

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V**

**(IB) 927/(ND)/2020**

**In the matter of:**

**Imagine Pictures Private Limited**

**A private company having its registered office at:**

**5th Floor, Radisson Commercial Plaza,**

**National Highway No. 8,**

**Mahipalpur, New Delhi — 110037, India**

**.... Corporate Applicant/Corporate Debtor**

**SECTION: U/S 10 of IBC, 2016**

**Order delivered on:- 05.11.2020**

**Coram:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**

**SH. KAPAL KUMAR VOHRA, HON'BLE MEMBER (T)**

**For the Petitioner: Adv. Ravi Sharma**

**For the Respondent:**

**ORDER**

**As Per Mr. Abni Ranjan kumar Sinha, Member (Judicial)**

1. The present petition has been filed under Section 10 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of default in making its repayment of the debts to its financial creditor.



2. The Corporate Applicant, namely, Imagine Pictures Private Limited, is a Private limited company incorporated on 15.10.2007 (CIN U22222DL2007PTC169433) under the Companies Act, 1956 to acquire world movies and distributing them. The Company presently does not have any business operations.
3. The applicant had taken a loan of Rs. 30,00,000 with interest payable @ 12% per annum from Turner General Entertainment Networks India Private Limited ("TGEN") vide loan agreement dated 26.09.2012 for the purpose of meeting its working capital requirements.
4. Thereafter, a sum of Rs. 74,92,669/- was disbursed to the applicant over years as loan, with interest payable @12% per annum, from financial year ('FY') 2012-13 till 31.01.2020. The applicant defaulted in repayment of the loan as and when the same fell due. On 31.01.2020, a memorandum of understanding ('MOU') between the corporate applicant and TGEN was entered.
5. As on 31.01.2020, the amount of default-in aggregate towards all the financial creditor was Rs.1,61,75,079 /- including the interest net of tax deducted at source and this fact was duly recorded in the MOU. Further, as on 15.08.2020, the amount of default-in aggregate towards the financial creditor is Rs. 1,65,16,913 /- including the interest.
6. In view of continuous operating losses incurred by the Corporate Applicant, the Corporate Applicant had closed down its operations with effect from April 12, 2012. The Corporate Applicant took loan and financial assistance from its holding company TGEN for meeting the administrative costs. However, as the Corporate Applicant did not have any business operations and it did not earn any operating income, consequently it did not have the financial ability to



repay such debt. Thus, the Corporate Applicant could not repay the financial debt.

7. The Board of Directors of the Corporate Applicant have approved the filing of the insolvency petition by the corporate applicant in their meeting held on 06.08.2020. Also, any of the Director(s) of the Corporate Applicant has been severally or jointly authorized to file necessary application for initiation of Corporate Insolvency Resolution Process in terms of Section 10 read with Section 55 of the Insolvency and Bankruptcy Code, 2016.
8. The shareholders of the Corporate Applicant, in their meeting held on 07.08.2020 have approved the filing of insolvency petition by the Corporate Applicant by passing a special resolution.
9. We have heard the Ld. Counsel for the petitioner and perused the averments made in the application.
10. Ld. Counsel for the petitioner submitted that copy of MoU was executed on 31.01.2020 and he further submitted that on 15.08.2020, there is default of financial debt of Rs. 16516913/-.He further submitted that apart from that there are dues of Income Tax Deptt. and VKC and associates.He further submitted that a Board of Director was also resolved on 06.08.2020 through Video Conferencing to initiate the CIRP under Section 10 and 55 of the IBC. Accordingly, the present application is filed.
11. In the light of the submissions raised on behalf of the petitioner, when we have gone through the averments made in the application and documents enclosed with the application then we noticed that the petitioner in support of its contention has enclosed the copy of loan agreement dated 26.09.2012 executed by TGEN and the corporate applicant and we further noticed that the petitioner has also enclosed the MoU dated 31.01.2020 executed by the TGEN and we further



noticed that the petitioner has also enclosed the details of the financial debt as on 15.08.2020 as well as details of operational debt as on 15.08.2020 but the petitioner has not enclosed any bank statement to show that the said amount was disbursed and the petitioner has received that amount.

