

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP (IB) - 1929/I&BP/MB/2019  
Under Section 7 of the I&B Code, 2016

**In the matter of**

M/s Finquest Financial Services Pvt. Ltd,  
602, Boston House,  
Near Cinemax, Suren Road,  
Andheri (East), Mumbai – 400 093`

.... Petitioner

Vs.

Anoushka Medicare & Diagnostic Pvt. Ltd.,  
5, Ashirvad, 51-Vallabh Nagar,  
NS Road No. 2, JVPD Scheme,  
Vile Parle (West), Mumbai – 400 056

.... Corporate Debtor

**Order delivered on: 11.12.2019**

**Coram:**

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)  
Hon'ble Shri V. Nallasenapathy (T)

For the Petitioner: Mr. Rahul Sarda a/w Mr. Rihal S. Kazi, Mr. Aniket  
Katre & Ms. Purva Buch, Advocates i/b M&M  
Legal Ventures

For the Corporate Debtor: Mr. Tushar Kumar Desai, Advocate

***Per: Bhaskara Pantula Mohan, Member (J)***

**ORDER**

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I & B) Code, 2016 by Bank of India (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process against Anoushka Medicare & Diagnostic Pvt. Ltd. (hereinafter called the 'Corporate Debtor'), on the ground that the Corporate Debtor committed default, in repayment of cash credit facilities aggregating to Rs. 2,75,00,000/-.
2. The petitioner contends that there have been successive defaults in payment of instalments on behalf of the Corporate Debtor despite of several intimations, the outstanding amount due and payable given to them by the Petitioner, there have been no response from the Corporate Debtor.

3. In support of the contentions made by the learned counsel for the petitioner, the documents have been annexed and placed reliance upon which are as follows:
  - a. Copy of Statement of claims.
  - b. Copy of ledger account of Financial Creditor in respect of loan.
  - c. Copy of Ledger Account as on 15.11.2018 as maintained by the Financial Creditor also duly confirmed by Director of Corporate Debtor.
  - d. Copy of Deed of Conveyance.
  - e. Copies of various letters issued by the Financial Creditor to the Corporate Debtor to discharge their outstanding liabilities.
  - f. Copies of Corporate Guarantee from Corporate Debtor.
  - g. Copy of Promissory note dated 12.03.2018 issued by the Corporate Debtor in favour of the Financial Creditor.
4. The Financial Creditor had filed the Original Form No. 1 with respect to three loans, i.e. Loan A, B & C. Loan A was given to the Corporate Debtor whereas, Loan B and C were given to the Directors of the Corporate Debtor. However, pursuant to this courts order dated 08.07.2019, the Financial Creditor filed an Amended Form No. 1 restricting its claim for the purpose of the present Application to Loan A only.
5. The Corporate Debtor received a loan for an amount of Rs. 2,75,00,000/- vide a sanction letter dated 01.08.2017 for a period of 12 months. This loan was secured by mortgage of immovable properties belonging to the Corporate Debtor and its creditor vide a Mortgage Deed dated 04.08.2017.
6. A Promissory note was issued by the Corporate Debtor in favour of the Financial Creditor dated 01.08.2017, however, the cheques drawn in favour of the Financial Creditor towards repayment of the loans were dishonoured. Thereafter, the Financial Creditor made various attempts and requests to the Corporate Debtor for repayment of the said loan.

7. On 22.03.2019, the Advocates of the Financial Creditor issued notice, calling upon the Corporate Debtor to discharge their liabilities. The Corporate Debtor, instead of complying to the said notice, replied to the said notice and refrained from making any payments. However, even then since the Corporate Debtor and its Guarantors failed to pay the dues of the Petitioner, this Petition is filed.
8. The Corporate Debtor has denied all the contentions and averments made by the Financial Creditor, denying payment of any claims and has raised two major objections with regards to the Petition filed. According to the Corporate Debtor:
  - a) The mortgaged properties were conveyed in favour of the Financial Creditor in "Full and Final Settlement" of all outstanding of the Financial Creditor.
  - b) The actual valuation of the mortgaged properties was "twice" that of the mortgage value. In support of this, the Corporate Debtor has relied on the other properties adjoining the mortgaged properties.
9. We have gone through all the documents and submissions made by the both the parties and are of the view that:

### **ORDER**

10. Primarily, it is to be noted herein that on Corporate Debtor in his reply has mentioned that he has indeed availed the loan of Rs. 2,75,00,000/- in August 2017. With regards to the objections raised by the Corporate Debtor, the same cannot be accepted for being not in line with the document executed between both the parties. The Deed of Conveyance which records that the value assigned to the property which is mortgaged is adjusted towards part payment and the Corporate Debtor continues to be liable for the remaining amount.
11. Coming to the point regarding the valuation of properties, it is interesting to note that there is document to show that the Corporate Debtor may have disputed the said valuation at relevant time. Therefore, this objection now seems like a mere technical afterthought.

12. We have gone through all the pleadings filed and heard the arguments advanced by the petitioner and the corporate debtor. An amount was disbursed by the Petitioner, however, there is default to the tune of Rs. 2,75,00,000/- by the Corporate Debtor. Based on the same, above facts shows that the corporate debtor clearly defaulted in making the payments towards the liability to the Petitioner and the petition deserves to be admitted.
13. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that Corporate Debtor defaulted in repaying the loan availed. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
  - (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.
- (II) 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.
- (III) 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.
- (IV) That the order of moratorium shall have effect from 11.12.2019 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.

- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Mr. Rajendra Karanmal Bhuta, having office at Room No. 1207, Yogi Paradise, Yogi Nagar, Borivali (West), Mumbai 400 092; having Registration No. IBBI/IPA-001/IP-P00141/2017-2018/10305 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. Accordingly, this Petition is admitted.

15. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

**Sd/-**  
**V. Nallasenapathy**  
**Member (Technical)**

**Sd/-**  
**Bhaskara Pantula Mohan**  
**Member (Judicial)**

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