRT, Coimbatore, the copy of which is placed at pages 31 to 45 of the typed set filed with the Application. The Financial Creditor has also placed on record the statement of accounts at pages 47 to 52 of the typed set filed with the Application to show that the amounts have been transferred to the Corporate Debtor on various dates and the amounts due.

14. The Corporate Debtor has filed Counter Affidavit wherein it is stated that the Corporate Debtor had availed



various credit facilities totalling to a principal sum of Rs.7 Crores from the Financial Creditor for its business commitments, but however, in the instant Application, the total outstanding amount due to the Financial Creditor is shown as Rs.116,81,08,629/- which is not correct, and the same is disputed.

15. It is further averred in the Counter Affidavit that the Financial Creditor has filed OA-103/2011 before the DRT at Coimbatore for recovery of a sum of Rs.30,06,41,668.37p on 25.08.2011, which is pending. In the meantime, the other lenders of the Corporate Debtor had joined together and assigned the debt to the ACRE (Assets Care & Reconstruction Enterprise Ltd.), which in turn had sold all the movable and immovable properties under SARFAESI Act, 2002 and the sale proceeds were taken over by ACRE. Therefore, the Corporate Debtor has no assets either movable or immovable for realisation as on date, and hence, prayed to dismiss the Application.



16. A perusal of the Counter Affidavit filed by the Corporate Debtor, it is seen that the Corporate Debtor has fairly admitted the various facilities availed by it from the Financial Creditor and also stated that it had committed default in repayment of the said loan due to cash crunch in the Corporate Debtor Company.

17. The documentary evidence which is placed on the records is sufficient in order to ascertain the existence of a default on the part of the Corporate Debtor. Therefore, in the light of the facts and circumstances recorded, and the legal position stated, the Financial Creditor has fulfilled all the requirements of law for admission of the Application. Therefore, we are inclined to admit the Application under Section 7 (5) of the I&B Code, 2016.

18. The Financial Creditor had initially proposed the name of one Mr. B. Hariharan (Regn. No. IBBI/IPA-001/IP-P00380/2017-2018/10637, residing at No.46, B IV Floor, Krishnan Complex, South Boag Road, T. Nagar,



Chennai-600 017.) as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 had been filed by the said proposed IRP. However, subsequently MA/1292/2019 has been filed by the Applicant namely Bank of Baroda (formerly known as Dena Bank Limited) to change the name of Interim Insolvency Professional from Mr. B. Hariharan to Mr. S. Muthu Raju.

19. It is submitted by the Learned Senior Counsel for the Applicant that since Dena Bank Limited has been amalgamated with the Bank of Baroda w.e.f. 01.04.2019, which necessitated the Applicant to file the present Application to change the Interim Resolution Professional.

20 Heard the Learned Senior Counsel for the Applicant and perused the records including Form -2 filed by the Mr. S. Muthu Raju. The reason assigned by the Learned Senior Counsel for the Applicant is convincing and hence,



the Miscellaneous Application filed in MA/1292/2019 is allowed. Accordingly, the Interim Resolution Professional namely Mr. B. Hariharan and whose details are provided in Part-III of the Application has been changed and in his place Mr. S. Muthu Raju (Regn. No. IBBI/IPA-002/IP-N00009/2016-2017/10013, residing at No.3, Sundaram Brothers Layout, Opposite to All India Radio, Trichy Road, Ramanathapuram, Coimbatore-641 045. ) has been substituted. Hence, Mr. S. Muthu Raju is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.



21. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (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.”



22. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub - section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

23. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub - section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the



date of such approval or liquidation order, as the case may be.”

24. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI



Certified to be True Copy

  
**N. SRIRAMASUBRAMANIAN**  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
CHENNAI BENCH  
CORPORATE BHAVAN, 9th FLOOR  
29, RAJAJI SALAI, CHENNAI-600001.