

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

CP(IB)No.1412/KB/2018

CORAM: Shri M.B. Gosavi, Member (Judicial)

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Punjab National Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Corporate Office Plot No. 4, Sector- 10 Dwarka, New Delhi-110075 and inter alia having its Branch office at Mahavir Chowk Branch, Upper Bazaar, Ranchi-834001.

.....Financial Creditor

In the Matter of:

M/s Divine Alloys & Power Co. Ltd., a company having its registered office at Block A, 139, Regent Estate 176/14/139 Raipur Road Kolkata-700092.

..... Corporate Debtor

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Counsels appeared:

For Financial Creditor:

1. Ms. Aparajita Rao, Advocate
2. Ms. Pallavi Gandhi, Advocate

For Corporate Debtor

1. Ms. Priyanka Kundu, Advocate

Date of pronouncement of order: 7th March, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. Punjab National Bank, the Financial Creditor has filed this application under Section 7 of Insolvency and Bankruptcy Code against M/s Divine Alloys & Power Co. Ltd., the Corporate Debtor to start Corporate Insolvency Resolution Process (in short CIRP) of the Corporate Debtor as the Corporate Debtor committed default in paying financial debt of more than Rs. 461.08 Crore. The financial debt consist of the loan from other Banks i.e. UCO Bank (Rupees 48.08 Crore) United Bank of India (Rupees 31.94 Crore), Bank of India (Rupees 31.82 Crore), Canara Bank (Rupees 8.35 Crore), Corporation Bank (Rupees 3.94 Crore) and Oriental Bank of Commerce (Rupees 3.75 Crore).

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2. It appears from record that Joint Lenders Meeting was held on 05.10.2018, the Financial Creditor being lead bank in consortium, was directed to initiate the CIRP against the Corporate Debtor.
3. Financial Creditor produced on record the agreement of restructure of loan of the Corporate Debtor from time to time. Outstanding loan amount of the Corporate Debtor as on 31.07.2018 was 576,18,80,073 (Rupees Five Hundred Seventy Six Crore Eighteen Lakh Eighty Thousand and Seventy Three Only). In spite of repeated demand, the Corporate Debtor did not repay the loan and committed default. Hence, this proceeding is filed.
4. Notice of this application was served on the Corporate Debtor. They appeared through one of directors Mr. Rajesh Pandey. Ld. Counsel Ms. Priyanka Khundu appeared for the Corporate Debtor and made a submission that Corporate Debtor does not wish to file any affidavit-in-reply and this Adjudicating Authority may pass necessary Orders.
5. I have gone through the record and proceeding. I heard Ld. Counsel for the Financial Creditor, Ms. Aparajita Rao.
6. Financial Creditor produced on record agreement of restructuring of the loan of the Corporate Debtor (at page 60). Financial Creditor also produced copy of Balance Sheet of the Corporate Debtor as filed with Registrar of Companies for the year 2018. Perusal of it shows that the Corporate Debtor admitted outstanding loan of Rs. 576,18,80,073/- (Rupees Five Hundred Seventy Six Crore Eighteen Lakh Eighty Thousand

and Seventy Three Only) to all its Financial Creditors as on 31.07.2018 (at page 172).

7. The Corporate Debtor did not dispute the existence of "financial debt" and its "default" by them. These are only two facts required to be seen by this Adjudicating Authority while admitting the CIRP under Section 7 of Insolvency and Bankruptcy Code. In this case, Corporate Debtor admitted both the facts.

8. The Financial Creditor suggested name of Mr. Rajesh Kumar Agarwal for appointment of Interim Resolution Professional. There is nothing on record to show that Mr. Rajesh Kumar Agarwal is facing any disciplinary enquiry at present. Since the application filed by the Financial Creditor is defect free, hence, I admit the same by following order.

ORDER

- i) The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Divine Alloys & Power Co. Ltd.** is hereby admitted.
- ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process

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and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 (54 of 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.

- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) Mr. Rajesh Kumar Agarwal, IP Registration No. IBBI/IPA-001/IP-P01023/2017-2018/11722, residing at 1, Ganesh Chandra Avenue, 3rd Floor, Room No. 301, Kolkata-700013, E-mail ID: **rajesh521@yahoo.com** is appointed as Resolution Professional for

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ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.


xi) The Financial Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **22.04.2019** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


7/3/2019
(M.B. Gosavi)
Member (Judicial)

Signed on this, the 7th day of March, 2019.

Deeksha(steno)