IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-663/(ND)/2022

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

HDFC BANK LIMITED
Registered Office At: HDFC Bank House,
Senapati Bapat Marg, Lower Parel(West),
Mumbai-400013

...Applicant/Financial Creditor

Versus

M/s. DD INDUSTRIES LTD.
Registered Office At: B-84, Mayapuri Industrial Area,
Phase-I, New Delhi-110064

...Respondent/ Corporate Debtor

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)
Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: Mr. Bheem Sain Jain

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Date: 12.04.2023

1. This is an application filed by M/s. HDFC Bank Limited to initiate corporate insolvency resolution process ("CIRP") against M/s. DD Industries Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 52,26,96,631.67/- (Rupees Fifty Two Crore Twenty Six Lakhs Ninety Six Thousand Six Hundred and Thirty One) as on 31.05.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

i. That on the request of the Corporate Debtor, the Applicant Bank granted various loan/credit facilities on numerous occasions to the Corporate Debtor and in consideration to the grant of such loan/credit facilities, Corporate Debtor and its guarantors and/ or mortgagors, signed and executed various loan and guarantee documents in favour of the Applicant Bank.

ii. That the Corporate Debtor (D.D. Industries Ltd), is a Company under the Companies Act, 1956 having its Registered Office at B-84, Mayapuri Industrial Area Phase-I, New Delhi-110064. DD Motors is a division of DD Industries Ltd. Therefore, the liability under loan/credit facilities granted to the DD Motors, is liable to be enforced against the DD Industries Ltd.

iii. That on the request of the Corporate Debtor the Applicant Bank granted loan/credit facilities to the tune of Rs. 145.23 crores vide sanction letter dated 26.02.2021.

iv. That to secure the said loan/credit facilities granted to Corporate Debtor by the Applicant Bank, Corporate Debtor, as borrower hypothecated all of its moveable assets, stocks and books debts and receivables etc. and also delivered blank cheques from time to time authorizing the Financial Creditor to fill in the date and/or the amount on the said cheques and to complete the said cheques to the extent of the loan/credit facilities outstanding including any interest, penal interest, charges etc.

v. That the Corporate Debtor duly availed the aforesaid credit facilities granted to them by the Applicant Bank but became highly irregular in conduct of the same and neglected to maintain its financial discipline and regularity in repayment. The account of Corporate Debtor stood classified as NPA on 14.05.2021 in accordance with the guidelines issued by the RBI from time to time.

vi. That the Corporate Debtor remained irregular in conduct of the aforesaid loan facilities and neglected to maintain their financial discipline, despite several requests and reminders, the Applicant Bank was forced to send Loan Recall and Demand Notice dated 09.07.2021 but despite receipt of the Loan Recall and Demand

Noticed dated 09.07.2021 the Respondent failed to pay the outstanding amount.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 13.02.2023.

3. We have gone through the documents filed the Applicant and heard the arguments made by the counsel for the Applicant. The Applicant has claimed the default on part of the Respondent for an amount of Rs. 52,26,96,631.67/- (Rupees Fifty Two Crore Twenty Six Lakhs Ninety Six Thousand Six Hundred and Thirty One) as on 31.05.2022.

4. Mere plain reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.

5. The Corporate Debtor and the Applicant executed loaning and security documents on 09.10.2017 and the loan amount was accordingly disbursed to the Corporate Debtor. Additional loan and credit facilities were also sanctioned vide sanction letters dated 17.04.2018 and 10.12.2019. Further, the Corporate Debtor has accepted default by signing the one-time settlement letter dated 22.10.2021.

6. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Manoj Kumar Anand for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00084/2017-18/10180. Mr. Manoj Kumar Anand has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 29.08.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

7. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

8. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Manoj

Kumar Anand has submitted the declaration in Form 2 dated 29.08.2022.

9. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

10. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

11. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

12. Mr. Manoj Kumar Anand having registration number IBBI/IPA-001/IP-P00084/2017-18/10180 is appointed as an Interim Resolution Professional.

13. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> "(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 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 corporate debtor."

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

SD/- SD/-

(RAHUL BHATNAGAR) **(BACHU VENKAT BALARAM DAS)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**