

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **13.12.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No : -
Petition No : CP(IB)/69/CHE/2024
Name of Petitioner : Ugro Capital Ltd
& Vs
Name of Respondent : Peakqualish Systems Pvt Ltd
Section : 7 Rule 4 of IBC, 2016

ORDER

Present: None for Petitioner.
None for Respondent.

Vide separate order pronounced in Open Court, the Petition for initiating Corporate Insolvency Resolution Process the Corporate Debtor is **allowed**.

Ms. Rajashree Santhanam is appointed as the Interim Resolution Professional.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

CP/IB/69/CHE/2024

*(filed under section 7 of the Insolvency and Bankruptcy Code,2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules,2016)*

In the matter of PEAKQUALISH SYSTEMS PRIVATE LIMITED

UGRO CAPITAL LIMITED

Equinox Business Park, Tower 3,
Fourth Floor, Off BKC, LBS Road,
Kurla, Mumbai-600 001.

...Applicant/Financial Creditor

-Vs-

PEAKQUALISH SYSTEMS PRIVATE LIMITED

No 366D, Compost Yard Street,
Theni- 625 531.

...Respondent/Corporate Debtor

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: V. Balasubramani, Advocate.

For Respondent: Ex-Parte.

Order Pronounced on 13th December 2024

ORDER

(Heard Through Hybrid Mode)

This is an Application filed by **UGRO CAPITAL LIMITED** (hereinafter the “Financial Creditor”) against **PEAKQUALISH SYSTEMS PRIVATE LIMITED** (hereinafter the “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. In Part-I of the Application, it is stated that the Financial Creditor viz., *Ugro Capital Limited* is a NBFC/public listed company with CIN:L67120MH1993PLC070739. It was incorporated on 10.02.1993 under the Companies Act, 1956. The Corporate Debtor herein viz., *Peakqualish systems Private Limited* was incorporated under the Companies Act, 2013 on 12.03.2018 with CIN:U74999TN2018PTC121314. In Part-II of the Application, the Registered office of the Corporate Debtor is stated to be No.366D, Compost yard street, Theni, Tamil Nadu- 625 531.

3. In Part III of the application, the Financial Creditor has proposed one Ms. Santhanam Rajashree, with Registration No: IBBI/IPA-002/IP-N00330/2017-2018/10935 as an “Interim Resolution Professional” of the

Corporate Debtor. The Written Consent of the IRP is appended at Page No.78 of the Application typeset.

4. The Affidavit verifying the application is placed at Page No-81 of the Application typeset. Mr.G.Kumar, City head litigation (Execution) of the Financial Creditor herein has sworn the Affidavit as the authorized representative of the Financial Creditor.

5. In Part-IV of the Application, it is stated that a total sum of Rs.2,29,12,504.23/- (Rupees. Two Crore Twenty Nine Lakhs Twelve Thousand Five Hundred and Four and twenty three paise) is the amount claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. Further the date of default is stated to be 02.02.2024.

6. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor to prove the existence of a 'Financial debt' and the same are enumerated hereunder:-

1. *Copy of the Sanction letter dated 01.01.2022 issued by Financial creditor to Corporate Debtor (Annexure P5).*
2. *Copy of Facility Agreement dated 02.11.2022 executed between the Financial Creditor and the Corporate Debtor. (Anenxure P6)*

3. *Copy of statement of Account as on 04.05.2023 of Corporate Debtor maintained by the Financial Creditor (Annexure P7)*
4. *Copy of the Demand Notice dated 04.05.2023 issued by the Financial Creditor to Corporate Debtor. (Annexure P9)*

7. Ld. Counsel for the Applicant submits as under:-

- (i) That the Financial Creditor is an NBFC incorporated under the Companies Act, 1956.
- (ii) That the Applicant Financial Creditor sanctioned the credit limit in favour of Corporate Debtor under the sanction letter dated 01.11.2022 and executed the Facility agreement dated 02.11.2022 for an amount of Rs.2,50,00,000 (Rupees Two Crore Fifty Lakhs only).
- (iii) That the Loan/Credit Facility was disbursed in many tranches by the Financial Creditor. The default arose on 02.02.2023 when no payment was made by the CD on maturity/due date of 1st tranche i.e.01.02.2023.
- (iv) That the Corporate Debtor failed to adhere to the repayment terms and conditions as stipulated under the facility agreement within the stipulated time period and accordingly

a demand notice 04.05.2023 was issued by the FC to repay Rs.2,29,12,504.23/- due as on 20.02.2024, along with the applicable interest.

- (v) That “No reply” came from the CD’s side in response to the loan recall notice issued by the Financial Creditor on 20.02.2024 to repay the outstanding amount mentioned *Supra*.

