

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P.(IB)909/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

Ebony Estates Private Limited

C-10, Dhanraj Mahal, CSM Marg,
Apollo Bunder, Mumbai- 400001

... Petitioner

v/s.

Grohealthy India Agrotech Private
Limited

30 & 31, 6th Floor, Monisha CHS Ltd., S.
V. Road, next to Devplaza, Andheri,
Mumbai- 400058

... Corporate Debtor

Order Pronounced on: 30.08.2021

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioners: Adv. Sarosh E. Bharucha
For the Corporate Debtor: Adv. Dhiraj Mhetre

Per: Chandra Bhan Singh, Member (Technical)



ORDER

1. This Company Petition is filed by Ebony Estates Private Limited (hereinafter called "Petitioner) seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Grohealthy India Agrotech Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default to the extent of Rs. ₹88,33,036/- as

provided under Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Submissions made by the Petitioners:

2. The Petition reveals that the Corporate Debtor approached the Petitioner seeking short term financial assistance for its general corporate purpose sometime in the year 2018. Accordingly, the Petitioner agreed to place an inter-corporate deposit with the Corporate Debtor. It was agreed between the parties that:
 - (a) the Petitioner would place a sum of Rs. 79,00,000/- with the Corporate Debtor as inter-corporate deposit which would be placed in tranches;
 - (b) the aforesaid deposit would carry an interest at the rate of 18% per annum; and
 - (c) the entire principal amount along with interest to be payable not before 31.10.2019 but not later than 31.12.2019 as time being of the essence.
3. The Counsel for the Petitioner submits that the terms on which the Petitioner placed the inter-corporate deposit with the Corporate Debtor were also recorded in an Acknowledgement Letter dated 19.03.2019 issued by the Corporate Debtor.
4. The Counsel for the Petitioner further submits that the principal amount was placed by the Petitioner with the Corporate Debtor in terms of the understanding between the parties in the manner as below:
 - i. ₹20,00,000/- disbursed on 01.01.2019;
 - ii. ₹15,00,000/- disbursed on 06.03.2019;
 - iii. ₹8,00,000/- disbursed on 26.03.2019;
 - iv. ₹17,00,000/- disbursed on 30.03.2019;
 - v. ₹5,00,000/- disbursed on 04.04.2019;



- vi. ₹6,00,000/- disbursed on 10.04.2019;
 - vii. ₹8,00,000/- disbursed on 18.04.2019.
5. The Counsel for the Petitioner submits that the Corporate Debtor repaid a very little sum of just ₹4,00,000/- to the Petitioner on 17.12.2019 which was appropriated by the Petitioner towards due interest. However, the Corporate Debtor failed to make the payment of principal amount of ₹79,00,000/- along with interest of a sum of ₹7,73,304/- as on 31.12.2019 after deducting a sum of ₹4,00,000/-.
6. As the Corporate Debtor failed to repay the principal amount along with interest by 31.12.2019, the Petitioner issued a Demand Notice dated 14.02.2020 calling upon the Corporate Debtor to pay a sum of ₹79,00,000/- towards principal amount along with balance interest amount of ₹9,33,036/- aggregating to a total sum of ₹88,33,036/- as on 10.02.2020 along with further interest at the rate of 18% per annum until the date of realization/ payment. However, the Corporate Debtor failed to reply to the said Demand Notice nor made any further payment to the Petitioner. Hence, the Petitioner filed the present Petition. The computation of claim amount filed by the Petitioner is reproduced below:



PARTICULARS OF CLAIM

Sr. No.	Particulars	Amount (in Rs.)
1.	Principal Amount of the Inter-Corporate Deposit placed by the Financial Creditor with the Corporate Debtor	Rs.79,00,000/- (Rupees Seventy Nine Lakh only)
2.	Interest at the rate of 18% p.a. due from the dates of disbursements until 10 th February, 2020	Rs.9,33,036/- (Rupees Nine Lakh Thirty Three Thousand and Thirty-Six only)
3.	Total (as on 10 th February, 2020)	Rs.88,33,036/- (Rupees Eighty Eight Lakh Thirty Three Thousand and Thirty-Six only)

Further Interest @ 18 % per annum from 11th February, 2020 on the aforesaid Principal Amount till actual payments and/or realization thereof.

