IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V

CP (IB) No. 692/MB-V/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

J.C. Flowers Asset Reconstruction Private Limited

…Financial Creditor/Applicant

V/s

Evenness Business Excellence Services Private Limited
[CIN: U74999MH2013PTC245430]

...Corporate Debtor/Respondent

Order Dated: 15.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Ms. Anamika Singh, Advocate.
For the Respondent(s)	:	Mr. Akshay Petkar, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. The Captioned Company Petition has been filed under Section 7 of the Insolvency & Bankruptcy Code 2016 (hereinafter "Code") to initiate Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against

the Corporate Debtor (erstwhile known as Essel Business Excellence Services Private Limited), on account of default in the payment of an amount of Rs.456,54,43,616.11 (Rupees four hundred fifty-six crore fifty-four lakh forty-three thousand six hundred sixteen and eleven paise only) as on 08.02.2022.

2. This is captioned Company Petition bearing C.P. (IB) No. 692/MB-V/2022 was originally filed by YES Bank Limited under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process against Evenness Business Excellence Services Private Limited, the Corporate Debtor. YES Bank Limited by a registered Assignment dated 16.12.2022 has assigned the financial assets of the Corporate Debtor along with its right, title interest in the financing documents and all the underlying securities created thereof, in favour of the J.C. Flowers Asset Reconstruction Private Limited, (acting in capacity as trustee of JCF YES Trust 2022-23/4) the Financial Creditor/Applicant. The Financial Creditor is an Asset Reconstruction Company under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter "the **SARFAESI Act**") and registered with the Reserve Bank of India. The Financial Creditor was thereby substituted in the captioned Petition by order dated 20.02.2023 passed by this Bench in IA No. 605 of 2023.

3. The Application is filed by Mr. Prashant Kumar, Managing Director of the Financial Creditor, duly authorised, vide its Power of Attorney dated 14.09.2020, claiming total default of Rs.456,54,43,616.11 (Rupees four hundred fifty-six crore fifty-four lakh forty-three thousand six hundred sixteen and eleven paise only) as on 08.02.2022 which includes:

3.1. Principal amount of Rs.341,20,00,000/-;

3.2. Normal Interest amount of Rs.80,03,26,663.01; and

3.3. Penal Interest of Rs.35,31,16,953.10.

4. The date on which the default occurred as mentioned in Part-IV of the Petition is 01.08.2019. The Petition is filed on 09.04.2022. The account of the Corporate Debtor was turned NPA on 30.10.2019.

5. The case of the Financial Creditor is that the Financial Creditor has granted a Term Loan Facility of Rs.400,00,00,000/- vide Facility Letter dated 13.12.2017 to the Corporate Debtor. Thereafter, the Addendum was issued to the Facility Letter from the Financial Creditor to the Corporate Debtor on 15.12.2017. For the purpose of availing the Term Loan Facility, Loan Agreement dated 31.01.2018 was executed by the Corporate Debtor defining the terms and conditions. Thereafter, various Addendum dated 05.02.2018, 04.10.2018, 28.11.2018 and 10.05.2019 were issued to the Facility Letter from the Financial Creditor to the Corporate Debtor. The Term Loan of Rs.400,00,00,000/- was disbursed on 05.02.2018.

6. The Financial Creditor has filed CRICL Report dated 31.12.2021 of the Corporate Debtor. The Financial Creditor has also filed the Certificate dated 22.02.2022 under Section 2A (b) and 2A (c) of the Banker's Book Evidence Act, 1891. The Financial Creditor has filed Statement of Accounts of the Corporate Debtor as on 08.02.2022.

7. The Financial Creditor issued Loan Recall Notice dated 07.07.2020 for recalling of total outstanding of Rs.380,67,46,805.33 as on 30.06.2022 payable within 7 days from the receipt of this Notice. However, the Corporate Debtor has nor replied to the said Loan Recall Notice.

<u>Reply of the Corporate Debtor:</u>

8. The Corporate Debtor has filed its Affidavit-in-Reply dated 28.03.2023 disputing the claim of the Financial Creditor as fraud and malafide and further submits as under:

   8.1. The Financial Creditor has filed Original Application No.148 of 2022, before the Debt Recovery Tribunal, New Delhi seeking a declaration relating to default or date of default and the quantum of debt. The Corporate Debtor alleged that the Financial Creditor was engaged in fraudulent activities vis-à-vis Essel Group of Companies and the said activities are under investigation by the Gautam Nagar, Police Station, Uttar Pradesh upon a Criminal Complaint filed by Dr. Subhash Chandra.

   8.2. The documents filed by the Financial Creditor are insufficiently stamped. The Loan Agreement dated 31.12.2016, Deed of Hypothecation dated 31.12.2016 are not sufficiently stamped and are executed and stamped in New Delhi. However, the Financial Creditor has brought the said Loan Agreement and Deed of Hypothecation into the State of Maharashtra for the purpose of filing the present Petition against the Corporate Debtor to which the Corporate Debtor was never agreed.

   8.3. The entire transaction is vitiated by fraud. The Loan transaction is part of a larger transaction wherein the Financial Creditor has granted various Term Loans for various purpose under separate sanction letter, to a group of companies, including the Corporate Debtor, Essel Corporate Resources Private Limited Last Mile Online Limited, Living Entertainment Enterprises Private Limited and Pan India Network Infravest Limited ('Essel/Subhash

Chandra Group Companies') professedly for the purpose stated in the respective sanction letter and Loan Agreements. The aforesaid Term Loans were secured by pledge of Rs.44,00,54,852 shares of the company called Dish TV India limited ('Dish Tv Shares') in favour of one Catalyst Trusteeship Limited, the Security Trustee appointed for the larger transaction ('Pledge'), for the benefit of the alleged Financial Creditor.

