

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB) 683/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

**Ashika Global Securities Private Limited
(Formerly known as Shentracon Trexim Private Limited)**

Having registered office at :- Trinity, 226/1, A.J.C. Bose Road, 7th Floor, Kolkata- 700020

..... Applicant/ Financial Creditor

Versus

**Evyavan Mercantile Private Limited
(Formerly known as Highstreet Mercantile Co. Private Limited)**

Having registered office at: - 414, Manish Chambers, Sonewala Road, Goregaon East, Mumbai-400063

..... Corporate Debtor

Order Delivered on :- 02.11.2023

Coram:

Mr. Anuradha Sanjay Bhatia
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Mitali Bhatt

For the Corporate Debtor : Adv. Rohit Gupta

ORDER

Per: - Shri. Kuldip Kumar Kareer (Judicial Member).

1. The present Petition is being prosecuted under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Ashika Global Securities Private Limited (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely Evyavan Mercantile Private Limited (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 7,81,73,014/- (Rupees Seven Crores Eighty One Lakhs Three Thousand Fourteen only) as on 31.03.2022.

The submissions of the Financial Creditor are as follows:

2. The Financial Creditor is a Non-Banking Financial Company and is engaged in the activities of financing and investment in shares/securities. In its ordinary course of Business, the Financial Creditor is also engaged in providing loan funding in lieu of interest paid in respect thereof.
3. In or about August 2016, the Corporate Debtor approached the management of the Financial Creditor through its Director with a request to avail a loan for a sum of Rs. 7 Crores. The Corporate Debtor assured and represented to the Financial Creditor that Corporate Debtor would pay interest @10% per annum thereon. It was further represented by the Corporate Debtor that it had sufficient means to repay the loan.
4. Pursuant to the representations made by the Corporate Debtor and discussions and meetings held by the parties, it was inter alia agreed as hereunder:-
 - a) A sum of Rs. 7,00,00,000/- would be disbursed by the Financial Creditor to the Corporate Debtor;
 - b) The said sum shall be repaid with interest at the rate of 10% per annum;
5. The Financial Creditor duly disbursed the said sum of Rs. 7,00,00,000/- (Rupees Seven Crores Only) on different dates between 18 August 2016 and 31 March 2017 to the Corporate Debtor account by way of RTGS/NEFT drawn on HDFC Bank, Stephen House Branch, Kolkata.

6. The Corporate Debtor never disputed its liability in respect of the said loan. The Corporate Debtor has also refunded/repaid principal amount to the tune of Rs. 1.90 Crores during the period of 23 August 2016 to 04 July 2018.
7. The Corporate Debtor has not paid any amount of interest on the principal amount which carries the time value of money and bearing interest @10% per Annum. The Corporate Debtor has given credit of TDS of Rs. 6,00,000/- deducted on interest of Rs. 60,00,000/- for the Financial Year 2017-18 as per TDS Form 26AS of Financial Creditor. Further, the Corporate Debtor has also deducted TDS of Rs. 1,29,315/- for Financial Year 2016-17 and as per TDS Form 26AS of Financial Creditor.
8. The Corporate Debtor failed to make payment towards the outstanding resulting in the total amount of debt due and payable by the Corporate Debtor including interest as on 31st March, 2022 amounting to Rs. 7,81,73,014/-. Hence this petition.

The Submissions of the Corporate Debtor in brief: -

9. In the reply filed by the Corporate Debtor, all allegations, claims, averments made in the Petition have been denied as wrong. It has further been claimed that the Petition is barred by limitation as the alleged loan was disbursed in 2016. Since no interest was paid from the very beginning, the default occurred in 2016 itself. The Petitioner has claimed the date of default as 05.07.2018 which is wrong and without any basis.

10. The Respondent has further pleaded that there is no loan agreement or contract executed between the parties and therefore there is no evidence as to when the amount was to be re-paid. Besides, there has been no demand on behalf of the Petitioner in respect of alleged loan amount. There is further no evidence to establish the nature of transactions. The demand letter dated 27.01.2019 is only payment for interest which means that the demand for repayment of the principal amount was never made. As there was no agreement or understanding for payment of interest, the demand for interest is illegal and contrary to law.
11. The Respondent has further pleaded that for the financial year 2016-17 and 2017-18, the TDS portion was deposited with the department by the Corporate Debtor at the request of the Petitioner so that they can put their accounts in order. Accordingly, the entries were made in the Books of Accounts even though as per understanding no interest was remitted. The Petitioner claims that the interest was not paid since 2016 whereas the date of default, as mentioned in the Petition is 05.07.2018 which is wrong.
12. The other allegations made in the Petition have been denied as wrong and, in the end, a prayer for dismissal of the petition has also been made.

