IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

C.P.(IB)-432(MB)/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Topaki Media Private Limited

Having Registered Office at: Row House No. 5, Behind Akshay Dental Hospital, Peer Bazar Dargah Road, Pratapnagar, Aurangabad- 431005.

……Financial Creditor/Applicant

Vs

Planet Mobiles Private Limited

Having Registered Office at: 171-C, 17th Floor, Mittal Court C Wing, Nariman Point, Mumbai, Maharashtra -400021.

…….Corporate Debtor/Respondent

Order delivered on: 08.07.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : CS Prashant Thakre

For the Corporate Debtor : Adv. Harsh Kesharia

ORDER

Per- Shyam Babu Gautam, Member Technical

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Topaki Media Private Limited (for brevity 'Financial Creditor') through its Authorised Signatory/Accounts Executive, Mr. Deepak Kathar, who has been duly authorised vide Board Resolution dated 31.01.2022 for initiating Insolvency Resolution Process (CIRP) against Planet Mobiles Private Limited (for brevity 'Corporate Debtor') for default in repaying Principal amount of ₹1,45,00,000 together with interest of ₹72,59,062.50 and ₹1,21,85,075, aggregating to ₹3,39,44,137.50 as on 31.03.2015.

2. Looking at the Company Petition, it reveals that this Applicant/Financial Creditor and the Corporate Debtor had entered into a Loan Agreement dated 01.03.2017 in pursuance of which an amount of ₹55,60,471 and ₹89,39,046 was disbursed by Financial Creditor to Corporate Debtor on 27.02.2017 and 28.02.2017 respectively, which was obligated the corporate debtor to repay on or before the expiry of 15 months from the date

of disbursement, along with interest at the rate of 18% per annum and an additional interest at the rate 2% per month for the period of default, as per the terms stipulated in the Agreement.

3. In addition to this ***Loan Agreement*** dated 01.03.2017, this Financial Creditor has sent letter to Corporate Debtor on 03.09.2019, 09.06.2018 and 01.06.2018 demanding the payment of outstanding dues which have been duly acknowledged by the Corporate Debtor. This Applicant/Financial Creditor has also filed ***Copy of the bank account statement*** of the Financial Creditor's Bank and ***Copy of ledger account*** of Topaki Media Private Limited.

4. In response to this, the corporate debtor has filed reply and has submitted that the Corporate Debtor has already been struck off by the Registrar of Companies, Mumbai on 19.07.2018 as the Respondent Company failed to file returns as required under Company law. Accordingly, the Respondent Company was construed as non-operational by the Registrar of Companies. The Corporate Debtor has further submitted that the management of the Corporate Debtor was willing to make the repayment of the dues of the Financial creditors in full but due to liquidity issues the repayment could not be done and prayed to grant 9 months for repayment of principal debt.

In relation to that the Corporate Debtor is a struck off Company on MCA records, Ld. Counsel for the Petitioner relied on the Judgement of the Hon'ble NCLAT in ***M/s. Elektrans Shipping Private Limited (Company Appeal (AT) (insolvency) No. 754 of 2019)***, which states that the CIRP can even be initiated against the struck of Company.

5. On having seen the loan disbursement and documents supporting agreement between the parties conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, we are of the considered view that this Financial Creditor has proved existence of debt and default. Further, on the contention that IBC proceedings against a company whose name has been struck off by the Registrar of Companies are maintainable or not. The Hon'ble NCLAT in ***M/s. Elektrans Shipping Private Limited*** **vs. Pierre D'silva &** ***Another (Company Appeal (AT) (insolvency) No. 754 of 2019)***, has held that;

> *"21. The name of the Company having been struck-off, the Corporate Person cannot file an application under Section 59 for Voluntary Liquidation. In such a case and in view of the provisions of Section 250(3) read with Section 248(7) and (8), we hold that the application under Sections 7 and 9 will be maintainable against the 'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struck-off."*

Under the said circumstances, since the debt and default on the part of the Corporate Debtor is being proved and also by looking at the consent given by the Insolvency Professional, we hereby admit this application by appointing ***Mrs. Neha Punit Agrawal*** as IRP with directions as follows:

a. **The above Company Petition (IB) 432(MB)/2022 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Agfa Healthcare India Private Limited.

b. This Bench hereby appoints ***Mrs. Neha Punit Agrawal, having Registration No: IBBI/IPA-002/IPN01130/2021-2022/13728; B-3, Kalyani Gurumukh Heights, Old Osmanpura, Aurangabad-431001***; as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

6. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Arpan, LRA
08.07.2022