IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 2941/IBC/MB/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

XANDER FINANCE SERVICE LIMITED

101, 5, North Avenue, Maker Maxcity, Bandra Kurla Complex, Bandra East, Mumbai-400051

……**Financial Creditor**

Vs

Liz Traders and Agents Private Limited

(CIN: U74120MH1998PTC048683)

Registered office at: 12/13 Cecil Court, 1st Floor, Lansdowne Road, Colaba, Mumbai-400039

…….Respondent

Order delivered on: 25.02.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Financial Creditor: Mr. Suvaankoor Das, Advocate

For the Corporate Debtor: None present.

Per: Chandra Bhan Singh, Member

ORDER

1. This Company petition is filed by *Xander Financial Services Ltd.* (hereinafter called "Financial Creditor") seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against *Liz Traders and Agents Private Limited* (hereinafter called "Respondent") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an Financial Debt of Rs. 28,57,431/- (Rupees Twenty-Eight Lakh Fifty-Seven Thousand Four Hundred Thirty-One).

2. The submissions by the Operational Creditor are as follows:

   a. The Financial Creditor had, upon a request of the Corporate Debtor, granted a term loan facility to the extent of Rs. 30,00,00,000/- (Rupees Thirty Crore only) against certain security and as per the terms and conditions mentioned in the loan agreement dated November 18, 2016.

   b. The interest was payable on the first day of every succeeding month, from the facility drawdown date till the final maturity date. The facility drawdown date has been defined to be the first drawdown of the facility and, therefore, the interest was payable on the first date of every succeeding month from the date of the first drawdown.

   c. The Corporate Debtor was under an obligation to maintain the security cover at 2x of the drawdown amount under the loan agreement. However, the Corporate Debtor failed to maintain the stipulated security cover as contemplated.

   d. As per the terms of the loan agreement, the Corporate Debtor secured the repayment of the term loan along with all other outstanding thereto including interest, additional interest, default interest by way of first ranking exclusive pledge over 35,00,000/- unencumbered fully paid up equity shares of Cox and Kings Limited and further by way of pledge of additional securities of other entities and a personal guarantee dated November 18, 2016 executed between the Financial Creditor and Ms. Urrshila Kerkar, being a director of the Corporate Debtor. An Irrevocable Power of Attorney dated November 18, 2016 appointing the Financial Creditor as the lawful attorney of the Corporate Debtor to carry out certain acts in respect of the pledged securities on behalf of the Corporate Debtor, as mentioned therein, was also executed.

e. The Financial Creditor further submits that pursuant to a drawdown request, the first drawdown to the Corporate Debtor was made on November 21, 2016 and, therefore, the interest was payable on the first date of every succeeding month. The entire amount as per the Loan Agreement was disbursed by the Financial Creditor on November 21, 2016 in a single tranche.

f. Further, as per the terms of the Loan Agreement, an amount of Rs. 28,57,431/- is due and payable towards interest as on July 1, 2019. In addition to the aforesaid, the Corporate Debtor also failed to maintain the requisite security cover as required under the loan agreement.

g. The Financial Creditor submits that due to the Corporate Debtor’s default in making the necessary Interest payments and also its failure to maintain the requisite security cover, the Corporate Debtor contravened the terms of the loan agreement and an event of default under clause 8 of the loan agreement has occurred.

h. In view of aforesaid event of default, the Financial Creditor issued a notice dated July 9, 2019 through its Advocate, inter alia, calling upon the Corporate Debtor to restore the security cover in the manner stipulated in the loan agreement and also called upon the Corporate Debtor to pay the defaulted loan instalment (as on such date) towards outstanding interest component aggregating to Rs. 28,57,431/- along with further interest within a period of 5 days from receipt of the notice.

i. Despite the above, the Corporate Debtor has failed and neglected to pay the amount due and payable to the Financial Creditor and has failed to cure the default committed by it under clause 8 of the loan agreement. The total outstanding interest component of the Term Loan, being the defaulted loan instalments, which is due and payable to the Financial Creditor by the Corporate Debtor as on July 1, 2019 is Rs. 28,57,431/-.

3. The Corporate Debtor filed affidavit in reply opposing the admission of the above Company Petition. The submissions of the Corporate Debtor are as follows:

a. The Corporate Debtor submits that in the Company Petition, loan amount of Rs. 30 Crores was advanced by the Financial Creditor to the Corporate Debtor on the Corporate Debtor pledging shares of a listed company owned by it. However, neither in the Company Petition, one finds an averment that the Board of Directors of the Corporate Debtor has passed any resolution deciding to take loan from the Financial Creditor on pledging shares owned by it nor does one find a recital in the loan agreement. The loan agreement shows that it is signed by One Surinder Singh who claims to have been authorized to sign the agreement on behalf of Corporate Debtor by a resolution of the Board of Directors of the Corporate

