

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No.525/7/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2019

Name of the Company: Bank of Baroda
V/s.
Duke Enterprise Pvt. Ltd.

Section of the I & B Code: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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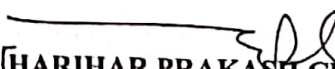
ORDER

None appeared for the Parties.

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


[PRASANTA KUMAR MOHANTY]
MEMBER (TECHNICAL)


[HARIHAR PRAKASH CHATURVEDI]
MEMBER (JUDICIAL)

Dated this the 30th day of September, 2019.



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(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
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C.P. (I.B.) No. 525/7/NCLT/AHM/2018

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)

In the matter of:

Dena Bank,
Now Known as **Bank of Baroda**,
Having its registered office at:
Dena Corporate Centre,
C-10, G-Block, Bandra Kurla Complex,
Bandra (E),
Mumbai - 400051.

Having its Branch Office at:
Sector - 16, Plot No.320-321,
GH-4, Sector - 16,
Gandhinagar,
Gujarat - 382016.

.....Applicant/Financial Creditor(FC)

Versus

M/s. Duke Enterprise Private Limited,
Plot No.409, Sector No.1,
Gandhinagar,
Gujarat - 382001.

.....Respondent/ Corporate Debtor(CD)

Appearance:

For the applicant: Advocate Ketan M Parikh

Mr. Kuldeep K. Adesara, Advocate in behalf of Mr. Ketan M. Parikh,
Advocate, for the Petitioner/Financial-Creditor.

None was present for the Respondent/ Corporate-Debtor.



Order Pronounced and delivered on 30th September, 2019

ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (Technical)]

1. The present I.B. Application is filed by the Financial-Creditor(FC) **Dena Bank** (Now known as **Bank of Baroda** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), on 4/10/2018 through their Authorised Officer Shri Madhav Das Motwani Asst. General Manager Gandhinagar Branch **seeking initiation of Corporate-Insolvency-Resolution-Process** ("CIRP" in Short) against the Corporate Debtor Company namely Duke Enterprise Private Limited for default committed by the Corporate Debtor(CD) in making repayment of the cash credit loan availed from the Financial Creditor. The Financial Creditor, Bank of Baroda is a Bank, constituted under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, **is having its registered address at:** Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051.
2. The Respondent Corporate Debtor (CD) Company, namely Duke Enterprise Private Limited was incorporated on 01.05.2013 with a CIN: U52390GJ2013PTC074814.



3. The main objects of the company, by which the Respondent Company was incorporated are mentioned in the Memorandum of Association are briefly mentioned as below:

"To carry on the business as traders, importers, exporters, buyers, sellers, suppliers of plastic granules such as HDPE, LDPE, LLDPE, Master Batches, Ropes, Eyelets, Geomembrane, Tunnel lining Membrane, Roof tile underway, Pile liner, Fumigation Cover, Industrial Fabrics, Textile products such as Yarn, Fabrics, Ready Made Garments, S S Scrap, steel ingots, Rolled Products and manufacturing of Geomembrane, other industrial fabrics, Steel Roll Products..... etc."

4. The nominal share capital of the Respondent/Corporate-Debtor Company is Rs.1,00,00,000.00 (Rupees One Crore only) divided into 10,00,000.00 (Ten Lakhs) equity shares of Rs.10/- (Ten) each and the paid-up share capital of the company is Rs.58,00,000/- (Rupees Fifty Eight Lakhs only) divided into 5,80,000 (Five Lakh Eighty Thousand only) equity shares of Rs.10/- (Ten) each. The registered office of the Corporate Debtor Company is situated at: Plot No. 409, Sector No.1, Gandhinagar, Gujarat - 382007. (Page 5 of the application)



5. a) Cash Credit against hypothecation of stocks cum book debts sanctioned for Rs.4.00 Crores (Rupees : Four Crores

Only) on 30/12/2013 with certain terms and conditions mentioned in the sanction letter (Page 54-60). The same facilities were availed by the Corporate Debtor executing the documents in this regard;

b) At the request of Corporate Debtor, the Financial Creditor enhanced the limit from Rs.4.00 Crores to Rs.4,95,00,000.00 (Rupees : Four Crores and Ninety Five Lakhs) with certain terms and conditions. The respondent company availed the facilities and executed the documents; and

c) In support of the Cash Credit Limit released and the Corporate Debtor availed the Cash Credit facilities, the Financial Creditor has enclosed the following documents –