12. We further noticed that on the basis of loan agreement dated 26.09.2012, the petitioner has claimed that he has received the loan amount of Rs. 30 lakh with interest payable @ 12% per annum and thereafter, a sum of Rs. 7492669/- was disbursed from financial year 2012-2013 till 31.01.2020 and we further noticed that the petitioner has not enclosed any document or bank statement to show that from the financial year 2012-13 till 31.01.2020, the petitioner has received Rs. 7492669/- from TGEN, of course, the MoU was entered in between the petitioner and the TGEN on 31.01.2020, in which, it is mentioned that from 2012-2013 till 31.01.2020, the petitioner has received the different amounts, the total of Rs. 7492669/.
13. It is also admitted by the petitioner in para 6 of the synopsis at page 8 of the application that the TGEN is the holding company of the petitioner.
14. Therefore, at this juncture, we have gone through the loan agreement dated 26.09.2012 and we noticed that vide this agreement, Rs. 30 lakh loan amount was disbursed as claimed by the petitioner and amount was disbursed as per the schedule and the schedule which is at page 32 of the application shows that Rs. 2797984/- was paid to the Income Tax Deptt. and the balance to be utilised by the borrower for other working capital needs.
15. As we have already stated in the aforementioned para that the petitioner has not enclosed the bank statement to show that he has received that amount. Therefore, At this juncture, we would like to refer the terms and conditions of the loan and as per the terms and conditions of the loan, which is mentioned at para 3, the loan



agreement shall come into force from the date of its execution and shall remain effected till 31.03.2013 or upon prepayment of the disbursal loan in full, whichever is earlier, which means the date of default according to this agreement is 31.03.2013, whereas the MoU was executed in the year 31.01.2020 i.e. after 7 years on the expiry of the period of loan and on the basis of that MoU, the petitioner tried to acknowledge the amount, which he has received in the year 2012, in our considered view, in view of the Article 137 of the Limitation Act the said amount is barred by limitation.

16. So far the amount, which the petitioner claimed that he received during the financial year 2012-13 till 31.01.2020, as we have already stated in the aforementioned para that the petitioner has not produced even a chit of paper to shows that he has received this amount, which shows that all these disbursal of the amount is merely a paper transaction and even the amount which the petitioner claimed that he has received in the financial year 2012-13 for the payment of Income Tax Deptt., no document is produced in support of its contention that he has received that amount.
17. For the reasons discussed above, in our considered view that all these paper transactions are being made only to get the benefit of Section 10 of the IBC, why the petitioner has filed this application, the reason is best known to him but we must say that the present application has been filed by the petitioner on the basis of loan agreement, which is barred by limitation and on the basis of MoU, which is not supported with any document to shows that any amount whatsoever shown in the MoU had ever been disbursed or received by the applicant.
18. Therefore, we are unable to accept the contention of the petitioner is that the petitioner has financial debt of Rs. 16516913/-, so far the operational debt is concerned that the petitioner has claimed that Rs. 29500/- is due towards VKC and associates.



19. We further noticed that the petitioner also claimed that there is Income Tax Depp due but it is mentioned in the application that due has been stay by the Income Tax Appellate Tribunal in appeal and that appeal is still pending, therefore, that amount cannot be treated as an operational debt unless and until that is discussed by the appellate tribunal.

20. For the reasons discussed above, we are of the considered view that petitioner has failed to establish there is a financial debt and petitioner was unable to pay the amount towards prior to 25.03.2020, so far the default after 26.03.2020 is concerned, in view of the ordinance dated 05.06.2020 Section 10(a) is inserted and the same is quoted below:-

“Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the the said sections before 25th March, 2020.”

21. Mere plain reading of the provision show that for any default arising on or after 25th March, 2020 no CIRP shall be initiated under Section 7, 9 and 10. Since the petitioner has failed to convince us any default is occurred prior to 25.03.2020, therefore, we are of the view that petitioner’s claim comes under Section 10A of the IBC, hence, we are not inclined to admit this application.



22. **With this order, the present application stands dismissed.**

-Sd-

**K.K. Vohra**  
**(Member Technical)**

-Sd-

**Abni Ranjan Kumar Sinha**  
**(Member Judicial)**

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