

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court Room-2**

C.P. (I.B) No.228/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.01.2020**

Name of the Company: Dena Bank
V/s
Aswaraj Infra Pvt Ltd

Section of the Companies Act : 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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1.

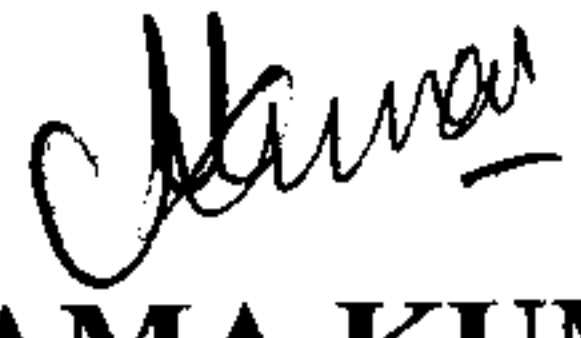
2.

ORDER

None appeared on behalf of the parties.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 31st day of January. 2020

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P.(IB) No. 228/NCLT/AHM/2019

In the matter of:

Bank of Baroda (Earlier Dena Bank)
Suraj Plaza, Sayaji Ganj,
Baroda-390005

:
Petitioner
(Financial Creditor)

Versus

Aswaraj Infra Private Limited,
73, Sahyadri Apartment,
7th Floor, Nr. Stadium Circle,
Navrangpura, Ahmedabad
Gujarat-380009

:
Respondent
Corporate Debtor

Order delivered on 31st January, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Advocate Mr. Riddhesh Trivedi for the Petitioner is present.
None appeared on behalf of the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

1. Mr. Dinesh Kumar Patwari, Assistant General Manager, being authorized signatory of Dena Bank (now Bank of Baroda) filed this petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") on behalf of Dena Bank, now Bank of Baroda.

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2. That the Petitioner / Financial Creditor i.e. Dena Bank now Bank of Baroda is a body corporate and having Identification No. the BSR Code 1:250260, having its registered office at Dena Corporate Centre, C/10-, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051. Vide order dated 06.09.2019, the Petitioner was allowed to make amendment in the cause title of the petition as Bank of Baroda in view of merger of Dena Bank with Bank of Baroda

3. The Respondent / Corporate Debtor Aswaraj Infra Private Ltd. is a company incorporated under the Companies Act, 1956 on 27.09.2010 having Identification No. CIN: U45200GJ2010PTC062439 and having registered office at 73, Sahyadri Apartment, 7th Floor, Nr. Stadium Circle, Navrangpura, Ahmedabad, Gujarat-380009. That the Authorized Share Capital of the Corporate Debtor Company is Rs.9,00,00,000/- and paid up Share Capital is Rs.9,00,00,000/-.

4. It is submitted that the Petitioner Bank had sanctioned financial facilities to the tune of Rs.11.85 Crores on 26.03,2013). The Financial Creditor disbursed such amounts in the following manner:
 - (i) Fresh Sanction of Working Capital Limit is Rs.2,50,00,000/-.
 - (ii) Letter of Credit for 90 days to the tune of Rs.3,75,00,000/-.
 - (iii) Term Loan for machinery Rs.5,60,00,000/- dated 15.10.2013 and 19.10.2013.

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These loans are being renewed and restructured from time to time. The Corporate Debtor has been classified as NPA on 31.05.2015.

5. The Petitioner submitted that the said Credit Facilities were secured by equitable mortgage of property by deposit of title deeds and hypothecation of Movable Assets (Plant and Machinery) of the Corporate Debtor.
6. The Petitioner further submitted that M/s. Sharp Industries Limited has given the Corporate Guarantee and Personal Guarantee has also been given by the Directors of the Corporate Debtor.
7. The Petitioner submitted that the proposal to restructuring the financial facility was approved by the Financial Creditor to the tune of Rs.11.36 crores.
8. The Petitioner submitted that the account was classified as NPA on 31.05.2015 and issued Demand Notice under the provisions of the SARFAESI Act dated 24.07.2015 and 22.10.2018 and an amount of Rs.,.17,98,61,001.10/- remaining due.
9. The Petitioner has annexed copies of documents regarding the existence of financial debt;
 - Board Resolution dated 31.12.2014 of Aswaraj Infra Private Ltd. Annexure-P
 - Letter dated 31.12.2014. Annexure-Q
 - Agreement for Working Capital Demand Loan dated 31.12.2014. Annexure-R
 - Agreement for re-phasing of loan dated 31.12.2014. Annexure-S
 - Power of Attorneys dated 31.12.2014 in favour of the Financial Creditor. Annexure-T

