BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 723/I&BP/NCLT/MAH/2017

Coram: B. S. V. Prakash Kumar, Member (Judicial)
V. Nallasenapathy, Member (Technical)

In the matter of under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule 2016)

1. Punjab National Bank
Asset Recovery Management Branch
PNB House, Kings Way
Nagpur – 440001. ... Applicants/Financial Creditor

2. DLS Industries Limited
Plot No.103, Flat No.104
Nirmal Apartment,
Near Airport Center Point.
Somalwala, Wardha Road,
Nagpur. ... Corporate Debtor

Counsel for the Financial Creditor: Mr. Vinit J. Mehta, Advocate i/b Intralegal.

Counsel for the Corporate Debtor: None Present.

ORDER
(Heard & Pronounced on 03.05.2017)

Per V. Nallasenapathy, Member (Technical)

1. This is an insolvency and bankruptcy Petition for initiation of insolvency resolution process by a Financial Creditor, Punjab National Bank, against the Corporate Debtor on the ground that the Corporate Debtor has defaulted in making payment for the various credit facilities sanctioned by the Bank to the extent of ₹4,41,43,273 as on 31-01-2017 with interest at the rate of 15% per annum plus 2% penal interest from 1.2.2017 till the date of realisation.

2. The financial creditor has stated that on 21.11.2009 the Bank has sanctioned ₹2.00 crores as Term Loan, ₹1.50 crores as Working Capital Loan to the Corporate Debtor. Subsequently on 10.5.2011, the Financial Creditor has enhanced the Term Loan to ₹6.55 crores and Working Capital Loan to ₹2.50 crores. The said facilities were primarily secured by hypothecation of stock in trade and the entire book debts of the Corporate Debtor. The said facilities were collaterally secured by hypothecation/mortgage of immovable properties belonging to the guarantors (1) Sh. D. L. Sawwalakhe, (2) Sh. Dhananjay Barokar, (3) Mrs. Pranita D Sawwalakha and (4) M/s. Rice City Land Developers. The Corporate Debtor executed the Term Loan Agreement on 4.5.2010, Supplementary Term Loan Agreement on 14.9.2012, Deed of Hypothecation on 4.5.2010 and the Letter of Mortgage on 12.5.2010. One Mr. D. L. Sawwalakhe and Mr. Jagdish H. Noukaria executed Guarantee Deed on 4.5.2010 in favour of the Financial Creditor guaranting the facilities sanctioned by the Financial Creditor. The Corporate Debtor has confirmed the balance due to the Financial Creditor on 31.7.2012. On the request of the Corporate Debtor dated 31.7.2012, the Term Loan was re-scheduled on 1.9.2012 and the Corporate Debtor was permitted to pay the balance outstanding of ₹1,87,06,810 in 84 months commencing from March, 2013 onwards. Since the Corporate Debtor has defaulted in making the payments, the Term Loan Account as well as the Cash Credit Account were classified as non-performing assets on 30.6.2014. The Financial Creditor issued notice u/S 13(2) of Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (SARFAESI), stating that a sum of ₹2,81,03,470 is the outstanding as on 30.6.2014. The Financial Creditor has stated that they have filed a Recovery Suit in the Debt Recovery Tribunal and the same is pending. The Financial Creditor on 14.2.2017 issued a notice to the Corporate Debtor demanding a sum of ₹4,41,43,273 with further interest failing which Insolvency Resolution Proceedings will be initiated against the Corporate Debtor. The Counsel for the Financial Creditor submitted that the business premises of the Corporate Debtor was already closed and the

Corporate Debtor is not filing any financial statements with Registrar of Companies from 2014 onwards.

3. As to the Petition filed by the Financial Creditor, this Bench, on perusal of the documents filed by the Creditor, observed that the Corporate Debtor defaulted in making payments and since the Financial Creditor placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceeding pending against the proposed resolution professional, the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

(a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) That the order of moratorium shall have effect from 3.5.2017 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 liquidation of corporate debtor under section 33, as the case may be.

(e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(f) That this Bench hereby appoints Mr. Dushyant C. Dave, 1101, Dalamal Tower, Nariman Point, Mumbai, email: dushyantcdave@gmail.com, Registration No. IBBI/IPA-003/IP-00043/2016-17/1343 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

4. Accordingly, this Application is admitted.

5. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B. S. V. PRAKASH KUMAR
Member (Judicial)