

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)
IB-434(ND)/2022**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF IB-434(ND)/2018:

M/s. Paisalo Digital Limited Applicant

Vs.

M/s. HPS IT Solutions Pvt. Ltd. Respondent

Order Pronounced On: 29.05.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For Petitioner : Mr. Harshal Kumar, Mr. Suhas Puthique, Advs.

For Respondent : Mr. Mrinal Harsh Vardhan, Mr. Kailash Ram, Mr. Yogender Singh, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. Paisalo Digital Limited, the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016), seeking initiation of CIRP against M/s. HPS IT Solutions Pvt. Ltd., the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted to pay the outstanding amount of Rs. 6,42,79,523/- which comprises of Rs. 1,68,67,778/- towards outstanding installments, Rs. 1,35,16,745/- towards late fee, Rs. 5,25,000/- towards cheque bouncing charges and Rs. 3,33,70,000/- towards future Installments as on 24.01.2022.

2. The Financial Creditor is a Non-Banking Financial Company incorporated under the Companies Act, 1956, having its Registered Office at CSC, Pocket 52, CR Park, Near Police Station, New Delhi 110019.
3. The Respondent Company is a Company incorporated under the Companies Act, 1956 and having its registered office at G-40, Basement, Jangpura Extension, New Delhi 110014. The Respondent Company has been in the Information Technology business in NCR.
4. It is the case of the Applicant that, the Respondent-Company through its Directors approached the Applicant for a loan of amount of Rs. 2,35,00,000/-. Accordingly, a Loan Agreement/Hypothecation dated 10.10.2018 was executed. The loan was to be paid along with the interest at the rate of 2% per month in 60 monthly installments as described in the "Schedule B" of the Loan Agreement and the Sanction Letter. The Loan Agreement also prescribed imposition of late fee at the rate of 3% per month compounded monthly or at a higher rate as the company may specify from time to time on the defaulted amount from the date of default till the date of payment of the defaulted amount.
5. It is submitted that the interest and late fee are based on the terms and conditions of the Loan Agreement and agreed between the Financial Creditor and the Corporate Debtor. The loans were secured by way of mortgage of immovable properties. Shri Harjeet Singh Sahini, Shri Arjunpreet Singh Sahni and Smt. Pummy Sahni stood as Guarantors for the loans availed by the Respondent Company along with M/s. K. D. Metalloys & Engineering Pvt. Ltd.
6. The Respondent Corporate Debtor failed to make payment of installments from the inception. The post-dated cheques given by the Respondent-Company to the Applicant/Financial Creditor were dishonored by the bank. Therefore, the Applicant/Financial Creditor issued Demand Notice dated 08.04.2019, Loan Recall-cum-Demand

Notice dated 04.05.2019, Demand Notice dated 31.08.2021 and reminder notice dated 17.09.2021 demanding payment of outstanding dues. However, the Corporate Debtor failed to repay the outstanding dues. The post-dated cheques were dishonored due to the reason-“Funds Insufficient”.

7. The Applicant/Financial Creditor has therefore submitted that the Corporate Debtor has committed default in payment of the loan amount along with interest amounting to Rs. 6,42,79,523/- which comprises of Rs. 1,68,67,778/- towards outstanding installments, Rs. 3,33,70,000/- towards future installments, Rs. 1,35,16,745/- towards late fee, Rs. 5,25,000/- towards cheque bouncing charges as on 24.01.2022.
8. The Respondent/Corporate Debtor filed a reply affidavit denying the allegations made in the application and contended that penal interest is not a Financial Debt and cannot be charged under the provisions of the Code, 2016.
9. We have heard the submissions made by the Ld. Counsel appearing for parties and perused the records.
10. In order to establish that the Applicant/Financial Creditor has sanctioned the loan amount in question to the Corporate Debtor the Applicant has placed on record the following documents:
 - 10.1 A copy of the letter dated 02.10.2018 written by the Corporate Debtor to the Financial Creditor requesting for a loan of Rs. 2,35,00,000/-. The Corporate Debtor agreed to pay interest at the prevailing rate and also undertook to abide by the terms and conditions of the agreement.
 - 10.2 The Loan Agreement dated 10.10.2018 executed between the Corporate Debtor and the Financial Creditor in which it was agreed to sanction loan of Rs. 2,35,00,000/-. The loan agreement has been duly signed and executed by the authorised signatories of the Financial Creditor, Corporate Debtor and Guarantors. A Hypothecation Agreement

dated 10.10.2018 was also executed by the parties. A Guarantee Agreement was also executed between the Financial Creditor and Guarantors. As per the Loan Agreement, a Sanction Letter dated 08.10.2018 was issued by the Financial Creditor to the Corporate Debtor for conveying the sanction of loan facility of Rs. 2.35 Crores with 2% interest per month.

