

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

CP No. 2326/IBC/NCLT/MB/MAH/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Evershine Advisory Services Private Limited

..... Financial Creditor
(Petitioner/Applicant)

V.

M/s. Spice Infra Trading Private Limited.

..... Corporate Debtor
(Respondent)

Pronounced on: 12.09.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

Adv. Prabhujan Gujar i/b Advocate Sunila Chavan.

For the Respondent :

None Present.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'M/s. Evershine Advisory Services Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 15.06.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹1,92,05,000/-, disbursed in five tranches on different dates from 19.07.2017 to 07.02.2018. The total amount claimed to be in default is ₹2,07,32,595/- which is inclusive of interest till 13.06.2018. The date of default is 18.04.2018.

3. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Spice Infra Trading Private Limited' (hereinafter as **Corporate Debtor**) having Registered office at 301, Gulab Building, 237, PD Mellow Road, Fort, Mumbai-400001.

4. Brief Background :

- 4.1. The Financial Creditor entered into a Loan Agreement dated 14.07.2017 with the Corporate Debtor to sanction a loan amount of ₹2,00,00,000/- (Two Crores Only) so as to meet the working capital requirements of the Corporate Debtor.

- 4.2. The said loan was disbursed in five tranches in the year 2017-18. The details of disbursement are given as follows:

- 1,50,00,000/- on 19.07.2017
- 40,00,000/- on 14.08.2017
- 70,000/- on 05.01.2018
- 1,00,000/- on 29.01.2018
- 35,000/- on 07.02.2018.

The receipt of the said loan amounts disbursed has been confirmed by the Corporate debtor vide various letters.

- 4.3. The Corporate Debtor has neither repaid the loan amount till date nor it has replied to the correspondences sent by the Financial Creditor calling for the repayment of loan.

5. Submissions by the Financial Creditor :

- 5.1. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor has disbursed the said sanctioned loan amount in five tranches on different dates during the year 2017-18. The Corporate Debtor vide letter dated 17.07.2017 requested the Financial Creditor for the disbursement of ₹1,50,00,000/-. The amount was disbursed on 19.07.2017 and the same has been confirmed by the Corporate Debtor vide letter dated 20.07.2017.

- 5.2. Further, the request for disbursement of ₹40,00,000/- has been made vide letter dated 11.08.2017, amount disbursed on 14.08.2017 and confirmation received vide letter dated 17.08.2017. The same process went on for the further amounts to be disbursed.

- 5.3. The HDFC Bank Statements of the Financial Creditor are the ample proof for the amount disbursed on various dates. Exhibit B in the Petition reveal the computation of the amount defaulted. The Bank statement is corroborating to the computation of claim of the Financial Creditor.

5.4. The Financial Creditor sent a letter dated 06.04.2018 to the Corporate Debtor for confirmation of the outstanding dues of ₹1,92,05,000/-. However, the Corporate Debtor failed to reply or to confirm. Various Demand Notices dated 04.05.2018 and 25.04.2018 were sent by the Financial Creditor to the Corporate Debtor. But all in vain.

6. No Submissions by the Corporate Debtor :

6.1. The Corporate Debtor has chosen not to be present before this Tribunal despite various notices intimating the dates of hearing before this Bench. It is thus affirmed that the Corporate Debtor has admitted its liability time and again by confirming the receipt of the amounts disbursed and has nothing much to say in its defence.

7. Findings :

- 7.1. I have gone through the facts and submissions of the petitioner. And upon considering the same I come to conclusion that, the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
- 7.2. Considering the above facts, I come to conclusion the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
- 7.3. The petitioner has placed on record the affidavit of service intimating the date of hearing on 05.09.2018 by hand delivery as well as through RPAD to the Corporate Debtor. But the Corporate Debtor has never appeared before this Bench.
8. As a consequence, keeping the admitted facts in mind that the Applicant has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner. I am of the conscientious view that this Petition deserves '**Admission**'.
9. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that, there is any disciplinary action is pending against the said proposed Interim Resolution Professional.
10. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.

11. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Ms. Dipti Atul Mehta, R/at 201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai-400018, having registration No. IBBI/IPA-002/IP-N00134/2017-18/10350 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
12. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
13. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
14. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
15. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
16. Ordered Accordingly.

Dated : 12.09.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)