

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP No. 1152/(IB)-MB-V/2023

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

In the matter of

Vivriti Capital Limited

Prestige Zackria Metropolitan No. 200/1-8, 2nd Floor, Block -1, Annasalai, Chennai- 600002, Chennai,

... Petitioner/Financial Creditor

V/s

Green Soul Ergonomies Private Limited

Building No. B-1, Green Space, Village Vahuli, Taluka - Bhiwandi, Thane, Maharashtra - 421302

... Respondent/Corporate Debtor

Order Pronounced on: 01.05.2024

Coram:

Hon'ble Smt. Reeta Kohli, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner : Adv. Aniruth Purusothaman(PH)

For the Corporate Debtor : Bishwajit Dubey (PH)

ORDER

1. The Petitioners viz. 'Vivriti Capital Limited' (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Green Soul Ergonomies Private Limited' (hereinafter as '**Corporate Debtor**'). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 18,30,76,657/- inclusive of contractual interest, penal interest, costs and expenses.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
 - a. A copy of Sanction Letters dated 01.12.2021 for facility 1, facility 2, facility 3, facility 4, facility 5, and copy of sanction letters dated 24.03.2022 for facility 1, facility 2.
 - b. A copy of Demand Promissory Note and Acknowledgement letters dated 01.12.2021 and dated 24.03.2022.
 - c. A copy of Master Facility Agreement dated 01.12.2021
 - d. A copy of Facility letters dated 01.12.2021 and dated 24.03.2022.
 - e. A copy of loan recall notice dated 30.09.2023.
 - f. A copy of record of default with NeSL.

Brief Facts

3. The Petition reveals that the Financial Creditor is a company incorporated under the provisions of Companies Act, 1956 and a non-banking financial company registered with Reserve Bank of India (**'RBI'**).

4. **Upscalio India Private Limited** (hereinafter referred to as the **"Borrower"**) is a Company incorporated under the Companies Act, 2013 engaged, inter alia, in the business of providing management and licensing services. With a view of raising finances, the Borrower approached the Financial Creditor for availing term loan facilities from time to time. Furthermore, the Financial Creditor and the Borrower signed and executed the Master Agreement (hereinafter referred to as the "Master Agreement") dated 01.12. 2021. Pursuant to the Master Agreement, the Financial Creditor had advanced credit facilities aggregating to Rs.32,00,00,000/- (Rupees Thirty-Two Crores Only) loan facilities vide 7 (Seven) Sanction Letters dated 01.12.2021 and 24.03. 2022. The details of the loan facilities are as under:
 - (i) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T1 (hereinafter referred to as **"Facility 1"**). Master Agreement was executed on December 01,2021. The loan was disbursed on 04.12.2021.

 - (ii) (i) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T2 (hereinafter referred to as "Facility 2"). Master Agreement was executed on December 01,2021. The loan was disbursed on 04.12.2021.

 - (iii) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T3 (hereinafter referred to as **"Facility 3"**). Master Agreement was executed on December 01,2021. The loan was disbursed on 04.12.2021.

- (iv) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T4 (hereinafter referred to as “**Facility 4**”). Master Agreement was executed on December 01,2021. The loan was disbursed on 04.12.2021.
 - (v) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T5 (hereinafter referred to as “**Facility 5**”). Master Agreement was executed on December 01,2021. The loan was disbursed on 04.12.2021.
 - (vi) Term Loan I of INR 5,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T1 (hereinafter referred to as “**Facility 6**”). Master Agreement was executed on December 01,2021. The loan was disbursed on 31.03.2022.
 - (vii) Term Loan I of INR 2,00,00,000/- (Rupees five Crore) bearing No.UPSCALIO TL 11 2021-T1 (hereinafter referred to as “**Facility 7**”). Master Agreement was executed on December 01,2021. The loan was disbursed on 31.03.2022.
 - (viii) The terms of the Facility 1, 2, 3,4,5,6 and 7 were accepted by the Corporate Debtor and Corporate Debtor agreed and had undertaken to repay the said facilities with interest, cost and charges.
5. It was further submitted that the Financial Creditor and the Borrower had established a security arrangement through a Master Deed of Hypothecation and a Hypothecation Schedule dated 01.12.2021, whereby the Borrower hypothecated certain receivables to secure facilities provided by the Financial Creditor. The Financial Creditor had issued Facility Letters to the Borrower outlining the terms of the facilities dated 04.12.2021 and 31.03.2022, and the Borrower had acknowledged the

arrangement by issuing an Acceptance and Acknowledgement letter along with a Demand Promissory Note to the Financial Creditor.

