

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (Court-II), CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 284/Chd/Hry/2023**

**Under Section 7 of the Insolvency &  
Bankruptcy Code, 2016 read with rule 4 of  
the Insolvency and Bankruptcy  
(Application to Adjudicating Authority Rules,2016).**

**In the matter of CP (IB) No. 284/Chd/Hry/2023 :**

**NORTHERN ARC CAPITAL LIMITED**

having its Registered office at:  
IIT-M Research Park, Phase-I, 10<sup>th</sup> Floor  
No. 1 Kanagam Village, Taramani,  
Chennai-600113

having its Branch Office at  
The Capital Tower, Office No. 908,  
A Wing, 9<sup>th</sup> Floor, Plot No. C-70,  
Bandra Kurla Complex,  
Bandra(East), Mumbai-400051,

....Applicant-Financial Creditor

Vs.

**UPSCALIO INDIA PRIVATE LIMITED**

having its Registered Office at  
Thinkvalley, Plot No. 37B, 2<sup>nd</sup> and 3<sup>rd</sup> Floor,  
Sector-32, Gurugram Haryana-122001

Also at-  
02-167, Wework 32nd Milestone,  
2<sup>nd</sup> Floor, Galaxy Hotel,  
Sector-15 (Behind 32<sup>nd</sup> Avenue),  
Gurugram, Haryana-122001

...Respondent-Corporate Debtor

**Judgment delivered on: 05.04.2024**

**Coram: HON'BLE DR. PSN PRASAD, MEMBER (JUDICIAL)  
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present:**

For the Applicant-Financial Creditor : Mr. Deepak Viswas, Advocate

For the Respondent-Corporate Debtor : Mr. Biswajeet Dubey, Advocate

**PER: PSN Prasad, MEMBER (JUDICIAL)  
Umesh Kumar Shukla, MEMBER (TECHNICAL)**

**JUDGMENT**

The present application has been filed by **NORTHERN ARC CAPITAL LIMITED.**, (hereinafter referred to as 'Applicant/Financial Creditor'), through its authorized representative, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process ('CIRP') against **UPSCALIO INDIA PRIVATE LIMITED** (hereinafter referred to as 'Respondent/Corporate Debtor'). The application is signed by Sh. Saurabh Pal, with the affidavit verifying the contents of the application, appended thereto. It is submitted in the application that the corporate debtor has defaulted in respect of a sum aggregating to Rs. 16,50,64,541.75/- including interest and other charges payable as on 22.09.2023.

2) Brief facts as stated by the applicant/financial creditor in the application are as below-

A. Financial Creditor is a Non-banking Financial Company registered under the Companies Act, 1956 and is carrying on its business as Non-Banking Financial Company for providing financial assistance to underserved businesses in India in

accordance with rules, regulations and guidelines issued by Reserve Bank of India from time to time and other applicable guidelines.

- B. Corporate debtor is a company registered under the Companies Act 2013 having its registered office at Gurugram, Haryana and therefore, the present application is within the jurisdiction of this tribunal.
- C. The corporate debtor is engaged in the business of investments and also grows and buys e-commerce businesses and helps various brands with multi-marketplace management, digital marketing, branding, logistics, sourcing, finance and business operations, all optimized using advanced analytics.
- D. Corporate debtor approached the financial creditor for seeking a secured term-loan for an amount of Rs. 25 Crores for utilizing it in the normal course of business towards general corporate purposes including working capital requirements. In respect thereof, a facility letter dated 23.12.2021 was issued upon the corporate debtor, terms and conditions of which were at times modified at the request of the corporate debtor. Later, a facility agreement was also executed between the financial creditor and the corporate debtor on 16.02.2022 for availing secured business loan at an applicable interest rate of 14.75% per annum that is the summation of FBLR of 13.90% plus the spread (Hereinafter referred to as Facility Agreement).
- E. As the loan facility was a secured one, certain documents in order to secure the loan facility were also executed by the corporate debtor in favour of financial creditor i.e. corporate guarantee deed, demand promissory note, deed of hypothecation, creation and registration of charge, special power of attorney

authorizing financial creditor to utilize the assets in terms of hypothecation agreement. Thereafter, at the request of the corporate debtor, the financial creditor disbursed through the banking channel an amount of Rs. 25 Crores on 23.02.2022.

- F. The corporate debtor on several occasions failed to maintain the financial discipline in terms of facility letter and facility agreement as mentioned in the table at page 7-8 of the application. In view of the consistent defaults by the corporate debtor, the financial creditor issued a notice bearing reference no. Northern Arc/Upscalio 1/202122 dated 24.03.2023 and notified the corporate debtor of the aforesaid defaults and accordingly re-called the entire loan facility. The notice of re-calling the loan is regarding the repayment of the outstanding loan amount of Rs. 16,51,18,384/- along with applicable interest, default interest and other charges to be due and payable on 25.03.2023.
- G. Simultaneously, the financial creditor issued another notice dated 24.03.2023 and called upon the corporate guarantor (Upscalio PTE Ltd.) to pay the outstanding loan amount in terms of clause 2.2 of the guarantee deed by 31.03.2023. However, no payment has been received from the corporate guarantor as on the date of filing the present application by the financial creditor.
- H. Corporate debtor had agreed to set up an escrow account wherein corporate debtor was required to ensure routing of 100% operational cash flow of identified business units/assets/subsidiaries through the Escrow account, with the Financial Creditor having first and exclusive charge on the same. It was mutually agreed that only after the Corporate Debtor meets the EMI obligations towards the Financial Creditor, proceeds from the Escrow account shall be passed to identified business

units/subsidiaries. In this regard, two separate Escrow Agreements were also executed amongst the Financial Creditor, Escrow Agent (IDFC First Bank Limited), Corporate Debtor and its respective subsidiaries on 28 June,2022 and December 3, 2022 respectively. On account of failure to maintain 100% of operational cash flow, the financial creditor was constrained to issue notice for breach of terms and conditions of the facility letter dated 23.12.2021.

