

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 83/IB/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

**Mivaan Pharma, Mr. Dhirav Thakkar,
Mrs. Jigna Thakkar, Mr. Samyak
Sheth, Mr. Harshil Sheth and Mr.
Tushar Sheth**

The Sidhpura Co-Op. Industrial Estate,
38/A, Plot No. 3. Gaiwadi, S.V. Road,
Goregaon (W), Mumbai – 400104, India

**..... Financial Creditors/
Petitioners**

Vs

Waxsen Lifescience Private Limited

411, Atlanta Estate, Estate Western
Express Highway, Goregaon (E), Mumbai
– 400063, Maharashtra

..... Corporate Debtor

Order Reserved On: 06.01.2023

Order Pronounced On: 03.03.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances: -

For the Petitioner: Adv. Sanket Singh

For the Respondent: None present

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Mivaan Pharma, Mr. Dhirav Thakkar, Mrs. Jigna Thakkar, Mr. Samyak Sheth, Mr. Harshil Sheth and Mr. Tushar Sheth** hereinafter called as the ("**Financial Creditors**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Waxsen Lifescience Private Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 3,45,27,331/- including interest.
2. A Memorandum of Understanding (MOU) dated 25.01.2019 was entered between the Financial Creditor and Corporate Debtor, agreeing to finance the buying/setting up of plant and machinery to the Corporate Debtor as per the terms and conditions of the MOU.
3. The details of the MOU entered into between the Financial Creditor and the Corporate Debtor are as follows:
 - a. **Amount Sanctioned** - An amount of Rs. 1,50,00,000/- was granted by way of a secured loan from Mivaan to Waxsen against the receipt and bills of plant and machinery as provided for in Clause 1 of the MOU dated January 25, 2019. Further, a total amount of Rs. 1,41,00,000/- as further credit facility have been made to the Corporate Debtor by the Financial Creditor No. 2 to 6 on the same terms and conditions as stated in the MOU. Hence, a total sum of Rs. 2,71,00,000/- has been disbursed to the Corporate Debtor by the Financial Creditors as loan under the terms and conditions prescribed under the MOU,

- b. **Amount Disbursed** - An amount of Rs. 1,30,00,000/- disbursed by the Financial Creditor to the Corporate Debtor in accordance with Clause 1 of the MOU as loan-cum-credit facility for buying/setting up of plant and machinery. An amount of Rs. 1,41,00,000/- as further financial assistance have been made to the Corporate Debtor by the Financial Creditors on the same terms and conditions as per the MOU.
4. It is submitted that in accordance with Clause 3 of MOU, the moratorium period of 2 months will start from the dates of disbursement of the Loan. The said 2-months was provided to Corporate Debtor for installation of additional plant and machinery for production of the pharmaceutical products. The date of final payment/disbursement made to Corporate Debtor was August 31, 2019, therefore, the date of default is October 31, 2019 i.e. after expiry of 2 months from the date of last payment. The principal amount was scheduled to be repaid by the Corporate Debtor in 5 equal monthly instalments by providing post-dated cheques. However, the Corporate Debtor had failed to perform its obligations under the clause 2, 3 and 13 of the MOU and had deliberately withheld the repayment of the aforesaid Loan/principal amount despite of assurances and promises made on several occasions. Being aggrieved by the failure of the Corporate Debtor in repaying the outstanding dues, on 08 January 2021, a Legal Notice was addressed by advocates of Financial Creditors to the Corporate Debtor, terminating the MOU dated January 25, 2019 and calling for the repayment of the loans granted to the Corporate Debtor by the Financial Creditors amounting to Rs. 2,56,00,000 along with interest @ 18% p.a. within 15 days of receipt of the notice.
5. It is further submitted that the corporate Debtor had not replied to the legal notice dated January 8, 2021 for terminating the MOU by the Petitioner. Hence this Petition.

FINDINGS:-

6. We have heard the Counsel for the Petitioner and have gone through the record.

7. As per MoU dated 25.01.2019 entered into between the Financial Creditor and the Corporate Debtor, a loan of Rs. 1,50,00,000/- was granted to the Corporate Debtor for setting up plant and machinery and the loan was repayable after a moratorium period of 2 months in 5 equal instalments of Rs. 30,00,000/- per month. It is further stipulated in the Agreement that the Petitioner shall install plant and machinery within the period of 2 months from the date of MoU, failing which, the Petitioner may terminate the contract, and, in such event, the Corporate Debtor shall refund the entire amount @ 18% per annum. Accordingly, the loan of Rs. 2,71,00,000/- Crore was disbursed to the Corporate Debtor as per the terms and conditions of the MoU. The disbursement was completed on 31.08.2019 and as there was an initial moratorium period of 2 months from the date of disbursement, hence, the date of default is 31.10.2019. Due to the failure of the Corporate Debtor in repaying the outstanding dues, a Legal Notice Dated 08.01.2021 was addressed by the Counsel for the Financial Creditor terminating the MoU dated 25.01.2019 and calling upon the Corporate Debtor to repay the amount of Rs. 2,56,00,000/- along with interest @18% per annum but despite that notice, no repayment was made by the Corporate Debtor.
8. In this case, neither the Corporate Debtor has appeared nor has filed any reply to controvert the averments made in the Petition. Even otherwise, it is evident from the documents placed on record that MoU dated 25.01.2019 was executed between the parties. A loan of Rs. 1,50,00,000/- was granted and the Corporate Debtor has committed default.
9. The Corporate Debtor failed to appear on 21.04.2022 despite service of notice was preceded against ex-parte. The Corporate Debtor further failed to appear despite service of notice on 16.07.2022.
10. After hearing the submissions and upon perusing the material available on record and considering the Corporate Debtor has been proceeded against ex-parte, the claim of Financial Creditor remains unchallenged. Hence, this Bench

feels that the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor in this case.

11. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a) The above Company Petition No. (IB) 83/IB/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Waxsen Lifescience Private Limited**.
- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Mr. Ritesh Prakash Adatiya**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01334/2018-2019/12013, having Email id riteshadatiya01@gmail.com 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. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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, the **C.P. 83/IB/MB/2022** 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)