IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB)-297(ND)/2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

In the matter of:

M/s. Plus Corporate Ventures Private Limited

... Applicant/ Operational Creditor

Versus

M/s. Transnational Growth Fund Limited

... Respondent/Corporate Debtor

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

SH. L.N. GUPTA, HON'BLE MEMBER (T)

Order Delivered on: 17.08.2022

ORDER

PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

The instant petition is filed by M/s. Plus Corporate Ventures Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') having CIN: U70101DL1999PTC101557 registered office at L-7, Menz, Floor Green Park Extension Delhi – 110016 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and

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Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Transnational Growth Fund Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').

2. The Respondent Company M/s. Transnational Growth Fund Limited having CIN:U65999DL1986PLC024089 incorporated under the provisions of the provisions of the erstwhile Companies Act, 1956 having its registered office situated at R-815, New Rajinder Nagar, New Delhi -110060. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Briefly stated, the facts of the case leading to filing of this petition, as averred by the petitioner are as follows:-

   a) The applicant submits that the applicant and corporate debtor had entered into a 'Sale Agreement' dated 27.08.2020 whereby the applicant had sold Preference Shares of M/s. Matrix Dotcom Infonet Private Limited at the rate of INR. 225/- per share amounting to INR.3,37,50,000/- (Rupees Three Crore Thirty-Seven Lakh Fifty Thousand), to the corporate debtor for which the invoice was raised on 31.08.2020.
   b) The applicant submits that pursuant to the Sale Agreement, the applicant had received part payment of INR 2,00,00,000 /- (Rupees Two Crore Only) on the below dates:-

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Date of Credit	Amount of Credit (Rs.)
16.09.2020	50,00,000/-
16.09.2020	50,00,000/-
19.09.2020	75,00,000/-
22.09.2020	20,00,000/-
24.09.2020	5,00,000/-

c) The applicant further submits that the remaining outstanding amount of INR 1,37,50,000/- (Rupees One Crore Thirty-Seven Lakh and Fifty-Thousand Only), being the debt remained unpaid by the corporate debtor.

d) The applicant submits that the applicant had sent regular reminders for the payment of the due amount but no payment had been made by the corporate debtor.

e) The applicant submits that the applicant had issued a Demand Notice dated 26.08.2021 to the corporate debtor in compliance of the provisions of Section 8 of the Code, 2016. The applicant further submits that after the issuance of the demand notice and up to the date of filing this petition, the applicant has neither received the payment nor notice of existence of any dispute.

f) The applicant to prove the existence and default of the operational debt had place reliance on the following documents:-

   i. Sale Agreement dated 27.08.2020, with the corporate debtor for transfer of shares to the corporate debtor.
   ii. Copy of the sale invoice dated 31.08.2020.
   iii. Copy of the demand notice dated 26.08.2021 in Form-4 sent by the applicant to the corporate debtor.

4. The corporate debtor has filed its reply and the averments of the corporate debtor in the reply are stated below:-

a) The corporate debtor submits that the applicant had sold the preference shares of M/s. Matrix Dotcom Infonet Private Limited at the reate of Rs.225/- per preference share aggregating Rs.3,37,50,000/- vide sale agreement dated 27.08.2020.

b) The corporate debtor submits that the corporate debtor had made the payments of Rs. 2 crore in tranches between 16.09.2020 to 24.09.2020. The corporate debtor further submits that the remaining outstanding amount of Rs.1,37,50,000/- is the debt remaining unpaid.

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c) The corporate debtor submits that the corporate debtor have full intentions to repay the remaining outstanding amount to the applicant. The corporate debtor further submits that the due to the bad shape of economy, poor market conditions, constant business losses and financial crises due to Covid, the corporate debtor has failed to make arrangements a for payment to the applicant.

5. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties.

