IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH- COURT III

C.P. No. (IB) 350/MB/C-III/2023

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

BANK OF INDIA,
Having its registered office at: Star House, C-5, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400051

………*Petitioner/ Financial Creditor*

V/s.

ESSENZAA LIFESCIENCE LIMITED,
(CIN: U36109MH2012PLC226651)
Having its registered office at: 115, B-Wing, Western Edge-2, Western Express Highway, Borivali (East), Mumbai-400066, Maharashtra

……..*Respondent/ Corporate Debtor*

Order Reserved on: **30.10.2023**
Order Pronounced on: **10.11.2023**

Coram: Hon'ble Smt. Lakshmi Gurung, Member (Judicial)
Hon'ble Shri. Charanjeet Singh Gulati, Member (Technical)

For the Petitioner: Ms. Geeta Toarakar i/b. PRM Legal
For the Respondent: Mr. Kunjal Dalal

Per: ***Coram***

1. This Company petition is filed by Bank of India ("**Petitioner/Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Essenzaa Lifescience Limited. ("**Respondent/Corporate Debtor**") by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Brief facts:

2. The Petitioner is a scheduled bank and is a body corporate, having its registered office at Star House, C-5, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400051 and carrying on business through its different branches including one at its branch office opposite Natraj Market, S V Road, Malad West, Mumbai- 400064.

2.1 The Corporate Debtor having Corporate Identification Number as U36109MH2012PLC226651 was incorporated on 10.02.2012 under the Companies Act, 1956 and having its registered office at 115, B-Wing, Western Edge- 2, Western Express Highway, Borivali (East), Mumbai- 400066, Maharashtra.

2.2 The Corporate Debtor has been availing the credit facilities from the Petitioner since 2012 and the same were revised from time to time. At the request of the Corporate Debtor the petitioner restructured the Term Loan of INR 4,31,00,000/- (Rupees Four Crores Thirty One Lacs Only) and the Cash Credit of INR 1,50,00,000/- (Rupees One Crore Fifty Lacs Only) vide sanction letter dated 13.05.2016.

2.3 As per part IV of the Petitioner, the Corporate Debtor committed default in making the repayment of loan amount and loan account of the Corporate debtor became NPA on 31.03.2017. The aggregate amount defaulted by the Corporate Debtor is INR 5,12,44,705.93/- (Rupees Five Crores Twelve Lacs Forty Four Thousand Seven Hundred Five and Ninety Three Paise Only) as on 24.01.2023.

2.4 That the Petitioner sent multiple reminders to the Corporate Debtor for repayment of the loan however, the Corporate Debtor remained unresponsive and hence the Petitioner prefers to initiate action under section 7 of the Insolvency and Bankruptcy Code, 2016.

3. An **Affidavit in Reply** was filed on behalf of the Respondent stating as follows:

3.1 Though the claimed amount has not been admitted but the Corporate Debtor does not oppose the petition as the default amount is above threshold limit of Rs. 1crore.

3.2 The Corporate Debtor is facing serious liquidity crisis and on account of non-availability of working capital. However, the Corporate Debtor has made on offer to pay Rs. 3.00 crores for one time settlement of dues.

3.3 The Corporate Debtor regretted their inability to pay the dues claimed in the petition and stated that they have no option but to accept the default and further stated that under the circumstances and in the interest of Corporate Debtor the Corporate Insolvency Resolution Process may be initiated if the present petition is otherwise in order.

FINDINGS/OBSERVATIONS

4. Heard the counsel appearing for the Petitioner and the Respondent and perused the material on record.

5. The date of default mentioned in the part IV of the is 31.03.2017. The present petition was e-filed on 13.03.2023. Though no objection was raised by the Respondent about limitation however, this Adjudicating Authority is bound to examine the issue of limitation as the same goes to the root of the matter. It is observed from the Exhibit-14 that L-444C (which is acknowledgment of debt) has been issued by the Corporate Debtor on 15.06.2019 in relation to term loan accounts as well as cash credit accounts. Thus, the acknowledgment has been issued before the expiry of limitation period of three years. Thereafter the period from 15.03.2020 to 28.02.2022 has to be excluded by virtue of order dated 27.04.2021 passed by ***Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020.*** Thus the petition is within limitation.

6. The affidavit in reply has clearly admitted the "debt" and "default" stating that ***"We regret our inability to pay the dues claimed in the petition and have no option but to accept the default".*** The counsel appearing for the Respondent during the oral hearing again admitted the "debt" and "default".

7. In the case of ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, the Hon'ble Supreme Court has held that:-

> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has*

> *merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

8. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the "debt" (which may be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application. In other words, if the "debt" and "default" has been proved, the petition has to be admitted.

9. In the present case, Corporate Debtor submits that debt was due and payable but could not be paid due to Financial Condition. Thus, it is a clear case of "debt" and "default".

10. Accordingly, the above company petition is admitted by passing the following;

ORDER

i. The above Company Petition No. (IB) 350 (MB)/2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Essenzaa Lifescience Limited**.

ii. This Bench hereby appoints Mr. Rajkumar Shamlal Jaiswal (**iprajkumarjaiswal@gmail.com**), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02598/2021-2022/13975 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

iii. 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. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.

iv. That this Bench hereby directs operation **of moratorium under section 14** of Insolvency and Bankruptcy Code, 2016 and prohibits the following:

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;
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.

v. 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.

vi. 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.

vii. 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.

viii. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

ix. 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.

x. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi. Accordingly, this Petition is admitted.

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

Sd/-
CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)

---Rajeev Kr. ---