

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

**CP (IB) 344/MB/2019**

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*

**Glance Investments (India)**

**..... Applicant/ Financial Creditor**

**Versus**

**Elexir Distributions Pvt. Ltd.**

**..... Corporate Debtor**

**Order Delivered on :- 16.03.2022**

***Coram:***

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

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

***Appearances:***

For the Financial Creditor: Mr. Pranav Avhad, Advocate

For the Respondent: None Appeared

**ORDER**

***Per:- Shyam Babu Gautam, Member Technical***

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Elexir Distributions Pvt. Ltd., (“**the Respondent**”) alleging default in payment of a Financial Debt.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of outstanding financial Debt of Rs. 2,54,43,151/- (Rupees Two Crore Fifty Four Lakhs Forty Three Thousand One Hundred and Fifty One Only) as on 16.01.2018. The Principal amount is Rs. 2,00,00,000/- (Rupees Two Crore Only) and Interest Rs. 54,43,151/- (Rupees Fifty Four Lakhs Forty Three Thousand One Hundred and Fifty One Only). The date of default is 29.10.2018.

**The Submissions of the Financial Creditor are as follows: -**

3. The Financial Creditor submits that the said loan of Rs. 2,00,00,000/- (Rupees Two Crore Only) was disbursed in two tranches. Rs. 1,00,00,000/- (Rupees One Crore Only) on 08.05.2015 and another Rs. 1,00,00,000/- (Rupees One Crore Only) on 26.06.2015.
4. On 15.04.2015, the Corporate Debtor addressed a letter to the Lender requesting to provide a Corporate Loan to meet the working capital requirement. The contents of the said letter stated that as per the discussion between the parties on 10.04.2015, a loan of Rs. 2,00,00,0000 was agreed to be provided to the Corporate Debtor for

the tenure of 42 months from the date of execution of the Loan agreement. Further, vide letter dated 25.04.2015, the Lender agreed to grant loan to the Corporate Debtor.

5. The said Loan was granted pursuant to the Loan Agreement dated 30.04.2015. The Loan Agreement was entered into between Evershine Advisory Services Private Limited (the Lender) and Elexir Distributors Private Limited, the Corporate Debtor.
6. The Financial Creditor further submits that subsequently the said Loan was assigned to the Financial Creditor vide assignment deed dated 02.04.2018.
7. Thereafter, the original lender Evershine Advisory Services Private Limited issued a letter dated 15.03.2018 to the Corporate Debtor thereby informing them that the said loan will be assigned to the Financial Creditor and also asked to give consent for assigning the Corporate Debtors receivables of Rs. 2,00,00,000 to the Financial Creditor. Further, vide letter dated 28.03.2018, the Corporate Debtor gave its no objection for the assignment deed proposal. The lender also informed the Corporate Debtor that the Financial Creditor will take the Corporate Debtors receivables.
8. Further on 20.10.2018, the Financial Creditor addressed letter to the Corporate Debtor as reminder for the payment of loan and to the said letter the Corporate Debtor replied vide letter dated 27.10.2018 and also informed that the Corporate Debtor is facing financial problems and therefore are unable to pay the outstanding Debt immediately. The Corporate Debtor asked for an additional time of one month to clear the dues. Further, the Financial Creditor sent a letter dated

28.11.2018 wherein the Financial Creditor gave a time of 7 days to clear the outstanding amount.

9. Further, the Financial Creditor vide letter dated 11.01.2019 served the Final Call Letter to the Corporate Debtor to clear the outstanding due. The same was received and stamped by the Corporate Debtor Company.
10. The Original Lender has thereby annexed the copy of Bank Statement for the period 01.04.2015 till 31.03.2016 in order to corroborate the claim filed by the Financial Creditor.
11. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

**No Submissions from the Corporate Debtor:-**

- a. The Corporate Debtor has not appeared before this Bench. The Affidavit of Service intimating the next date of hearing is placed on record. None attended. The correspondences between the Financial Creditor and the Corporate Debtor, reveal that the debt is an admitted debt.
- b. Since the Corporate Debtor has not appeared before this Bench, it is presumed that there is nothing much to say in defence.

## **FINDINGS**

12. We have heard the submissions of the Counsel appearing for the Financial Creditor. It is seen from the records that this Tribunal had given sufficient chances to the Corporate Debtor to file its Reply. However, the Corporate Debtor failed to appear and did not file its Reply. This act itself shows that the amount is due and payable to the Operational Creditor.
13. Further it is seen from the records that the Financial Creditor had also carried newspaper publication in Nav Shakti (Marathi) and Free Press Journal (English) thereby setting out the next date of hearing in the Tribunal. Further it is seen from the records that the Corporate Debtor had already been set as ex-parte vide Order dated 15.12.2021. In addition to the newspaper publication, the Financial Creditor also intimated the next date of hearing to the Corporate Debtor vide email dated 02.10.2021. This bench observes that the Financial Creditor has served and intimated the date of hearings to the Corporate Debtor on several occasions.
14. Further, it can be seen from the correspondences between the Corporate Debtor and the Financial Creditor that the Financial Creditor had provided loan to the Corporate Debtor and also the Corporate Debtor had asked for some time to clear the outstanding dues. The Corporate Debtor had acknowledged the debt by letter dated 27.10.2018.

15. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.
16. The Financial Creditor has proposed the name of Mr Laxmikant Yeshwant Desai, Registration No. IBBI/IPA-001/IP-P01669/2019-2020/12641, as the Interim Resolution Professional.
17. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

### **ORDER**

- a. **The above Company Petition No. (IB) - 344(MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Elexir Distributions Private Limited.
- b. This Bench hereby appoints **Mr. Laxmikant Yeshwant Desai, Registration No. IBBI/IPA-001/IP-P01669/2019-2020/12641**, having Office at :- 503, Atharva Society, M.B. Raut Road, Shivaji Park, Dadar West, Mumbai – 400028, Mobile No. :- 9920203366 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 2 Lakhs 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 for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

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

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P.N. DESHMUKH  
(MEMBER JUDICIAL)**