

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)
KOLKATA**

C.P. (IB) No. 112/KB/2022

An application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

In the matter of:

State Bank of India

...Financial Creditor

-Versus-

Danla Metaliks Private Limited [CIN U27100WB2009PTC138888] having its registered office at 5/53 Jagatipota, Krishan Market Road, P.O – Dhalua, Kolkata – 700152.

...Corporate Debtor

**Date of hearing: 23 August, 2023
Order Pronounced on: 25 August, 2023**

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Arvind Devanathan, Member (Technical)

Appearances (via video conferencing/physical)

For the Financial Creditor : Mr. Uttiyo Mallick, Adv.

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ORDER

Per: Arvind Devanathan, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Kaushik Das, Chief Manager, State Bank of India, duly authorised by virtue of Letter of Authority dated 10 August, 2021 (***‘Financial Creditor’***) for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against Danla Metaliks Private Limited (***‘Corporate Debtor’***).
3. The present Petition was filed on ***04 February, 2022*** before this Adjudicating Authority. The total amount claimed in default is Rs.11,27,77,142.08/- (Rupees Eleven Crore Twenty Seven Lakh Seventy Seven Thousand One Hundred Forty Two and Eight paisa only) [*Principal – 2,99,99,784.49, Interest – 8,27,77,357.59*].
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.1,10,00,000/- (Rupees One Crore Ten Lakh only) with subscribed share capital of Rs.1,07,15,950/- (Rupees One Crore Seven Lakh Fifteen Thousand Nine Hundred Fifty only). Part – IV of the Petition deals with the particulars of the Financial Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Corporate Debtor is a private limited company engaged in the business of crushing of iron ore and trading in states of West Bengal, Jharkhand and Orissa.
 - 5.2 In 2009, the Corporate Debtor approached the Financial Creditor for availing credit facilities amounting to Rs. 3 Crores. The Financial Creditor sanctioned the credit facilities in respect of Cash Credit for Rs. 3 Crores *vide* a Letter of Arrangement dated 20 October, 2009 [*Pages 98 – 107 of the Petition*].

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- 5.3 Subsequently, as per the the terms and conditions contained in the sanction letter/letter of arrangement and diverse loan agreements executed from time to time between the parties, the Corporate Debtor availed and utilised several credit facilities granted by the Financial Creditor since 2009.
- 5.4 The Corporate Debtor also executed deed of guarantee and the directors of the Corporate Debtor stood as personal guarantors for payment of the outstanding amount in respect of the loan account with interest, costs and charges.
- 5.5 SAV Steels Private Limited [*CIN U27109WB2006PTC109155*] also resolved to furnish required Corporate Guarantee to the Financial Creditor for the various credit facilities granted to the Corporate Debtor and confirm extension of charge on the properties of the company in favour of the Financial Creditor.
- 5.6 However, the Corporate Debtor failed to repay the principal amount along with interest to the Financial Creditor. The Corporate Debtor executed revival letter dated 10 January, 2012 in Form SME-11 in respect of Cash Credit Account whereby the Corporate Debtor admitted their dues in the said letter making it clear and unequivocal acknowledgement and admission of debt owed to the Financial Creditor.
- 5.7 The Corporate Debtor failed and neglected to maintain its accounts with the Financial Creditor and to clear the outstanding dues to the Financial Creditors. As such, the account became irregular and, accordingly, was declared as Non - Performing Asset on 24 October, 2013.
- 5.8 The Financial Creditor sent various letters to the Corporate Debtor demanding payment of the dues payable by the Corporate Debtor to the Financial Creditor, but the Corporate Debtor did not comply with such demands.
- 5.9 The Financial Creditor sent a demand Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of

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Security Interest Act, 2002 dated 30 June, 2014 upon the Corporate Debtor and its Guarantors demanding.

- 5.10 In spite of the receipt of the notice dated 30 June, 2014, the Corporate Debtor failed to liquidate the outstanding dues. After the expiry of 60 days and left with no other alternative, the Financial Creditor was constrained to take possession under Section 13(4) of the said Act. Paper publication dated 19 July, 2015 post issuance of possession notice under Section 13(4) of the said Act was also made by the Financial Creditor.
- 5.11 Subsequently, proceedings under the provisions of Recovery of Debts due to Bank and Financial Act 1993, was initiated on 07 January, 2015 being OA No. 1 of 2015 before The Learned Debts Recovery Tribunal - I, Kolkata. Judgment was pronounced on 15 December, 2021 and as such the acknowledgement of the debt is subsisting and is covered under the laws of limitation.

Analysis and Findings

6. We have heard the Learned Counsel appearing on behalf of the Financial Creditor.
7. The matter was heard from time to time (*i.e.*, 20 May, 2022, 12 July, 2022, 01 September, 2022, 26 October, 2022, 02 December, 2022, 17 January, 2023, 06 March, 2023, 26 April, 2023, 15 June, 2023, 19 July, 2023 and 23 August, 2023). It has been submitted by the Financial Creditor that they have sent the Petition *via* email to registered email address of the Corporate Debtor.
8. Further, in terms of the Order dated 02 December, 2022 of this Adjudicating Authority, the Financial Creditor has also made publication in two leading newspaper *i.e.*, in Business Standard (English) and Ek Din (Benagli) on 07 December, 2022, having wide circulation where the registered office of the Corporate Debtor is located Despite, several opportunities, none appeared on behalf of the Corporate. Accordingly, the matter was set *ex-parte* as on 19 July, 2023.

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9. On perusal of the record it is apparent that transaction held between the parties squarely falls under the definition of financial transaction. The Financial Creditor has also relied on the existing ***financial contract/agreement*** between the parties, which includes the agreed rate of interest and the amount of interest being received by the Financial Creditor from the Corporate Debtor.
10. As held by the Hon'ble Supreme Court in Dena Bank (now Bank of Baroda) v C. Shivakumar Reddy and Anr.¹, that '*a final judgement, decree and/or a recovery certificate passed/ issued by a court or tribunal would give rise to a fresh cause of action for a financial creditor to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).*'
11. Further, a similar view was taken by one of the Coordinate Bench in State Bank of India Vs. Sujyot Infrastructure Pvt. Ltd. – NCLT Ahmedabad Bench, where it has been held that '*the judgement and order/ Decree of the DRT and the recovery certificate gave a fresh cause of action to the financial creditor to initiate a petition under section 7 of the IBC.*'²
12. In light of the above facts and circumstances, the present petition filed by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
13. Accordingly, it is, hereby ordered as follows:-
- (a) The application bearing ***C.P (IB) No. 112/KB/2022*** filed by State Bank of India, the Financial Creditors, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Danla Metaliks Private Limited, the Corporate Debtor, is ***admitted***.
- (b) There shall be a moratorium under section 14 of the IBC.

¹ Civil Appeal 1650 of 2020

² (2021) ibclaw.in 809 NCLT

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- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) **Mr. Aditya Kumar Tibrewal**, registration number **IBBI/IPA-001/IP-P00743/2017-2018/11249**, email: **adityatibre@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- (h) The Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees Five Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 14. C.P (IB) No. 112/KB/2022** to come up on **09 October, 2023** for filing the periodical report
- 15.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on 25th day of August, 2023

SA [LRA]