8.4. The Financial Creditor has transferred the Shares of Dish TV to itself and is publicly claiming to be the beneficial owner of the said shares and seeking to exercise all rights in respect thereof. Further, the Financial Creditor has charged interest not in accordance with the terms of the Sanction Letter. The interest rate was at 1.65% over and above one year MCLR, however, the Financial Creditor revised the rate of interest to 2.65% over and above one year MCLR, w.e.f. 01.11.2018.

Findings/Observations:

9. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the records.

9.1. It is observed that that the Financial Creditor has granted a Term Loan Facility of Rs.400,00,00,000/- vide Facility Letter dated 13.12.2016 to the Corporate Debtor. Various Addendum were issued by the Financial Creditor to the said Facility Letter. The Term Loan granted to the Corporate Debtor is also reflected in the Bank Statement submitted by the Financial Creditor.

9.2. It is the contention of the Corporate Debtor that the Financial Creditor has filed the documents like Loan Agreement and Deed of Hypothecation which are not properly stamped and hence the said

Petition filed by the Financial Creditor is liable to be dismissed. This Bench is of the considered view that the it is irrelevant that the documents filed are insufficiently stamped while considering the admission of section 7 Petition under the Code. This Bench has earlier decided the same issue on 03.03.2023, in the matter ***C.P.(IB) No. 295 of 2022, Kotak Mahindra Bank Ltd. V. M/s, Hybro Foods Private Limited*** and while deciding the issue this Bench has relied upon ***SpiceJet Limited v/s Credit Suisse AG 2022 SCC OnLine Mad 112,*** wherein the Madras High Court has observed that the only point to be verified is whether the debt is bonafide disputed or not and the contention of the Corporate Debtor regarding insufficiently stamped is to be rejected. Also, the Hon'ble NCLAT in *Praful Nanji Satra v. Vistra ITCL (India) Limited & Ors* adjudicated a similar issue. The Hon'ble NCLAT, in the said judgement, held that the issue of debt being due and payable was not interdicted by any other law by only a technical deficiency of insufficiency of stamping, which could be cured and further opined that the insufficiently stamped documents were not relevant in establishing the debt of the Corporate Debtor as claimed in the Section 7 Petition filed under the Code. Thus, it is well settled that the any adjudication of the issue of stamping of documents is irrelevant in a position filed under Section 7 of the Code.

9.3. Secondly, the Corporate Debtor has contented that Financial Creditor has filed Original Application No.148 of 2022 before the Debt Recovery Tribunal, New Delhi seeking a declaration relating to default or date of default and the quantum of debt. We have observed in various NCLAT and Hon'ble Supreme Court Judgements that the IBC is independent proceeding and the same have overriding effect over any provisions inconsistent therewith, contained in any other law for the time being in force. Hence, pendency of DRT proceedings does not debar the filing an application under of IBC. Further, the said DRT proceedings have not attained finality as on date. In view of this, this Bench finds no merit in the above contention of the Corporate Debtor and hence, the same is not liable to be considered.

9.4. Thirdly, the Corporate Debtor contented that the entire transaction is vitiated by fraud. It is observed by this Bench that the Facility Letter dated 13.12.2017, attached to the Petition, has been issued by the Financial Creditor in the name of the Corporate Debtor itself and the same is also acknowledged by the Corporate Debtor. Further, from the material on records, it is observed that the invocation of the pledge has no bearing on the present proceedings and has been referred with a sole intent to obfuscate the whole issue. It is repeated and reiterated that, in an application filed under Section 7 of the Code, the Hon'ble Tribunal is to ascertain if there is any default qua a financial debt as per the requirements stipulated in Section 7 of the Code. The realisation of dues through secured assets is a remedy separate from the caption Petition. The Corporate Debtor has also passed the Board Resolution dated 14.12.2017 for borrowing and availing the Term Loan Facility for an amount of Rs.400,00,00,000/- from the Financial Creditor. It is also observed from the material on records that the Loan Agreement dated 31.01.2018 was entered between the Financial Creditor and Corporate Debtor and the Corporate Debtor has not denied the same. Hence, the contentions of the Corporate Debtor regarding the documents vitiated by fraud has no merit.

9.5. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form. From the aforesaid, the following position emerges, which is beyond the pale of doubt and/or dispute, viz.

9.5.1. The Corporate Debtor has committed a default and there is an existence of debt as reflected from the Statement of Accounts;

9.5.2. The Corporate Debtor has committed a default which has been duly recorded in CRILC;

9.5.3. The Corporate Debtor has neither disputed and/or denied the default in the reply filed before this Bench;

9.5.4. The Corporate Debtor has never disputed the availing of the Term Loan facility from the Financial Creditor;

9.5.5. The Corporate Debtor has never responded to the Loan Recall Notice; and

9.5.6. The Corporate Debtor has never disputed much less denied the contents of the Loan Recall Notice.

9.6. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. This Bench does not find any sustainable objection on record against the maintainability of the instant Petition. Hence, the Application filed by the Financial Creditor deserves to be admitted u/s 7 of the Code.

10. The Applicant has proposed the name of Mr. Birendra Kumar Agrawal, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

11. Resultantly, the Petition is admitted in the following terms:

ORDER

a. The Application bearing C.P. (IB) No. 692/MB-V/2022 filed by **J.C. Flowers Asset Reconstruction Private Limited**, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Evenness Business Excellence Services Private Limited**, Corporate Debtor is **admitted.** The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against Evenness **Business Excellence Services Private Limited.**

b. This Bench hereby appoints **Mr. Birendra Kumar Agrawal**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00564/2017-2018/11040 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 Lakhs towards the initial CIRP costs 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.

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

SD/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)