

FOR INFORMATION OF DEBENTURE HOLDERS OF D.S. KULKARNI DEVELOPERS LTD. (DSKDL)

Corporate Insolvency Resolution Process (**CIRP**) initiated on 26.09.2019, is presently at the stage of consideration of resolution plans received from Resolution Applicants. We have made efforts to clarify on the points raised by debenture holders from time to time, through emails and disclosures on website www.catalysttrustee.com. However, for easy reference / understanding, clarifications to frequently asked questions are given herewith. The clarifications given hereunder are mainly based on relevant provisions of Companies Act, 2013, SEBI (Debenture Trustee) Regulations, 1993, Insolvency and Bankruptcy Code, 2016 (**IBC**). Debenture holders are earnestly requested to refer to these Acts / Rules for more clarity.

1) How to get details of developments so far and updates hereafter?

All updates from the first default on 01.07.2017 are available on website www.catalysttrustee.com. For easy reference, summary updates are given in the form of “Status Report” which can be accessed by the following link.

<https://www.catalysttrustee.com/d-s-kulkarni-developers-ltd/>

Further, relevant information post commencement of CIRP, is available on website www.dskcirp.com. The information includes orders of Hon. NCLT, public notices, list of creditors and their claims, annual reports etc. The can be accessed by the following link.

<https://www.dskcirp.com/>

2) What action was taken after DSKDL defaulted in payment?

Application under Section 71(10) of Companies Act, 2013 was filed with NCLT on 17.11.2017, which is registered at Sr. No. 21763. The said application has not yet been heard. In view of the proceedings under Insolvency and Bankruptcy Code, 2016 (IBC) the application is now infructuous.

Filed an application with Debt Recovery Tribunal (**DRT**) on 22.01.2018. DRT has passed an order allowing claim on 21.05.2018. Recovery proceedings initiated through Recovery Officer, DRT from June 2018. Recovery Officer, DRT, Pune issued order of attachment of properties on 27.11.2018 and issued a ‘Notice for setting Sale Proclamation’. Matter was fixed for further hearing on 21.10.2019.

Meanwhile, Hon. NCLT, Mumbai passed an order on 26.09.2019 under provisions of IBC for initiating CIRP.

3) Who initiated action against DSKDL under Insolvency & Bankruptcy Code, 2016 (IBC) & what action was taken by Trustee?

Bank of Maharashtra, being one of creditors of DSKDL, filed an application with NCLT under IBC.

As per the public announcement dated 30.09.2019 of Mr. Manoj Kumar Agarwal, Interim Resolution Professional (**IRP**), Catalyst as Trustee filed claim on 07.10.2019, with said

IRP in respect of debentures issued by DSKDL. The claim is for Rs.161.01 crore in respect of amount outstanding debentures, based on the Recovery Certificate issued by DRT, Pune, with interest @13.40% p.a., as awarded by DRT, upto date of insolvency commencement date i.e., 26.09.2019. Since then, Trustee is attending the proceedings of CIRP on behalf of debenture holders.

4) Why debenture trustee (DT) filed claims with Resolution Professional (RP) on behalf of debenture holders, instead of pursuing with execution of order / recovery certificate issued by DRT, Pune?

As per order dated 26.09.2019 of Hon. NCLT, Moratorium under Section 14 of IBC has been declared. Hence continuation of execution of decree / order of any court / tribunal stand stayed.

5) What is amount of claim filed with RP and admitted by him?

Amounts of claims filed by trustee with IRP on 07.10.2019 is for Rs. 161,01,15,881/-, which includes amount of interest till date of filing, at rate awarded by DRT. On scrutiny, RP admitted entire amount of claim filed by trustee, however, considering the claims of D S Kulkarni family members as 'related party' claims, the claims are restricted to Rs.156,75,53,881/- for the purpose of voting rights of debenture holders

6) What is status of action taken before initiation of action under IBC?

The proceedings under the application registered at Sr. No. 21763 with Hon. NCLT under Section 71(10) of Companies Act, 2013 and recovery proceedings pending with Recovery Officer, DRT as per Recovery Certificate, are stayed according to the moratorium declared vide order dated 26.09.2019 of Hon. NCLT during CIRP.

7) What is present status of proceedings under IBC?

The resolution plans submitted by three resolution applicants are being scrutinized by professional consultants appointed by IRP to confirm that they are compliant with provisions of IBC. The process of voting by all creditors, including debenture holders, on all the three resolution plans, will start shortly. The voting will be by way of E-Voting process.

8) Why are IBC proceedings taking so long time?

CIRP mainly delayed due to (i) continued COVID-19 pandemic situation (ii) extensions granted to resolution applicants to enable them to visit sites of DSKDL, examine documents etc. (iii) re-bidding process started since resolution proposals not received within stipulated time limit in first round and (iv) negotiations with resolution applicants for upwards revisions of their offers and for ensuring that they are compliant of IBC, CIRP, RFRP etc.

9) Why different resolution plans are being sent and which are final plans?