10.3 The Title Deeds are dated 10.10.2018, 15.10.2019 & 03.12.2019 and Registered Mortgage is dated 30.11.2019 for the Properties Mortgaged by the Guarantors in favor of the Financial Creditor. The Applicant has also placed on record the bank account statement reflecting the disbursement of loans and also reflecting that the post-dated cheques have bounced back. The Applicant issued Demand Notice dated 08.04.2019, Loan Recall-cum-Demand Notice dated 04.05.2019, Demand Notice dated 31.08.2021 and reminder notice dated 17.09.2021 demanding the outstanding amount from the Corporate Debtor.

The Corporate Debtor failed to repay the Amount from the inception

- 11.** It is pertinent to note that the Applicant filed IA-5228/2023 seeking amendment of the date of default from November, 2018 to 31.08.2021. The said application was dismissed vide order dated 09.04.2024 by this Adjudicating Authority.
- 12.** Ld. Counsel appearing for the Corporate Debtor, during the course of the arguments, raised two objections:
 - (i) That the present application is barred by limitation.
 - (ii) That the Applicant has not mentioned the qualified date of default in Part-IV of the application filed under Section 7 and in absence of specific date of default, the application is incomplete and is liable to be dismissed.
- 13.** The main thrust of the arguments of the Ld. Counsel appearing for the Corporate Debtor is that the Applicant has failed to mention any qualifying date of default and therefore, the present application is

incomplete and cannot be entertained. In this regard, it is pertinent to refer to Section 7 of the Insolvency and Bankruptcy Code, 2016 which reads as follows:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

“(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

- 14.** On a perusal of the provisions contained in Section 7 of the IBC, 2016, we find that Section 7 of the Code does not envisage mentioning of date of default. Sub Rule 1 of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides that an application under Section 7 of the Code be filed in Form-1 along with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Under Part-IV

particulars of financial debt have to be furnished in the following manner:

PART IV

PARTICULARS OF FINANCIAL DEBT

1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	

Thus, it is clear that the date of default has to be mentioned in Part-IV of Form-1 while filing an application under Section 7 of the Code.

15. Further mentioning of the date of default is necessary in order to adjudicate as to whether an application under Section 7 or 9 of the Code, 2016, as the case may be, has been filed within the period of limitation i.e. three years from the Date of Default as per Article 137 of the Limitation Act. However, non-mentioning Date of Default may not be fatal to the case, if, there are other materials on record to show the existence of a Date of Default.
16. Ld. Counsel appearing for the Corporate Debtor vehemently argued that according to the Applicant, the Date of Default is November, 2018 but there is no specific date mentioned therein and therefore, it cannot be considered to be the Date of Default. The Ld. Counsel for the Applicant in his rejoinder submissions has relied upon the order passed by the Hon'ble Supreme Court of India in SMW(C) No. 3 of 2020 wherein the limitation period was extended from 15.03.2020 to 28.02.2022. Even assuming that the date of execution of the Loan Agreement which is 10.10.2018 is the date of default then the three-year period will expire on 09.10.2021 which falls during the suspension of limitation period as

held by the Hon'ble Supreme Court in SMW(C) No. 3 of 2020. Therefore, we are of the considered view that non-mentioning of the Date of Default by the Applicant will not affect in any manner the present case.

- 17.** On the basis of the above analysis, we are of the considered view that the amount involved in the present case can be considered a "Financial Debt" within the definition of sub-section 8 of Section 5 of the Code and the Applicant is a Financial Creditor holding financial debt which is in default of payment by the Corporate Debtor and the present Application under Section 7 of the Code is maintainable.
- 18.** It is settled law that the prerequisites for an application under Section 7 of the Code are the existence of 'financial debt' and a 'default'. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under Section 7 of the Code. Therefore, the Application under sub-section (2) of Section 7 is taken as Complete.
- 19.** In light of the above facts and circumstances, it is hereby ordered as follows: -
 - i.** The Application bearing **IB-434(ND)/2022** filed by the Applicant, under Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted.**
 - ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:

“(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.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium

shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.

- iv.** The Applicant has proposed the name of Mr. Mukesh Gupta as the Interim Resolution Professional (“IRP”) having address: F1, Milap Nagar, Uttam Nagar, New Delhi-110059. His Email id is camukeship@rediffmail.com. His registration number is IBBI/IPA-001/IP-P-01494/2018-2019/12254. The Applicant filed a copy of the Consent Issued by Mr. Mukesh Gupta in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B. Accordingly, Mr. Mukesh Gupta is appointed as IRP.
- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the Corporate Debtor’s assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.
- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- xi.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xiii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)