

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

**CP No. (IB) 53/ MB/ 2022**

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

*In the matter of*

**Eye Care Distributors**

Having its Registered Office at: Ground  
Floor, Renuprakash Apartment, 817,  
Sadashiv Peth, Pune- 411 030.

..... **Financial Creditor**

Vs.

**Calix Life Sciences Private Limited**

Having its Registered Office at: CTS  
No. 6616, PL No. 491, Office No. 403,  
Center Point, Mitra Mandal Chowk,  
Pune – 411 009, Maharashtra.

..... **Corporate Debtor**

**Order delivered on :- 17. 06. 2022**

***Coram:***

**Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)**

**Hon'ble Member (Technical) : Shri Shyam Babu Gautam**

***Appearances:***

For the Financial Creditor : Mr. Jayanta Kar

For the Corporate Debtor : Mr. Preet Chheda

## ORDER

*Per: Shyam Babu Gautam, Member Technical*

1. This Company Petition is filed by *Eye Care Distributors* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Calix Life Sciences Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “the Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate sum of Rs. 1,52,93,750.44/-** (Rupees One Crore Fifty-Two Lakhs Ninety-Three Thousand Seven Hundred Fifty Only) as on **24<sup>th</sup> August 2021** including the outstanding Principal of **Rs. 1,13,67,672/-** (Rupees One Crore Thirteen Lakhs Sixty-Seven Thousand Six Hundred Seventy-Two Only) and **interest @ 24% per annum** compounded annually.
3. The Corporate Debtor is a Group Company of one Shraavan Medisales Private Limited (hereinafter called “Borrower”) which approached the Financial Creditor for providing

financial assistance by way of an unsecured Loan facility for working capital requirements of the Borrower from time to time for an amount not exceeding **Rs. 2,00,00,000/-** (Rupees 2 Crores only). The following was agreed between the parties vide **Loan Agreement dated 10<sup>th</sup> October 2018:**

- a. That the funds shall be disbursed in tranches as and when required for infusion of fresh working capital;
- b. That the entire loan amount including the principal and the interest shall be converted into equity shares of the Borrower and Corporate Debtor proportionately and the said equity shall be transferred in favour of the Financial Creditor by the Borrower and Corporate Debtor in lieu of repayment of the loan amount as on **31<sup>st</sup> December 2020**. In such a scenario, 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 business valuations and total debt component at the time of conversion of the repayment amount of the Loan into equity capital;
- c. That the Corporate Debtor shall stand as the **Corporate Guarantor** and Mr. Aashwiin Pardessi and Mr. Sunil Chandore, both Directors of the Borrower shall stand as Personal Guarantors of the unsecured loan amount. All of them shall be jointly and severally liable for conversion of the financial debt with interest into equity of the Borrower;

- d. That any failure on the part of the Borrower and/or Corporate Debtor shall be considered as an **“Event of Default”** and the entire financial debt shall become payable immediately including the principal and accumulated interest thereon.

The Corporate Debtor and the Borrower also executed a **Deed of Corporate Guarantee** with the Financial Creditor on **18<sup>th</sup> October 2018**. Copies of the Loan Agreement and the Deed of Corporate Guarantee have been duly attached to this Petition.

4. Subsequently, the Financial Creditor disbursed a sum of Rs. 1,13,67,672/- according to the terms stipulated under the aforementioned Agreements. The Borrower committed defaults in repayment from 21<sup>st</sup> August 2020 onwards and failed to convert the financial debt of the unsecured loan due and payable as on 31<sup>st</sup> December 2020 into equity as agreed between the parties thereby committing an “Event of Default”. The Financial Creditor addressed a Letter dated **16<sup>th</sup> November 2020** to the Corporate Debtor intimating the Corporate Debtor about the cut-off date of conversion of the outstanding debt into equity. The Corporate Debtor acknowledged the existence of the Agreement and admitted their liability to repay the Loan amount vide Reply dated **26<sup>th</sup> November 2020**, copies of which have been duly annexed to this Petition.
5. Several reminders were thereafter sent by the Financial Creditor to which the Corporate Debtor replied seeking time to repay the dues. A Loan Recall Notice dated **25<sup>th</sup> July 2021** was sent by

the Financial Creditor to the Corporate Debtor demanding the payment of the entire outstanding amount after the Borrower expressed inability to effect conversion of debt to equity, copy of which has been attached to this Petition.

6. The Corporate Debtor filed a Reply to the Petition on **4<sup>th</sup> February 2022** wherein Mr. Aashwiin Pardessi, the sole surviving Director of the Borrower, deposes that he was initially unaware of the transactions made by the now deceased Director, Mr. Sunil Chandore who was wholly responsible for managing the business of the Corporate Debtor. Although the Agreements came to his knowledge after the demise of Mr. Sunil Chandore, Mr. Aashwiin Pardessi admits the liability of the Corporate Debtor to repay the outstanding amounts and states that they are not in a position to discharge their obligations under the Loan Agreement.

### **FINDINGS**

7. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Counsel appearing for the Corporate Debtor. On perusal of the Petition, we find that the Financial Creditor has indicated the last date of payment as 21<sup>st</sup> August 2020. Further, the table showing the computation of the amount claimed to be in default and days of default annexed to the Petition as “Exhibit D” clearly displays the **date of default as 31<sup>st</sup> December 2020.**

8. In this regard, it is pertinent to note that vide IBC (Second Amendment) Act 17 of 2020, the Insolvency and Bankruptcy Code, 2016 was amended and **Section 10A** was inserted to the Code and the same is reproduced below:

*“10A. Suspension of initiation of corporate insolvency resolution process.—*

*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”*

9. This suspension was further extended by subsequent Notifications issued by the Ministry of Corporate Affairs until 25<sup>th</sup> March 2021. Since the date of Default falls within the said time period of suspension, this Petition is barred by Section 10A of the Code. Even though an “Event of Default” as stipulated under the terms of the Agreement dated 10<sup>th</sup> October 2018 has occurred, the filing of this Petition is expressly barred by Section 10A of the Code. Considering these circumstances and for the

foregoing reasons, in our view, this Petition cannot be admitted and deserves to be dismissed.

Accordingly, this Petition is dismissed.

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

**Sd/-**

**SHYAM BABU GAUTAM**

**(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**(MEMBER JUDICIAL)**