8. Ld. Counsel for the Applicant submitted that in view of the facts and circumstances, a clear case of debt and default is established. Ld. Counsel concluded his arguments by praying that this Tribunal may pass an order of CIRP against the Corporate Debtor considering the defaults committed in repayment of loan dues, liable to be paid by the Corporate Debtor in accordance to the terms and conditions of the Facility Agreement dated 02.11.2023 and Sanction letter dated 01.11.2023.

9. The Financial Creditor has annexed the latest record of default in a separate typeset filed along with the Application in **SR No 5356 dated 07.11.2024**. The record of default reflects “Deemed to be authenticated”.

10. In the instant case, the Petitioner/Financial Creditor had served the notice to the Corporate Debtor. An Affidavit of service was filed before this Tribunal on 22.06.2024. Even after awarding opportunity to the Corporate Debtor/ the Respondent, it failed to file a reply/counter statement in this matter. Hence, this Tribunal was constrained to set the Corporate Debtor *ex-parte* in the hearing dated 08.08.2024 and proceed with the present Application.

11. The Financial Creditor has placed on record the Facility Agreement dated 02.11.2023 and Sanction letter dated 01.11.2023 to prove that there is an existence of a Financial debt, which has been disbursed by the Financial Creditor. Further, from the record of default attached by the Financial Creditor in **SR No 5356 dated 07.11.2024** it is evident that there is an existence of 'default' committed by the Corporate Debtor.

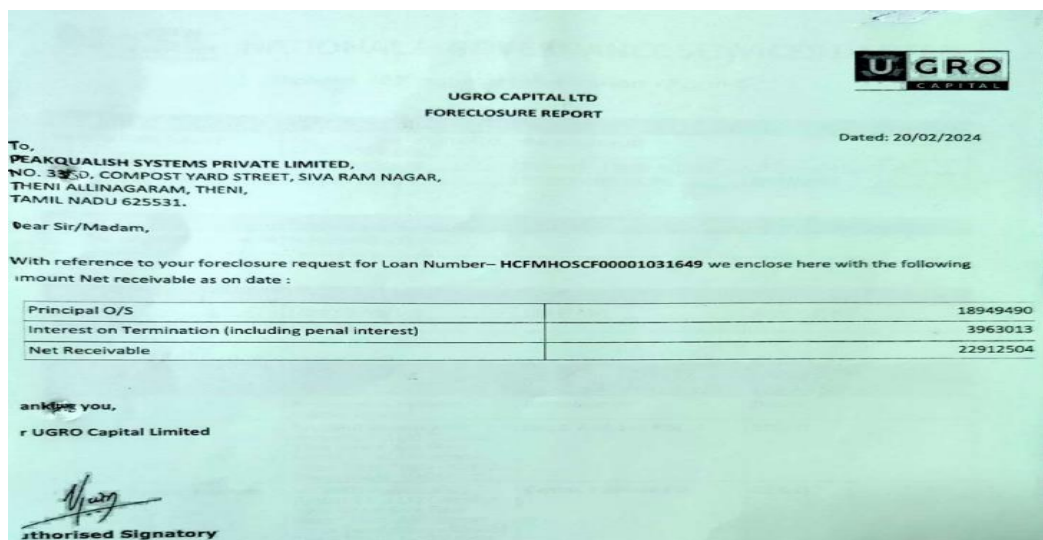
EXTRACT OF NESL RECORD OF DEFAULT ANNEXED BY THE FINANCIAL

CREDITOR IS AS UNDER:-

Date of Submission	05-08-2024 18:12:59
Type of Submission	Default Submission
Submission ID	11
Submitted by (CREDITOR)	M/s UGRO CAPITAL LTD
Debtor	M/s PEAKQUALISH SYSTEMS PRIVATE LIMITED
Default Amount	15464520.00
Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
Authentication Completed on	22-08-2024 00:04:31

12. It is seen that the 'default' which is arising in the present Application has happened much after the advent of Covid - 19. The Corporate Debtor therefore cannot seek shelter under Section 10A of IBC, 2016.

13. The Financial Creditor in the Application has attached a summary of the amount due on foreclosure of the Loan:



14. In view of the facts as stated supra and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option but to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

15. It has been consistently held by the Hon'ble Supreme Court in *Innoventive Industries Ltd. -Vs- ICICI Bank* and another [(2018) 1 SCC 407] as well as *Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353] after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present

case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1.0 Crore.

16. For the aforesaid reasons and case laws cited supra, this Tribunal orders to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz, *Peakqualish Systems Private Limited*.

17. The Financial Creditor has proposed the name **Ms. Santhanam Rajashree** with *Registration Number: IBBI/IPA-002/IP-N00330/2017-2018/10935*, (email- rajashrees66@gmail.com) as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2. Upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the IRP till 31.12.2024. We therefore appoint **Ms. Santhanam Rajashree** as the IRP. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file her report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the

CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. As a consequence of the Application being **admitted** in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

19. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such

supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

21. Based on the above terms, the Application stands **admitted** in terms of Section 7 (5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini. K