

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

**C.P. (IB) No. 891/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:**

**Punjab National Bank, a Body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Corporate Office Plot No. 4, Sector – 10 Dwarka, New Delhi – 110 075, and having its Branch Office at Main Road, 003, Jokhram Chambers, Ranchi – 834 001, in the State of Jharkhand, within the aforesaid jurisdiction.**

**...Applicant / Financial Creditor**

**-Versus-**

**In the matter of:**

**M/s Divine Vidyut Ltd., a Company registered under the provisions of the Companies Act, 1956, having CIN: U40102WB2007PLC118068, and having its registered office at Block – D, 139 Regent Estate, 176/14/139, Raipur Road, Kolkata – 700 092, in the State of West Bengal, within the aforesaid jurisdiction.**

**...Respondent / Corporate Debtor**

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**Coram: Shri. Jinan K.R., Hon'ble Member (Judicial) &  
Shri. Harish Chander Suri, Hon'ble Member (Technical)**

**Counsels on Record:**

1. Ms. Aparajita Rao, Advocate ]  
2. Ms. Pallavi Gandhi, Advocate ] For the Financial Creditor

**Order pronounced on: 19<sup>th</sup> September, 2019.**

**ORDER**

**Per Shri. Harish Chander Suri, Hon'ble Member (T):-**

1. This is an application filed by the **Financial Creditor / Punjab National Bank** under Section 7 of the Insolvency and Bankruptcy Code 2016 (I&B Code in short) for initiating Corporate Insolvency Resolution Process (CIRP) against the **Corporate Debtor / M/s Divine Vidyut Ltd.** alleging that the Corporate Debtor has failed to make repayment of the credit facilities which were availed by the Corporate Debtor and granted by the Financial Creditor, and the amount claimed to be in default is to the tune of **Rs. 190,73,00,000/- (Rupees One Hundred Ninety Crores and Seventy Three Lakhs only)** as on 31.05.2018, and so, the Financial Creditor has filed this application under Section 7 of the I & B Code.

2. Brief facts for the consideration of the application are as follows:-

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- The Financial Creditor granted Rs. 129.45 crores as the total amount of credit facility, to the Corporate Debtor as per particulars as under

:

- a) Term Loan for Rs. 99.58 crores
- b) Funded Interest Term Loan I – Rs. 15.88 crores
- c) Funded Interest Term Loan II – Rs. 1.30 crores
- d) Funded Interest Term Loan III (IDC) Fresh – Rs. 12.69 crores

3. In consideration of the grant of the abovementioned facilities, the Corporate Debtor Company executed several security documents in favour of the applicant Bank, and the necessary charge was duly filed with the Registrar of Companies, West Bengal. On 15.10.2013 and again on 26.04.2016, the Corporate Debtor Company, in writing, confirmed the outstanding dues in its accounts with the applicant Bank. The Company failed to regularise its account and hence, the account of the Corporate Debtor Company was classified as Non-Performing Asset on 31.03.2016.

4. On 29.09.2016, the Applicant issued demand notice on the Corporate Debtor as well as the guarantors. The Applicant further issued notice under Section 13(2) of the SARFAESI Act, 2002 on 17.05.2016. The Applicant Bank has filed Original Application being O.A. No. 149 of 2017 against the Corporate Debtor before the Debt Recovery Tribunal, Ranchi for recovering dues of the loan granted to the Corporate Debtor.

5. As on 31.05.2018, a sum of Rs. 190.73 crores is due from the Corporate Debtor to the Applicant, which the Corporate Debtor has failed and neglected to repay. Therefore, the Financial Creditor has filed this

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application under Section 7 of the I & B Code, 2016 and prays for passing an order for admission of the application.

6. The Financial Creditor produced proof of lending loans to the Corporate Debtor and following are the documents relevant for the consideration of the case in hand:-

- (a) Copy of the last Sanction Letter dated 28.03.2015 is annexed with the application and marked as **"Annexure A-5"**.
- (b) Copy of the Statement of Account up to 31.05.2018, annexed and marked as **"Annexure A-6"**.
- (c) Copy of the Valuation Report dated 20.01.2016 with regard to the security held by the Financial Creditor, in consideration of the credit facility granted to the Corporate Debtor, annexed and marked as **"Annexure A-7"**.
- (d) Copy of the Certificate of charge created/modified with the Registrar of Companies, West Bengal, marked and annexed as **"Annexure A-8"**.
- (e) Copy of the report issued by CIBIL for M/s Divine Vidyut Ltd., annexed and marked as **"Annexure A-9"**.
- (f) Copy of the Security documents executed, with regard to the loan granted to the Corporate Debtor, marked and annexed as **"Annexure A-10"**.

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7. The applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, and produced Form 2 and written communication from **Mr. Rajesh Kumar Agarwal**, of Room No. 301, 3<sup>rd</sup> Floor, 1, G.C. Avenue, Kolkata - 700 013 and **Registration No. IBBI/IPA-001/IP-P01023/2017-2018/11722** and e-mail id: rajesh521@yahoo.com.

