



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.682/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

Ashika Global Securities Private Limited
(Formerly Known as Shentracon Trexim
Private Limited)

[CIN: U51909WB1993PTC057525]

...Financial Creditor

v/s.

Evyavan Global Private Limited
(Formerly Known as Merchant Capital
Private Limited)

[CIN: U65990MH1996PTC096360]

...Corporate Debtor

Order Delivered on: 21.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Financial Creditor:

Mr. Ayush J. Rajani, PCA a/w Ms.
Khushboo Shah i/b AKR Advisors,
Ld. Counsel.

For the Corporate Debtor:

Mr. Rohit Gupta i/b Adv. Agam H
Maloo, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)



1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Ashika Global Securities Private Limited (formerly known As Shentracon Trexim Private Limited) (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Evyavan Global Private Limited (formerly known as Merchant Capital Private Limited) against the Corporate Guarantor.
 - 1.1. The Company Petition is filed on 30.05.2022 claiming an amount of Rs.3,78,26,466 in default. The Part IV of Form 1 specify the date of default as 14.06.2018.

2. The Corporate Debtor approached the Financial Creditor through its director with a request to avail loan of Rs.2.50 Crores and assured the Financial Creditor to pay an interest @12% pa. The said loan amount was disbursed on 26.05.2016 and 23.08.2016 to the Corporate Debtor by way of RTGS/NEFT.
 - 2.1. The Financial Creditor further submits that the Corporate Debtor never disputed its liability in respect of said loan. The Corporate Debtor has also refunded/repaid the principal amount to the tune of Rs. 25,00,000 on 13.06.2018.
 - 2.2. The Financial Creditor submits that the Corporate Debtor has not paid any interest amount which carries the time value of Money and bearing interest, however, has deducted TDS of Rs.1,96,274/- on interest on the given loan for the Financial Year 2016-2017 and Rs. 3,00,000 on interest for Financial Year 2017-2018. The Financial Creditor had also taken TDS credit on the said loan.
 - 2.3. The amount has been shown as “Inter-Corporate deposits” under the head Long term borrowings in the Financial Statement of the Corporate Debtor for the Financial year 2017-2018 which clearly shows the outstanding



amount of Rs.2,94,66,466/- as well as in the confirmation of accounts sent by Corporate Debtor to the Financial Creditor.

3. The Corporate Debtor in its reply has stated that the company petition is barred by the limitation; there are two date of default mentioned by the Financial Creditor the letter clearly evidences and records that payment of interest has not been made since 2016, the default begins from 2016, while as specified in the Part IV of the Company Petition the date of default 14.06.2018, however there is no evidence to substantiate the same; there is not any kind of loan transaction or agreement between the parties, the only document which shows any kind of demand is the letter dated 22.01.2019 in which a request was made regarding payment of interest amount and that was to be made 7 months after the alleged default had taken place; KYC documents are not loan documents therefore cannot be used to show the existence of any kind of debt.

3.1. The Financial Creditor has filed rejoinder dated 25.11.2022 in which he specifically submitted that all the statement allegations and contentions raised in reply by the Corporate Debtor have been denied by the Financial Creditor.

3.2. The Financial Creditor has filed Written Submission dated 03.03.2023 wherein it is pleaded that the recall notice was send to Corporate Debtor on 22.01.2019 for payment of interest and also pleaded that loan was repayable on demand and accordingly section 7 petition is nothing else but demand to repay the said loan to the Financial Creditor. It is also pleaded that date of default cannot be an NPA date.

Findings:

4. We have heard both the parties and perused the material on record.



4.1. Vide order dated 30.01.2023 this bench has directed the Applicant to file financial statement for the year ended on March 2017 and March 2018, as the bench sought to verify the treatment of the amount claimed to be in default by the Financial Creditor in the audited financial statements. However, the copy of its financial statement was not filed. The counsel of the Financial Creditor was asked specifically by this bench as to whether the financial creditor being NBFC has made any provision against the amount of debt claimed to be in default in the present application. However, the counsel chose not to respond to this query either by filing Financial Statement or clarifying this fact in the written submission dated 03.03.2023 filed by it.

4.2. It is admitted fact that the Principal amount of loan was repayable on demand and there was no stipulation as to the period for payment of interest on such loan. The fact of loan is also not disputed. The letter date 22.01.2019 is the only communication whereby payment of interest for FY 2016-2017, 2017-18 and from 01.04.2018 till 31.12.2018 was asked. No principal amount was asked to be paid vide this communication. There is no communication to evidence any understanding in relation time of payment of interest as well as date of payment of Principal amount. Further, we could not verify these facts relating to interest and Principal having become overdue in the absence of Financial Statement of the applicant before us despite specific direction to the applicant in this regard.

4.3. A debt is said to be in default when it is due for payment and the existence of debt simpliciter cannot give rise to cause of action under the code unless there occurs default in payment of debt when it is due. On perusal of statement of outstanding dues it is noticed that a sum of Rs.19,62,740/-, Rs.30,00,000/- and Rs.20,70,000/- is claimed to have accrued till



31.12.2018 out of which a sum of Rs.4,96,274 has been deposited as TDS by the Corporate Debtor, also admitted by the applicant. Thus, a sum of Rs.65,36,466/- was outstanding because of interest as on that date and can be said to be in default in consequence to demand for payment of interest raised by the applicant by letter dated 22.01.2019.

4.4. This application is filed on 30.5.2022. The threshold limit as prescribed u/s 4 of the Code was enhanced to Rs.1 Crore vide notification dated 24.03.2020. The Hon'ble NCLAT in the case of *Jumbo Paper Products v/s Hansraj Agrofresh Pvt. Ltd Company Appeal (AT) (Ins) No. 813 of 2021* has held that the increase threshold limit will apply to all the application filed under the code on or after the date of notification. Since, the debt and default as discussed in the preceding para is Rs. 65,36,466/-, which is below the threshold limit as applicable on the date of filing of present application, this application is not maintainable.

ORDER

5. The petition bearing CP(IB) 682/MB-IV/2022 filed by Ashika Global Securities Private Limited (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Evyavan Global Private Limited (“the Corporate Debtor”), is **Dismissed**.
6. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
21.03.2023

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)