- i. Statement of Accounts of the Corporate Debtor maintained by the Bank of India along with Certificate issued under Banker's Book Evidence Act, 1891 (Page No.72 to 91)
- ii. Certified Copy of the Resolution passed by the Board of Directors of Corporate Debtor (Page No.92 to 97)
- iii. Copy of Resolution passed under Section 293(1)(d) of Companies Act at the Annual General Meeting of the members of the Corporate Debtor held on 15/10/2013 (Page No.98)
- iv. Copy of the Resolution passed by the Board of Directors of Corporate Debtor held on 15/07/2014 (Page No.99 to 104)
- v. Copy of Mortgage Deed registered at Serial no.3525 executed on 13/03/2014 between Majukunwarba Nirbhaysingh Rao, Guarantor of Corporate Debtor in favour of the Financial Creditor (Page No.105 to 114)
- vi. Copy of Deed of Reconveyance/Release registered at Sr. No.13292 executed on 26/09/2014 between the Financial Creditor and Smt.Manjukunwarba Nirbhaysingh Rao (Page No.115 to 123)
- vii. Copy of Instrument Relating to deposit of Title Deed registered at Serial no.3312 executed on 25/09/2014 between the Shri Nirbhaysingh K. Rao



- in favour of the Financial Creditor (Page no.124 to 139)
- viii. Copy of Supplemental Deed of Hypothecation dated 29/09/2014 executed between the Corporate Debtor and the Financial Creditor (Page No.140 to 160)
- ix. Copy of Letter of Guarantee dated 13/03/2014 by the Individual Guarantors in favour of the Corporate Debtor (Page No.161 to 171)
- x. Copy of Letter of Guarantee dated 29/09/2014 (Page No.172 to 183)
- xi. Copy of Letter of Consent dated 29/09/2014 by Guarantors in favour of Corporate Debtor (Page No.184 to 185)
- xii. Copy of Letter of General Lien and Set off from Guarantors (Page No.186 to 187)
- xiii. Copy of Letter of confirmation of Guarantee by Guarantor (Page No.188 to 189)
- xiv. Copy showing the details of charges registered of the Corporate Debtor (Page no.190)
- xv. Copy of Application for registration of creation of charge dated 13/03/2014 (Page no.191 to 196)
- xvi. Copy of Application for registration of modification of charge dated 29/09/2014 (Page no.197 to 202)
- xvii. Copy of ROC search report dated 24/09/2018 issued by Company Secretary in respect of Corporate Debtor (Page no.203 to 204)
- xviii. Copies of Valuation Reports (Page no.205 to 224)
- xix. CIBIL Report dated 25/09/2018 (Page no.225 to 236)

6. The Petitioner has annexed the details of Cash Credit Hypothecation details for which the dues are pending for the Hypothecation Account No.0985130223858. In which, the Petitioner has given details of default in tabular form and annexed with the present petition is as described below:

Sr. No.	Details	Amount (Rs.)
1	Outstanding balance in respect of principal amount as on 29.02.2016	5,12,90,437.45



2	Add. Interest up to 24.09.2018	1,67,00,376.92
3	Add. Penalty up to 24.09.2018	23,94,914.19
4	Add. Legal Expenses	2,00,638.00
5	Less. Recovery made	10,23,559.00
Total Outstanding		6,95,62,807.56

7. The Petitioner/Financial Creditor has also annexed the statement of account of the Corporate Debtor, M/s. Duke Enterprises Pvt. Ltd. as maintained by M/s. Dena Bank, Gandhinagar as Annexure-I/5. As per the statement of accounts, **the date of default is 29.02.2016.**

8. The Applicant/Financial Creditor, in support of its claim of financial debts of the Respondent Company has produced certain evidences in the form of documents, records of default in the Part-V of its application to this Adjudicating Authority.

9. It is submitted that the Respondent Company had hypothecated a residential property as security situated at Plot No.409, Sector-1, Gandhinagar in the name of Smt. Manjukuverba Nirbhaysinh Rao for the repayment of loan. As submitted, the said market value of the property is Rs.400 Lakhs (Rupees Four Hundred Lakhs). It is



mentioned in the hypothecation (Annexure-I/6) that Mr. Nirbhaysinh Rao and Mr. Bhagirathsinh N. Rao are the directors of the company.

10. It is submitted that one application no. 718 of 2016 is filed by the Financial Creditor against the Corporate Debtor before the **Debts Recovery Tribunal, Ahmedabad** which is pending for hearing and final disposal.
11. It is also submitted that the Petitioner Bank has also filed an FIR being I-C-R No.40 of 2018, registered with Sector 21 Police Station at Gandhinagar against three directors/guarantors of the Corporate-Debtor under the provisions of Section 406, 420 and 114 of the I.P.C. which is pending for adjudication before the competent forum.
12. It is also submitted that the said three director/guarantors of the Corporate Debtor have preferred quashing petition u/s. 482 of CRPC being Criminal Miscellaneous Application No.7044 of 2018 against State of Gujarat and the Financial-Creditor, before the Hon'ble High Court of Gujarat at Ahmedabad which is said to be pending for hearing and final disposal.
13. Furthermore, this Tribunal vide its order dated 02.11.2018 had directed the Petitioner Bank to serve the notice of date



of hearing to the Corporate Debtor and file proof of service of the notice of hearing duly served to Corporate-Debtor. Accordingly, it is submitted that the Petitioner Bank, itself and also through its counsel had served the notice of hearing at the premises of the Corporate Debtor on 16.11.2018 to remain present for hearings on 11.12.2018 at the premises of the Corporate Debtor. But the same notice was returned undelivered to the office of the Petitioner, having an endorsement of "Refused to accept" on 24.11.2018. The Petitioner has annexed the relevant copies of speed-post-delivery in support of its claim.

