

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 453/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code,
2016

In the matter of

Eye Care Distributors,

Through its proprietor Mr. Amol Subhashrao Chandore

Ground Floor, Renuprakash Apartment, 817, Sadashiv Peth,
Pune-411030.

... Financial Creditor/Applicant

Versus

Calix Life Sciences Private Limited

[CIN: U36912PN2012PTC144371]

CTS No. 6616, PL No. 491, Office No. 403 Center Point,
Mitra Mandal Chowk, Pune- 411009.

... Corporate Debtor/Respondent

Order Delivered on 20.10.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Financial Creditor : Mr. Jayanta Kar i/b S. Jalan &
Company, Advocates.
For the Corporate Debtor : None Appeared.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Eye Care Distributors through its proprietor Mr. Amol Subhashrao Chandore** ("the Financial Creditor"), seeking to initiate Corporate Insolvency

Resolution Process (CIRP) against **Calix Life Sciences Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares incorporated on 14.08.2012 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at CTS No. 6616, PL No. 491, Office No. 403 Center Point, Mitra Mandal Chowk, Pune- 411009. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present Petition was filed on 07.06.2023 before this Tribunal for claiming a sum for an Unsecured Loan for a sum of Rs. 1,13,67,672/- (Rupees One Crore Thirteen Lakh Sixty-Seven Thousand Six Hundred and Seventy Two Only) vide a Loan Agreement dated 10.10.2018 for the Aggregate debt of Rs.2,16,48,422 /- (Rupees Two Crore Sixteen Lakh Forty Eight Thousand Four Hundred and Twenty Two Only) as on 10.04.2023 including the outstanding principal and interest. The Date of Default was on 31.05.2021.

Submissions made by the Financial Creditor:

4. On 10.10.2018, Shrava Medisales Private Limited (hereinafter referred as "the borrower") requested the Financial Creditor for providing Financial Assistance by way of an unsecured loan facility for raising working capital of the Borrower for an amount not exceeding INR 2.00 Crores (Rupees Two Crores only). The Borrower further represented the Financial Creditor that the funds shall not be required in a single tranche but would be required as and when infusion of fresh working capital shall arise and the total funds required for mitigating the requirement of the working capital shall be to the tune of INR 2.00

Crores over a period of time and would be converted into equity of the borrower as on 31st December,2020.

5. It was agreed between the Borrower and the Financial Creditor that the Corporate Debtor shall stand as the Corporate Guarantor to the Borrower and Mr. Aashwiin Pardessi and Mr. Sunil Chandore, both Directors of the Borrower shall stand as the Personal Guarantors of the unsecured loan and therefore all of them shall be jointly and severally responsible for conversion of the financial debt along with interest thereon into an equity of Borrower and Corporate Debtor Proportionately as on 31.12.2020.
6. A loan agreement was executed by and between the borrower and the Financial Creditor on 10.10.2018 and further executed a demand promissory note in favour of the Financial Creditor and a Deed of Corporate Guarantee. By virtue of the loan agreement, the Financial Creditor disbursed an unsecured loan with a precondition that the entire loan amount including the principal together with interest component, shall be converted into equity shares of the borrower and the Corporate Debtor in Lieu of repayment of loan amount.
7. In a loan agreement it was further agreed that the Financial Creditor will hold a minimum share capital of 30% post conversion of debt into equity share capital which will be eligible to go up to 51% based on the business valuations and total debt component at time of conversion of the repayment amount of the loan into equity capital.
8. By a letter dated 16.11.2020, the Financial Creditor intimated the Corporate Debtor about the cut-off date of conversion of the Financial debt into equity and by a reply dated 26.11.2020 the Corporate Debtor

acknowledged its liability of the repayment of financial debt and to initiate the process for conversion of such debt into equity. However, the Corporate Debtor sought time to comply with the requirements.

