



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.746/MB-IV/2021

Under Section 7 of the IBC, 2016

*In the matter of*

Y T ENTERTAINMENT LIMITED  
[CIN: U74140MH1994PLC080105]

...Financial Creditor

v/s.

ONEUP ENTERTAINMENT PRIVATE  
LIMITED  
[CIN: U92120MH2006PTC164229]

...Corporate Debtor

Order Delivered on: 21.03.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Financial Creditor:

Mr. Hussain Dholakawala, Ld.  
Counsel.

For the Corporate Debtor:

None

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*



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1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Y T ENTERTAINMENT LIMITED (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against ONEUP ENTERTAINMENT PRIVATE LIMITED (“the Corporate Debtor”).
2. The Company Petition is filed on 25.08.2021 claiming an amount of Rs.1,90,03,603 in default. The Part IV of Form 1 specify the date of default as 06.06.2021. The Financial Creditor further submits that -
  - 2.1 The Financial Creditor granted loan facility of Rs.2,00,00,000 (as per the schedule of terms and the due date was 31.03.2021) on various dates as per the requirement of the Corporate Debtor under the Master Loan Agreement dated 10.12.2019 for film production distribution and general corporate purpose;
  - 2.2 the Corporate Debtor through its letter dated 04.01.2020 under the terms and conditions as mentioned in the said Loan Agreement repaid an amount of Rs.5,00,000 and annexed a copy of Bank statement of the Corporate Debtor;
  - 2.3 The Financial Creditor through letter dated 02.01.2021 asked the Corporate Debtor to repay the total outstanding amount of Rs.2,33,37,899 along with interest as on date.
  - 2.4 Due to cash crunch arising out of COVID-19 pandemic, the Corporate Debtor vide letter dated 15.01.2021 sought time to repay the outstanding dues. Accordingly, on 03.03.2021 the Corporate Debtor made part payment of Rs.11,00,000/- and requested the



Financial Creditor vide its letter dated 05.03.2021 and sought more time to repay the outstanding dues.

- 2.5 Even though, there was continuous follow up from the Financial Creditor, the Corporate Debtor has failed to regularize the account.
- 2.6 Subsequently, a Demand Notice was issued on behalf of the Financial Creditor to the Corporate Debtor on 02.06.2021 for recalling the entire outstanding amount of Rs. 1,90,03,603 along with interest (default interest as on 31.05.2021 @18% p.a. and delayed interest @6% p.a.) till date of actual payment. The Corporate Debtor has not responded to the said Demand Notice.
3. The Corporate Debtor has submitted in its reply that due to COVID-19 pandemic situation huge losses have incurred hence is not able to fulfil its commitments and is unable to repay the loan within stipulated time to Corporate Debtor.

**Findings:**

4. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
5. On perusal of Master Loan Agreement dated 10.12.2019 entered between the parties, it is noticed that this loan of Rs.2,00,00,000/- was a demand or call loan facility and the borrower was under obligation to repay the credit facility balance, when demanded or called, forthwith on demand by the lender in terms of clause 7(a) of the agreement. Further, the agreement stipulated that the interest, at option of the lender, may be payable upfront or periodically or at the time of repayment of the demand or call loan



- facility or partly by each of the aforesaid methods of payment in terms of clause 4(b) of the agreement.
6. The applicant had issued a notice dated 02.01.2021 stating at para 3 thereof *“we would like to call upon the outstanding loan along with interest till the date of payment within a period 14 days, failing to which we will take legal action against you at your costs.”* Further para 4 thereof states that *“The outstanding loan balance along with interest is Rs.2,33,37,899/- as on 1<sup>st</sup> January 2021. You are called upon to pay the entire loan amount along with interest.”* In view of this, we feel that the default occurs after 16.01.2021. This fact is further confirmed from the letter dated 02.04.2021 issued by the applicant to the Corporate Debtor stating at Para 3 *“We have called upon the loan along with outstanding interest vide our letter dated 2<sup>nd</sup> January 2021. However, you have failed to honour the payment which is overdue.”*
  7. Learned counsel for the applicant invited our attention to clause 18(b) of the agreement and pleaded no notice was required was to be given if the borrower has made any material misrepresentation as to any facts, more particularly in relation to the security. From the perusal of the record before us we noticed that the applicant has not brought out on record any misrepresentation on the part of Corporate Debtor giving rise to clause 18(b). In absence thereof, it cannot be set that default has occurred on a date other than 16.01.2021.
  8. Section 10A of the Code provides that no application u/s 7, 9 and 10 shall filed for any default arising on or after 25.03.2020 till 24.03.2021. In the present case, the date of default is 16.01.2021, which falls between the period notified u/s 10A of the Code. In view of these this application is barred by sec 10A of the Code and deserve to be dismissed.



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**ORDER**

9. The petition bearing CP(IB) 746/MB-IV/2021 filed by Y T ENTERTAINMENT LIMITED (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against ONEUP ENTERTAINMENT PRIVATE LIMITED (“the Corporate Debtor”), is **Dismissed.**
10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

**Sd/-**

**PRABHAT KUMAR  
MEMBER (TECHNICAL)  
21.03.2023**

**Sd/-**

**KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)**