6. On perusal of the **Part-IV of Form V** giving particulars of the operational debt claimed and the supporting documents submitted by the applicant, we observe that applicant had claimed Rs.1,37,50,000/- as outstanding operational debt with **date of default as 30.04.2021**, being the last date of payment as per the sale agreement. We observe that in the **demand notice (Form-4)** dated 26.08.2021 issued by the applicant to the corporate debtor states *that Rs.1,37,50,000/- is outstanding and payable to the Operational Creditor* ***with effect from 31.10.2020 that is in default*** *as reflected in the invoice attached to this notice.*

7. We find that as per the terms and condition of the Sale Agreement dated 27.08.2020 as relied by both the parties, as per clause 2 of the said Sale agreement the schedule for payment agreed between the parties is presented overleaf:-

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2) Second Party agreed to pay the entire amount to First Party as per schedule mentioned hereinafter.

S.No.	Bank Name	DATE	Modeof Payment	Amount
1.	AU Small Finance Bank	16-09-2020	RTGS/NEFT	1,00,00,000/-
2.	AU Small Finance Bank	30-09-2020	RTGS/NEFT	1,00,00,000/-
3.	AU Small Finance Bank	31-10-2020	RTGS/NEFT	20,00,000/-
4.	AU Small Finance Bank	30-11-2020	RTGS/NEFT	20,00,000/-
5.	AU Small Finance Bank	31-12-2020	RTGS/NEFT	20,00,000/-
6.	AU Small Finance Bank	31-01-2021	RTGS/NEFT	20,00,000/-
7.	AU Small Finance Bank	28-02-2021	RTGS/NEFT	20,00,000/-
8.	AU Small Finance Bank	31-03-2021	RTGS/NEFT	20,00,000/-
9.	AU Small Finance Bank	30-04-2021	RTGS/NEFT	17,50,000/-
			TOTAL	3,37,50,000/-

8. Therefore, before embarking upon the detailed discussion on the facts of the case on merits, this Adjudicating Authority upon perusing the record prima facie notices that the above claim is barred by Section 10A of the Code according to the own averments of the applicant mentioned in the above Petition.

9. Consequently, it is relevant to examine the issue of maintainability of the present petition in the light of the provision of section 10A of the Code 2016. The provision of Section 10A is reproduced herein verbatim:-

> *"**10A.** Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified[2] in this behalf:*
> ***Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.***

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Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

10. We cannot agree with the applicant's submission that the date of default is 30.04.3021, being the last date of payment as per the sale agreement. We are of the inferred view that in view of the clause 2 of the said sale agreement dated 27.08.2020, the date of default for default in payment of Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000, Rs.17,50,000/- will be 31.10.2020, 30.11.2020, 31.12.2020, 31.01.2021, 28.02.2021, 31.03.2021, 30.04.2021 respectively.

11. Further going into the legislative intent and the proviso to Section 10A of the code, which stipulates that ***"no application shall ever be filed"*** for the initiation of the CIRP ***"for the said default occurring during the said period***, noticed that the expression **"shall ever be filed"** is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred during 25.03.2020 to 24.03.2021.

12. Accordingly, from the above discussion and relying on the averments made and documents submitted, we inferred that the date of default with respect to Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/-, Rs.20,00,000/- aggregating to Rs.1,00,00,000/- will be 31.10.2020, 30.11.2020, 31.12.2020, 31.01.2021 and 28.02.2021 respectively and are consequently barred by Section 10A of the Code,2016. Since, the instant petition has been filed on 08.04.2022 and the demand notice was issued on 26.08.2021, the pecuniary threshold limit of Rs.1 crore of debt as envisaged under Section 4 of the Code, 2016 will be applicable in the case before us.

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13. Since the principal amount outstanding after considering the bar of Section 10 A of the Code will be around Rs.37,50,000/- which is below the minimum threshold requirement of Rs.1 crore as stipulated under Section 4 of the Code, 2016, the instant petition is not maintainable under Section 4 of the Code, 2016 .

14. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it is barred by the law, in view of insertion of Sec 10A of Code,2016.

15. Resultantly, the present petition (Company Petition No. (IB)-297(ND)/2022) ***stands dismissed***, as to no order to the costs.

Copy be given to the respective parties as per rules.

File be consigned to records.

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(L.N. GUPTA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)