6. Furthermore, the Financial Creditor and the Borrower made amendments to rectify errors in facility letters dated 24.03.2023 executed by the Financial Creditor and the Borrower with respect to the Sanction Letters dated 01.12.2021 and 24.03.2023(annexed at Exhibit U1 to Exhibit U5 at page no 471 to 485 of the Company Petition), the Borrower set up three (3) NACH (National Automated Clearing House) mandates for repayment, and provided letters of continuity dated 22.11.2021, regarding demand promissory notes issued for the sanctioned loans.
7. It is also submitted that Upscalio Pte Limited (a Company incorporated in Singapore) (i.e., the holding Company of the Borrower), having its address at 68 Circular Road, #02-01, Singapore — 049422 with Corporate Registration No.202117540H, issued an Undertaking to the Financial Creditor with respect to the credit facilities issued by the Financial Creditor via the 7 (seven) sanction letters dated 01.12.2021 and 24.03.2022.The Upscalio Pte Limited also issued Corporate Guarantee agreeing to provide unconditional and irrevocable guarantees dated 01.12.2021 and 31.03.2022 in favour of the Financial Creditor in consideration of the Facilities granted by the Financial Creditor to the Borrower.
8. After availing the loan facilities, the Borrower made its first default in loan repayment on 15.04.2023, and thereafter the borrower was irregular in servicing its payment obligations under the Facilities. Subsequently, the Borrower and the Financial Creditor were in talks to restructure the debt, but no agreement was reached. The Borrower had requested more time to finalize and implement the restructuring plan. In a letter dated 21.08.2023, the borrower accepted being irregular in repayment of the loan.

9. Furthermore, in response to the Borrower's request for an extension until September 20, 2023, to implement the resolution plan, the Financial Creditor, via a letter dated 24.08.2023, agreed to grant an extension but with a revised timeline. The Financial Creditor agreed to extend the deadline for the Borrower until September 15, 2023.
10. It was also submitted that The Borrower, via a letter dated 25.08.2023, had agreed to the proposal that each of its 8 (eight) subsidiaries would provide contractual comfort in relation to the repayment of the Facilities, along with the Borrower, as co-borrowers. Thereafter, it was agreed that the Corporate Debtor, among other entities called as "Co-Borrowers", would, jointly and severally, be liable to repay the amounts under the Facilities along with the Borrower, as Obligor in respect of the Facilities.
11. In pursuance of this, the Financial Creditor, the Corporate Debtor, the Borrower, and other Co-Borrowers (collectively referred to as the "Parties") signed and executed an Agreement on 07.09.2023 (hereinafter referred to as the "Amendment and Co-Borrowing Agreement"), which constituted an Amendment and Co-Borrowing Agreement to the Master Facility Agreement dated 01.12.2012.
12. It is further submitted that the Petitioner sent a loan recall notice dated 30.09.2023 (Annexed at Exhibit ZG at page no. 713 to 719 of the Company Petition), to the Corporate Debtor among other co-borrowers and the borrower with respect to the loan facilities granted by the Applicant to the Borrower. The Corporate Debtor never replied to the letter nor made any repayment of the entire outstanding due to the Applicant.
13. Hence, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

14. In the reply to the petition, the Corporate Debtor contended that, being a subsidiary of Upscalio India Private Limited, it relied on both debt and equity funding, as well as support from Upscalio India Private Limited for its operations. However, due to unsuccessful restructuring of loans and financial debt, and with Upscalio India Private Limited facing insolvency proceedings and declining market conditions, the respondent company could not fulfil its obligations to Upscalio or under co-borrowing arrangements. Despite intending to repay, the respondent company was currently unable to meet the claimed amount by the applicant.

