



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 175/Chd/Pb/2019

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

**Union Bank of India
through its Chief Manager Sh. D J Singh.**
having its Registered office at:
Union Bank Bhavan,
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai.

...Petitioner-Financial Creditor

Vs.

**M/s Devgan Solvex Pvt Ltd.
through its Directors.**
having its Registered Office at:
83, Dhab Wasti Ram,
Amritsar, Punjab

...Respondent-Corporate Debtor

Judgment delivered on: 22.12.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Iqbal Mohammed, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 14.11.2022



PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by Union of India (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Sh. D. J. Singh under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Devgan Solvex Pvt Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. D J Singh with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 29.03.1988 The company having its registered address at 83, Dhab Wasti Ram, Amritsar, Punjab. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-1/2 of the petition.

3. Brief facts of the case are that the petitioner-financial creditor is a nationalized Bank and is carrying on business as bankers. The corporate debtor is in business of extraction of edible oil from Rice Brand and has availed various financial facilities from financial creditor. The following facilities were granted to the corporate debtor:-

Sr. No.	Loan Type	Date of Disbursement	Amount Sanctioned	Amount Due as on 28.03.2019
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1.	Cash Credit Limit	28.12.2012 13.08.2014 22.05.2017	Rs.5,90,00,000/-	Rs.7,62,16,782.17 + uncharged Intt Rs.1,72,02,705.83 Total : Rs. 9,34,19,488.00
2.	Term Loan	28.12.2012 13.08.2014 31.03.2017	Rs.1,95,00,000/-	Rs.1,10,27,830.43 + uncharged Intt Rs.22,79,055.57 Total : Rs. 1,33,06,886.00
3.	Term Loan	24.12.2014	Rs.10,00,000/-	Rs.5,72,141.07 + uncharged Intt Rs.82,157.93 Total : Rs. 6,54,299.00

The renewal/sanctioned was made to the overall financial facility of Rs.785 lakhs and Rs,10,00,000/- in the shape of term loan(vehicle). The corporate debtor executed the following documents :

Sr. No.	Particulars of the documents	Date
1.	Agreement for term loan of Rs.95.00 Lacs	05.08.2014 & 21.10.2016
2.	Hypothecation Agreement For Goods & Debts	28.02.2012 13.08.2014 31.03.2017
3.	DP Note	28.12.2012 13.08.2014 31.03.2017
4.	Letter of Continuity	28.12.2012 13.08.2014 31.03.2017
5.	Composite Hypothecation Deed	28.12.2012 13.08.2014 31.03.2017
6.	Interest Agreement	28.12.2012 13.08.2014



		31.03.2017
7.	Guarantee Agreement	28.12.2012 13.08.2014 31.03.2017

The corporate debtor was classified as Non-Performing Asset on 29.12.2017 and proceedings under Section 13(2) of SARFAESI Act were initiated on 15.01.2018. The financial creditor initiated action under Section 13(4) of Securitization Act dated 04.04.2018 and took the symbolic possession of the secured assets. The financial creditor filed the Original Application under Section 19 of recovery of debts due to the Banks and Financial Institutions Act before the Debt Recovery Tribunal. Despite various measures the corporate debtor failed to repay any amount.

4. It is stated in Part-IV of Form No.1 tha the total amount claimed to be in default is Rs. 10,73,80,673.00/- (Rupees Ten Crores Seventy Three Lakhs Eighty Thousand Six Hundred and Seventy Three Only) and date of default is 29.12.2017 i.e.corporate debtor was classified Non-Performing Asset. Copy of sanction letter (Annexure-I/3), Statement of Accounts (Annexure I-4), Sale Deeds (Annexure I-5), Statement of Stocks (Annexure I-6), Certificate of Registration of Change (Annexure I-7), Sanction letter of credit facilities (Annexure I-7), Hypothecation Agreement of Goods and Debts (Annexures I-12 & I-16 & I-28), D.P. Note (Annexures I-13 & I-15 & I-24), General Term Loan (Annexure I-18), Term Loan Agreement (Annexure I-19), Composite Hypothecation Deed (Annexure I-20) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 09.05.2019 for 01.08.2019 to show cause as to why this petition



be not admitted and on 27.07.2019 for arguments. The Affidavits of service were filed vide Diary No. 4253 dated 22.08.2019 and Diary No.00549/2 dated 11.03.2022. The reply was filed by respondent-corporate debtor vide Diary No.6579 dated 25.11.2019 wherein it is stated that the declaration of circular of RBI dated 12.02.2018 are ultravires, the present petition is no longer maintainable. The financial creditor has omitted to give the dates of disbursement of alleged credit facilities without giving requisite dates upon which the petitioner alleges to have disbursed the amounts. The financial creditor omitted to give the number of days of default on part of the corporate debtor and estimated value of the assets of the corporate debtor. He has further failed to annex a complete copy of the Original Application filed before the Debt Recovery Tribunal. The financial creditor has recorded incorrect charges with ROC. The petitioner has failed to place on record the Board Resolution evidencing the limits availed from time to time and and letter evidencing deposit of title deeds to claim mortgage rights over the alleged mortgaged property. Vide order dated 14.11.2022, it was recorded that on the last date of hearing, none had appeared on behalf of the respondent-corporate debtor then ex parte arguments to be heard. However, there was no representation on behalf of the respondent-corporate debtor. So, it appeared that respondent-corporate debtor was not interested in defending the said petition, therefore, respondent-corporate debtor proceeded against ex parte. The short written submissions were filed by applicant vide Diary No.00549/3 dated 23.11.2022.

6. We have heard the learned counsels for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-



“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 29.12.2017 i.e. corporate debtor was classified Non-Performing Asset. The present petition is filed vide diary No.1709 dated 03.04.2019. It can be said that the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by sanction letter (Annexure-I/3), Statement of Accounts (Annexure I-4), Sale Deeds (Annexure I-5), Statement of Stocks (Annexure I-6), Certificate of Registration of Change (Annexure I-7), Sanction letter of credit facilities (Annexure I-7), Hypothecation Agreement of Goods and Debts (Annexures I-12 & I-16 & I-28), D.P. Note (Annexures I-13 & I-15 & I-24), General Term Loan (Annexure I-18), Term Loan Agreement (Annexure I-19), Composite Hypothecation Deed (Annexure I-20) attached with the main petition. As per the financial records it is evident that an amount of Rs. 10,73,80,673.00/- (Rupees Ten Crores Seventy Three Lakhs Eighty Thousand Six Hundred and Seventy Three Only) is still which amounts to default.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Rakesh Phull, has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 28.02.2019 along with the



certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Rakesh Phull is attached at Annexure-I/II of the petition. Form B has been submitted vide Diary No.00549/4 dated 02.12.2022. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rakesh Phull, and there is nothing adverse against him. In view of the above, we appoint Mr. Rakesh Phull, Registration No.IBBI/IPA-003/IP-N000122/2017-2018/11305,Email: rakeshphul@gmail.com, Mobile No. 9872405454, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Rakesh Phull shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;



- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider



kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution



Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.



11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this



Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

14. The petition is admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 22, 2022

VN/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)