# IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – II, CHENNAI

## CP (IB)/52(CHE) 2022

*(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* **DEVAS ENGINEERING SYSTEMS PVT. LTD.**

**UNION BANK OF INDIA**
Hosur Branch,
560/1C, Yashodha Mahal,
Opp Bus Stand, By-Pass Road,
Hosur – 635 109. … *Financial Creditor*

-Vs-

**DEVAS ENGINEERING SYSTEMS PVT. LTD.**
CIN: U29150TZ2010PTC015970,
101A, SIPCOT Inudstrial Complex,
Phase –I, Hosur – 635 126.

… *Corporate Debtor*

*Order Pronounced on 09th September 2022*

CORAM:

**BACHU VENKAT BALRAM DAS MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor* : *Mr.Shanthi Meenakshi, Advocate*
*For Corporate Debtor* : *Mr.R.Sugumaran, Advocate*
*Ms.Vaiduriya, Advocate*

**ORDER**

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by **UNION BANK OF INDIA,** Hosur Branch (hereinafter referred to as 'Financial Creditor') on 24.01.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **DEVAS ENGINEERING SYSTEMS PVT. LTD.** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the

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Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The registered office address of the Financial Creditor as per the Application is stated to be situated at 239, Vidhan Bhavan Marg Nariman Point, Mumbai – 400 021 and also Branch office address is situated at 560/1C, Yashodha Mahal, Opp Bus Stand, By-Pass Road, Hosur – 635 109. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr.G.K.Murigan, Chief Manager of the Financial Creditor. Verifying affidavit dated 24.01.2022 was filed for the same.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 24.06.2011 with CIN: U29150TZ2010PTC015970. The registered office of the Corporate Debtor as per the MCA master data is situated at 101A, SIPCOT Inudstrial Complex, Phase –I, Hosur – 635 126.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr.Sivalingam, Reg. No. IBBI/IPA-001/IP-PO1597/2018-19/12430.

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5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.29,39,87,476.00/- (Rupees Twenty Nine Crore Thirty-Nine Lakh Eghty-Seven Thousand Four Hundred and Seventy Six Only) as on 04.12.2015 with further interest and other charges, less recoveries if any, which is due and payable by the Corporate Debtor. The date of default is averred in Part-IV of the Application as 04.12.2015.

6. Part V of the application describes the particulars of Financial Debt, list of documents filed in the typed set of the Application.

7. It is averred in the application that the Financial Creditor has sanctioned various credit facilities time to time, to the Corporate Debtor as follows:-

| Nature of Facilities | Extent Rs. in Lakh |
|---|---|
| BE under LC | 30.00 |
| Cash Credit | 500.00 |
| Term Loan (Existing) | 196.00 |
| Term Loan (New) | 70.00 |
| DBC/BDD | 10.00 |
| Inland LC cum BG | 200.00 |
| **Total** | **1006.00** |

the said facilities are secured by hypothecation of Plant and Machinery, other movable and Mortgage of immovable properties.

8. It was further averred that at the request of the Corporate Debtor the Financial Creditor has restructured and modified the said facilities as below, vide letter CO/CHEN/CLCC/15/2014-15 dated 07.06.2014.

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| Nature of Facilities | Extent Rs. in Lakh |
|---|---|
| BE under LC | 30.00 |
| Cash Credit | 500.00 |
| Term Loan -1 | 10.71 |
| Term Loan -2 | 88.00 |
| Term Loan -3 | 400.00 |
| DBC/BDD | 10.00 |
| Inland LC cum BG | 500.00 |
| BG | - |
| WCTL | 575.00 |
| FITL Fresh | 140.51 |
| **Total** | **2254.22** |

9. It was further averred that the account was classified as NPA on 04.12.2015. Thereafter, the Corporate Debtor has requested the Financial Creditor to reduce the CC limit and convert the non-fund based limits into fund based limits. Considering the same the Financial Creditor had sanctioned the following limits

| Nature of Facilities | Extent Rs. in Crore |
|---|---|
| Cash Credit | 2.00 |
| Term Loan -1 | 0.45 |
| WCTL | 5.75 |
| FITL | 1.40 |
| LC cum BG | 0.75 (Reduced from Rs.5.00 Cr.) |
| **Total** | **15.35** |

to the Corporate Debtor vide letter No. ZO/CBE/ADV/SME/ ZLCC/400/2015-16 dated 11.12.2015.

10. Further, it was mentioned that Rs.29,39,87,476.00/- (Rupees Twenty Nine Crore Thirty-Nine Lakh Eghty-Seven Thousand Four Hundred and Seventy Six Only) has been due to the Financial Creditor as on 04.12.2015.

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11. When this case is taken up for final hearing on 06.09.2022, the Ld. Counsel on record for the Respondent Mr.R.Sugumaran is represented by Ms.Vaiduriya, as her senior is held up before Hon'ble High Court and the case was passed over and taken up for hearing at 11.45 A.M.. However, Ld. Counsel R.Sugumaran was not appeared to make any representation. Reasonable opportunity was given to the representing counsel to argue the defence, but she refuses to continue with the arguments. Considering the time taken in earlier adjournments, this Adjudicating Authority inclined proceeded further in this case.

