

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) - 442/IB/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Evershine Advisory Services,
204, 2nd Floor, D-Definity, Jai Prakash
Nagar No. 1, Goregaon East, Mumbai -
400063

.... Petitioner

Vs.

Optic Advisory Services Private
Limited,
Ground Floor, Office No. 1, Siddarth
Chamber, Opp. Gaondevi Deve Maidan,
Naupada, Thane West, Mumbai - 400602

.... Respondent

Order delivered on: 16.10.2018

Coram:

Hon'ble M. K. Shrawat, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Alpana Ghone i/b Ms. Sunila Chavan, Advocates.

For the Respondent: None Present.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Evershine Advisory Services (hereinafter called 'Petitioner') has sought the initiation of Corporate Insolvency Resolution Process of Optic Advisory Services Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default from 28.01.2017 onwards in repayment of facility granted to the Corporate Debtor to the extent of Rs. 4,51,35,455/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. Petitioner submitted that a sum of Rs. 4,97,50,000/- was disbursed on the strength of the Loan Agreement dated 20.10.2016 for Rs. 5,00,00,000/- entered into between the parties. The Loan was repayable within 15 months from the date of disbursement with interest mutually agreeable by

the parties at the end of the tenure of the Loan and also provided for default interest @9% p.a. in the event of default.

3. The Petitioner further submitted that the said Loan was disbursed over a period of time from 20.08.2016 to 10.07.2017 to the extent of Rs. 4,97,50,000/- and the Corporate Debtor has repaid a sum of Rs. 98,00,000/- as on 10.07.2017. The Corporate Debtor acknowledged the liability on 09.11.2016, 18.11.2016 and also on 11.07.2017. The Petitioner claimed a sum of Rs. 4,51,35,455/- including interest and the date of default being 28.01.2017 i.e. 15 months since the date of first disbursement.
4. Since the Loan is a Term Loan for a period of 15 months the Petitioner by notice dated 30.01.2018 referring the Loan Agreement dated 20.10.2016 demanded the Corporate Debtor to clear the outstanding within 7 days time along with interest @ 9% p.a. The Corporate Debtor neither made the payment nor responded to the notice issued by the Petitioner. Hence this Petition.
5. The Counsel for the Petitioner submits that the Petition was served on the Corporate Debtor and subsequently the date of hearing was also intimated to the Corporate Debtor and proof of service was filed to that effect. However, the Corporate Debtor failed to appear. This Bench has directed the Petitioner to take out substituted service by publication in English newspaper and a newspaper in the regional language. Accordingly, the Petitioner issued publications and filed proof of service. Even then there was no appearance on the side of the Corporate Debtor.
6. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and has also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed Resolution Professional, therefore the Application under Section 7 is taken as complete, accordingly this Bench hereby 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 Securitisation 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 16.10.2018 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.

(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 Ms. Dipti Mehta, 201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai, Maharashtra, 400018, Email: - dipti@mehta-mehta.com, having Registration No. IBBI/IPA-002/IP-N00134/2017-18/10350 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional within seven days from the date the order is made available.

Sd/-

V. NALLASENAPATHY
Member (T)

Sd/-

M. K. SHRAWAT
Member (J)