Findings

15. We have heard the Counsels and perused the material available on record.
16. It is an undisputed fact that loan was given to the Borrower (i.e. Upscalio India Private Limited) and the Borrower and Financial Creditor have entered into Master Agreement dated 01.12.2021, and Subsequently Confirming and acknowledging the receipt of the said sum of Rs.32,00,00,000/-.Thereafter the Financial Creditor, the Corporate Debtor, the Borrower, and other Co-Borrowers collectively executed an Agreement on 07.09.2023 (i.e. Amendment and Co-Borrowing Agreement), wherein agreed that the Corporate Debtor with other entities (i.e.Co-Borrowers), shall, jointly and severally be liable to repay the amounts under the Facilities along-with the Borrower.
17. In the present case, The Borrower has acknowledged the debt vide letter dated 21.08.2023 annexed at exhibit Z at pages 678-680 of the Company Petition and further asked for an extension till 20.09.2023 for repayment of the said outstanding loan. Therefore, there is a clear acknowledgement of debt and default of non-payment of money due by the Borrower. The Financial Creditor consider granting the extension depending on various factors, including their assessment of the Borrower's financial viability, the potential impact on their own financial interests, and the likelihood of

reaching a successful restructuring agreement within the extended timeline.

18. Additionally, it is pertinent to note that the Amendment and Co-Borrowing Agreement dated 07.09.2023, executed by the Financial Creditor, Borrower, Corporate Debtor and the Co borrowers clearly states the liability as under:

“Clause 2.1 of the Amendment and Co-Borrowing Agreement states the following: On and from the date of this Amendment Agreement, a new Clause 4.10 will be added after Clause 4.9 having the following provision: “4.10 Notwithstanding anything contained in the Facility Agreement, the Co-Borrowers along with the Borrower, jointly and severally, agree and undertake to repay the amounts outstanding under the Facilities/Master Facility Agreement/Facility Documents including but not limited to the default interest, Penal Charges, prepayment penalty, costs, expenses and other charges under the Master Facility Agreement/Facility Documents, as if the Facility was availed by such Co-Borrowers.”

19. The Financial Creditor post giving Several opportunities for repayment of Loan to the Borrower, a loan recall notice dated 30.09.2023 (annexed at Exhibit ZG at page no.713-719) for recovery of the said sum was sent by the Financial Creditor to the Borrower, Corporate Debtor and the Co borrowers. Therefore, the Corporate Debtor having not paid, the Corporate Debtor is in default.

20. It is clear from the records produced before this Tribunal that the Financial debt amounting to than Rs. 18,30,76,657/- (Rupees Eighteen Crore Thirty Lakh Seventy-Six Thousand Six Hundred Fifty-Seven Only) is due & payable by the Corporate Debtor as on The date of filing the present Company Petition. Further, there is Admission of default and outstanding liability by the Corporate Debtor in various correspondences annexed to the Company Petition.

21. The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) Of the Code are proved by the Financial Creditor beyond Reasonable doubt in the present case. The application made by the Financial Creditor is complete in all Respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in Excess of minimum amount stipulated under section 4(1) of the IBC. Besides, the Company Petition is well within the period of limitation. Therefore, the debt and default stand established and there is No reason to deny the admission of the Petition. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter. In view thereof, This Adjudicating Authority admits this Petition and orders Initiation of CIRP against the Corporate Debtor.

22. Consequently, the petition is ordered to be admitted in the following terms:

- a. The above Company Petition No. 1152/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Green Soul Ergonomies Private Limited.
- b. The IRP proposed by the Financial Creditor, **Mr. Vishal Ghisulal Jain** , having registration No. IBBI/IPA-002/IP-00337/2017-2018/10941, having address at 1003, 10th Floor, Satra Plaza, Sector 19D, Palm Beach Road, Vashi, Navi Mumbai, Maharashtra-400 703. Registered Address: D-1902, Palm Beach Residency, Amey CHS Ltd., Plot No. 24-29, Sector-4, Nerul West, Navi Mumbai, Maharashtra-400706., is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 or 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 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.
- f. 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.

- g. 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.
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 1152/IBC/MB/2023 is **Admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Madhu Sinha
Member (Technical)

/Priyanka/

Sd/-

Reeta Kohli
Member (Judicial)