

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 111/MB/2023**

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*

**mCarbon Tech Innovation Private Limited**

Having registered office at: - 1/2424, First Floor, Durga Mandir Marg, Shahdara, New Delhi- 110032.

**..... Applicant/ Financial Creditor**

**Versus**

**Pointific Digital Private Limited**

Having registered office at: - 601,06<sup>th</sup> Floor, Dilkap Chambers, Off. Veera Desai Road, Andheri West, Mumbai-400053.

**..... Corporate Debtor**

**Order Delivered on :- 10.11.2023**

*Coram:*

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances (Hearing in Physical Mode):*

For the Financial Creditor: Adv. Subir Kumar a/w Adv. Disha Shah.

For the Corporate Debtor: Adv. Dhruv Joshi, Adv. Rohit, Adv. Nishant Gautam and Adv. Vardhaman Kaushik.

**ORDER**

*Per: - Coram.*

1. This Company petition is filed by **mCarbon Tech Innovation Private Limited** (hereinafter referred to as "Financial Creditor") praying for initiation of Corporate Insolvency Resolution Process (CIRP) against **Pointific Digital Private Limited**. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a **claim** as on 30<sup>th</sup> November, 2022 of **INR 4,87,88,499/-** (Rupees Four Crores, Eighty-Seven Lakhs, Eighty-Eight Thousand, Four Hundred and Ninety-Nine Only) in respect of which the default has been committed by the Corporate Debtor.

**Facts of the Case as stated by the Financial Creditor in the Application u/s 7 are briefly stated as follows:**

2. The present application is being filed by the Financial Creditor u/s 7 of the Code against the Corporate Debtor on account of the default

committed by the Corporate Debtor under the Inter-Corporate Loan Agreements dated 17.03.2020, 18.03.2020, 16.10.2020 and 25.04.2022. The relevant portion of the terms of aforesaid agreements have defined the “Material Adverse Effect” as under: *“Material Adverse Effect” means the effect or consequence of any event or circumstance, which is or is likely to be: (a.) adverse to the ability of the Borrower or any person, to perform or comply with any of their respective obligations under this Agreement; or (d.) any circumstances, events, occurrence, condition, change, development which is or may, in the opinion of the lender materially impaired, or could materially impair the Borrower’s ability to perform under this Agreement.*

3. In February, 2020 Mr. Mukesh Bajpai, the then 100% shareholder of the Corporate Debtor, approached one of the Directors of the Applicant named Mr. Amit Kumar Dey in his capacity as a director of the company named M/s. Device Book Online Services Ltd., seeking investment in the Corporate Debtor. Mr. Mukesh Bajpai assured Mr. Amit Kumar Dey that he would utilise the investment and facilitate growth of the Corporate Debtor. Upon the assurance and promises made by Mr. Mukesh Bajpai, the company named M/s. Device Book Online Services Ltd agreed to invest in the Corporate Debtor. Consequently, a share purchase agreement dated 17.03.2020 was executed between the Corporate Debtor and Device Book Online Services Ltd.
4. Contemporaneous with investments, Mr. Mukesh Bajpai requested Mr. Amit Kumar Dey for a loan from the Financial Creditor in which he had substantial holdings, for the purpose of clearing the existing dues of the Corporate Debtor which inter-alia includes the salaries of

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employees and payments to publishers. Consequently, the Loan Agreement dated 17.03.2020 was executed between the Corporate Debtor and the Financial Creditor whereby a Loan of Rupees Two Crores (INR 2,00,00,000/-) was granted. Mr. Bajpai had assured and guaranteed that he will bring the Corporate Debtor out of distress and as the Corporate Debtor grows, the loan would be repaid. Accordingly, a Deed of Guarantee dated 17.03.2020 was executed by him in favour of the Applicant. The Loan Agreement dated 17.03.2020 was subsequently revised vide Inter-Corporate Loan Agreements dated 01.06.2020, 20.10.2020 and 25.04.2022 for the purpose of sustaining the Corporate Debtor and the loan facility was enhanced to INR 5,50,00,000/- (Rupees Five Crores and Fifty Lakhs Only).

The Loan was secured by:

A) First ranking charge over the following assets of the Corporate Debtor:

<b><u>Sr. No.</u></b>	<b><u>Nature of Assets</u></b>	<b><u>Amount (INR)</u></b>
1.	Sundry Debtors	95,21,265/-
2.	TDS Receivables AY 2019-20	25,21,127/-
3.	Security Deposit with Gurgaon Landlord	3,82,454/-
4.	Bank Balance with HDFC Bank A/c No. 50200014926233	24,36,960/-
	<b>TOTAL</b>	1,48,61,806/-

B) A pledge on balance 51% shares which were then held by Mr. Mukesh Bajpai. Date of Creation: 17.03.2020.

