



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 69/7/JPR/2021

(Application under Section 7 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF:

PREPLADDER PRIVATE LIMITED ...Financial Creditor/Applicant

Versus

MOTION EDUCATION PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

M/s Prepladder Private Limited

Having its registered office at: -
SCO-36, Sector-11 Panchkula
Haryana- 134109.

... Financial Creditor/Applicant

VERSUS

M/s Motion Education Private Limited

Having its registered office at: -
394, Rajeev Gandhi Nagar, Kota
Rajasthan- 324005.

... Corporate Debtor/Respondent



For the Applicant : Abhishek Nahta, Adv.
Rishabh Sachdeva, Adv.
For the Respondent : Daksh Pareek, Adv.

Order Pronounced On: 20.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by Prepladder Private Limited, ('Applicant/Financial Creditor'), through the authorised signatory Mr. Sahil Goyal, who is duly authorised to sign this Application *vide* Board Resolution dated 09.07.2021 at Annexure – 3 of the Application, under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to initiate a Corporate Insolvency Resolution Process ('CIRP') against Motion Education Private Limited ('Respondent' / 'Corporate Debtor').
2. The Corporate Debtor is a Private Limited Company incorporated in the name and style of Motion Education Private Limited under the Companies Act, 1956/2013 with the Registrar of Companies, Jaipur on 24.12.2012 with Corporate Identity Number U80302RJ2012PTC041116, having its registered office at 394, Rajeev Gandhi Nagar Kota, Rajasthan- 324005. Copy of the Corporate Debtor's Master data along with details of Signatory as extracted from the portal the of Ministry of Corporate Affairs



(www.mca.gov.in) is annexed as Annexure 1 of the Application at Page No. 18.

3. The Financial Creditor, Prepladder Private Limited, is a Company registered under the Companies Act, 2013 with the Registrar of Companies, Delhi on 22.03.2017 with having CIN: U80903HR2017PTC068263. The registered office of the Applicant is situated at SCO-36, Sector-11 Panchkula, Haryana- 134109.
4. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. 1888/2021 dated 20.09.2021 are as follows:
 - i. The Applicant submits that on 24.09.2019 an Agreement has taken place between the Applicant and Corporate Debtor towards the launch of the new product and finalized the term of working on such product.
 - ii. Subsequently, the Applicant has given advances of Rs. 3,78,00,000/- (Rupees Three Crore Seventy-Eight Lakh Only) on 30.09.2019 to the Corporate Debtor from the bank account number 919020063803160 of the Applicant. The said advance was paid towards the services, which the Applicant was supposed to receive.
 - iii. The Applicant states that the Corporate Debtor also issued various invoices on several occasions for acknowledging the advances for the services to be rendered.



5. The Corporate Debtor filed **its** reply *vide* diary No. 983/2022 dated 31.03.2022 whereby states that the transaction/relationship between the Financial Creditor and the Corporate Debtor is that of the Service Provider therefore the Applicant does not fall under the definition of Financial Creditor in Section 5(7) of the Code. Further, it is stated that the Applicant approached the Corporate Debtor to create educational online content for its application 'WePrep'. The understanding and arrangement between the Applicant and the Corporate Debtor were such that the Corporate Debtor will provide the following services:

- i. Hire well-known faculty, educators and teachers, and the payments to them would be routed through the Corporate Debtor by the Applicant;*
- ii. Create videos, lecture series, study material, question banks per subject per teacher separately as a part of service by Corporate Debtor.*

Copy of the E-mail dated 24.09.2019 exchanged between the Applicant and the Corporate Debtor crystallizing the terms of the arrangement as **Service** Provider is annexed as Annexure-R 2 of the Reply.

6. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Rajasthan therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application.



7. Without delving into the merits of the present case the issue for consideration is Whether an advance payment in lieu of services to be availed at a later stage **can** be categorized as Financial Debt or Operational Debt.
8. The law on the subject has been categorically laid down by the Hon'ble Supreme Court in *Consolidated Construction Consortium Limited Vs Hitro Energy Solutions Private Limited [2022] 7 SCC 164* held that:

“43.....Hence, this leaves no doubt that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt”
9. In the present matter the Applicant and the Corporate Debtor entered into an agreement to create educational online content. The Applicant has paid an advance sum of Rs. 3,78,00,000/- (Rupees Three Crore Seventy-Eight Lakh Only) and later paid an additional sum of Rs. 45,00,000/- (Rupees Forty-Five Lakh Only) as advance. Subsequently, the Applicant has filed an Application under Section 7 of the IBC, 2016 claiming an amount given against advance to render the services from the Corporate Debtor.
10. However, in the view of *Consolidated Construction Consortium Limited Vs Hitro Energy Solutions Private Limited (supra)*, we are not inclined to allow the present application for CIRP of the Corporate Debtor. The present petition has been rejected only on the ground of maintainability without deciding the Application on merit.



11. Therefore, we hereby grant liberty to the Applicant to file a fresh Company Petition under Section 9 of the IBC, 2016.

DEEP
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JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**