

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP (IB)2430/MB/C-IV/2019

Under section 7 of the I&B Code,
2016

In the matter of

SMARAN ENTERPRISES LLP.

[LLPIN: AAA-0578]

...Financial Creditor

v/s.

ORASI TECHNOLOGY (INDIA)

PRIVATE LIMITED

[CIN:U72900MH2002PTC135137]

...Corporate Debtor

Order pronounced on 01.01.2020

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Petitioner: Adv. Manoj Kumar Mishra

For the Respondent: Adv. Namrata N. Shenoy

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Smaran Enterprises LLP**

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP (IB)2430/MB/C-IV/2019

[LLPIN:AAA-0578] ("the Financial Creditor"), represented by its Authorised Signatory, Mr. Hiten Mehta, on the basis of a Resolution dated 04.03.2019 passed by partners of the LLP (**Annexure '1'** to the petition at p.1) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Orasi Technology (India) Private Limited (CIN:U72900MH2002PTC135137) ("the Corporate Debtor").

2. The Corporate Debtor is a Private company limited by shares and incorporated on 11.03.2002 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its CIN is U72900MH2002PTC135137. Its registered office is at PG/17, Ground Floor, Rotunda Building, Bombay Stock Exchange, Mumbai Samachar Marg, Fort, Mumbai-400023. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 25.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.12,50,000/- (Rupees twelve lakh and fifty thousand only) as principal and Rs.7,64,435/- (Rupees seven lakh sixty four thousand four hundred and thirty-five only) as interest @18% p.a. as on 01.04.2017 as per Memorandum of Understanding (MoU) dated 08.01.2016. The date of default is stated to be 01.04.2017.
4. The case of the Financial Creditor is that the Financial Creditor executed the said MoU for conducting the business of developing and creating viewers & report machines for Diamond as stated under clause 2.7.1 thereof. As per clause 2.6.2 of the said MoU dated 08.01.2016 (**Annexure '3'** to the petition at pp.4-12), the Financial Creditor shall have 25% share in annual sale proceeds

of Corporate Debtor, till the entire invested amount of Rs.12,50,000/-is recovered. After the entire amount is recovered, Corporate Debtor shall have 10% share in the annual sale proceeds of the Corporate Debtor year after year. The Financial Creditor will have no claim to profits generated through any other project of Corporate Debtor or its representatives.

5. The Financial Creditor has submitted copy of the bank statement from Axis Bank Ltd., for the period 01.04.2015 to 31.03.2016, proving debit entry on 11.01.2016 to the extent of Rs.12.50 lakh from the account of the Financial Creditor in favour of the Corporate Debtor (**Annexure '6'** to the petition at p.39).
6. The Financial Creditor has submitted that the investment carried an interest rate of 18% p.a., as per clause 2.8 of said MoU (**Annexure '3'** to the petition at p.9). In pursuance of the MoU, the Corporate Debtor also executed a Promissory Note dated 08.01.2016, promising to pay, on Demand, a sum of Rs.12,50,000/-with interest @18% p.a. (**Annexure '4'** to the petition at p.13)
7. The Financial Creditor stated that on 13.12.2016, the representative of Financial Creditor sent an email stating the timely execution of incomplete or pending matters. The Clause 2.7.3 is as follows:

"2.7.3. *Asit Shah has represented to SEL to execute the following incomplete and /or pend matters within the below give time frame, as the timely roll out is the essence of success execution of this project:*

1. *Retail viewer: The first model will be ready for presentation to potential clients by 31st January, 2016. Based on the*

feedback received for changes required for aesthetics or functional modifications, the Final version will take 30 days and its roll out will be by 29/02/2016.

2. Software for light performance will take approximately 90 days to roll out the first version and then another 30 days for the required modifications and variations. So, the final roll out of report printing Software will be by 30/04/2016.

3. Machine for light performance will be developed along with the software and the final version will be ready by 30/04/2016."

