



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

CP (IB) No. 220/KB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

**Pixel Consultancy Private Limited
[CIN: U74140WB2010PTC151288]**

...Financial Creditor

Versus

**Dreamvalley Projects Private Limited
[CIN: U45208WB2009PTC133164]**

...Corporate Debtor

Order reserved on:24/02/2023

Order pronounced on: 18/07/2023

Coram:

Bidisha Banerjee : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Ms. Rashmi Bothra, Advocate

For the Corporate Debtor : Ms. Aparajita Rao, Advocate

Ms. Ankana Basu, Advocate

ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.



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2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by Pixel Consultancy Private Limited, represented by **Shri Hemanta Pakira**, authorized *vide* a Board Resolution dated 02.05.2022¹ seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Dreamvalley Projects Private Limited (“Corporate Debtor”)**.
3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part –IV of the Petition contains details of Financial debt for an amount of Rs.9,62,86,713/- (Rupees Nine Crore Sixty Two Lakh Eighty Six Thousand Seven Hundred and Thirteen only) including interest upto 31.05.2022.
5. The Corporate Debtor was incorporated on 25 February 2009, having CIN: U45208WB2009PTC133164, under the Companies Act, 1956. It’s registered office is at Room No. 803B, Cabin No. A, Shaila Tower, 8th Floor, J1/16, EP Block, Salt Lake, Sector V, Kolkata-700091. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 21 July 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.9,62,86,713/- (Rupees Nine Crore Sixty Two Lakh Eighty Six Thousand Seven Hundred and Thirteen only) including interest up to 31.05.2022.

Submission of learned Counsel appearing for the Financial Creditor

7. The learned Counsel submitted that in or around the last week of February 2020, the Corporate Debtor approached the Financial Creditor

¹ Page 6 of the Petition



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representing that they are into trading shares and sought for Inter Corporate Loan to fund their business. The Corporate Debtor had also provided an Audited Annual Balance Sheet for the Financial Year ending on 31.03.2019. After requisite due diligence, the Financial Creditor agreed to offer the Inter Corporate Deposit to the Corporate Debtor.

8. A loan agreement dated 02.03.2020² was entered into between the parties and it was agreed that the Financial Creditor would grant a loan of upto 10 crores with simple interest @ 9% per annum payable quarterly which shall be repayable on or before 31.03.2021. A Board Resolution dated 28.02.2020 was executed by the Financial Creditor regarding approval for granting loan for Rs.10 crore to the Corporate Debtor. Simultaneously a Board Resolution dated 28.02.2020 was executed by the Corporate Debtor requesting the Financial Creditor for granting a loan up to a maximum of Rs.10 crore.

9. The Learned Counsel further submitted that The Financial Creditor on the request of the Corporate Debtor disbursed an amount of Rs.20 Lakh on 03.03.2020. The Corporate Debtor did not seek for any further disbursement for the next three months. On or around 25th June, 2020, the Corporate Debtor once again approached the Financial Creditor for review of the Loan Agreement in view of the disruption in Covid outbreak. The Financial Creditor in good faith and considering the hardships faced by the Corporate Debtor agreed to revise the Loan Agreement through an Addendum dated 30.06.2020³. It was agreed that the Financial Creditor would continue with the original agreed term of advance of Inter Corporate Loan of a maximum of Rs.10 Crores in phased manner as and when the Corporate Debtor makes a request. By way of the said Addendum, it was agreed that the interest from 03.03.2021 to 30.06.2021 on the said Rs.20,00,000/- (Rupees Twenty Lakhs Only) would be waived off by the

² Annexure-I, Page 104-112 of the Petition

³ Annexure-J, Page 115-116 of the Petition



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Financial Creditor and the loan would continue to bear interest @ 9% per annum from 01.07.2021, but the same shall become due and payable alongwith refund of principal on or before 31.03.2021.

10. Thereafter the Financial Creditor vide a letter dated 15.04.2021⁴ had recalled the loan amount of Rs. 9,65,00,000/- alongwith due interest as on 31.03.2021 and requested to pay the same within 30 days from the notice alongwith interest @ 9%. The Corporate Debtor vide a letter dated 25.04.2021⁵ had acknowledged its dues and sought time to extend the due date for repayment of the loan and interest up to 30.06.2021. The Financial Creditor had again sent a demand notice dated 06.07.2021⁶ to the Corporate Debtor seeking for repayment of the loan excluding an amount of Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lakhs only) which the Corporate Debtor had paid between 24.06.2021 to 29.06.2021 after seeking extension of time for repaying the loan. Therefore the default occurred on 30.06.2021 i.e., the date within which the Corporate Debtor had promised to pay the loan with interest in full.