- I. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 16,50,64,541.75/- (Rupees Sixteen Crores Fifty lakhs sixty four thousands five hundred and forty one and seventy five paise only) including interest and other charges payable as per Loan Recall Statement and Statement of Loan Account and date of default is 25.03.2023. Copy of loan recall notice dated 24.03.2023 (Annexure A/3), Copy of notice issued to the guarantor dated 24.03.2023 (Annexure-A/4), Copy of loan recall statement dated 22.09.2023 (Annexure A/5) is also attached with the application.

3) The Respondent through its authorized representative Mr. Gautum Kshatriya e-filed an affidavit dated 21.12.2023, wherein it is stated that the respondent company admits the debt and default of a sum aggregating to Rs. 16,50,64,541.75/- (Rupees Sixteen Crores Fifty lakhs sixty four thousands five hundred and forty one and seventy five paise only) including interest and other charges payable as on 22.09.2023. It is also stated in the affidavit that they have no objection to commencement of the Corporate insolvency resolution process against the corporate debtor.

4) The Respondent filed an additional affidavit in compliance of the directions passed by this tribunal vide order dated 17.01.2024, having diary no. 03201/5 dated 19.01.2024,

wherein it has re-admitted the existence of debt and default of the same and also submitted a copy of the relevant extract of the bank statement showing credit of money from the financial creditor to the corporate debtor (Annexure A of the affidavit) and copy of balance sheet for the financial year 2021-2022 & 2022-2023 (Annexure B and C of the affidavit respectively).

5) We have heard the learned counsel for the Applicant as well as respondent and have also perused the records.

6) The first issue for consideration is "*Whether the present application is filed within the limitation*". It can be seen from the records that the date of default is 25.03.2023. The present application is filed vide Diary No. 03201 dated 02.11.2023. Therefore, the present application is well within the period of limitation of three years.

7) Another issue for consideration is "*whether there is a default in payment of financial debt or not*". It is observed that in the present case the Respondent-corporate debtor has itself admitted the existence of debt and its default in its affidavit dated 21.12.2023 and reiterated in additional affidavit dated 18.01.2024. The existence of debt is further evidenced by a copy of bank statements showing credit of money as submitted by Corporate debtor (Annexure A of additional affidavit). The debt and its default is also evidenced with copy of balance sheet of the corporate debtor for the years 2021-22 and 2022-23 and documents attached with the application such as copy of facility agreement dated 16.02.2022 (Annexure-A/9), copy of deed of hypothecation dated 15.02.2022 (Annexure-A/6), Copy of statement of account and loan overdue statement dated 22.09.2023 (Annexure A/10), Copy of loan application form signed by authorized representative Mr. Gautum Kshatriya (Annexure- A/12), copy of letter regarding sanction

of credit facility dated 23.12.2021(Annexure A/13), copy of demand promissory note cum waiver letter dated 22.02.2022(Annexure A/16).

8) As per the records placed before this Adjudicating Authority, the corporate debtor has admitted that debt of an amount of Rs. 16,50,64,541.75/- (Rupees Sixteen Crores Fifty lakhs sixty four thousands five hundred and forty one and seventy five paise only), which is in default.

9) The present application is complete and applicant has established the existence of debt and its default. It is above the threshold limit. Therefore, the application is admitted in terms of Section 7(5) of the IBC.

10) We have gone through the contents of the application filed in the Form 1. From the records placed before this Adjudicating Authority, it is found that the Authorisation for Assignment (AFA) of the proposed Interim Resolution professional (IRP) Mr Kanti Mohan Rustagi was valid up to 31.01.2024. Therefore, this Adjudicating Authority has ascertained from IBBI website and it is found that his AFA certificate no. AA2/10240/02/290125/203239 is now valid upto 29.01.2025 and the disciplinary status is shown as not applicable. In view of the above, the Adjudicating Authority hereby confirms the appointment of Mr. Kanti Mohan Rustagi having registration no. IBBI/IPA-002/IP-N00097/2017-18/10240 email id- [kanti.rustagi@patanjaliassociates.com](mailto:kanti.rustagi@patanjaliassociates.com) Mobile no. 9871306829 as IRP, with the following directions: -

- i.) The term of appointment of Mr.Kanti Mohan Rustagi shall be in accordance with the provisions of Section 16(5) of the Code subject to his written consent to be filed within 7 days of this order;

- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency

Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
  
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing

and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
  - ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.
- 11) In terms of section 14 of the code, we also order moratorium as below-
- (i) Moratorium under of sub-section (1) of Section 14 of the code for prohibiting 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 any of its 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and

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.

(ii) it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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

(iii) The provisions of sub-section (1) of section 14 shall not apply to such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; a surety in a contract of guarantee to a corporate debtor.

(iv) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(v) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench

approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

12) We direct the Financial Creditor to deposit a sum of ₹4,00,000/- (Rupees four Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13) A copy of the order shall be communicated to both parties. The learned counsel for the applicant shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

14) The application filed under section 7 is admitted accordingly.

Sd/-

**(Umesh Kumar Shukla)**  
**Member (Technical)**

April 05, 2024  
*Vanshika/Reet*

Sd/-

**(PSN Prasad)**  
**Member (Judicial)**