9. Thereafter, the Financial Creditor issued various reminder notice to the Corporate Debtor about the default in converting the debt into equity in terms of Loan Agreement:

- i) The First Reminder Notice was issued on 04.01.2021 and a reply dated 29.01.2021 was made by the Corporate Debtor who sought for an extension of time due to Covid-19 pandemic as well as pending compliance to be made before the Registrar of Companies.
- ii) The Second Reminder notice dated 10.02.2021 called upon the Corporate Debtor to pay INR 1,13,67,672.00 towards the entire principal alongwith interest accrued thereon @ 24% per annum till realization within 3 days from the date of notice.
- iii) The Third Reminder Notice was sent on 16.02.2021 to the Corporate Debtor to pay the Outstanding Loan Amount including interest thereon. On 08.03.2021, Corporate Debtor vide a letter expressed inability for conversion and further sought extension of time due to various reasons attributable to the corporate debtor.
- iv) On 05.04.2021 Corporate Debtor vide letter sought extension of time till 30.05.2021 for repayment of outstanding amount. Such extension was granted by the Financial Creditor on 12.04.2021.

10. Thereafter the Financial Creditor through their Advocate issued a demand notice on 14.06.2021 and by a loan recall notice dated 25.07.2021, the Financial Creditor terminated the loan and called upon

the borrower as well as the Corporate Debtor to pay the outstanding dues of the loan enforceable as financial debt.

Findings:

11. Heard the Ld. Counsel for the Financial Creditor and perused the records.
12. Upon going through the record files, it is observed that vide order dated 04.09.2023, this bench forfeited the right to file reply by the Corporate Debtor on account of non-filing of reply. On multiple occasions matter was listed out of which only on 17.07.2023 appearance was made by the Corporate Debtor. Thereafter on 09.08.2023, 04.09.2023 and 14.09.2023 neither appearance made nor reply was filed. Hence, the matter in hand is taken on merits.
13. The following facts are not in dispute:
 - 13.1. Shrava Medisales Private Limited the borrower requested the Financial Creditor for providing Financial Assistance, it was agreed between the Borrower and the Financial Creditor that the Corporate Debtor shall stand as the Corporate Guarantor to the Borrower and Mr. Aashwiin Pardessi and Mr. Sunil Chandore, both Directors of the Borrower shall stand as the Personal Guarantors of the unsecured loan. In this regards documents have been produced and it is demonstrated that the Corporate Debtor is the Corporate Guarantor to the above transaction.
 - 13.2. A loan agreement was also executed between the borrower and the Financial Creditor on 10.10.2018. Further, a demand promissory note in favour of the Financial Creditor and a Deed of Corporate Guarantee was also executed.

- 13.3. The said amount was extended to the borrower upon the Corporate Guarantee given by the Corporate Debtor, the amount was extended for a consideration in time value of money and hence same falls under a Financial Debt within the meaning of Section 5(8) of the IBC.
- 13.4. At the outset, we note that there is no dispute over the fact that the borrower has defaulted in repayment and CIRP against borrower was initiated. Since the Corporate Debtor has given the Corporate Guarantee is liable jointly and severally to pay the amount in default. The financial debts is more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the petition is filed by properly and by authorized Person.
14. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
15. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor.
16. The Financial Creditor has proposed the name of **Mr. Udaykumar Bhaskar Bhat**, Registration No: IBBI/IPA-001/IP/P-01425/2018-19/12234, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required

under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

17. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
18. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 453/MB/2023** filed by **Eye Care Distributors**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Calix Life Sciences Private Limited [CIN: U36912PN2012PTC144371]**, the Corporate Debtor, is **Admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Udaykumar Bhaskar Bhat**, Registration No: IBBI/IPA-001/IP/P-01425/2018-19/12234, having address at B-304, Goldville, Aundh Ravet Road, Dange Chowk, Thergaon, Pune 411033, Email Address: udaybhat2805@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

20.10.2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)