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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 76 of 2020 in C.P. (I.B) No.423/NCLT/AHM/2018

Coram: **HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.09.2020

Name of the Company: Paisalo Digital Ltd

Section : IA for Directions

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

Advocate, Mr. Bhagyodaya Mishra appeared on behalf of Applicant.

The Order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 28th day of September, 2020

MANORAMA KUMARI
MEMBER JUDICIAL

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BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 423/10/NCLT/AHM/2018
With IA No. 76 of 2020

<u>In the matter of:</u>

M/s. Neesa Agritech and Foods Limited
Plot No. 279P
Panchratna Industrial Estate
Opp. Armec Cold Storage
Changodar
AHMEDABAD 382 213 : **Applicant**
[Corporate Debtor]

Versus

1. **Small Industries Development Bank of India**
Navjivan Amrit Jayanti Bhavan
1st Floor, Post Box No. 10
Navjivan P.O.
Ahmedabad 380 014

2. **Central Bank of India**
Mid Corporate Finance Branch
1st Floor, Central Bank Building
Lal Darwaja
AHMEDABAD 380 001

3. **ICICI Bank Ltd.**
8th Floor,
JMC House
Nr. Parimal Garden
Ellisbridge
AHMEDABAD 380 006 **Respondents**
[Financial Creditor]

IA NO. 76 OF 2020
IN CP (IB) NO. 423 OF 2018

<u>In the matter of</u>

M/s. Paisalo Digital Limited
(Formerly known as S.E. Investments Limited)
101, CSC, Pocket 52
Nr. Police Station
CR Park
New Delhi 110 019 : **Applicant/Objector**

Versus

M/s. Neesa Agritech and Foods Limited
Plot No. 279P
Panchratna Industrial Estate
Opp. Armec Cold Storage
Changodar
AHMEDABAD 382 213 : **Corporate Debtor**

Order delivered on 28th September, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner	:	Mr. Jainish Shah, Advocate
Intervener/	:	Mr. Vishal Dave, Advocate for SIDBI
objector	:	Mr. Lalit Patel, Advocate for ICICI Bank
	:	Mr. Sandeep Bhatt, Advocate for CBI
		Mr. Bhagyodaya Mishra, Advocate for Paisalo Digital Ltd.

COMMON ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Sanjay Gupta, claiming himself to be the authorised signatory, on behalf of **M/s. Neesa Agritech and Foods Limited** filed this Petition under Section 10 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant is a limited company registered under the Companies Act, 1956, having identification number U01110GJ1994PLC023697 and having registered office at Chagodar, Dist. Ahmedabad, Gujarat State.

3. On issuance of notice, the financial creditors viz. Small Industries Development Bank of India (SIDBI), Central Bank of India and ICICI Bank Ltd. appeared through counsels and filed objections.

4. Learned counsel for **SIDBI** submitted that there is suppression of facts, therefore, the instant application is not maintainable. It is also submitted that the application has been preferred by the applicant under section 10 of the I & B Code with a prayer for initiating corporate Insolvency Resolution Process (CIRP) against the applicant company and issuance of directions for activating the moratorium under Section 14 of the Code. It is submitted that on the request of the applicant company, SIDBI had from time to time during FY 2006 to 2013 sanctioned term loans vide various sanction letters under different schemes aggregating to Rs. 10.99 crores out of which the outstanding as on 16.06.2019 is Rs. 7.14 crores. Further, a limit of Rs. 5.00 crores were sanctioned under Receivable Finance Scheme and outstanding of Rs. 2.33 crores there against which was converted into working capital term loan out of which the outstanding as on 17.06.2019 is Rs. 2.33 crores.

5. It is further submitted by learned lawyer of **SIDBI** that the applicant company had executed various loan documents and created securities by way of hypothecation and mortgage for securing the aforesaid credit facilities and which were duly registered with Registrar of Companies, Ahmedabad. Besides personal guarantees of the promoter-directors and corporate guarantee of its group companies were also executed. That, the applicant turned into non-performing asset (NPA) as on 09.12.2013 and on account of default, legal action was initiated under DRT Act and SARFAESI Act, 2002.

6. **SIDBI** has also submitted that the application is incomplete. That, the application is filed with malicious intention to avoid the responsibility and liability as envisaged, inter alia, under the Companies Act, 2013. That, documents pertaining to mortgage of property of the corporate applicant being collateral security for loans and facilities granted to group concerns – Neesa Infrastructure Ltd. (NIL) by SIDBI to Neesa Technologies P. Ltd. (NTPL)/ and to Neesa Leisure Ltd. (NIL) are not enclosed with the petition filed by the corporate applicant. In addition to the same, letter of intents, hypothecation and mortgage documents executed for all loans given by SIDBI were also required to be attached to the application, however, such documents remain unenclosed for the purpose of computing total debt. Thus, the applicant has clearly suppressed information regarding the documents for various transactions held between the applicant and the respondent. That, the applicant has not provided all the details of the properties mortgaged or the charge created upon them.

