



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.826/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

Consultshah Financial Services
Private Limited.

[CIN:U65999MH2008PTC179898]

...Financial Creditor

v/s.

Shivom Investment & Consultancy
Limited.

[CIN:L74140MH1990PLC300881]

...Corporate Debtor

Order Delivered on: 07.02.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Rakesh Gupta, Ld.
Counsel.

For the Corporate Debtor:

Mr. Avinash Khanolkar,
Ld. Counsel for the
Respondent No.7.

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Consultshah Financial Services Private Limited ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Shivom Investment & Consultancy Limited., the Corporate Debtor by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 3,06,26,550/- (Rupees Three Crores Six Lakhs Twenty-Six Thousand Five Hundred and Fifty Only). The Petition is filed on 19.06.2023. The date of default as Specified in Part IV of the Petition is 01.04.2023.

2. The submissions of the Financial Creditor are as follows:

2.1. The Financial Creditor submits that, the Corporate Debtor needed funds for Working Capital requirements to manage its business operations therefore in order to meet the temporary working capital requirements Corporate Debtor approached the Financial Creditor pursuant to which, the Financial Creditor agreed to grant an Unsecured Loan



(Inter Corporate Borrowings) amounting to Rs. 5,93,00,000/- to which a Loan Agreement dated 01.09.2022 was executed between Financial Creditor and Corporate Debtor. The said loan was repayable on demand as per the terms laid down in the Agreement.

2.2. In pursuance to thereof, Corporate Debtor executed letter of Acknowledgement of Loan dated 20.09.2022 & 01.10.2022 as well as Promissory notes dated 20.09.2022 & 01.10.2022 in favour of the Financial Creditor under the terms and conditions as particularly mentioned in the Loan Agreement. As per the terms agreed upon, the Corporate Debtor was liable to pay simple interest @9% p.a. calculated at the end of each financial year.

2.3. Accordingly, the said amount of Rs. 5,93,00,000/- was disbursed by the FC into the account of Corporate Debtor in various tranches.

2.4. The Corporate Debtor repaid an amount of Rs 3,00,00,000/- to financial creditor. The same is reflected in the ledger statement of Corporate Debtor attached to the company petition.

2.5. The financial creditor had asked for repayment of outstanding loan of Rs 3,06,26,550 (Rupees Three Crore Six Lac Twenty-Six Thousand Five Hundred Fifty only) vide

its letter dated 01.04.2023. However, loan was not repaid. The Corporate Debtor vide its reply dated 28.04.2023 had admitted its liability and stated that due to fall in the business of the Corporate Debtor, it was facing difficulty in clearing the dues of the Financial Creditor and had further requested some time to repay the outstanding amount, but the Corporate Debtor failed to repay the same. However, even after giving multiple opportunities to the Corporate Debtor, the corporate debtor failed to pay the outstanding amount to the Financial Creditor. Resultantly, this Company Petition under Section 7 of the Insolvency and Bankruptcy Code is filed.

Findings

3. This bench observed that, vide order dated 30.10.2023 the Corporate Debtor was granted 3 weeks' time to file reply. On 04.12.2023, upon the request of the Corporate Debtor 1 weeks' time was granted to file reply as a final chance in the interest of justice. Thereafter, the matter was listed on 09.01.2024 the Corporate Debtor submitted that he does not intended to file reply therefore right to file reply was *forfeited* by this bench. The matter was heard on merits and was Reserved for Orders.
4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1. This bench observes that, as per the loan agreement dated 01.09.2022 the loan was payable on demand pursuant to which the Financial Creditor had issued legal notices dated 01.04.2023 and 17.04.2023 seeking release of payment of the Unsecured Loan of Rs. 3,06,26,550. The Financial Creditor had placed reliance upon letter dated 28.04.2023 received from the Corporate Debtor confirming “that an amount of Rs. 2,93,00,000/- is due and payable to the Financial Creditor. Further the Corporate Debtor stated that, the company is in liquidity crunch which has caused financial difficulties to run the business. We request you to settle this matter in a fair and just manner so that we can be relieved of the burden of owing you this debt.” This itself shows that debt is established and there is an admission of liability on part of the Corporate Debtor.

5. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, and the present petition is filed within limitation therefore this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

- (a) The Petition bearing CP (IB) No.826/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Consultshah Financial Services Private Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Shivom Investment & Consultancy Limited., 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;



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- (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 Tribunal 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) The bench hereby appoints **Mr. Nimai Gautam Shah**, an Insolvency Professional registered with Indian Institute of

Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00154/2017-2018/10323** and email- **cnjabd@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

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- (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) A copy of this Order be sent 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)
07.02.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)