

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

CP (IB) 3834/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Persistent Systems Limited,

`Bhageerath', 402, Senapati Bapat
Road, Pune- 411016

... Petitioner

Vs.

Klisma E-Services Private Limited,

`Bhageerath', 402, Senapati Bapat
Road, Pune- 411016

... Corporate Debtor

Order delivered on: 20.01.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (J)
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: PCS Pallavi Viraj Salunke

For the Corporate Debtor: Adv. Saurabh

Per: V. Nallasenapathy, Member (T)

ORDER

1. Persistent Systems Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Klisma E-Services Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor, in its capacity as a Corporate Guarantor, committed default to the extent of ₹2,74,26,663/-, as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner and the Corporate Debtor entered into an Inter Corporate Loan Agreement on 07.05.2012. As per the agreement, the Petitioner has granted an Inter Corporate Deposit (ICD or loan) of ₹2,74,26,663/- to the Corporate Debtor in multiple tranches from June, 2012 to March, 2013. Further, as per the repayment schedule set forth in the agreement, the Corporate Debtor

was required to make the repayment of ICD in three tranches as below:

Tranche of Repayment	Particulars	Date of Repayment	Amount in ₹
First	50% of the loan amount payable at the end of third financial year from the date of last disbursement of Loan	March 31, 2016	1,37,13,332
Second	25% of the loan amount payable at the end of eighteen months from the date of payment of first tranche of repayment of Loan	September 30, 2017	68,56,666
Third	25% of the loan amount payable at the end of eighteen months from the date of payment of second tranche of repayment of Loan	March 31, 2019	68,56,665
	Total		2,74,26,663

3. The Petitioner submits that the Corporate Debtor through its letter dated 31.03.2013 addressed to the Petitioner acknowledged the debt amount. The letter is extracted below:

"Dear Sir/Madam,

With regards to the above referred Inter Corporate Loan Agreement, we hereby acknowledge the receipt of Inter Corporate Loan of ₹2,74,26,663/- from Persistent Systems Limited ('the Company') during the period from June 8, 2012 to March 29, 2013.

Thanking you"

4. The Petitioner has enclosed the Inter-Corporate Loan Agreement dated 07.05.2012, board resolution of the Petitioner dated 21.04.2012 authorizing grant of loan to the Corporate Debtor, bank statements for the years 2012 & 2013 of the Petitioner's account evidencing the remittance of the loan amount and minutes of the meetings of Audit Committee of the Petitioner dated 18.07.2012 and 26.01.2013.
5. The Petitioner in its letter dated 04.04.2013 to the Corporate Debtor demanded the payment of ₹15,24,519 towards interest on the ICD for the Financial Year 2012-13. The Corporate Debtor in its reply dated

14.04.2013 to the said letter requested the Petitioner to waive off the interest of ₹15,24,519 due for Financial Year 2012-13. The Petitioner through its letter dated 23.04.2013 agreed to waive off the said interest amount.

6. On the non-payment of the debt amount, the Petitioner sent letter dated 05.04.2016 to the Corporate Debtor demanding principal amount for first tranche of ₹1,37,13,332/- after the expiry of its due date. Subsequently, the Petitioner sent another letter dated 10.10.2017 to the Corporate Debtor demanding principal amount for second tranche of ₹2,05,69,998/- after the expiry of its due date. Then, on 12.04.2019 and later on 26.07.2019, the Petitioner sent letters demanding principal amount for third tranche of ₹2,74,26,663/-.
7. On 26.11.2019, both the sides were heard and the Counsel for the Corporate Debtor accepted the liability as well as the default.
8. The Corporate Debtor in its written submissions accepted all the contentions raised by the Petitioner and acknowledged the debt amount ₹2,74,26,663/- payable to the Petitioner. The Corporate Debtor also enclosed its Balance Sheets for the years 2016-17 and 2017-18 wherein this Petitioner was shown as a Creditor under the head Non-Current liabilities- loans and advances from related parties.
9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, 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:
 - (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.
- I. 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.
 - II. 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.
 - III. That the order of moratorium shall have effect from 20.01.2020 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.
 - IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
 - V. That this Bench hereby appoints, Mr. Dinesh Gopal Mundada, having his address at 403, Fortune House, Near Occasion Lawn, Baner-Pashan Link Road, Baner, Pune – 411045, having Registration No. IBBI/IPA-001/IP-P00286/2017-18/10530 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
10. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Suchitra Kanuparthi
Member (J)