IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP (IB) 4493/MB/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016

In the matter of

State Bank of India
..... Applicant/ Financial Creditor

Versus

Aegis Medicines Pvt. Ltd.
..... Corporate Debtor

Order Delivered on :- 25.11.2022

Coram:

Justice P.N Deshmukh : Hon'ble Member (Judicial)

Mr. Shyam Babu Gautam : Hon'ble Member (Technical)

Appearances:

For the Financial Creditor: Mr. Zaman Ali, Adv.
For the Respondent: None Present

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** seeking to initiate Corporate Insolvency Resolution Process **("CIRP")** against Aegis Medicines Pvt.

Ltd., **("the Respondent")** alleging default in payment of a Financial Debt.

<u>The Submissions of the Financial Creditor are as follows: -</u>

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of outstanding financial Debt of Rs. 47,50,87,913/- (Rupees Forty Seven Crore Fifty Lakhs Eighty Seven Thousand Nine Hundred Thirteen Only)/- as on 30.11.2019. The date of Non-Performing Asset was on 11.11.2013.

3. The Financial Creditor submits that various facilities had been sanctioned such as (i) Term Loan 1 facility of Rs. 16.50 Crores disbursed on 29.12.2009, (ii) Term Loan-2 facility of Rs. 3.50 Crores on 25.10.2011, (iii) Cash Credit facility of Rs. 3.50 Crores on 25.10.2011, (iv) Funded Term Loan facility for Rs. 6.52 Crores on 22.01.2013.

4. The said facilities were secured by way of an Agreement of Hypothecation dated 31.12.2019 as well as by way of Registered mortgaged Deed dated 31.12.2009.

5. The Financial Creditor further submits that the report of CRILC dated 31.10.2019 along with the CIBIL report dated 19.10.2019 is on record.

6. The Financial Creditor further submits that in order to prove the existence of Financial Debt, the amount and date of default, the Financial Creditor have produced Financial Statements from 2015-2016, 2016-2017,2017-2018, 2018-2019, 2019-2020 on record.

7. The Financial Creditor submits that entries in the bankers book in accordance with the Bankers Book Evidence Act6, 1891 along with Certificates under Bankers Book Evidence Act, 1891 have been produced on record in order to corroborate the claim filed by the Financial Creditor.

8. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

<u>FINDINGS</u>

9. We have heard the submissions of the Counsel appearing for the Financial Creditor. It is seen from the records that vide Order dated 22.11.2021, the Corporate Debtor was allowed to file reply subject to payment of cost of Rs. 25,000/-. The Financial Creditor submitted that the Corporate Debtor has not complied with the Order and hence the Reply if any could not be taken on record. Also, the Corporate Debtor was proceeded ex-parte on 11.07.2022.

10. Further, the Corporate Debtor has filed its Written Submissions in which the Corporate Debtor requested the Tribunal to allow the matter to be settled and also asked to direct the Financial Creditor to give an opportunity to settle the matter by working on One Time Settlement.

11. This evidently shows that the Corporate Debtor is not denying its liability to pay the outstanding dues to the Financial Creditor.

12. Hence, it is seen from the records available that the Financial Creditor has established that the various term loans/Credit facilities were duly sanctioned and duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.

13. Further, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:

> *(5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
>
> *(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*
>
> *Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

Hence, accordingly We, have perused this Petition/Application filed under Section 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.

14. On going through the facts and submissions of the Financial Creditor and upon considering the same, it is concluded that the Financial Creditor has established that the loan/ Credit facilities 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.

15. 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.

16. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves **'Admission'**.

17. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

a. **The above Company Petition No. (IB) -4493 (MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Mittal Corp Limited.

b. This Bench hereby appoints **Mr. Girish Siriram Juneja, Registration No: IBBI/IPA-001/IP-P00999/2017-18/11646** as the Interim Resolution Professional having registered address at 22, Dignity Apartments, Bon Bon Lane, 7 Bungalows, Versova, Andheri (West), Mumbai – 400053, **email :- junejagirish31@gmail.com,** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. 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.

f. 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.

g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**