

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH [SPECIAL], COURT NO. II
KOLKATA**

Company Petition (IB) No. 226/KB/2022

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

IN THE MATTER OF:

Pixel Consultancy Private Limited

(CIN: U74140WB2010PTC151288)

... Applicant/ Financial Creditor.

Verses

M/s Linkpoint Advisory Private Limited

(CIN: U74140WB2010PTC151309)

... Respondent/ Corporate Debtor.

Date of Pronouncement: January 02, 2024.

CORAM:

ROHIT KAPOOR, MEMBER (JUDICIAL)

BALRAJ JOSHI, MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor: Ms. Rashmi Bothra, Adv.

For the Corporate Debtor: Ms. Aparajita Rao, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsels for both the parties and perused the documents filed.
3. This present application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 for brevity "I&B Code", read with other provisions of law, by one **Pixel Consultancy Private Limited**, hereinafter referred to as Financial Creditor (Applicant) against one **M/s Linkpoint Advisory Private Limited**, hereinafter referred to as Corporate Debtor (Respondent) seeking direction from this Adjudicating Authority to initiate Corporate Insolvency

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Resolution Process, (for brevity “CIR Process”/ “CIRP”) in respect of the Corporate Debtor herein.

4. The Corporate Debtor was incorporated on 14.07.2010, registered office at Room No. 803B, Cabin No. A, Shaila Tower, 8th Floor, J1/16, EP Block, Salt Lake, Sector V, Kolkata – 700091, having Authorized Capital of Rs. 5.50 Crore and Paid-up Capital of Rs. 5.49 Crore.
5. It is claimed that the total amount claimed to be in default is of Rs. 9,44,51,917/- including interest at the rate of 18% being if Rs. 2,83,01,917/- up to 15.07.2022 and the date of default is claimed as on 24.03.2021 when the first loan fell due along with interest and is continuing.

Submissions of the Applicant:

6. The Ld. Counsel for the Financial Creditor submits that in the year 2019, the Corporate Debtor invested in shares and equity of the Financial Creditor and proposed to Financial Creditor to invest their surplus funds with the Corporate Debtor. The Corporate debtor further proposed to make long term investment of the funds in equities and assured guaranteed returns of 18% p.a. The Corporate Debtor further offered that such interest on the loan, the Corporate Debtor would optimize its investment in equity and proposed that the advance so received shall be refundable after 18 months **at least**. Accordingly, the Financial Creditor had agreed upon to invest its surplus fund from time to time with Corporate Debtor.
7. It is contended that the first such loan amounting to Rs. 1,00,00,000/- was advanced on 25.09.2019 which fell due for repayment on 24.03.2021. Thereafter the Corporate Debtor disbursed a total of Rs. 7,34,00,000/- in the course of next one year more or less. The Corporate Debtor made an aggregated refund of Rs. 72.50 Lakh against the first tranche of loan advanced on 25.09.2021. Further, in good faith and considering that the first tranche of loan was being repaid in advance, the Financial Creditor advanced a loan of Rs. 4 Lakh to Corporate Debtor on 05.02.2021 and also advanced another amount of Rs. 10 Lakh on

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17.03.2021 on assurance that the same will be repaid along with the refund of first tranche of loan on 24.03.2021.

8. It is contended that the Corporate Debtor failed to make any further payment even after the end of the loan terms for all advances made. Even after passage of long time, the Corporate Debtor did not repay the payment and having no option left, the Financial Creditor issued demand notice on 16.05.2022 and 28.06.2022 annexed at Page 91 and Page 92-94 as Annexure “J” and “K” respectively.
9. Further, The Financial Creditor has referred to the Bank Statement showing the transactions between the Corporate Debtor including the disbursement of the Financial Creditors annexed at pages 23-53 as Annexure “G” to this Application and also supplied the Acknowledgment letter confirming the receipt of the loan issued by the Corporate Debtor, annexed at Page 83-90 as Annexure “I” to this Application.
10. The Ld. Counsel for the Applicant further submits that Total amount of debt granted by the Financial Creditor is of Rs. 7,34,00,000/- to the Corporate Debtor and the total amount claimed to be in default is of Rs. 9,44,51,917/- including interest at the rate of 18% being if Rs. 2,83,01,917/- up to 15.07.2022. The schedule of disbursement of the said Loan is annexed as Annexure “E” at Page 21 to this Application and the copy of the working and computation of the amount in default and the ledger account of the Corporate Debtor in the books of Financial Creditor is annexed as Annexure “F” at Page 22 to the Application.

