

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 1443/KB/2018**

**IN THE MATTER OF:**

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**-And-**

**IN THE MATTER OF:**

**DENA BANK**, having CIN No. U23109WB1991PTC051437 and registered office at Dena Corporate Center, C-10, G-Block, Bandra Kurla Complex, Bandra € , Mumbai – 400051 and also at Asset Recovery Branch, 109/D Sir Ashutosh Mukherjee Road, Bhowanipur, Kolkata 700025;

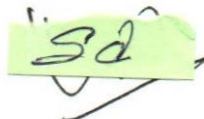
**... Financial Creditor**

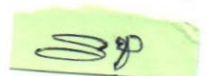
**-Versus-**

**IN THE MATTER OF:**

**M/S. DILIP POLYFAB PRIVATE LIMITED**, CIN U25200WB2009PTC139223, having its Registered Office at 179, Badu Road, Bright Ware Complex, Madhyamgram, Mouza Digberia, P.O. Badu, P.S. Barasat, Kolkata 700128, District 24 Parganas North, West Bengal.

**... Corporate Debtor**





**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &**  
**Shri Harish Chander Suri, Hon'ble Member (T)**

**Counsel on Record:**

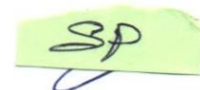
- |                               |                          |
|-------------------------------|--------------------------|
| 1. Mr. Gopal Pahari, Advocate | ] For Financial Creditor |
| 2. Ms. Mandeep Kaur, Advocate | ]                        |

**Date of pronouncement of Order: 14/10/2019.**

**ORDER**

**Per Harish Chander Suri, Member (T).**

1. This Application under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Dena Bank**, hereinafter referred to as the **Financial Creditor**, through **Mr. Bipin Kumar Banerjee, Assistant General Manager** of its Asset Recovery Branch, Kolkata who have been authorized by the bank vide authorization/permission letter dated 22<sup>nd</sup> October, 2018 against **M/s. Dilip Polyfab Pvt. Ltd.**, a Corporate Entity having CIN No. U25200WB2009PTC139223, registered with the Registrar of Companies, West Bengal and having its Registered Office at Kolkata, hereinafter referred to as the "**Corporate Debtor**".
2. It is submitted that a loan of Rs. 8,00,00,000/- (Rupees Eight Crores Only) was sanctioned by the Financial Creditor to the Corporate Debtor vide Sanction Letter dated 11<sup>th</sup> November, 2014 on the terms and conditions duly acknowledged and accepted by the Corporate Debtor, a



copy of the said sanction letter dated 11<sup>th</sup> November, 2014 has been annexed with the Application as **Annexure 'A'**.

3. It is submitted that the Corporate Debtor committed default in payment of the amount and the date of default actually occurred on 28<sup>th</sup> August, 2015. After calculation of the amount as per the rate of interest agreed upon between the parties, total amount due and outstanding is Rs. 12,99,05,589.16p (Rupees Twelve Crore Ninety Nine Lacs Five Thousand Five Hundred Eighty Nine and Paise Sixteen Only). To secure its loan the Financial Creditor had got hypothecation of the following securities/assets:-

1. *Hypothecation by way of first charge of all the Corporate Debtor's*
  - a) *Stock of Raw materials, goods in process and finished goods such as cotton, jute, etc., consumable stores and spars etc., both present and future.*
  - b) *Present and future book debts, outstanding, monies receivables, claims, bills etc.*
  - c) *All tangible movable properties and assets including plant, machineries, tools and accessories, furniture, articles, office equipments, computer etc.*
2. *The whole of the Corporate Debtor's receivables being Book Debts, all cash flows and receivables arising from/in connection with business of Corporate Debtor.*
3. *All rights, title, interest, benefits, claims and demand whatsoever in respect of rights arising under insurance policies of the Corporate Debtor.*

4. On their failure to make the payment of the outstanding amount, the Financial Creditor sent a demand notice on 6<sup>th</sup> January,

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2016 to the Corporate Debtor calling upon the Corporate Debtor to pay a sum of Rs.8,71,53,003/- (Rupees Eight Crore Seventy One Lacs Fifty Three Thousand and Three Only) which was duly received by the Corporate Debtor and possession notice was also issued on 15<sup>th</sup> March, 2016 which forms part of the record.