7. **SIDBI** has also submitted that properties of the applicant company have been mortgaged as collateral for loans granted by State Bank of India to Neesa Infrastructure Ltd and by Rajasthan Consortium Lenders for loans granted to Neesa Leisure Ltd. which are neither mentioned nor have they been made parties in the application. That, property of the applicant at Changodhar at Plot No. 279/P and Plot No. 278 (part of the property) and 1282 (part of the property) of which the respondent bank has first charge and second charge created in favour of Central Bank of India, NOC documents etc. are not enclosed with the information and annexures in the instant application.

8. **SIDBI** has also submitted that the applicant has not provided substantial information with respect to the

properties mortgaged, securities charged and collateral given for borrowings from the respondents. That, despite requests/reminder letters, notices and recall notice, the applicant did not repay the outstanding dues. Therefore, the respondent bank filed recovery proceedings before the Debts Recovery Tribunal, Ahmedabad and if such proceedings are stayed, recovery proceedings under DRT would not have any essence, if the corporate debtors like the present one seeks for voluntary insolvency as envisaged under the Code.

9. **SIDBI** has also submitted that since the last annual general meeting was conducted in the year 2013 and the last balance sheet was filed in the year 2013. That, as per the provisions of law, Directors of the applicant are disqualified and are not eligible to conduct any meeting. Therefore, the application is filed to avoid the repercussions of non-compliance inter alia with the Companies Act, 2013 and take shelter under the moratorium of the Code.

10. **SIDBI** has also submitted that the applicant filed the insolvency application based upon the Special Power of Attorney signed in extra ordinary general meeting, wherein, one Mr. Sanjay Gupta, one of the promoters of the applicant was authorised for doing acts as defined in the said power of attorney, however, the directors are not eligible to conduct any meeting to enforce any right under the code. Hence the very power to file case/proceedings is bad.

11. **SIDBI** has also submitted that when the authorisation itself is improper, bad in law, arbitrary and illegal, it is to be construed that the present application filed is without authorisation and hence the present application deserves to be dismissed forthwith.

12. **Central Bank of India (CBI)** has also filed objection against the application filed under Section 10 of the I & B Code by the applicant denying the averments made in the application. It is submitted by the bank that the application filed is incomplete and filed with mala fide intention only with a purpose to avoid the responsibility and liability inter alia under the Companies Act, 2013.

13. **Central Bank of India (CBI)** has further submitted that the applicant had applied for overdraft facility with the bank and having considered the securities and guarantees offered, the bank had sanctioned overdraft facility of Rs. 85.00 lacs by sanction letter dated 07.04.2014 and pursuant to that the applicant had executed various security documents on 07.04.2014 which the applicant cannot deny. Thereafter, the applicant had applied for credit facilities vide application dated 24.06.2011 and having considered the securities and guarantees offered, the bank had sanctioned cash credit/overdraft facility of Rs. 10.00 crores by sanction letter dated 02.07.2011. Thereafter, the applicant had also acknowledged the debts and accordingly executed its balance confirmation on 30.03.2014, 30.06.2014 and revival letter dated 24.09.2014.

14. **Central Bank of India (CBI)** has further submitted that the applicant had executed various loan documents and created securities by way of hypothecation and mortgage for securing the aforesaid credit facilities and besides the personal guarantees and corporate guarantees of the promoter-directors and its group companies respectively.

15. **Central Bank of India (CBI)** has further submitted that the applicant company was classified as non-performing asset (NPA) as on 28.09.2014 and, subsequently, the bank initiated the recovery proceedings by way of filing Original

Application before Debts Recovery Tribunal-I, Ahmedabad under the RDDB Act, 1993. That, the applicant has deliberately not enclosed the copies of various documents executed in favour of the bank.

16. **Central Bank of India (CBI)** has further submitted that the instant insolvency application filed under section 10 of the IB Code, 2016 is with malice intention to stall the recovery proceedings pending before DRT-I, Ahmedabad, as after the admission of the present petition, the moratorium under section 14 of the Code shall be commenced and thus all the proceedings shall be stayed automatically.

17. **Central Bank of India (CBI)** has also submitted that the applicant filed the insolvency application based upon the Special Power of Attorney signed in extra ordinary general meeting, wherein, one Mr. Sanjay Gupta, one of the promoters of the applicant was authorised for doing acts as defined in the said power of attorney, however, the directors are not eligible to conduct any meeting to enforce any right under the code and hence the applicant is required to put to strict proof thereof.