12. It was submitted by the Learned Counsel for the Applicant that the account was classified as Non-Performing Asset on 04.12.2015. It was further submitted that the Corporate Debtor has acknowledged the debt owed to the Applicant in its balance sheets for the financial years 2015, 2016, 2017, 2018, 2019 & 2021. Moreover, the Counsel of the Applicant relied on Hon'ble Supreme Court decision in Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. and argued that the acknowledgement of liability in the balance sheet extends the period of limitation and the application is well within the limitation.

13. It was contended in the reply statement filed by the Respondent that there is difference in outstanding amount calculated by the bank and the Corporate Debtor. It was further

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averred that SARFAESI proceedings initiated by the Financial Creditor against the Corporate Debtor was still pending under DRT-III Chennai, Bench.

14. From the submissions of both the Counsels and on perusal of the documents placed on record we see that in the balance sheets of the Corporate Debtor for the years 2019 and 2021 the long term borrowings are recorded as follows:-

| 3 . Long-Term Borrowings | | In ₹ (Rupees) |
|---|---|---|
| Particulars | As at 31st Mar 2019 | As at 31st Mar 2018 |
| Secured (Nature of security shall be specified separately in each case) | | |
| Bonds/Debentures | | |
| Term Loans | | |
| - From Banks | | |
| TERM LOAN FROM CORPORATION BANK A\C.NO. 110004 | 74,58,063 | 43,21,342 |
| TERM LOAN FROM CORPORATION BANK A\C.NO. 140001 | 1,99,26,236 | 1,20,76,259 |
| TERM LOAN FROM CORPORATION BANK A\C. NO. 140005 | | - |
| TERM LOAN FROM CORPORATION BANK A\C. NO. 14000 | 9,16,26,679 | 5,75,00,000 |
| TERM LOAN FROM CORPORATION BANK A\C NO. 15001 | 7,89,33,606 | 5,00,00,000 |
| - From Other Parties | 66,104 | 66,104 |
| | | |
| TERM LOAN FROM HDFC | | 60,980 |
| TERM LOAN FROM KOTAK MAHENDRA BANK | | 4,27,209 |
| TERM LOAN FROM MAGMA FINCORP | 73,312 | 73,312 |
| Total | 19,80,84,000 | 12,45,25,206 |

| 3 . Long-Term Borrowings | | In ₹ (Rupees) |
|---|---|---|
| Particulars | As at 31st Mar 2021 | As at 31st Mar 2020 |
| Secured (Nature of security shall be specified separately in each case) | | |
| Bonds/Debentures | | |
| Term Loans | | |
| - From Banks | | |
| TERM LOAN FROM CORPORATION BANK A\C.NO.560821000030863 (UBI) | 96,72,999 | 87,11,501 |
| TERM LOAN FROM CORPORATION BANK A\C.NO.560726000000196(UBI) | 2,58,35,390 | 2,32,17,082 |
| TERM LOAN FROM CORPORATION BANK A\C.NO.140005 | | - |
| TERM LOAN FROM CORPORATION BANK A\C.NO.560716000000511(UBI) | 10,25,38,047 | 10,69,21,102 |
| TERM LOAN FROM CORPORATION BANK A\C NO.560716000000501(UBI) | 11,91,71,438 | 9,21,10,423 |
| - From Other Parties | 1,16,104 | 66,104 |
| | | |
| TERM LOAN FROM HDFC | | - |
| TERM LOAN FROM KOTAK MAHENDRA BANK | | - |
| TERM LOAN FROM MAGMA FINCORP | 73,312 | 73,312 |
| Total | 25,74,07,290 | 23,10,99,524 |

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the above documents clearly shows that the Corporate Debtor has acknowledged the debt in both the balance sheets.

15. In the Judgement relied by the Ld. Counsel of the Applicant viz., ***Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr.*** the Hon'ble Apex Court has clearly declared that the acknowledgement in the balance sheet would amount of admission of liability.

16. Similarly, the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited & Ors.*** reiterated above judgement and concluded as follows

> *"97. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."*

17. And for the contention regarding pending proceeding before DRT, it is relevant to refer to decision of Hon'ble NCLAT in ***Mr.Amar Vora Vs. City Union Bank Ltd.*** wherein it was held as follows

> *"9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016*

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*before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant"*

18. In view of the facts of the case and the catena of judgements referred *supra* we are convinced that there is undoubted debt and default on the part of the Corporate Debtor and this Tribunal inclined to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

19. 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 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.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

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

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(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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

21. 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:

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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.

22. The Financial Creditor has proposed the name of **Mr.K.Sivalingam (Email id: siva.k220353@gmail.com), Reg. No. [IBBI/IPA-001/IP-P-01597/2018-2019/12430]** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 21.12.2022.

22. **Mr.K.Sivalingam** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

25. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also

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communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

26. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

27. Post this CP(IB)/52(CHE)/2022 for hearing on **21.10.2022.**

-Sd-

**SAMEER KAKAR**
MEMBER (TECHNICAL)

-Sd-

**BACHU VENKAT BALRAM DAS**
MEMBER (JUDICIAL)