IRP shared the resolution plans received from Resolution Applicants from time to time with members of CoC and in turn, trustee shared them with debenture holders, being creditors. The proposals received, were required to be modified in lines with negotiations and making them compliant with relevant provisions.

The final plans will be shared with debenture holders shortly, after they are examined by Advisors to IRP.

10) How decision on resolution plans will be taken?

All the resolution plans received from IRP, along with his certificate that they are compliant of IBC, CIRP, RFRP, will be shared by trustee with debenture holders for voting on them.

Trustee will cast a vote on behalf of debenture-holders, as per the majority decision / mandate (51%) through e-voting by individual debenture holders, in value terms of those who cast their vote.

IRP will consider the votes received from members of CoC. The resolution applicant getting maximum votes of assent, in value terms, would be considered as the ‘Successful Resolution Applicant’, provided the votes secured in value terms, is 66% or more of the total admitted claims of Financial Creditors.

In case more than one resolution applicant receive the same value of votes more than 66%, the COC approved “Tie Breaker Formula” will be applied for considering Successful Resolution Applicant.

Thereafter IRP shall file an application to Hon. NCLT for approval of the Successful Resolution Plan.

11) Whether IRP and / or DT has right to accept or reject any of resolution plans?

Assenting or Dissenting to the resolution plans, is entirely the decision of CoC, including debenture-holders. They may decide as per their best judgement. As such, neither IRP nor Trustee of NCD holders has right to accept or reject the resolution plans.

12) Whether resolution plan approved by majority of creditors is binding on debenture holders?

The resolution plan approved by all the creditors with 66% or more in terms of value, will be submitted to Hon. NCLT for its approval. Upon approval of plan by Hon. NCLT, it will be binding on all stakeholders, including debenture holders.

13) Why to consider resolution plans offering less than value of security?

As per provisions of CIRP, each financial creditor in its commercial wisdom may consider each of the resolution plans received. It is absolute discretion of the creditors to accept or reject the plans with 66% in terms of value.

14) What 'assenting' & 'dissenting' debenture holders will get on approval of plan by NCLT?

The decision on each of the resolution plans will be sought from the debenture holders, by way of e-voting, being class of creditors. The decision of 'assenting' or 'dissenting' for plan with 51% of those who voted, will be binding on all debenture holders, irrespective of their individual assenting or dissenting vote.

Upon successful resolution plan approved by Hon. NCLT ---

- (a) if debenture holders as a 'class of creditors' have 'assented' for the plan (which is finally approved by Hon. NCLT), ALL debenture holders (including those individually dissented), would get payment as per approved resolution plan,
- (b) if debenture holders as a 'class of creditors' have 'dissented' for the plan (which is finally approved by Hon. NCLT), ALL debenture holders (including those individually assented), would get the payment as per the 'Liquidation Value' as determined by the valuers appointed for the purpose.
- (c) The Liquidation Value will be revealed along with the resolution plans put for voting.

15) What will happen if any resolution plan is not approved by creditors with required majority?

The IRP will file an application with Hon. NCLT for order of liquidation of the Company.

16) What are steps ahead, till payment to debenture holders?

- (a) E-voting on each of the resolution plans
- (b) Submission of an application by IRP with Hon. NCLT, for approval of resolution approved by CoC
- (c) Once the plan is approved by Hon. NCLT, implementation of approved resolution plan by successful resolution applicant will begin i.e., payment to debenture holders as proposed in the approved resolution plan.

17) When will debenture holders' claims be settled?

The exact time cannot be ascertained at this stage, considering the various steps involved in the process. However the debenture holders may refer the approved resolution plan once the voting by CoC is concluded on the resolution plan.

18) What is role of debenture trustee under CIRP?

To participate and vote in meetings of CoC on behalf of debenture holders, in accordance with the decision taken by them, with vote of 51% of the voting share, who cast their vote.

19) What action needs to be taken by debenture holders?

Keep track of developments in the matter, by examining all communications received by them from time to time, by way of emails, postings of websites of RP, trustee, documents placed on Virtual Data Room (VDR).

Examine carefully, the resolution plans and take a considered view before voting on them.

20) What is importance of updating of email ID and other details with RTA?

It is responsibility of DSKDL and Debenture Holder to maintain updated list of debenture holders with details of address, mail ID, bank account etc. (BENPOS) and to submit such list to trustee. For the purpose, it had engaged services of Registrar and Transfer Agent (RTA).

As per IBC, the information about CIRP is of confidential in nature and has to be shared with debenture holders as per BENPOS. The communication needs to be sent by way of emails appearing on BENPOS.

IRP has restored the services of RTA and for noting / updating the mail ID and other details, he has taken initiative by releasing an advertisement requesting debenture holders to update their details with RTA, by arranging for special portal and dedicated personnel by RTA, for attending to debenture holders. Trustee has sent several mails and also posted notifications on its website, MobileApp (MyTrustee), emphasizing significance of having correct email IDs on the BENPOS.
