BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-102(ND)/2022

IN THE MATTER OF

M/s. Shimping Technology Pvt. Ltd. ...Financial Creditor

Vs.

M/s Foxdom Technology Pvt Ltd. ...Corporate Debtor

Coram:

Shri Atul Chaturvedi
Hon'ble Member (Technical)

Shri Bachu VenkatBalaram Das
Hon'ble Member (Judicial)

Pronounced on: 03.02.2023

Appearances:
Financial Creditor : Mr. M.S. Vishnu Sankar, Advocate
For the Corporate Debtor :

O R D E R

Per:Bachu Venkat Balaram Das, Member (Judicial)

1. This application has been filed by M/s Shimping Technology Private Limited (Formely Bitzium Technology Private Limited), the Financial Creditor under Section 7 of IBC seeking initiation of Insolvency Resolution Process against M/s. Foxdom Technology Private Limited (Formerly Fenexa Technology Private Limited), the Corporate Debtor.
2. On 23.02.2022 this Tribunal issued notice to the Respondent. Mr. Shriram Parakkar, Advocate accepted notice on behalf of the Corporate Debtor and was granted time to file Vakalatnama and reply affidavit.

Thereafter, the matter was adjourned on the request made by the Corporate Debtor to enable the parties to settle the dispute.

3. On 20.09.2022 no one appeared on behalf of both the parties. Since the parties did not come forward with any settlement proposal nor did the Respondent/Corporate Debtor file the reply affidavit, the right to file reply was closed and the matter was directed to be listed for final arguments. On 21.11.2022, the Financial Creditor was granted time to file copies of the certificate of incorporation issued by RoC with respect to change of names of the parties.
4. We have heard Mr. Sankar, Ld. Counsel for the Financial Creditor. Mr. Sankar submits that in compliance with the order dated 21.11.2022, the certificate of incorporation has been filed, which is taken on record. Since, the Corporate Debtor has already been set ***Ex-parte,*** *w*e have heard the arguments of Mr. Sankar, Ld. Counsel appearing for the Financial Creditor on the merits of the case. Mr. Sankar submitted that the parties had entered into a loan agreement dated 18.05.2021, wherein an amount of Rs. 4,31,40,000/- paid earlier in form of advances to the Corporate Debtor, the said advances were converted into a loan agreement of equal amount payable in 240 days from the signing of the agreement dated 18.05.2021 with an interest at the rate of 7% per annum and upon failure to pay amount within 7 days following the interest payment date a penalty was to be paid. The Financial Creditor wrote a letter to the Corporate Debtor on 10.01.2022 requesting therein to keep sufficient balance in the Vijaya Bank account so as to enable the Financial Creditor to draw PDC No. 060699 dated 12.01.2022 for the principal amount plus interest amounting to Rs. 4,51,25,622/- in line with the terms of the loan agreement dated 18.05.2021. On the same day i.e., 10.01.2022, the Corporate Debtor replied to the Financial Creditor and requested for time till 20.01.2022 and also undertook to fulfill the terms of the Loan Agreement. The Corporate Debtor further requested

that the PDC No. 060699 may not be deposited due to paucity of funds in their account. On 21.01.2022, after the extended period was over, the Corporate Debtor again prayed for time to make the payment and sought time till 07.02.2022. However, the Financial Creditor did not receive any payment from the Corporate Debtor. Hence this petition.

5. Mr. Sankar, Ld. Counsel appearing for the Financial Creditor, submitted that the letter dated 21.01.2022 written by the Corporate Debtor to the Financial Creditor seeking further time to deposit the amount in question shows that the Corporate Debtor has admitted his liability. The Financial Creditor has also filed a Bank Statement showing therein the payment details. Mr. Sankar, therefore prayed that the present application should be admitted and CIRP be initiated against the Corporate Debtor.

6. Having heard the submissions by Mr. Sankar and perused the records, we are satisfied that the Corporate Debtor has admitted his liability in its letter dated 10.01.2022 and 21.01.2022. We have also perused the Bank Statement filed by the Financial Creditor which shows that the amount has been disbursed to the Corporate Debtor. Therefore we have no hesitation to admit the present petition and direct initiation of Corporate Insolvency Proceedings against the Corporate Debtor.

7. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Shailendra Singh having IBBI Registration No. IBBI/IPA-002/IP-N00471/2017-2018/11372 120A-120IC as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor’s management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

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's 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 (54 of 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.

e. The explanation below section - 14 (1) also stipulates "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”.

9. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

10. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

11. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks’ time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

12. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the

MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

13 . The order is pronounced by this Adjudicating Authority in Virtual Hearing.

14 . The IB-102/ND/2022 is hereby **admitted.**

Sd/- Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)