7. The Counsel for the Petitioner submitted the following documents evidencing default committed by the Corporate Debtor:
- Copy of the Certificates issued by the banks under Bankers' Book of Evidence Act, 1891
 - Copy of the statement of account held by the Petitioner with its bank
 - Copy of the record of default issued by NeSL
 - Copy of master data of the Petitioner
 - Copy of master data of the Corporate Debtor

Submissions made by the Corporate Debtor:

8. The Counsel for the Corporate Debtor contended that:

- The present Petition is not maintainable *per se* as the Corporate Debtor was not aware of the alleged loan and interest amount which as per the Petitioner are due and payable. The Corporate Debtor never agreed to take any loan on interest as can be seen from the documents placed on record by the Petitioner before this Tribunal. It



is submitted that no meeting between the Petitioner and the Corporate Debtor was held to deliberate on this loan and this transaction was conducted solely on the behest of Mr. Yogesh Bothra, Director of the Corporate Debtor.

- b. The interest free loan was a friendly loan to the Corporate Debtor so the Corporate Debtor did not make any deductions for the Tax Deducted at Source and also, no provision for interest was made in the balance sheet of the Corporate Debtor.
- c. The Corporate Debtor was shocked to receive the Demand Notice dated 14.02.2020 from the Petitioner's Advocate. The said Notice was sent to the Corporate Debtor on the basis of the Acknowledgement Letter dated 19.03.2019 which was issued to the Petitioner by Mr. Yogesh Bothra unilaterally and without any authorization from the Corporate Debtor. Moreover, this acknowledgement was provided to the Petitioner *post facto*, i.e., after the disbursement of the funds which clearly shows that there was no intention to charge interest on the loan before it was agreed to be disbursed by the Petitioner. It is submitted that the purported Acknowledgement Letter is not even on the original letter head of the Corporate Debtor. It is handcrafted/ computerized and the same has been mentioned in the police complaint dated 03.07.2020 filed against Mr. Yogesh Bothra by the Corporate Debtor under Sections 406, 420, 465, 468 of the Indian Penal Code, 1860 for cheating, forgery and criminal breach of trust on account of issuance of the Acknowledgement Letter.
- d. The Corporate Debtor never admitted any liability of any interest on these loans from the Petitioner as these loans were issued as interest free loans by the Petitioner. Also, the Petitioner has not produced any documents on record to prove otherwise.
- e. The loan allegedly advanced by the Petitioner does not find any



reference in the balance sheet of the Petitioner under the head of loan but rather it appear to have been booked under the head of 'Security Deposit', whereas the Petitioner in the present Petition have contended that these were inter corporate deposits, which creates an ambiguity with respect to the terms & conditions under which the alleged loan was given.

Findings:

9. The Bench notes that the present Petition is a crystal clear case of the debt and default. The Acknowledgement Letter dated 19.03.2019, which was issued by the Director of the Corporate Debtor himself, clearly shows that there was no dispute raised by the Corporate Debtor as to the disbursal of the inter-corporate deposit amount at the rate of 18% p.a. by the Petitioner. There is no mentioning of any interest-free loan in the said Letter nor there is any other document to prove that there was any agreement between both the parties with regard to the interest-free loan as contended by the Corporate Debtor. Hence, the contention of the Corporate Debtor that the Corporate Debtor Company was never involved in the inter-corporate deposit at the rate of 18% p.a. nor in the issuance of the said Acknowledgement Letter cannot be considered. Even if the Director, Mr. Yogesh Bothra, acted on his own without the lawful authority of the Corporate Debtor, then also the Corporate Debtor is liable for the said debt amount because the debt amount was undeniably deposited in the account of the Corporate Debtor Company. The said Acknowledgement Letter is extracted below:



Date: 19/03/2019

To
Ebony Estates Private Limited
313/314 Varma Chambers,
11 Homiji Street, Horniman Circle,
Fort, Mumbai – 400 001
Maharashtra, India

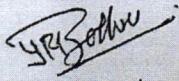
Sub: Inter Corporate Deposit / Borrowing