8. Clause 8 of the said MoU gives right to the Financial Creditor to terminate the MoU without incurring any obligation towards other parties and also entitles the Financial Creditor to the repayment of the investment of Rs.12,50,000/- along with interest @18% p.a. upto date (**Annexure '3'** to the petition at p.9).
9. The Financial Creditor further submitted the copy of email dated 16.03.2017 by the Corporate Debtor to the effect that a sum of Rs.2,50,000/- by 15.04.2017 and the balance Rs.10,00,000/- will be considered as the business loss (**Annexure '5'** to the petition at p.14). Also, email dated 26.03.2016 from the Financial Creditor to the Corporate Debtor regarding abnormal delay in the project has been placed on record (**Annexure '5'** to the petition at p.17).
10. Thereafter, the Financial Creditor served a legal notice in the form of a Demand Notice dated 11.03.2019 to the Corporate Debtor (**Annexure '7'** to the petition at pp.103-108). The Corporate Debtor sent a reply dated 27.04.2019 to the demand notice (**Annexure '8'** to the petition at pp.109-111).

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP (IB)2430/MB/C-IV/2019

11. The Financial Creditor submitted copy of Bank statement of Axis Bank Limited dated 06.07.2019 for the period of 01.01.2016 to 31.05.2019 stating that the non-payment of Rs.12,50,000/- to the Financial Creditor. (**Annexure '6'** to the petition at pp.29-102).
12. The Corporate Debtor has filed an affidavit in reply dated 20.09.2019 to the petition. Among other things, the Corporate Debtor has submitted that-
 - a. The Financial Creditor has expressed a desire to invest in the Corporate Debtor for the project of developing a retail viewer;
 - b. The Corporate Debtor has developed the product as per requirements and marketed the same. However, the product could not fetch the estimated profits in the market.
 - c. Clause 6 of the MoU contains an arbitration clause in case of any dispute. Therefore, this Adjudicating Authority has no jurisdiction to entertain the present petition, and solely on this ground alone this application is liable to dismissed;
 - d. The MoU does not state that interest should be paid @18% p.a.

It is noted that throughout the reply, the Corporate debtor has referred to the petition as "Operational Creditor" and not "Financial Creditor".

13. The Financial Creditor has filed a rejoinder to the affidavit in reply, largely reiterating the contentions made in the Petition.

14. Advocate Namrata N. Shenoy, appeared for the Corporate Debtor and made her submissions.
15. We have heard both the parties and perused the record.
16. The Hon'ble Supreme Court in the matter of ***Innoventive Industries Limited V. ICICI Bank & Anr. [(2018) 1 SCC 407]***, has held that the provisions of section 7 become applicable as soon as financial debt is established and there is an existence of a default. The Hon'ble Court had observed that the moment the Adjudicating Authority is satisfied that a default in repayment of debt had occurred, the process of insolvency is to be triggered unless the application is incomplete.
17. It is noted that the Corporate Debtor has admitted the liability by the email dated 16.03.2017 (**Annexure '5'** to the petition at p.14). By this email, the Corporate Debtor had offered to return Rs.2,50,000/- by 15.04.2017 and balance of Rs.10,00,000/- will be considered as business loss. Thus, there is implicit admission of the liability, albeit to the extent of Rs.2,50,000/-, with a promise to pay the same by 15.04.2017.
18. The MoU and the Demand Promissory Note both prove that the amount in question was given to the Corporate Debtor for the time value of money. Both these documents prove that the definition of "Financial Debt" in section 5(8) of the Insolvency and Bankruptcy Code,2016, is satisfied in the present case.
19. The Financial Creditor has proposed the name of Mr. Rajkumar Mahto registration No. IBBI/IPA-002/IP-N00723/2018-19/12209, as Interim Resolution Professional with his consent in Form 2

declaring that no disciplinary proceedings are pending against him
(Annexure '2' to the petition at pp.2-3).

20. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the application of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, the petition made by the Financial Creditor is complete in all respects as regulated under law.
21. The application made by the Financial Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues, and this has also been confirmed by the Corporate Debtor.
22. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB)2430/MB/C-IV/2019** filed by **Smaran Enterprises LLP (LLPIN:AAA-0578)** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Orasi Technology (India) Private Limited**, (CIN:U72900MH2002PTC135137), 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

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP (IB)2430/MB/C-IV/2019

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. Rajkumar Mahto registration No. IBBI/IPA-002/IP-N00723/2018-19/12209**, having address at Krishna Kewal housing Society, Flat No. O-16, Kondawa, Khurd, Pune-411048, [email: mahrajkumar@gmail.com, Mobile: 7709266764], 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 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.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP (IB)2430/MB/C-IV/2019

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) 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/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
Rajasekhar V. K.
Member (Judicial)

01.01.2020