IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

Company Petition No. 848/(IB)-MB-V/2020

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 Polaris Healthcare,

Through Mr. Surendra Damodar Patil

Wakad – Dange Chowk Road,

Opp Nandan Inspera,

Near Datta Mandir, Wakad

Pune – 411057

…. Applicant/Financial Creditor

Vs.

M/s Empirical Medi Solutions Private Limited,

1st Floor, Narsinh Centre,

Vision Next Apte Road,

Above HDFC Bank Pune

Pune MH 411004 IN.

...Corporate Debtor/Respondent

Order Reserved on: 14.03.2022

Order Pronounced On: 20.04.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner	:	Ms. Geeta Lundwani, Advocate
For the Respondent	:	Ms. Sneha Chugh, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'M/s Polaris Healthcare'. (hereinafter as **Petitioner**) 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" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'M/s Empirical Medi Solutions Private Limited' (hereinafter as '**Corporate Debtor**').

2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 9,34,787/- out of which principal amount is Rs. 7,00,000/- and 2,34,787 in lieu of interest. The date of default is stated to be 21.06.2018.

Brief Facts-

3. The Petitioner M/s Polaris Healthcare is a Partnership and the Empirical Medi Solutions Private Limited is a company incorporated under the provisions of Companies Act, 1956.

4. On 31.12.2015 the Petitioner has advanced Rs. 2,00,000/- by way of unsecured loan at interest @12% for a period of one year or on demand. The parties have entered into a Memorandum of Understanding (MoU) dated 28.12.2015 pursuant to which the Petitioner has disbursed a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the Corporate Debtor. The Copy of the MoU is annexed to the Petition.

5. Further on request of the Corporate Debtor the said loan of Rs. 2,00,000/- at an interest @12% was renewed for another one year or on demand and an additional unsecured loan for a sum of Rs. 5,00,000/- was disbursed to the Corporate Debtor as per the renewal of loan letter dated 22.12.2016 and on the same terms and conditions as of the Memorandum of Understanding dated 28.12.2015. Copy of renewal letter dated 22.12.2016 is annexed to the Petition.

6. The Petitioner further states that the Petitioner has been meeting and continuously following up regarding the outstanding loan however the Corporate Debtor has been requesting to accommodate himself and making false commitments to repay the loan amount along with interest. The Petitioner has issued a loan recall notice on 14.06.2018 to the Corporate Debtor demanding outstanding payment of Rs.8,34,630/- comprising of Rs.7,00,000/- towards repayment of loan amount and Rs. 1,34,630/- towards the unpaid interest calculated till March 2018.

7. In response to the said notice, the Corporate Debtor has replied vide its letter dated 19.06.2018 and mentions that the Corporate Debtor has admitted and acknowledged the receipt of monies/ loan from the Petitioner.

8. Copy of bank account statements of the Petitioner evidencing the disbursement of the loan of Rs. 2,00,000/- as on 31.12.2015 and Rs.7,00,000/- as on 29.12.2016 to the Corporate Debtor is annexed to the Petition.

9. On the basis of the abovementioned documents placed on record it is abundantly clear that the Corporate Debtor has been continuously buying time from the Petitioner and on backdrop of false assurances. The Petitioner has always considered the difficulties and accommodated the Corporate Debtor and in fact renewed the loan as and when requested. Despite of giving enough time, the Corporate Debtor has hopelessly defaulted in repayment of the said loan and an amount of Rs.9,34,787/- (Rupees Nine Lakhs Thirty- Four Thousand Seven Hundred and Eighty-Seven Only) is outstanding in the books of Petitioner. Copy of the ledger account statements for the periods 2015-2016, 2016-2017, 2017-2018, 2018-19 is annexed to the Petition.

   Moreover, the Corporate Debtor has admitted its liability which is evident from the above records and has not repay the Principal and Interest amount to the Petitioner. Hence, a total amount of Rs. 9,34,787/- comprising of Rs. 7,00,000/- towards principal and Rs. 2,34,787/- towards interest is outstanding and to be paid by the Corporate Debtor to the Petitioner as acknowledged in their own balance sheet which is uploaded on the MCA for the period 2016-2017, 2017-2018 and 2018-2019. Copy of the Balance

Sheet of the Corporate Debtor for the year 2016-2017, 2017-2018 and 2018-2019 reflecting the name of the Petitioner in the schedule of unsecured Creditors is annexed to the Petition.

10. The Applicant/Financial Creditor states that even after accommodating on various occasions the Corporate Debtor has given numerous assurances but has hopelessly defaulted in payment of said loan. Based on the documents placed on record it can be sufficiently proved that Corporate Debtor has failed in making the payment of the said loan, further it can be constructed that the Corporate Debtor is gone commercially insolvent to discharge its liability. Moreover, there exists a clear case of debt and default and hence the instant petition is filed before the Adjudicating Authority for initiating Corporate Insolvency Resolution Process u/s 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

SUBMISSONS BY THE CORPORATE DEBTOR

11. At the outset, the Corporate Debtor denies all allegations and/or contentions and/or insinuations and/or aspersions and/or statements and/or grounds and/or submissions contained in the present Company Petition as are contrary to and/or inconsistent with what has been stated and submitted herein. Nothing shall be deemed to have been admitted by the Corporate Debtor, save and except to extent specifically admitted herein. Merely by reason of not specifically dealing with any allegations and/or contentions and/or insinuations and/or aspersions and/or statements, the Corporate Debtor does not admit and shall not in any manner be deemed to have

admitted the same. Nothing ought to be deemed to be admitted by the Corporate Debtor merely for want of a specific traverse.