ANALYSIS AND FINDINGS

13. We have heard the counsel for the parties and have gone through the records.
14. It has been contended by the Counsel for the Petitioner that in this case a sum of Rs. 7 crores were advanced and disbursed to the Corporate Debtor by the

Petitioner between 18.08.2016 and 31.03.2017. The Counsel for the Petitioner has further pointed out that the Corporate Debtor deducted and deposited TDS as per Form 26 AS for the financial years 2016-17 and 2017-18 showing deduction of TDS of Rs. 1,29,315/- and Rs. 6,00,000/- respectively. According to the Counsel for the Petitioner this shows that the transactions was in fact a loan transaction. The Counsel for the Petitioner has further referred to confirmation of account (Annexure 9) showing a total balance of Rs. 7,11,63,836/- as on 01.04.2017 and another confirmation account (Annexure 10) showing a balance of Rs. 6,65,63,836/-. The Counsel for the Petitioner further submitted that the Corporate Debtor has no repaid the outstanding amount despite demand notice dated 22.01.2019 and therefore, the Petition is liable to be admitted.

15. On the other hand, Counsel for the Respondent has argued that there is no loan agreement between the parties. There is no evidence as to when the alleged loan was payable. There is no supporting evidence to show that the date of default was 05.07.2018, as claimed in the Petition. The Counsel for the Respondent has further contended that the so-called demand notice dated 22.01.2019 is not for the repayment of the loan as only the interest amount was demanded by way of this notice and no demand was made for the repayment of the principal amount. Therefore, according to the Counsel for the Respondent the Petition deserved to be dismissed.
16. We have weighed the contention raised by the Counsel for the parties.
17. In this case, the Petitioner claims to have an advance an unsecured loan of Rs. 7 crores to the Corporate Debtor which was disbursed between 18.08.2016 and 31.03.2017. The Respondent has not disputed the receipt of

a sum of Rs. 7 crores but has claimed that it was not a loan transaction. It has been argued on behalf of the Corporate debtor that since there is no document such as loan agreement, the nature of the transaction cannot be said to have been proved. However, the Corporate Debtor has not disputed that TDS was deducted and deposited by it as evident from Form 26 AS for the financial year 2016-17 and 2017-18 which shows that interest was duly paid by the Corporate Debtor and the tax deducted at source was also deposited. That being so, it cannot be claimed by the Corporate Debtor that the transaction in question was not loan transaction. Secondly, in the confirmations of the account issued by the Corporate Debtor as on 01.04.2017 and 01.04.2018, it has been candidly admitted by the Corporate Debtor that the transaction was a loan transaction and the interest was also applicable.

18. It has also been argued on behalf of the Corporate Debtor that the date of default has been wrongly claimed by the Petitioner as 05.07.2018 without any basis. Moreover, vide demand notice dated 21.01.2019, the Petitioner demanded only the interest and not the principal amount and therefore no cause of action has arisen to the Petitioner to file the present Petition.
19. We have thoughtfully considered the above contention raised on behalf of the Corporate Debtor but have found the same to be devoid of any force of substance. Admittedly, in the notice dated 22.01.2019, it is stated that the interest for the year 2016-17, 2017-19 and from 01.04.2018 till 31.12.2018 was not paid. None payment of interest also amounts to default on the part of the Corporate Debtor giving a cause of action to the Petitioner to initiate proceedings under Section 7 of the Code. Since the payment of interest was not made by the Corporate Debtor for the year 2016-17, 2017-18 and

subsequently from 01.04.2018 till 31.12.2018 it constituted a default on the part of the Corporate Debtor. Merely because the Petitioner has claimed date of default in the Petition as 05.07.2018, in our considered view, it cannot non-suited on this ground alone especially when the factum of default on the part of the Corporate Debtor in repayment of interest as well as principal is writ large.

20. So far as the limitation is concerned, as per record, the loan was disbursed between 18.08.2016 and 31.03.2017. The Corporate Debtor issued confirmation of accounts on 01.04.2017 and 01.08.2018 which are annexure 9 and 10 on record whereby the liabilities was acknowledged by the Corporate Debtor in view of the confirmation issued by the Corporate Debtor and taking into account law laid down by the Hon'ble Supreme Court in Suo Moto Writ Petition No. 3 of 2020 decided on 10.01.2022 whereby it was held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation under any general or special laws in respect of all judicial or quasi-judicial proceedings. Hence, it has to be held that the present petition is well within a period of limitation.
21. In the light of the above discussion, we find the instant case to be fit one for admission under Section 7 of Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 683 (MB)/2022 is hereby admitted and initiation of**

Corporate Insolvency Resolution Process (CIRP) is ordered against **Evyavan Mercantile Private Limited. (Formerly known as Highstreet Mercantile Co. Private Limited)**

- b. This Bench hereby **appoints Mr. Shailesh Desai, Registration No: IBBI/IPA-001/IP-P00183/2017-18/10362** as the **Interim Resolution Professional** having his registered office at **708, Raheja Centre, 7th Floor, Free Press Marg, Nariman Point, Mumbai, Maharashtra-400021; Email:- shailesh@headwayip.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
22. **Accordingly, this Petition is admitted.**
23. 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)