

DIVISION BENCH
COURT - II

M-1

(MENTIONING)

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/276(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ORDER SHEET OF THE HEARING ON 29TH NOVEMBER 2024

IN THE MATTER OF	PIXEL CONSULTANCY PRIVATE LIMITED VS LINKPOINT ADVISORY PRIVATE LIMITED
UNDER SECTION	IBC UNDER SEC 7

Appearance (via video conferencing/physically)

C O R R I G E N D U M O R D E R

1. Upon mentioning the order dated 28th November, 2024, learned Counsel Ms. Rashmi Bothra appearing on behalf of the Financial Creditor states that in the said order, some error has crept in and the same needs to be corrected. On being satisfied, we amend the order as under:
 - a. In the order dated 28th November, 2024, in the heading “**Appearance**”, Ms. Rashmi Bothra, Adv., for the Financial Creditor, Ms. A. Rao, Adv., for the Corporate Debtor and Mr. Pintu Ghosh, Adv., Ms. Sangeeta Kar, Adv. for the Intervenor are present.
 - b. Rest of the order dated 28th November, 2024 will remain unchanged.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

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C.P (IB) NO. 276/KB/2024

***An Application under Section 7 of the Insolvency and Bankruptcy Code,
2016***

IN THE MATTER OF:

M/s. Pixel Consultancy Private Limited

... Financial Creditor

Versus

M/s. Linkpoint Advisory Private Limited

... Corporate Debtor

Date of Pronouncement: 28th November, 2024

Coram:

Bidisha Banerjee, Member (Judicial)

D. Arvind, Member (Technical)

Appearance:

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1. The Court congregated through hybrid mode.**
- 2. The Learned Counsels of both the parties were heard.**

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3. The instant application has been filed by **M/s Pixel Consultancy Private Limited**, hereinafter referred to as the '**Financial Creditor or FC**' under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity, '**I&B Code**' to initiate Corporate Insolvency Resolution Process in respect of **M/s. Linkpoint Advisory Private Limited**, hereinafter referred to as the '**Corporate Debtor or CD**'.

4. Submissions of the Petitioner:

4.1 It is submitted that the FC advanced the first tranche of Rs.1,00,00,000/- on 25.09.2019 which fell due for repayment on 24.03.2021 (which is during the 10A period and not claimed by the FC). Thereafter, the FC disbursed a total of Rs. 6,20,00,000/- in the course of one year more or less in multiple tranches each falling due after 18months of the advance made.

4.2 The CD made an aggregate refund of Rs. 72.50 Lakhs against the first tranche of loan advanced on 25.09.2019 which falls before the due date.

4.3 The dates of disbursement and the date of default of each tranche of the advance made is as per the statement below:

Sl.no	Date of Disbursement	Amount Advanced	Amount Refunded	Principal dues	Last date of Refund	Date of Default
1.	02-01-2020	25,00,000.00	-	25,00,000.00	02-07-2021	02-07-2021

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2.	29-01-2020	1,00,00,000. 00	-	1,00,00,000. 00	29-07- 2021	29-07- 2021
3.	27-02-2020	45,00,000.00	-	45,00,000.00	27-08- 2021	27-08- 2021
4.	06-03-2020	2,70,00,000. 00	-	2,70,00,000. 00	06-09- 2021	06-09- 2021
5.	05-08-2020	80,00,000.00	-	80,00,000.00	05-02- 2022	05-02- 2022
6.	08-10-2020	1,00,00,000. 00	-	1,00,00,000. 00	08-04- 2022	08-04- 2022
	TOTAL	6,20,00,000		6,20,00,000		

Total Interest (Interest calculated@18%) = 1,23, 80,383/-

Total Principal = 6, 20,00,000/-

Total Amount = 7, 43,80, 383/-

4.4 That the respondent failed to make any further payment even after the due dates of all advances made. The respondent kept giving assurances that the money was secured but needed some time. The investments made were not fetching the desired return due to pandemic. Thus default occurred due to failure of the payment of the interest as well as principal by the Respondent.