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- Fresh Letter of Guarantee given by the Directors of the Corporate Debtor dated 31.12.2014. Annexure-U
 - Letter of continuity dated 31.12.2014. Annexure-V
 - Specific Undertaking dated 31.12.2014 executed by Corporate Debtor. Annexure-W
 - Letter of General Lien and Set off from Guarantors and Borrowers dated 31.12.2014. Annexure-X
 - Board Resolution dated 30.03.2013 of Aswaraj Infra Private Ltd, Andheri Branch. Annexure-Y
 - Agreement of Hypothecation (Goods, Book Debts and Other Movable Assets to secure multiple facilities) dated 14.10.2013. Annexure-Z
 - Hypothecation of Movables Plant and Machineries etc., dated 14.10.2013. Annexure-Z1
 - Inland Bill Form Dated 15.10.2013 is annexed herewith and marked as Annexure-Z2.
 - Foreign Bill Form dated 15.10.2013. Annexure-Z3
 - Term Loan Agreement of Hypothecation of Movables dated 14.10.2013. Annexure-Z4
 - Personal and Corporate Guarantee dated 14.10.2013 Annexure-Z5
 - Letter of General Lien and Set off from Guarantors dated 14.10.2013. Annexure-Z6
 - Undertaking of Mr. Rajesh Sheth, Director of the Corporate Debtor. Annexure-Z7
 - Sale Deed evidencing the purchase of Immovable Property by the Corporate Debtor which is held as security as mentioned in Part V B. Annexure-Z8
 - Bank Accounts statements pertaining to the Corporate Debtor. Annexure-Z9
10. None appeared for the Respondent inspite of paper publication dated 10.10.2019. The matter was finally heard on 23.01.2020 and petitioner was also given liberty to file his written submissions within 3 days.
11. In respect of petition filed under Section 7 of IB Code for initiation of CIRP by Financial Creditor, the Adjudicating Authority has to see the existence of financial debt, whether the default has occurred and whether the petition is complete.
12. From the records submitted alongwith the petition;

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- (a) Petition in Form-1 filed by Shri Dinesh Kumar Patwari, AGM of the Bank and in support of the same, the Petitioner has filed authorization papers. The petition is complete.
- (b) There is financial debt owed by the Respondent to the Petitioner.
- (c) Date of NPA is 31.05.2015.
- (d) The last date of transaction is on 30.06.2016. The petition is filed on 18.03.2019 and is well within time.
13. The Petitioner has proposed the name of Mr. Gaurav Ashok Adukia, Anand Bhavan, Jamnadas Adukia Road, Kandivli West, Mumbai-400067 having Registration No. IBBI/IPA-002/IP-N00457/2017-18/11293 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBIBI has been filed by the proposed IRP.
14. From the material placed on records, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB code and extracted hereunder shall follow in relation to the Respondent Corporate Debtor.
- (1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority declared moratorium for prohibiting all of the following, viz;-
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or

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order in any court of law, Tribunal, Arbitration Panel or other Authority.


- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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);
 - (iv) The recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be, terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the 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


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liquidation of Corporate Debtor under Section 33, as the case may be.

15. This Adjudicating Authority hereby appoint Mr. Gaurav Ashok Adukia, Anand Bhavan, Jamnadas Adukia Road, Kandivli West, Mumbai-400067 having Registration No. IBBI/IPA-002/IP-N00457/2017-18/11293 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.
16. The petition is allowed and stands disposed-off.
17. Communicate a copy of this order to the Petitioner, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Dated this the 31st day of January, 2020

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