11. The Financial Creditor has placed the following documents on record which includes:

- a. A copy of the loan agreement dated 2 March 2020 alongwith the relevant Board Resolutions of the Financial Creditor and Corporate Debtor [**Annexure I @Pgs. 104-114 of the Company Petition**]
- b. A copy of Addendum to the loan agreement dated 30 June 2020 [**Annexure J @Pgs. 115-116 of the Company Petition**]
- c. A copy of the demand notice dated 15 April 2021 [**Annexure K @ Pg. 117 of the Company Petition**]

⁴ Annexure-K, Page 117 of the Petition

⁵ Annexure-L, Page 118 of the Petition

⁶ Annexure-M, Page 119 of the Petition



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- d. A copy of letter of extension by the Corporate Debtor dated 25 April 2021[**Annexure L @ Pg. 118 of the Company Petition**]
 - e. A copy of the second demand notice dated 6 July 2021 [**Annexure M @ Pg. 119 of the Company Petition**]
12. The Financial Creditor has proposed the name of **Mr. Neeraj Kejriwal**, registration number IBBI/IPA-001/IP-P00392/2017-2018/10710, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Counsel appearing for the Corporate Debtor

13. The learned Counsel appearing on behalf of the Corporate Debtor submitted that the Corporate Debtor is a solvent company carrying on business in investment and trading since 2010. The Corporate Debtor had approached the Financial Creditor for a credit limit to tide over some temporary deficiency in its business. The credit facility was granted in tranches.
14. The Corporate Debtor faced a severe setback in the Covid period which hampered its business and the Corporate Debtor had duly informed the Financial Creditor time and again and sought for extending the time for repaying the loan. The Corporate Debtor also paid an amount of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lacs only) in good faith during the said period.
15. The learned Counsel submitted that in spite of being well aware of the condition of the Corporate Debtor and that the Corporate Debtor needed time to repay the dues, the Financial Creditor issued a demand notice dated 06.06.2021 and asked for paying the entire amount. The Corporate



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Debtor had always been willing to pay the amount due and sought extension of time to repay the same.

16. The learned Counsel further submitted that the loan agreement dated 02.03.2020 did not contain any repayment terms. The Corporate Debtor states that although the loan agreement provides that the loan was repayable by 31.06.2021, the Financial Creditor had agreed that the time shall be extended if so requested by the Corporate Debtor. The repayment date was revised at the coercion of the Financial Creditor.
17. The Corporate Debtor was in a very difficult situation during the Covid period and is always willing and ready to pay the due amount. The Corporate Debtor has paid an amount of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakhs only) while in the petition it is mentioned that the Corporate Debtor has paid an amount of Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lakhs only). Further, the Corporate Debtor denies that any default has occurred due to failure of payment of interest or principal and the computation of due amount is also not correct.
18. The learned Counsel further submits that the Corporate Debtor has never assured to make complete payment by 30.06.2021 as mentioned in the notice dated 06.07.2021. It further states that the Financial Creditor is trying to mislead this Hon'ble Tribunal and has approached this Hon'ble Tribunal as a recovery tool in order to recover its alleged dues which is not permitted under the Code, therefore the present application shall be dismissed at the outset with costs for misleading this Hon'ble Tribunal.
19. Pursuant to the order dated 22.11.2022, the Corporate Debtor had filed a Supplementary Affidavit consisting of Balance Sheets for the last 3 financial years.



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Analysis and Findings

20. Heard the learned Counsels appearing for the Financial Creditor and the Corporate Debtor and perused the records.
21. The Corporate Debtor had submitted its Audited Financial Statement by way of an affidavit pursuant to the order dated 22.11.2022 which is taken on record. After perusing the records we find that in the instant case there was a debt and the Corporate Debtor had defaulted in repaying the same after getting sufficient time for repayment.
22. The two main elements of a Section 7 petition filed under the Insolvency and Bankruptcy Code, 2016 are debt and default and the same has been established in the instant case. The application is filed within prescribed period of limitation and meets the threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016.
23. Therefore, we find that the present petition made by the Financial Creditor which is complete in all respects and should be *admitted*.
24. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. This requires admission of petition under Section 7 of the Code.⁷
 - b. The application bearing **CP (IB) No. 220/KB/2022** filed by Pixel Consultancy Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Dreamvalley Projects Private Limited, the Corporate Debtor, is *admitted*.

⁷ Innoventive Industries v. ICICI Bank (2017)



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- c. There shall be a moratorium under section 14 of the IBC.
- d. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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 Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f. **Mr. Neeraj Kejriwal**, registration number IBBI/IPA-001/IP-P00392/2017-2018/10710, **email:** nkejriwal.ca@gmail.com, **Mobile No:** 6291470523 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- g. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive



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- steps will follow. There shall be no future opportunities in this regard.
- h. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- i. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- j. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- k. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- l. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means 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.



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25. **CP (IB) No. 220/KB/2022** to come up on **21/08/2023** for filing the periodical report.
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This order is pronounced on the 18th day of July, 2023.

(FA_LRA)