8. The Applicant filed an affidavit of service proving delivery of notice to the Corporate Debtor by way of publication as well as by e-mail. So, delivery of notice to the Corporate Debtor is declared sufficient. As nobody on the side of the Corporate Debtor appeared for defending the case, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 26.07.2019.

9. Heard the Ld. Counsel appearing for the Financial Creditor and perused the records.

10. This is an application filed by the Financial Creditor for initiating Corporate Insolvency Resolution Process against the Corporate Debtor alleging that the Corporate Debtor has committed default in repayment of the credit facilities granted to it and the total amount in default is **Rs. 190,73,00,000/- (Rupees One Hundred Ninety Crores and Seventy Three Lakhs only)** as on 31.05.2018 as per the Sanction Letters executed with the Financial Creditor. The copy of the last Sanction Letter dated 28.03.2015 has been produced along with the application and marked as "**Annexure A-5**". According to the Ld. Counsel for the Financial Creditor, all the requirements to be met to file an application of this

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nature have been complied with by the applicant and since the Corporate Debtor did not repay the debt, the application deserves to be allowed. It is submitted that the Corporate Debtor availed credit facilities under the Sanction Letters to the tune of Rs. 129.45 crores, in consideration of which, the Corporate Debtor executed security documents in favour of the Applicant/ Financial Creditor, and necessary charge was filed with the Registrar of Companies, West Bengal. Thereafter, the Corporate Debtor committed default in repayment of the said credit facilities, as a result of which, the loan account was declared as NPA on 31.03.2016. It is further contended that on 29.09.2016, the Applicant issued demand notice on the Corporate Debtor as well as the guarantors, but the Corporate Debtor failed to repay the dues and, thereafter, the applicant issued notice dated 17.05.2016 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the outstanding amounts. The Corporate Debtor, however did not pay the outstanding amount, and further, the Financial Creditor initiated proceedings before the Ld. Debts Recovery Tribunal, Ranchi against the Corporate Debtor by filing application being O.A. No. 149 of 2017 which is pending final adjudication, and hence, the Financial Creditor has filed this application under Section 7 of the I & B Code, 2016 to initiate CIRP against the Corporate Debtor.

11. The Ld. Counsel on behalf of the Financial Creditor also submits that copies of the statement of accounts up to 31.05.2018 as well as the CIBIL report are produced to prove that the above said amount is due and the documents are marked as **"Annexure A-6"**, and **"Annexure A-9"**.

Therefore, being proved that the loan amount as claimed is due, and that the Corporate Debtor has committed default in repaying the outstanding dues despite recalling of the loan, issuing notice under SARFAESI Act, 2002, and initiating proceedings before the Ld. Debts Recovery Tribunal, and hence it appears to us that the Financial Creditor here, in the instant case, has succeeded in proving the existence of default on part of the Corporate Debtor.

12. The applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, **Mr. Rajesh Kumar Agarwal**. A reference to the Form 2 produced on side of the applicant proves that there are no disciplinary proceedings pending against him. Therefore, the applicant has succeeded in meeting with all the requirements to be satisfied under Section 7 (3) of the I & B Code 2016 and so it appears to us that the application is complete as per the statutory provisions. Accordingly, this application deserves to be admitted.

13. In the light of the above said discussions, we hereby admit the application under Section 7 of the I & B Code, upon the following orders: -

### ORDER

(i) The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating

the Corporate Insolvency Resolution Process in respect of the Corporate Debtor/ **M/s Divine Vidyut Ltd.**

(ii) We hereby declare a Moratorium and public announcement in accordance with Sections 13 to 15 of the IBC, 2016.

(iii) The 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. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iv) 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 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;

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- 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 possession of the corporate debtor.
- (v) 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.
- (vi) 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.
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (viii) 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

(x) **Mr. Rajesh Kumar Agarwal**, with address at Room No. 301, 3<sup>rd</sup> Floor, 1, G.C. Avenue, Kolkata - 700 013 and **Registration No. IBBI/IPA-001/IP-P01023/2017-2018/11722** and e-mail id: rajesh521@yahoo.com is hereby appointed as **Interim Resolution Professional** for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

(xi) 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.

(xii) The IRP is directed to see that Regulation 40A of IBBI (IRP for Corporate Persons) Regulations, 2016 is complied strictly and file progress report in terms of compliance of the Regulation.

(xiii) The Applicant/Financial Creditor is directed to deposit Rs. 5,00,000/- (Rupees Five Lacs only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP, as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(xiv) Registry is hereby directed under Section 7(7)(a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the

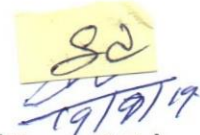
Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

(xv) List the matter on **21.10.2019** for the filing of the progress report.

(xvi) 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 19<sup>th</sup> day of September, 2019.*

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