18. **ICICI Bank Ltd.** also filed objections cum affidavit in reply inter alia reiterating the objections on the same lines raised by SIDBI and CBI and saying that the applicant has filed the instant petition to buy moratorium and to stall the legal proceedings already initiated and thereby defraud its creditors and to avoid the liability bestowed upon them.

19. **M/s. Paisalo Digital Ltd.** (formerly known as S.E. Investments Ltd.), a non-banking financial company incorporated under the Companies Act, 1956 having registered office at New Delhi filed Interlocutory Application

No. 76 of 2020 stating inter alia that somewhere in August, 2010 the corporate debtor availed loan facilities from the objector company as per agreed terms of the loan agreement. That, the corporate debtor defaulted in the repayment of loans and the objector company invoked the arbitration clause contained in the loan agreements and initiated arbitration proceedings against the corporate debtor and its guarantors. The Ld. Sole Arbitrator passed arbitral award dated 04.12.2015 in favour of the objector company for an amount of Rs. 4,71,65,336/- along with interest @ 18% per annum from 05.12.2015 till realisation and cost of Rs. 2,20,000/-. That, the corporate debtor challenged the aforesaid award dated 04.12.2015 by filing petition u/s 34 of Arbitration and Conciliation Act, 1996 before Hon'ble City Civil Court, Ahmedabad and the said petition was dismissed vide order dated 25.09.2019 due to lack of jurisdiction. That, the corporate debtor again challenged the aforesaid award dated 04.12.2015 by filing petition u/s 34 of the Arbitration and Conciliation Act, 1996 before Hon'ble Delhi High Court and the said petition was also dismissed by Hon'ble Court vide order dated 16.08.2018.

20. **M/s. Paisalo Digital Ltd.** has further submitted that having come to know that the corporate debtor has filed application u/s 10 of IBC before this Adjudicating Authority, the objector company has prayed not to admit the present application until the corporate debtor pay the outstanding dues of the objector company as per aforesaid award dated 04.12.2015.

<u>Finding:</u>

21. Gone through the application as well as the record and the annexures filed therein. Further, on perusal of the record it is found that no Board Resolution is ever passed by the

company authorising Mr. Sanjay Gupta to file the instant application. Further, on perusal of the record it appears that the applicant company has held one Extra-Ordinary General Meeting (EGM) flouting all the norms of the Companies Act, 2013, thereby the very power given in favour of Mr. Sanjay Gupta is bad in the eye of law and as such the application is not maintainable for want of proper authorisation.

22. As per section 10 of the Code, the applicant has to be corporate applicant as provided under Section 10 (1) whereas the Corporate Applicant as per section 5 (5) defines as follows:

> *(5) "Corporate Applicant" means –*
>
> *(a) Corporate debtor; or*
>
> *(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or*
>
> *(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or*
>
> *(d) a person who has the control and supervision over the financial affairs of the corporate debtor*

23. Admittedly, as also matter of record that, the applicant is not a corporate applicant as per form 6, Clause 3. The applicant is not a director and is disqualified under Section 168 of the Companies Act, 2013 wherein the name and address of the Director is shown as **"All directors on the Board has already resigned and vacated office pursuant to resignation u/s 168 of the Companies Act, 2013 and a situation of deadlock has emerged.** However, clause 3 of form 6 further discloses that the list of promoters along with their address attached.

24. As per the list of promoters/shareholding pattern as on 30.06.2018 (page 11), Mr. Sanjay Gupta holds 23,15,714 shares of the company. Further, the applicant has not filed/disclosed the details of the unsecured financial creditors. However, there are as many as 427 operational debtors as per the list annexed to the application at page No. 24-32. However, while going through the records it is found that there is no whisper about the outstanding amount. It is also pertinent to note that if the company is really insolvent, applicant could have opted for winding up/dissolution application. Further, affairs of the company is managed by the Directors and not by the promoters. Since the Directors are already disqualified, the applicant has no authority to file the instant application.

25. On perusal of the record it is found that there is violation of Section 10 (3) (c). In the instant matter there is no special resolution passed for filing the application. For the sake of convenience Section 10 (3) (c) is reproduced herein below: -

Section 10 (3) (c)

the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

26. It is also a matter of record that objector (s)/banks have already initiated proceedings under RDDB Act, 1993 and SARFAESSI Act, 2002 and to install the said proceedings, the applicant has filed the instant application, so as to initiate moratorium and to get stayed the proceedings initiated by the banks. Under such circumstances, the instant application has no merits and, therefore, requires to be dismissed.

27. In the result, Company Petition CP (IB) No. 423 of 2018 stand dismissed as not maintainable.

28. IA No. 76 of 2020 in CP (IB) No. 423 of 2018 is allowed.

29. No order as to cost.

Chockalingam Thiruvavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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