



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 34/2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

NuFuture Digital (India) Limited

Applicant/
... Original Corporate Debtor

In the matter of

CP (IB) No.1147/MB/C-IV/2022

Axis Trustee Services Limited

... Financial Creditor

Vs.

NuFuture Digital (India) Limited

... Corporate Debtor

Order Pronounced on: **30.03.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant : Mr. Ritin Rai, Ld. Sr. Counsel a/w
Mr. Shyam Kapadia, Advocates.

For the Respondent : Mr. Ankit Lohia, Advocate.

ORDER

Per; Kishore Vemulapalli, Member (Judicial)

1. This is an Application filed by the Corporate Debtor seeking dismissal of Company Petition No. 1147/2022 (stated as No. 1260/2022 in the Application) on the ground that the default was committed during the period specified in Section 10A of the



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Code, which bars filing of any Application u/s 7 of the Code for any such default.

2. The Applicant states that it is the case of Financial Creditor itself that the Financial Creditor has issued Notice dated 22.10.2020, seeking full repayment of all dues pursuant to 'event of default'.
3. The Corporate Debtor has pleaded in its Application at Para 5 that "*the Financial Creditor upon seeking full repayment for the event of default as stated by them in the notice dated 22nd October 2020 and in effect invoking the mandatory prepayment clause, cannot now take a stand that the payments became due and payable in March 2021. This clearly is a mischief played on the part of the Financial Creditor to circumvent Section 10A of the Code*". It has further submitted that notice dated 22nd October 2020 states that even the default has occurred as on that date and any other date of default would mean shifting the date of default which is not permissible.
4. We note that the Financial Creditor had subscribed to 2500 Non-Convertible Debenture (NCD) having total value of Rs. 250.00 crore on 28.09.2018 as stated in Part-IV of the Application u/s 7 of the Code. A Debenture Trust Cum Mortgage Deed dated 06.12.2018 (DTD) was executed between the Financial Creditor and the Corporate Debtor in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and the SEBI (Debenture Trustees) Regulations 1993. The Financial Creditor issued notice dated 22.10.2020 notifying breaches under the transaction documents resulting in occurrence of default under Clause 13 of DTD. The said notice stated that consequent upon rating of debenture falling below



BBB+ triggering mandatory repayment option, the Financial Creditor reserves its right to accelerate the redemption of debenture. The said notice also referred to assurance from Mr. Akhilesh Kalra representative of the Corporate Debtor vide email dated 31.08.2020 that all the amount due and payable by the Company shall be paid off upon completion of ongoing transaction between Future Group and Reliance Retail Ventures Limited ("RRVL") and called upon the Corporate Debtor to confirm full repayment of all dues pertaining to the above debentures from the proceeds of such transaction.

5. Clause 12.1 of the DTD reads as *"12.1 In the event that the rating of the Debentures, at any point in time until the Final Settlement Date, falls to or below BBB+", each of the Debentures Holders shall be entitled to ("Mandatory Prepayment Option") require the Company, provision of a notice in writing ("Mandatory Prepayment Notice"), to repay, in full or in part, the principal amounts outstanding in respect of the Debentures held by them, together with Coupon accrued thereon and all such monies which shall be due and payable to such Debenture Holders".*
6. Our attention was drawn to letter dated 13.04.2020 written by Corporate Debtor to Franklin Templeton Asset Management (India) Private Limited, the holder of Debentures, whereby a request was made to consider the Corporate Debtor's temporary cashflow mismatch situation and permit a moratorium of 5 months for the repayment of principal amounts and interest payment due. Vide letter dated 27.04.2020, the Applicant Debenture Trustee granted a 3-month moratorium for all payment obligations due between 01st April 2020 to 30th June



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2020 in relation to the principal repayment and interest obligations on the NCDs issued by Nufuture Digital (India) Limited subscribed by Franklin Templeton Asset Management (India) Private Limited in terms of DTD. As per Financial Creditor, this had the effect of shifting all monthly repayment obligations by period of 3 months.

7. On perusal of notice dated 22.10.2020, we find that the Applicant Debenture Trustee had called upon to make full repayment of all dues pertaining to the Debentures from the proceeds of the transaction between Corporate Debtor and RRVL or any other investor. However, none of the parties before us has claimed that this transaction has materialized or any payment in pursuance of this transaction has been received by the Corporate Debtor. Accordingly, we do not agree with the contention of the Applicant Corporate Debtor that this had the effect of recall of total dues payable under Debenture in terms of Clause 12.1 of DTD because that clause contemplate repayment of complete outstanding on account of Debentures, whereas the contents of Para 15 of said notice suggests that the effect of notice dated 22.10.2020 is to seek payment of amounts which are outstanding as on that date.
8. The Financial Creditor has submitted that the Corporate Debtor failed to pay the amounts which had fallen due after the period prescribed under Section 10A of the Code and the application filed u/s 7 filed by it pertains to defaults occurring after the said date. From perusal of the application u/s 7 before us, we find this submission is correct. We feel that Section 10A of the Code bars filing of Application u/s 7 of the Code only for defaults occurring during the period stated therein and it has



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no bearing on the defaults occurring subsequent to this period even if the transaction is same.

9. In view of this, we do not find any merit in the contention of the Applicant Corporate Debtor and hold that 1st default after 10A period occurred on 31.03.2021, when the Corporate Debtor failed to pay a sum of Rs.4,16,66,875-/ falling due on that date.
10. Accordingly, I.A.-34/2023 is **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)