12. Is to be noted that the alleged loan was renewed for another one year i.e., till December 2017 but the Petitioner has taken his sweet time to send the Loan Recall Notice. Further, the Petitioner has nowhere in its Loan Recall Notice clearly specified its interest calculation or how the amount of default has come to Rs. 8,34,630/-

13. Despite of being aware about the financial distress suffered by the Corporate Debtor back then, the Petitioner has deliberately sent Loan Recall Notice thereby granting only 07 days' time to repay the entire loan amount. It is surprising that how the Petitioner expects the Corporate Debtor to repay the entire loan amount in such short duration wherein the Petitioner in fact had knowledge about the Corporate Debtor facing financial crunches. This act evidently discovers the ulterior motive of the Petitioner to portrait the Corporate Debtor as insolvent.

14. It is pertinent to note that, the Petitioner had never followed up with the Corporate Debtor for the repayment of the alleged loan, which can also be realised from the non-attachment of any evidence in support thereof. The belated Loan Recall Notice is nothing but an afterthought of the Petitioner to snatch orders from this Tribunal by misrepresenting the facts and circumstances of the present case. The Petition is nothing but an abuse of the process of law and this Tribunal ought to dismiss this Petition. It will not be out of place to mention that the Corporate Debtor is a solvent and a thriving company and the invocation of the provisions of Section 7 of the

Code is nothing but a devious thought of the Petitioner to extort monies from the Corporate Debtor.

FINDINGS:

15. Upon perusal of the Petition and after hearing both the parties, it is established that the Petitioner has granted a loan to the Corporate Debtor wherein the money of Rs. 2,00,000/- was disbursed by the Petitioner and further the loan was renewed for another one year for sum of Rs. 5,00,000/- was disbursed to the Corporate Debtor. the Corporate Debtor was not able to repay the amount and an amount of Rs. 9,34,787/- along with interest is due and outstanding.

16. The Corporate Debtor has filed reply of the Demand Notice dated 19.06.2018 wherein the Corporate Debtor has accepted that he is in financial crunch. The reply of the said demand notice is reproduced below:

Empirical Medi Solutions Pvt. Ltd.

Narsinh Centre, Opp. Co
Above HDFC Bank, Off. J
PUNE - 411 004, INDIA.
Phone: 020-3022 1515.

Date: 19.06.2018

To,
Surendra Damodar Patil
Wakad – DangeChowk Road,
OppNandanInspera, Near DattaMandir,
Wakad Pune 411057, Maharashtra, India

Sub. : Reply to the notice dated 14th June, 2018

Dear Sir,

We have received your letter and repeated requests regarding repayment of loan amount with outstanding interest.

However, we have to state that due to good relations from many years you had provided us the said loan and we seek your kind cooperation in these tough times. Even when you had approached us earlier for payment, we had indicated the difficulties and asked for 2 months additional time to enable you the proper payment of Rs. 7 lacs to your goodself in due course.

Therefore we again request you to kindly grant us some more time to arrange funds and we would be clearing and closing the loan account by the end of September 2018.

Your co-operation will be appreciated

Thanking you,

Yours faithfully,
For Empirical Medi Solutions Private Limited

Empirical Medi Solutions Pvt. Ltd.

Ambarish Balkrishna Barak
Director

17. It is established from the Balance Sheet that the Financial Creditor has disbursed an amount of Rs.7,00,000/- to the Corporate Debtor by way of unsecured loan. There is a clear acknowledgement of liability in the Balance Sheet for the year 2017-2018. The Balance is reproduced below:

Empirical Medi Solutions Pvt.Ltd.
Unsecured Loans

	Unsecured Loans	
	Empirical Medi Solutions Pvt.Ltd.	
Particulars	1-Apr-2017 to 31-Mar-2018	
	Closing Balance	
	Debit	Credit
Ambarish Balkrishna Darak		2601943.00
Dr. Rajesh Sinha		830000.00
Gopal Balkrishna Darak		450000.00
Parekh Integrated Services Pvt. Ltd.		6359270.00
Parikshit Darak		1270320.00
Pioneer Developers (Raj Sekhar Savali Hirmukhe)		500000.00
Polaris Health Care		700000.00
Prutha Ambarish Darak		14000.00
Rajneesh Pawar		1000000.00
Vijaya Balkrishna Darak		1550000.00
Grand Total		**15275533.00**

18. Hence, this Bench concludes that it is established beyond doubt that there is debt and default. Hence, the Petition is admitted.

19. Ongoing through the submissions made by the Learned Counsel for both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and the Corporate Debtor failed to pay the amount to the Petitioner.

20. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12)

of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

21. Further that, we 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 any disciplinary action is pending against the said proposed Interim Resolution Professional.

22. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Prawin Charan Prafulcharan Dwary having registration No. IBBI/IPA-002/IP-N00331/2017-2018/10937, having address at 407, Akchhat Tower, Pakwan Cross Road, S.G. Highway, Bodakdev, Ahmadabad, Gujarat, 380015, having email id: dwaryprawin@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

23. 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, and 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.

24. 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.

25. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process 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.

26. In view of the above, the Bench "**Allows**" the Company Petition No. **848/(IB)-MB-V/2020** u/s.7 initiating CIRP against the Corporate Debtor M/s Empirical Medi Solutions Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

27. Ordered Accordingly.

Sd/-	Sd/-
Anuradha Sanjay Bhatia	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)