Submissions of the Respondent, per contra:

11. The Ld. Counsel for the Respondent, claims that the Financial Creditor is an investor not a creditor of the Corporate Debtor and the Financial Creditor has tried to mislead this Adjudicating Authority by stating that it is a debt not an investment. Further it is claimed that the Corporate Debtor is a financially solvent company carrying on business in investment of shares since 2015.

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12. The Ld. Counsel for the Respondent further contends that the Financial Creditor has not extended any loan to the Corporate Debtor. It is only an investment in the course of the business of the Corporate Debtor and the Financial Creditor was made aware of the same fact. The alleged interest (18%) was guaranteed by the Corporate Debtor as a return towards the investment made by the Applicant.

Analysis and Findings:

13. It is evident that the Financial Creditor on several occasions has disbursed money to the Corporate Debtor from 25.09.2019 to 17.03.2021 which has also been acknowledged and confirmed by the Corporate Debtor towards receiving of the amount as loan bearing interest at the rate of 18% Per Annum payable along with principal on or before 24.03.2021. The Financial Creditor has referred the Bank Statement showing the transactions between the Corporate Debtor including the disbursement of the Financial Creditors annexed at pages 23-53 as Annexure “G” to this Application and also supplied the Acknowledgment letter confirming the receipt of the loan issued by the Corporate Debtor, annexed at Page 83-90 as Annexure “I” to this Application.
14. In reply, the Corporate Debtor has taken a plea that the alleged amounts disbursed by the Financial Creditor has not been extended as loan to the Corporate Debtor, but has been invested in the course of business of the Respondent and the Corporate Debtor is a financial solvent company. However, the Corporate Debtor has not filed any evidence that substantiates its claim in counter of the Applicant’s contentions.
15. It is seen that the petition has been filed on 04-08-2022, wherein the date of default has been mentioned as 24-03-2021 in Part IV on page 12 of the Application. It is observed that the date of default falls within the period which has been proscribed under Section 10A of the I&B Code, 2016. For clarity, the provision is extracted below:

“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a

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corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

16. Further, it is relevant to state here that the said period was extended by another six (6) months vide notification no. 17 of 2020 viz: “THE INSOLVENCY AND BANKRUPTCY CODE (SECOND AMENDMENT) ACT, 2020 NO. 17 OF 2020”, thus extending the period as prescribed under Section 10A of the I&B Code to 24-03- 2021. As such the present petition is squarely hit by the provisions of section 10A of the I&B Code and is thus not maintainable.
17. To fortify our view, we would reply upon the judgment passed by the Hon’ble NCLAT in *Plus Corporate Ventures Pvt. Ltd. vs. Transnational Growth Fund Ltd., Company Appeal (AT) (Insolvency) No. 1270 of 2022 order dated 31.10.2022* reported in MANU/NL/0908/2022 that:

“7. When we look into the proviso to Section 10A, the expression is “provided that no Application shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period” thus default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. The Appellant's submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submission goes contrary to the statutory scheme delineated by Section 10A proviso as noted above. When Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Application as barred by Section 10A of the Code. In so far as the last two default on 31st March, 2021 and 30th April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.”

“We thus are of the view that no error has been committed in rejecting the Application filed under Section 9 of the Code. However, it shall always

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open for the Appellant to take steps as permissible in law. With these observations, the Appeal is dismissed.”

(Emphasis Added)

- 18.** In terms of foregoing discussion, we **dismiss** this application being **C.P. (IB) No. 226/KB/2022.**
- 19.** **The Registry** is hereby directed to communicate this Order to the Parties by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- 20.** Further, the **Registry** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means.
- 21.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This Order is signed on the 02nd Day of January, 2023.

Bose, R. K. [LRA]