14. Further, the Petitioner vide order of this Tribunal dated 11.03.2019 had directed the Petitioner Bank to effect service of notice of hearing to Corporate Debtor by way of paper publication widely circulated in the area where the office of Corporate Debtor is situated and to file proof of publication. The Petitioner vide its affidavit dated 06.04.2019 has submitted the proof of notice in compliance of the order of this Bench's order.

15. It is observed that the Corporate Debtor or Counsel representing them, did not file any reply/objection to the present I.B. Petition. Hence, it may be inferred that the Corporate Debtor has not denied its loan liability nor has



disputed the debts which is of more than of rupees one lakh.

16. Financial Creditor filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 on 04/10/2018 and the matter was heard on 02/11/2018, 11/03/2019, 08/04/2019, 17/06/2019, 20/06/2019, 20/06/2019, 30/07/2019 & 20/08/2019. In spite of sufficient opportunities given, the Respondent preferred not to appear before the Bench. Arguments made by the Learned Lawyer representing the Financial Creditor, Shri Ketan M. Parikh was heard on 20/06/2019 and the Learned Lawyer **pressed for admitting the application.**

17. It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the CD.

18. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.



19. It is also found, that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P.

19.1 The loans/CC were sanctioned and released by the Petitioner Bank and the same were availed by CD, Duke Enterprise Pvt. Ltd. The **Charges have been filed by the Corporate Debtor** for the original limit of Rs.4.00 Crores and enhanced limit of Rs.4.95 Crores with the ROC in favour of the Petitioner Bank on **13/03/2014** and **29/09/2014**, respectively. (Page no.191-197 of paper book)

19.2 The CD has defaulted in making repayment of Cash Credit to the Petitioner Bank and **the date of default is 29/02/2016**. The Statement of accounts and the **CIBIL Reports** (Page no.226 of paper book) submitted by the applicant Bank **confirm the default** committed by the Corporate-Debtor.

19.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the **date of mortgage of the property is 13/03/2014**, SARFAESI proceeding initiated on 25.03.2016, DRT proceedings started in 2016 vide application no.718 of 2016 and payment of Rs.20.00 Lakhs, Rs.10.00



Lakhs and Rs.9,64,936.00 have been made on 04/11/2015, 15/12/2015 and 09/03/2016, respectively.

19.4 The present I.B. Petition is filed by duly authorised official of the Petitioner Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt default** and **proposed a name** of Resolution Professional to act as an Interim Resolution Professional (IRP)

20. Considering the **material, papers** filed by the Petitioner Bank on record and the facts mentioned in the Para No. **19, 19.1, 19.2, 19.3, 19.4**, this Adjudicating Authority is satisfied that,

(a) The Corporate Debtor availed the cash credit facilities from the Petitioner.

(b) Existence of debt is above Rs. One Lac;

(c) Debt is due;

(d) Default has occurred on 29/02/2016;

(e) Petition had been filed within the limitation period;

(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor, Paper publication done and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the**



purpose of initiation of Corporate Insolvency Resolution Process against the Corporate-Debtor-Company.

Hence, the present IB Petition is admitted with the following Directions/observations. The date of admission of this petition is 30/09/2019.

21. This Adjudicating Authority hereby appoints, as proposed, **Mr.Chandra Prakash Jain**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00147/2017-18/10311**, Email ID: **jain_cp@yahoo.com**, Resi. Ph. **(079) (NIL)**, Mobile No. **9824036127**, Address: **D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad - 380060, Gujarat, India as an Interim-Resolution-Professional**. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.



22. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

I. (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.*

(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 Securitisation 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.*

II. *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.*

III. *The provisions of sub-section (1) shall not apply to*

(a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

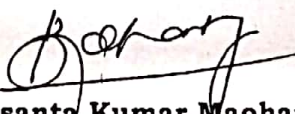
IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

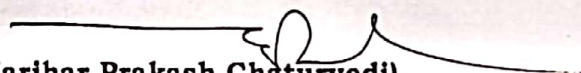


23. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20, 21 of I.B Code. Further **the personnels of the Corporate Debtor** are advised to extend co-operation to Interim Resolution Professional as required under **Section 19 of IB Code.**

24. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.

25. The present IB-Petition is disposed of with aforesaid directions and observations.


(Prasanta Kumar Maohanty),
Adjudicating Authority
Member (Technical)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (Judicial)