5. Thereafter, Mr. Mukesh Bajpai abruptly resigned via e-mail on 09.08.2021 in utter disregard of the assurances and promises made by him while availing the loan from the Financial Creditor and seeking investments from DeviceBook Online Services Ltd. Mr. Amit Kumar Dey persistently tried to persuade Mr. Mukesh Bajpai to abide by his obligations under the aforesaid agreements as also the Deed of Guarantee executed by him in favour of the Applicant. However, Mr. Mukesh Bajpai refused to keep his contractual covenants and failed to co-operate or offer any assistance to the Financial Creditor.
6. On 06.08.2022, Mr. Mukesh Bajpai filed Form DIR-11 before MCA, thereby resigning from the post of director of the Corporate Debtor. The actions of Mr. Mukesh Bajpai had made the Financial Creditor believe that the Corporate Debtor would never repay the loan. The aforesaid state of affairs falls within the meaning and definition of “Materially Adverse Effect” and constitute as an event of default under the aforesaid agreements. Accordingly, in respect of the default committed by the Corporate Debtor, the Financial Creditor sent a Demand Notice dated 02.12.2022 calling upon the Corporate Debtor and Mr. Mukesh Bajpai to pay the whole of the outstanding amount of INR 4,85,38,032/- payable to the Financial Creditor as on 11.11.2022.
7. Despite the service of Demand Notice dated 02.12.2022, the Corporate Debtor has failed to repay the loan. Hence, the Financial Creditor has filed this Petition.

**Reply on Behalf of the Corporate Debtor (in brief):**

8. The Corporate Debtor is a company incorporated on 28.06.2013 under the Companies Act and is involved, inter-alia, in the business of Digital Advertising, Telecom/VAS, OTT, D2C products and services.
  
9. The Corporate Debtor through its Director Mr. Mukesh Bajpai had approached a company named Device Book Online Services Pvt Ltd seeking investments. The aforementioned Company agreed to invest and a Share Purchase Agreement dated 17.03.2020 was executed with the Corporate Debtor. In order to clear the outstanding payments such as salaries, dues of the publishers and the statutory dues, on behalf of the Corporate Debtor, Mr. Mukesh Bajpai had approached the subsidiary of Device Book Online Services Pvt Ltd i.e. the Applicant/Financial Creditor, seeking financial assistance. The Financial Creditor agreed to lend a loan of Rupees Two Crores (INR 2,00,00,000/-) to the Corporate Debtor and consequently, an Inter-Corporate Loan Agreement dated 17.03.2020 was executed between the parties herein. Simultaneously, a Deed of Personal Guarantee and Indemnity dated 17.03.2020 was also executed by Mr. Mukesh Bajpai, the then director of the Corporate Debtor, in favour of the Financial Creditor. Therefore, the Corporate Debtor submits that in view of the personal guarantee and indemnity, the outstanding dues of the Financial Creditor ought to be recovered from Mr. Mukesh Bajpai.
  
10. The Corporate Debtor submits in its reply that the resignation of Mr. Mukesh Bajpai was never accepted by it and as such a complaint in this behalf was registered on 18.08.2022 by one of the directors of the Corporate Debtor. The Corporate Debtor states that since the

resignation of Mr. Bajpai was illegal, the loan agreements are still active and as such, there is no occurrence of the event of default in order to trigger the CIRP. The defence of the Corporate Debtor that the resignation of Mr. Mukesh Bajpai is non-est is substantiated by the fact that the official records of the RoC still show him as the Director of the Corporate Debtor. The resignation of the above-named director is nothing but an attempt to evade his liability. The Corporate Debtor argues that even if the claim of Mr. Mukesh Bajpai as to his resignation is considered, yet his resignation does not absolve him of his liabilities and obligations arising out of the aforesaid agreements.

