

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

IA-5229/2023
In
CP(IB)435(ND)/2022

IN THE MATTER OF CP(IB)435(ND)/2022:

M/s. Paisalo Digital Limited Financial Creditor
Vs.
M/s. Solitairian Buildspace Private Limited Corporate Debtor

AND IN THE MATTER OF IA-5229/2023:

M/s. Paisalo Digital Limited Applicant
Vs.
M/s. Solitairian Buildspace Private Limited Respondent

Order Pronounced On: 09.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Harshal Kumar, Adv.
For Respondent : Mr. Mrinal Harshvardhan, Mr. Kailash Ram, Mr.
Yogendra Singh, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The Applicant has filed the present application seeking to amend the date of default in Part IV of Form 1. The only ground which the Applicant has taken in the application is mentioned below:

“That it has been noticed that in the original company petition filed before this Hon’ble Court, an inadvertent error has crept in the Part IV of Form 1 and Date of Default was wrongly mentioned as November, 2018 in place of 31.08.2021.”

2. The Ld. Counsel appearing for the Applicant during the course of the arguments submitted that the Applicant issued a demand notice to the Respondent on 08.04.2019, a loan recall-cum-demand notice on 04.05.2019, a demand notice on

31.08.2021 and another reminder notice on 17.09.2021. The Ld. Counsel has therefore, submitted the date of default should be treated as 31.08.2021, the date on which the third demand notice was issued to the Respondent instead of November, 2018.

3. The Ld. Counsel appearing for the Respondent vehemently opposed the arguments advanced on behalf of the Applicant and submitted that the present application has been filed merely to escape the issue of limitation.
4. The Ld. Counsel submitted that the Applicant in the main application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 has specifically averred that:-

“The Respondent Company, since inception i.e. November, 2018, has failed to make the payment of instalments on due dates”.
5. He further submitted that non-mentioning of the date of default in Part IV, Form 1 of the Section 7 application renders the application incomplete or defective in as much as the date of default determines the limitation for filing an application under Section 7 or 9 under the Insolvency and Bankruptcy Code, 2016.
6. We have heard the arguments of the Ld. Counsel appearing for the Applicant as well as the Respondents and perused the records carefully.
7. It is an admitted case that the Applicant and Respondent entered into a loan agreement dated 11.10.2018. Further, the Applicant has very clearly stated in the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 that

the Respondent has failed to make the payments of installments since the inception and therefore issued 3 demand notices dated 08.04.2019, 04.05.2019 and 31.08.2021.

8. Therefore, in our considered view, the Applicant cannot take a stand at the stage of the hearing of the matter that the date of default has to be recorded from the date of issue of demand notice. The Applicant at the time of filing of the application under Section 7 of the Code (01.06.2022) has chosen to treat the date of default to be November 2018 and after nearly about 1.4 years from the date of filing of the application under Section 7 of the Code has filed the present application (25.09.2023) seeking to change of date of default.
9. Further, the Applicant has categorically stated that the default has commenced right from the inception of the date of the agreement and the first demand notice was issued on 08.04.2019. Therefore, by no stretch of the imagination it can be said that the date of demand will be 31.08.2021, which is the date on which the third demand notice was issued. The Applicant cannot be allowed to choose the date of default as per his convenience. In our considered view, the applicant is attempting to bring Section 7 application within the period of limitation by seeking a change of date of default in Part IV of Form 1 which cannot be permitted at this stage.
10. We may further note that the Applicant has filed a bald application without taking any grounds for seeking change of date of default and has merely made oral submissions at the time of hearing of the application.

11. For the aforesaid reasons, we are not inclined to entertain this application and accordingly **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)