Dear Sirs,

- 1) We hereby record, acknowledge and confirm the following agreed terms and conditions regarding the captioned subject.
- 2) That you shall deposit and we shall borrow an aggregate sum of Rs.79,00,000/- (Rupees Seventy Nine Lakhs Only) to be disbursed as mutually convenient, by 30.04.2019.
- 3) Of and from the aforesaid sum of Rs. 79,00,000/-, we acknowledge having received an aggregate sum of Rs.35,00,000/- as on date.
- 4) The Rate of interest applicable on the above borrowing is 18% p.a.
- 5) The principal sum along with interest computed as above shall be repaid by us to you, not before 31.10.2019 but in any event by 31.12.2019, time being of the essence.
- 6) You are requested to reimburse the TDS which will be deposited on the interest to be paid to you against our submitting the TDS Certificate.

Yours truly,

For Grohealthy India Agrotech Private Limited



Yogesh Bothra
Director



10. The Bench also notes that the Petitioner has filed statement of its Bank Account which clearly shows an amount of ₹79,00,000/- (principal debt amount) debited from its Bank Account and transferred to the Bank Account of the Corporate Debtor Company between the period of 01.01.2019 to 18.04.2019. The Petitioner has annexed these bank statements to the Petition. An entry of 17.12.2019 in the bank statement of the Petitioner also shows an amount of ₹4,00,000/- deposited by the Corporate Debtor in the account of the Petitioner which the Petitioner had adjusted towards the interest amount. These transactions undisputedly



prove that there was disbursal of an amount of ₹79,00,000/- by the Petitioner to the Corporate Debtor, out of which the Corporate Debtor made repayment of just an amount of ₹4,00,000/-. The bank statement of the Petitioner showing ₹4,00,000 deposit in the Petitioner's account is extracted below:

		 NKGSB Bank NKGSB Co-op. Bank Ltd.			
Date	Particulars	Chq No	Withdrawals	Deposits	Balance
17-12-2019	RTGS PMT NKGSB19351013083 UTIB SHWETA BHAGWANT	83990	9,12,112.00		1,86,69,003.05 Dr
17-12-2019	RTGS GROHEALTHY INDIA AGROTE HDFC			4,00,000.00	1,82,69,003.05 Dr
20-12-2019	RAJAT STATIONERY XEROX	83989	1,176.00		1,82,70,179.05 Dr
20-12-2019	MTNL	83992	565.00		1,82,70,744.05 Dr
20-12-2019	Charges for RTGS NKGSB19354037599 ATIA ESTATES PR		59.00		1,82,70,803.05 Dr
20-12-2019	RTGS PMT NKGSB19354037599 SCBL ATIA ESTATES PRIVAT	83993	25,00,000.00		2,07,70,803.05 Dr
21-12-2019	DHAVAL VUSSONJI ASSOCIA	83991	90,000.00		2,08,60,803.05 Dr
24-12-2019	BEST	83994	10,130.00		2,08,70,933.05 Dr
31-12-2019	Dr. for: NEFT NKGSB19385089569 DESIGN SPARKS		81,000.00		2,09,51,933.05 Dr
31-12-2019	LEDGER FOLIO CHARGES		100.00		2,09,52,033.05 Dr
31-12-2019	TO SGST		18.00		2,09,52,051.05 Dr
31-12-2019	02513060000001:InL.Coll:01-12-2019 to 31-12-2019		2,13,765.00		2,11,65,816.05 Dr
31-12-2019		Total :	77,35,563.50	1,10,48,443.00	2,11,65,816.05 Dr

11. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench here by admits this Petition prohibiting all of the following of item-(I), namely:

- (I) (a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 (SARFAESI Act);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) 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.

(III) 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.

(IV) 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 maybe.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Sanjay Badrinal Puanglia, having Registration No. IBBI/IPA-001/IP-P008-5/2017-2018/11437 as Interim Resolution Professional to carry the



functions as mentioned under Insolvency & Bankruptcy Code.

12. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.
13. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)



Certified True Copy

Copy Issued "free of cost"

On 17/09/2021

Sachin Kumar

Deputy Registrar

17/09/2021

National Company Law Tribunal Mumbai Bench

Government of India