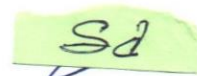
5. It is further submitted in the petition that the last payment received from the Corporate Debtor in the Bank account was only Rs.57,000/- on 30<sup>th</sup> October, 2017. The Financial Creditor has filed CIBIL Report dated 25<sup>th</sup> October, 2018 (Annexure 'S') proving default. The Financial Creditor has also proposed the name of Mr. Sanjai Kumar Gupta to act as Interim Resolution Professional in this matter and the above named IRP vide letter dated 5<sup>th</sup> October, 2018 has given his consent that in the event of his appointment as IRP, he will take up the job and perform his duties accordingly.
6. The Financial Creditor has placed on record the various documents in support of its prayer, which are as follows:-
- a) *Sanction Letter dated 11.11.2014 for sanction of the loan for Rs.8,00,00,000/- a copy of which is annexed hereto and marked as "Exhibit – A".*
- b) *Demand Promissory Note dated 11.11.2014, copy of which is annexed hereto and collectively marked as "Exhibit – B".*
- c) *Agreement of Hypothecation (Goods, Book debts and other moveable assets to secure multiple facilities) dated 11.11.2014 copy of which is annexed hereto and collectively marked as "Exhibit – C".*

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- d) Letter of general lien and set off for borrowing arrangements from the borrower dated 11.11.2014, copy of which is annexed hereto and collectively marked as **"Exhibit – D"**.
- e) Letters of general lien and set off from guarantors dated 11.11.2014, copy of which is annexed hereto and collectively marked as **"Exhibit – E"**.
- f) Two Letters of Guarantee executed by the Guarantors dated 23.05.2006 and 22.05.2009 copies of which are annexed hereto and collectively marked as **"Exhibit – F"**.
- g) Letters of Confirmation of Guarantee by Guarantors dated 11.11.2014 copy of which is annexed hereto and collectively marked as **"Exhibit – G"**.
- h) Specific undertaking dated 11.11.2014 executed by the Corporate Debtor, a copy of which is annexed hereto and marked as **"Exhibit – H"**.
- i) General undertaking dated 11.11.2014 executed by the Corporate Debtor, a copy of which is annexed hereto and marked as **"Exhibit – I"**.
- j) Power of Attorney for Book Debts executed by the Corporate Debtor on 11.11.2014, copy of which is annexed hereto and collectively marked as **"Exhibit – J"**.
- k) Declaration of the Directors of the Corporate Debtor regarding creation of Equitable Mortgage executed by the Corporate Debtor dated 11.11.2014 a copy of which is annexed hereto and marked as **"Exhibit – K"**.
- l) memorandum of Entry executed by the Corporate Debtor dated 13.11.2014, a copy of which is annexed hereto and marked as **"Exhibit – L"**.





7. When the matter was listed, a notice was issued to the Corporate Debtor but in spite of notice having been received, nobody appeared on behalf of the Corporate Debtor on 31<sup>st</sup> October, 2018, 19<sup>th</sup> December, 2018, 13<sup>th</sup> February, 2019 and even on 19<sup>th</sup> March, 2019. In spite of notice having been served upon the Corporate Debtor nobody appeared even on 4<sup>th</sup> June, 2019 when as per the directions of this Tribunal notice had been published in the Newspapers for effecting services on the Corporate Debtor and an affidavit to this effect was filed by the Financial Creditor. On 21<sup>st</sup> August, 2019 the Corporate Debtor was ordered to be declared ex-party.
8. We have heard the Ld. Counsel for the Financial Creditor who have taken us through all the documents as mentioned above. It has been submitted by the Ld. Counsel for the Financial Creditor that notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was given on 6<sup>th</sup> January, 2016 and pursuant thereto an O.A. was filed and is still pending before the DRT.
9. Having heard the Ld. Counsel for the Financial Creditor and after having gone through all the documents placed on record by the Financial Creditor, we are fully convinced that the Financial Creditor has been able to prove its case. We are, however, deprived of the opportunity to hear the Corporate Debtor who would have given his version if he had appeared in the matter after receiving the notice of

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this Court repeatedly issued to him. In these circumstances we have no other option but to decide the case ex-parte on the merits of the documents placed before us.

10. On the basis of the application and the annexures filed in support of the application, we are convinced that a default as alleged has occurred and the application is complete and thus admit the application and pass the following orders:-

### **ORDERS**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Dilip Polyfab Pvt. Ltd.** is hereby admitted.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including

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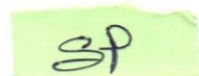
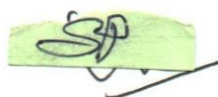
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- execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial 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 (54 of 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

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- vii) 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 the 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.
- viii) **Mr. Sanjai Kumar Gupta**, of 153A, A.P.C. Road, Kolkata 700006. an Interim Resolution Professional having **Registration No. IBBI/IPA-001/IP-P00592/2017-2018/11045**, Email: casanjaigupta@gmail.com, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the

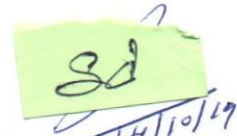


order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

- xi) List the matter on **15<sup>th</sup> November, 2019** for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)  
Member (T)



(Jinan K.R.)  
Member (J)

Signed on this, the 14<sup>th</sup> day of October, 2019.

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