Debtor dated 18.11.2016 which is the date of the agreement also. The agreement is supposed to have been signed at New Delhi. The Corporate Debtor has its office at Mumbai and the copy of the resolution dated 18.11.2016 is not to be found on record. Thus, in the Company Petition, there is no averment made that the Board of Directors of the Corporate Debtor company authorized pledge of shares, taking of loan and that it authorized Mr. Surinder Singh to act on its behalf to sign the agreement. There is nothing placed on record which will show that the Corporate Debtor company authorized by a resolution incurring of the loan, pledge of shares owned by it and authorized anybody to sign the agreement.

b. It is further submitted by the Corporate Debtor that though there is an averment made in the petition that the loan amount was paid by the Financial Creditor to the Corporate Debtor, there is no document placed on record which will establish that the amount of Rs. 30 crores was actually received by the Corporate Debtor from the Financial Creditor.

c. The notice demanding the amount of Rs. 28,57,431/- was issued on 9th July, 2019. The Company Petition has been filed on 7th August 2019. By the notice dated 9th July 2019, it was alleged that the Corporate Debtor has to give security cover of Rs. 15,25,76,483/-, it means that the security which the Financial Creditor was already in possession was worth more than Rs. 30,00,00,000/-.

d. The Corporate Debtor submits that the Financial Creditor has not disclosed in the petition whether the shares which are alleged to have been pledged to secure the loan have been transferred by the Financial Creditor or not. The

Corporate Debtor has not received any intimation or notice in this regard. It is submitted that as the Company Petition has been filed on 7th August 2019, the Financial Creditor was under an obligation to disclose all events that have taken place up to the date of filing the Petition. The Financial Creditor has suppressed relevant and vital information from this Tribunal and therefore for this reason also, the Company Petition is liable to be rejected.

FINDINGS

1. This Company petition has been filed by M/s *Xander Financial Services Ltd.* (hereinafter called "Financial Creditor") who had granted term loan facility to the extent of Rs. 30 crore against certain securities to the Corporate Debtor, *Liz Traders and Agents Private Limited*. The loan was granted as per the terms and conditions of the loan agreement dated 18.11.2016. As per the loan agreement the total sum was disbursed by the Financial Creditor on 21.11.2016 in a single tranche. As per the petition, the total outstanding as on July 2019 stand at Rs. 28,57,431/-.
2. As per the term loan, the Corporate Debtor had to pay interest on the term loan on a monthly basis at the applicable interest rate on the first date of the succeeding month. The instalment payable by the Corporate Debtor also forms part of the loan Agreement and is reflected as Annexure-2 to the loan Agreement. The Bench notice that the Corporate Debtor made payments as per the scheduled of instalment till June 2019. The Financial Creditor has enclosed a statement of accounts on the basis of ledger of the bank statement annexed to the Company Petition. As per this, as on 01.07.2019 the outstanding loan balance was about Rs. 21.7 crore as the

principal amount and the net interest thereon was Rs. 25,71,688/-. A notice was given by the Financial Creditor to the Corporate Debtor on 09.07.2019 and the Bench notes that no reply to the recall notice has received by the Financial Creditor.

3. The Bench notes that in the loan agreement at para 9.1 subsequent to event of default a cure period of 3 days has been provided. Further, clause 9.2 of the Agreement allows for Acceleration of payment and cancellation of the loan on the occurrence of the event of default. However, the Bench notes that in the recall notice dated 09.07.2019 the amount claimed in default is only an amount of Rs. 25,71,688/- which is the amount due towards interest component and not the outstanding loan balance of Rs. 28.7 lakhs. Be that it may the amount claimed on default of payment, is more than of Rs. one lakh which is well within the threshold limit as per Section 4(1) of the Code, 2016. Since the above Company Petition was filed on 08.08.2019 which is much prior to the Government Notification dated 24.03.2020 therefore, the minimum threshold limit of rupees one lakh will only be applicable.
4. The Bench also notes that in the affidavit in reply dated 25.11.2019, the Corporate Debtor has not denied the receipt of the disburse amount of Rs. 30 crores. He has also not denied default under the loan agreement.
5. The bench notes that when the matter was finally heard and reserved for orders on 08.02.2022, nobody appeared for the Corporate Debtor despite specific directions to the Corporate Debtor to address arguments today. It seems that the Corporate Debtor is not inclined to address any argument.
6. The only plea that the Corporate Debtor has taken is that board of directors of the Corporate Debtor has not passed any

resolution deciding to take loan from the Financial Creditor by pledging shares own by it. This contention of the Corporate Debtor has been denied by the Financial Creditor and further the board of directors of the Corporate Debtor has passed a resolution on November 18, 2016 approving the loan of Rs. 30 crores from the Financial Creditor, M/s *Xander Financial Services Ltd*. In view of above, it is very clear to the Bench that there is Financial Debt in terms of Section 5(8) of the Code and there is a default in terms of Section 3(12) of the Code.

7. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -2941(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Liz Traders and Agents Private Limited.

b. This Bench hereby appoints **Prajakta Menezes,** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01349/2018-19/12016 having registered office at: 2D-1104, Dreams CHS Ltd., LBS Marg, Bhandup West, Mumbai- 400078, email ID prajakta@prmlegal.in as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakh 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 or 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 Registrar of Companies, Mumbai, 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/-
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**