11. The Corporate Debtor was finding it very difficult to financially sustain itself and hence, via the subsequent loan agreements dated 01.06.2020, 20.10.2020 and 25.04.2022, the loans advanced were collectively enhanced to Rs. 5.50 crores. The Corporate Debtor received a demand notice dated 02.12.2022 seeking the repayment of whole outstanding of INR 4,85,38,032/- upon the alleged occurrence of default as per the loan agreement dated 17.03.2020 i.e. "Materially Adverse Effect". However, no such default occurred as it is submitted that exiting of a director from the company (i.e. Corporate Debtor) does not constitute "Materially Adverse Effect" under the Inter-Corporate Loan Agreement dated 17.03.2020. Hence, the aforesaid demand notice, as also this Petition, is devoid of any merits. Resultantly, the above-captioned petition should be dismissed.

### FINDINGS

12. We have heard the counsel for the parties and gone through the records.

13. During the course of argument, the counsel for the Financial Creditor has argued that in this case the factum of existence of financial debt and its default committed by the Corporate Debtor has been proved on record. The Counsel for the Financial Creditor has further contended that in the reply filed by the Corporate Debtor, the existence of the debt has been admitted. The counsel for the Petitioner has further referred to annexure A-3 annexed with the Petition to prove the disbursement of the loan amount. The counsel for the Financial Creditor further referred to Inter Corporate Loan Agreement dated 17.03.2020 on the basis of which the loan was advanced to the Corporate Debtor. According to the counsel for the Petitioner, the Corporate Debtor failed to repay the outstanding amount despite having received the Demand Notice dated 02.12.2022. The counsel for the Petitioner further urged that the petition be admitted.
14. On the other hand, the counsel for the Corporate Debtor has argued that the Petitioner has failed to establish the existence of date and default and further that it has also not been established as to how and when the default, if any, took place and further that the Demand Notice was also issued without any basis and therefore, the petition is liable to be dismissed.
15. We have weighed the contention raised by the counsel for the parties and also gone through the records.
16. So far as the factum of existence of the financial debt is concerned, it has been candidly admitted by the Corporate Debtor in the reply itself that a loan of Rs. 2 Crore was advanced on the basis of Inter Corporate Loan Agreement dated 17.03.2020. It has also been admitted that at

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the time of the availment of the loan, Mr. Mukesh Bajpai, the then director of the Corporate Debtor also executed personal guarantee and indemnity dated 17.03.2020 in favour of the Financial Creditor.

17. The only objection raised on behalf of the Corporate Debtor is that merely because Mukesh Bajpai resigned from the directorship of the Corporate Debtor through e-mail dated 09.08.2021 was not sufficient for the Financial Creditor to treat it as an event of default. It has also been pointed out by the Corporate Debtor that the resignation of the Mukesh Bajpai was not accepted and he continues to be reflected as director of the Corporate Debtor in the official records of the Registrar of Companies. It has also been claimed on behalf of the Corporate Debtor that the 'material adverse effect' clause in the loan agreement has been wrongly invoked by the Financial Creditor.
18. Having thoughtfully considered the above objection raised on behalf of the Corporate Debtor, we find the same to be meritless. Clause-D of the agreement dated 17.03.2020 clearly states that if in the opinion of the lender, there occurs any change in the general nature or scope of the business, operations, management or ownership of the borrower, the same would be treated as material adverse effect. The default clause in the agreement clearly states that any change in the management or ownership of the buyer would be treated as event of default giving cause of action to the Financial Creditor to file the present petition. In view of the terms and conditions of the loan agreement dated 17.03.2020, it is evident that the Financial Creditor was well within its right to issue the demand notice dated 02.12.2022 wherein it was specifically highlighted that a materially adverse event including change in management would be an event of default. It is not disputed by the

Corporate Debtor that Mukesh Bajpai resigned from the directorship of the Corporate Debtor. Thus, the demand notice was rightly issued by the Financial Creditor as per terms and condition by the loan agreement. Therefore, the defence raised by the Corporate Debtor is not at all tenable.

19. No other points have been raised on behalf of the Corporate Debtor. Even otherwise the factum of existence of financial debt and its default stand proved on record. It has also been established that the petition is within time.
20. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

**ORDER**

- (a) The petition bearing **CP(IB)-111/MB/2023** filed by M/s. **mCarbon Tech Innovation Private Limited**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. **Pointific Digital Private Limited** [CIN: U22222MH2013PTC244907], the Corporate Debtor, **is hereby admitted**.
- (b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the

resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Kamal Agarwal**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P00868/2017-2018/11466**, (email: [advocate.kamal.aggl@gmail.com](mailto:advocate.kamal.aggl@gmail.com), Mob.: 9811138823), **is hereby appointed as Interim Resolution Professional** to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of ₹ **5,00,000/-** (Rupees five lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon

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communication of this Order.

- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**