IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V

C.P. No. 9/IBC/MB/2022

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

In the matter of

Consultshah Financial Services Private Limited
26, 4th Floor, Sujata Niketan, Rani Sati Road, Malad East, Mumbai 400 097

……**Financial Creditor**

Vs

Vienna Multi Ventures Private Limited
606, 6th Floor, CTS 343, Synergy, Kachpada, Near Malad Industrial Estate, Malad West, Mumbai- 400 064

…….Corporate Debtor

Date of Order: 31.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Mr. Rajeep Lahiri, Advocate

For the Respondent: Mr. Abhishek Kaushik, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company petition is filed by **Consultshah Financial Services Private Limited** (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Vienna Multi Ventures Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 7** of the 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. Rs. 9,31,62,640/-, which includes interest of Rs. 1,93,47,878/-.

2. The counsel for the Financial Creditor submits that the Financial Creditor is in the business of financial advisory and consultation. The Corporate Debtor is also in similar business.

3. As the Corporate Debtor was in need of funds, on 01.03.2017, an Inter-Corporate Deposits Agreement **(hereinafter ICD)** was executed between the Financial Creditor and the Corporate Debtor. The said ICD is reproduced below;

ANNEXURE - A

18.

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA 2017 RP 998729

GOVERNMENT OF INDIA NOTARY

प्रधान मुद्रांक कार्यालय, मुंबई
प. मु. वि. क्र.
28 FEB 2017
सक्षम अधिकारी

INTER CORPORATE DEPOSITS AGREEMENT

THIS AGREEMENT is made at Mumbai on this 1st day of March, 2017

BETWEEN

M/s. CONSULTSHAH FINANCIAL SERVICES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 having its Registered Office at 26, 4TH FLOOR, SUJATA NIKETAN, RANI SATI ROAD, MALAD EAST MUMBAI MH 400097 (hereinafter referred to as "The Lender") which term or expression shall unless excluded by or repugnant to the subject or context hereof shall mean and include its heirs, successors and assigns of the One Part

AND

M/s VIENNA MULTIVENTURES PRIVATE LIMITED, a Company incorporated under the Companies Act, 2013 having its Registered Office at 113/A, SHREE KEDIA CHAMBERS CO-OP HOUSING SOCIETY LTD., ABOVE WOODLAND SHOWROOM, OPP. ADITI HOTEL MALAD WEST, MUMBAI-400064 (hereinafter referred to as "The Borrower") which terms or expression shall unless excluded by or repugnant to the subject or context hereof shall mean and include its heirs, successors and assigns of the SECOND PART and

For Consultshah Financial Services Private Limited

Director/Authorised Signatory

VIENNA MULTIVENTURES PVT. LTD.

Authorised Signatory

WHEREAS

The Borrowers has approached "The Lender" for grant of inter corporate deposit for their short term working capital for a period of 90 days beginning from the date of disbursal of loan for their scrap and other businesses.

The Lender has favourably considered the request of the Borrower and has agreed to lend and advance interest carrying inter-corporate deposits for meeting the short term working capital requirements to the Borrower on the terms and conditions and covenants as follows.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. At the request of the Borrower the Lender lends an advance to the Borrower inter corporate deposit as per the requirements of the Borrower, subject to the maximum of Rs. 8.00 crores (Rupees Eight Crores) only, for a period of 90 days beginning from the date of disbursal.

2. The said inter corporate deposit shall carry an interest @ 9 % per annum. In case of delay or default in payment, whether of the principal or of the interest or any part thereof the Lender shall be entitled and the borrower shall be liable to pay a penal interest @ 2% per annum over and above the interest mentioned hereinabove.

3. It is agreed that the Borrower shall execute a Demand Promissory Note in favour of the Lender.

4. The Borrower agrees and undertakes to execute in favour of the Lender all such documents/papers, as may be required by the Lender from time to time.

IN WITNESS WHEREOF the parties herein have signed this agreement in acceptance of all terms stated above on the date and place mentioned hereinabove.

1. THE LENDER

For CONSULTSHAH FINANCIAL SERVICES PRIVATE LIMITED

For Consultshah Financial Services Private Limited

Director/Authorised Signatory

(Mr. Sanjay Shah)

Director

NOTARY * GOVERNMENT OF INDIA *

VIENNA MULTIVENTURES PVT. LTD.

Authorised Signatory

True copy

4. The Inter-Corporate Deposits Agreement contains a maximum grant of Rs. 8 crores towards the working capital facilities which can be advanced to the Corporate Debtor. It also carries an interest component. Hence, the ICD contains all the facets of being a financial instrument and any default in terms of the same,

contemplates a 'financial debt', within the meaning of the Section 5(8) of the IBC, 2016. Section 5(8)(a) defines "financial debt" to mean a debt along with the interest, which is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest.

5. As per the ICD, working capital facilities were being extended from time to time, and from the perusal of the ledger copies, various transactions are shown, both credit and debit.

6. On 31st December, 2020, the Corporate Debtor confirmed an outstanding of Rs. 7,64,07,672/- , as on 31st December, 2020 vide the Balance Confirmation, dated 31st December, 2020.