4.5 Thereafter, the FC preferred one company petition for admission of the CD into CIRP under section 7 of the 'I&B Code' before this Tribunal. The application was filed and registered on 12.08.2022 and was first heard on 26.08.2022. It was dismissed with the observation that the date of default falls within the period as provided of section 10A of the 'I&B Code'.

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4.6 Aggrieved with the order dated 02.01.2024 passed in the aforementioned CP (IB) No. 226/KB/2022, the Financial Creditor preferred an appeal before the National Company Law Appellate Tribunal, Principal Bench, New Delhi, (NCLAT in short) being Company Appeal (AT) (Insolvency) No. 1229 of 2024 on 09.02.2024. On 12.07.2024, the said appeal was disposed with the following directions:

"4. In facts of the present case, we are of the view that ends of justice be served in giving liberty to Appellant to file a fresh application under Section 7 with regard to default which were committed by corporate debtor subsequent to 10A period."

4.7 Emboldened thereby, this application has been filed with revised default amount and date of default excluding the period covered under Section 10A of the 'I&B Code' code as directed by the Hon'ble NCLAT.

5. The Corporate Debtor represented by Ms. Aparajita Rao has not used any reply affidavit to deny, dispute, controvert the statements made in the petition filed by the FC. Hence we proceed to deal with the matter on the basis of available record.

6. Analysis and Findings

6.1 We note that the Hon'ble NCLAT by an order dated 12.07.2024 has given the liberty to the FC to file a fresh application under Section 7 with regard to the default which were committed by the CD subsequent to Section 10A period.

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6.2 At this juncture, we would refer to the decision of Hon'ble NCLAT in *NuFuture Digital (India) Ltd. v. Axis Trustee Services Ltd.* reported in **2023 SCC OnLine NCLAT 242** where the Hon'ble NCLAT held that Section 10A has no application when an action is initiated for default which occurred subsequent to 10A period.

6.3 We find that the after excluding the default which occurred during Section 10A period, the first default took place on **02.07.2021** when the first tranche of loan fell due alongwith interest.

6.4 It is evident from the ledger account which is marked as Annexure F of the CD that the total amount due as on 08.04.2022 alongwith 18% interest sums up to **Rs. 7,43,80,383** which exceeds the threshold limit.

6.5 In the aforesaid backdrop, we allow the petition. It is, accordingly, hereby ordered as follows:-

- (i) The application bearing C.P.(IB) No. 276/KB/2024 filed by m/S. Pixel Consultancy Private Limited (Financial Creditor), under section 7 of the Code for initiating CIRP against M/s. Linkpoint Advisory Private Limited (CIN:U74140WB2010ptc151309),the Corporate Debtor, is **admitted.**
- (ii) There shall be a moratorium under Section 14 of the Code.
- (iii) 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

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passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

- (iv) 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 (hereinafter referred to as the **“Regulations”**).
- (v) Individual notices shall also be served to the IFax Department, PF authorities, GST authorities and any other statutory authorities that would be required intimating for initiation of the CIRP against the CD.
- (vi) **Mr. Vishnu Kumar Tulsyan**, with **IBBI Reg. No. {IBBI/IPA-001/IP-P01428/2019-2020/12525}**, phone no. 9831054180, e-mail: tulsyanvk@gmail.com is hereby appointed as the Interim Resolution Professional (IRP) 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) Regulation, 2016.
- (vii) 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.
- (viii) During the entire CIRP period, the IRP or RP shall be vested with the power for the management of the Corporate Debtor in terms of Section 17 of the Code. The IRP shall be provided by the officers and managers

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of the Corporate Debtor with all the 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.

- (ix) The IRP or RP shall submit to this Adjudicating Authority, periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The Financial Creditor shall initially deposit a sum of ₹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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- (xi) In terms of section 7(7)(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 within two days.
- (xii) The Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor.
- (xiii) 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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- 7.** The **C.P. (IB) No. 276/KB/2024** is **admitted** and **allowed**.

- 8.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

- 9.** List the matter on 13.01.2025 for the Progress Report.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on this, the 28th Day of November, 2024

Oindrila, K. (LRA)