

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

CP(IB)/05/GB/2018
Dy. No3(133) of 2018

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

In the matter of:

Dena Bank : ... Financial Creditor

-Versus-

M/s. Bluefern Venture Pvt. Ltd. : ... Corporate Debtor

Coram:

Hon'ble Mr. Justice P.K. Saikia, Member (J)

For the applicant/Financial Creditor : Mr. Gaurav Khandelia, Advocate

For the Non-applicant/Corporate Debtor : None

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ORDER

Date of Order: 21st December 2018

This is an application filed by Dena Bank, financial creditor herein, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short "Code of 2016") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short "Rules of 2016), seeking initiation of corporate insolvency resolution process (CIRP) against the corporate debtor, namely, M/s. Bluefern Venture Pvt. Ltd., alleging that the said Corporate Debtor (in short, CD) was granted term loan facility for an amount to the tune of Rs.27,45,30,410.00 with certain terms & conditions for

repayment of such loan. But there was default in repayment of the loan in accordance with repayment schedule and as such, the FC came up with the present application seeking initiation of CIRP against the CD.

2. It may be mentioned here that on receipt of the application under section 7 of the Code of 2016, the Financial Creditor (in short, FC) was directed to serve notice upon the CD and as required, the FC had taken steps for service of notice on the CD by registered post with A/D on 04-12-2018.

3. However, as required by this Authority, the FC has again taken steps in the matter of service of notice on the CD for second time vide postal receipt dated 07/12/2018. The FC has also submitted service affidavit showing that the directions rendered by this Authority are duly complied with. It has also been submitted that as required under Rule 4 of the Rules of 2016, just after filing of the application, a copy of the same was also sent to the CD through postal department.

4. In this connection, I have also seen the Registry's note from which it appears that the statement of the petitioners regarding service of notice on the CD is correct. From the above, it can be presumed that the notice was served upon the CD. However, despite service of notice, no one appeared from the side of the CD before this Authority today. In that view of the matter, it may be presumed that the CD has nothing to say against the contentions made in the application filed by the FC.

5. The facts necessary for disposal of the present proceeding, in short, are that the CD herein, namely, M/s. Bluefern Venture Pvt. Ltd., a company registered under the Companies Act, 1956 (in short, Act of 1956), with its registered office situated at Ethanpa Villa, Damthang Road, Namchi Bazar, approached the applicant/Financial Creditor herein seeking a term loan facility for Rs.1033 lakhs for construction of a Hotel-cum-commercial project at Namchi, South Sikkim.

6. The FC had considered the proposal and on being satisfied about the proposal so made, on the basis of documents annexed with such proposal, granted the aforesaid loan vide sanction letter dated 23.11.2010.

7. In 2013, the CD again approached the FC seeking additional term loan of Rs.1861 lakhs on restructuring the original term loan, stating that the amount already granted was not sufficient to execute the project. In support of such proposal, necessary documents were furnished and on being satisfied, once again, aforesaid loan was restructured in 2013 and additional loan was granted vide sanction letter dated 06.02.2013.

8. In order to secure the credit facilities granted by the FC, the CD executed deeds of mortgage, deposited the sale deeds, executed deeds of hypothecation, Letter of guarantee, demand promissory notes, memorandum of agreement for hypothecation of plant and machinery, letter of general lien and set off from guarantors on different dates. Copies of all the executed documents by the CD are annexed with the application.

9. As per report dated 24.03.2014, it was found that the project was delayed and, therefore, by letter dated 03.04.2014, the FC requested the CD to give their observations as to why there was delay in executing the project and requested them to ensure that the project is completed at the earliest. The CD, by letter dated 08.05.2014 admitted the delay and assigned the reasons as to why the execution of the project got delayed.

10. In the meantime, there was further correspondence between the FC & CD regarding the execution of the project aforementioned. The CD once again, by letter dated 02.01.2015, letter dated 17.03.2015 and letter dated 29.03.2015 requested the FC to grant further loan under different heads. There were some correspondences between the authorities and in the month of Feb' 2016, an amount to tune of Rs.81 lakhs was granted which was duly received by the CD.

11. Thereafter, the CD did not repay the loan as per repayment schedule for which the FC started writing to the CD requesting them to repay the loan as per repayment schedule.

12. Since the CD did not repay the loan, the FC ultimately declared the loan granted to the CD as a Non Performing Asset (in short, NPA) and the FC thereafter filed

a proceeding before the Debt Recovery Tribunal (in short, DRT) under relevant provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 on 18.01.2017 calling upon the CD to pay the FC an amount to the tune of Rs.28,63,52,352.31 and said proceeding is now pending before the learned DRT, Guwahati.

13. Since the FC had granted a term loan facility to the CD and since the amount so granted to the CD was not repaid as per repayment schedule, there was default in repayment of the debt and as on 30.09.2018, the total amount payable to the FC stood at Rs.37,68,62,983.00, the interest component there being Rs.10,23,32,573.00.

14. I have considered the petition and the documents annexed therewith having regard to the submissions made by Shri Gaurav Khandelwal, learned counsel appearing for the FC and have found that the FC, on different dates, had granted loan to the tune of Rs.27,45,30,410.00 but the amount so granted to the CD was not repaid with interest for which as on 30.09.2018, an amount to the tune of Rs.10,23,573.00 accrued as interest on such loan. The CD too admitted that it received aforesaid loan from the FC vide its letter dated 12.01.2018 (Annexure-A). That being the position, it is well apparent that the CD owed debt to the FC but there was clear default in repayment of such debt.

15. I have also perused the petition and found that the CD has named one Shri Rishikesh Dasgupta as Interim Resolution Professional (in short, IRP) against whom no proceeding is said to have been pending. The FC has also annexed a certificate, obtained from said Shri Rishikesh Dasputa giving his consent to work as IRP in the event of the application under consideration is admitted.

16. On going through the petition, I find that the application is complete in all respects and as such, the present proceeding is required to be admitted. Accordingly, the application is admitted.

17. Consequently, this authority declares moratorium prohibiting the following:

- 1) (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 corporate debtor any of its assets or any legal right or beneficial right 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 possession of the corporate debtor.*
- 2) *The supply of essential goods or services to the corporate debtor shall not be terminated or suspended or interrupted during the moratorium period.*
- 3) *The order of moratorium shall have effect from today till the completion of corporate insolvency process.*

18. Necessary order regarding the appointment of IRP would be passed shortly.

19. The registry is directed to put up a note regarding appointment of IRP before this authority.

sdt
Adjudicating Authority
National Company Law Tribunal
Guwahati Bench,
Guwahati

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