7. The Corporate Debtor had remitted some amount to the account of the Financial Creditor, thereby reducing the total outstanding to Rs. 7,38,14,672/-. As per the ICD agreement, interest @ 9% p.a. was to be charged.

8. The counsel for the Financial Creditor further submits that as directed by the Hon'ble Bench, the Financial Creditor has produce the Ledger copies from the date of execution of the ICD (i.e. from 01.03.2017), and the same was provided. It is evident from the ledger accounts that the Corporate Debtor is in default of Rs. 7,38,14,672.00/-, which is due and payable to the Financial Creditor as per the terms of the ICD. The Corporate Debtor defaulted on repayment of principal and interest.

9. The Financial Creditor issued a Legal Notice dated 23.03.2021, upon the Corporate Debtor and its Directors, but the Corporate Debtor has chosen not to reply to the aforementioned Legal Notice. The Financial Creditor was not left with any other option, but to file a Company Petition, under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal.

10. The Corporate Debtor has not filed its reply despite being given an opportunity by the Bench to file their reply. On 05.12.2022, the Bench has given a direction to the Corporate Debtor to file their reply within two weeks, subject to the payment of Rs. 25,000/- as costs. The Corporate Debtor has neither filed the reply nor the cost of Rs. 25,000/- imposed on the Corporate Debtor has been paid. Thereafter, on 04.01.2023, the Corporate Debtor's right to file reply was forfeited.

11. The following documents categorically demonstrate the financial debt due and payable by the Corporate Debtor, to the Financial Creditor:-

    a. Inter Corporate Deposit Agreement Dated 01.03.2017
    b. Ledger account of the Corporate Debtor
    c. Board Resolution dated 19.03.2021
    d. Legal notice dated 23.03.2021

Findings

12. Heard the submissions of Mr. Rajeep Lahiri, counsel appearing for the Petitioner/ Financial Creditor and Mr. Abhishek Kaushik, counsel appearing for the Corporate Debtor and perused the material available on record. As mentioned above the Corporate Debtor chose not to file a written reply, despite the Bench directing it to file.

13. After hearing the submission of both sides, this Bench notes that the Financial Creditor and the Corporate Debtor has signed an Inter Corporate Deposits Agreement (ICD) on 01.03.2017. As per the ICD, the Borrowers has approached the Lender for grant of inter corporate deposit for the short-term working capital for a period of 90 days, beginning from the date of disbursal of loan.

14. The ICD itself contains a clause that the maximum sanction of Rs. 8 crores towards the working capital facilities to the Corporate Debtor and also carried an interest component.

15. The counsel for the Financial Creditor has placed a reliance on the ledger accounts produced by him on 09.01.2023. It is evident from the ledger account that the Corporate Debtor is in default of Rs. 7,38,14,672/- as principal amount, which is due and payable to the Financial Creditor as per the terms of the ICD.

16. On 23.03.2021, the Financial Creditor has issued a legal notice upon the Corporate Debtor demanding the repayment of the

outstanding dues. Despite receipt of legal notice, Corporate Debtor neither repaid the outstanding dues nor submitted any reply.

17. The Corporate Debtor was accorded an opportunity to present his defence, through their counsel, vide oral argument on 09.01.2023. The learned counsel for the Corporate Debtor stated the following two arguments.
    a. The Criminal complaint has been filed against Financial Creditor.
    b. However, we find no copy of the any FIR / Charge sheet / Notice was placed before the Bench and hence we hold that the defense taken by the Corporate Debtor has no merit.
    c. There is a collusion amongst the Directors of the Corporate Debtor.

18. The Corporate Debtor was unable to place before this Bench any evidence of any collusion amongst the Directors. The Bench is of the considered view that so far as the question of admission of the Petition under section 7 or 9 of Insolvency and Bankruptcy Code, 2016 is concerned, the collusion amongst the Directors does not play any role, anywhere, in the process of admission of the Petition.

19. The Bench is of the considered opinion that the Corporate Debtor is liable to pay the Financial Creditor/ Petitioner and it has

defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under Section 5 (8) of the Code. It has also been established that there is a "Default" as defined under Section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of '**debt**' and '**default'**, for admission of a petition under section 7 of the I&B Code, have been met in this case.

20. The Petitioner had suggested the name of Mr. Amarnath Matadin Sharma as Interim Resolution Profession along with his consent letter in Form 2.

21. After hearing the submissions and upon perusing the material available on record, this Bench is of the considered opinion that the above Company Petition is liable to be admitted and accordingly the same is admitted by passing the following:

<u>ORDER</u>

a. The above **Company Petition No. 9/IBC/MB/2022** is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Vienna Multi Ventures Private Limited**.

b. This Bench hereby appoints **Mr. Amarnath Matadin Sharma**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00458/2017-2018/10801, having Registered Address at: 607, Ijmima Complex, Interface, Off. Link Road, Malad West, Mumbai City, Maharashtra ,400064 as the Interim Resolution

Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs 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 or 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
k. Accordingly, this Petition is admitted.
l. 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)