

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB) 329/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Plus Plus Unified Engaugement Services
Pvt. Ltd.**

Having registered office at :- 1402/A, 14th
Floor, Rajul Plot No. 9, Laxmibai
Jagmohandas Marg, Malabar Hills,
Mumbai- 400006

..... Applicant/ Financial Creditor

Versus

Compauge Infocom Ltd.

Having registered office at: - D-601/602&
G-601/602, Lotus Corporate Park, Steel
Compound, Western Express Highway,
Goregoan (East), Mumbai- 400063

..... Corporate Debtor

Order Delivered on :- 02.11.2023

Coram:

Mr. Anuradha Sanjay Bhatia
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Nausher Kohli

For the Corporate Debtor : Adv. Mr. Bijal Rathod

ORDER

Per: - Shri. Kuldip Kumar Kareer (Judicial Member).

1. The present Petition is being prosecuted under Section 7 of the Insolvency Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by M/s. **Plus Plus Unified Engaugement Services Pvt. Ltd** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely **Compauge Infocom Ltd** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") for resolution of an unresolved Financial outstanding amount of Rs. 1,68,66,164/- as on 31.03.2022.

The submissions of the Financial Creditor are as follows:

2. The Applicant is a Private Limited Company, registered and incorporated under the provisions of Indian Companies Act, 1956 and engaged in the

business of consulting, advertising, publicity, sales promotion, public relations, market and sales research and other allied activities

3. Mr. Ankush Namdev Shinde is one of the Directors of Applicant/ Financial Creditor and is authorised to file the present application to initiate corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 on behalf of the Applicant/ Financial Creditor.
4. The Respondent/ Corporate Debtor is a public limited company, engaged and carrying on its business as a value-added distributor in Information Technology (IT) and mobility catering to resellers, retailers, brand stores and system integrators in India.
5. The Corporate Debtor through its Directors approached and requested the Applicant Company to advance a short-term loan for its working capital requirement. The Applicant states it was mutually agreed and decided that the Applicant shall provide an intercorporate loan amounting to Rs.3,65,00,000/- (Rupees Three Crore Sixty-Five Lakhs) to the Respondent Company as per the terms and conditions of the Loan Agreement dated 2nd August 2021. Thereafter, the parties entered into a Loan Agreement dated 2nd August 2021. The Respondent have duly accepted all the terms and conditions of the Loan agreement. Therefore, the Applicant has disbursed a total amount of Rs. 3,65.00.000/ (Rupees Three Crore Sixty-Five Lakhs Only). In order to secure the aforesaid Loan, the Corporate Debtor has also signed a demand Promissory Note dated 2nd August. 2021 in favour of the Financial Creditor for an amount of Rs. 3,65,00,000/-. Directors of the Corporate Debtor, Mr. Atul Mehta and Mr. Bhavesh Mehta have also

executed Guarantee Deeds in favour of the Financial Creditors guaranteeing jointly and severally the repayment of the said loan. Applicant states that Respondent/Corporate Debtor repaid an amount of Rs. 2.00 crore by October, 2021 and continued to pay interest on quarterly basis subsequently.

6. The Applicant further states that the Respondent time and again confirmed and reiterated that the Respondent shall repay the Loan as per the terms and conditions the Loan Agreement dated 2nd August, 2021 entered into by and between the Respondent and the Applicant and also have acknowledged the debt having signed the ledger statement but failed and neglected to make the payments as promised by the respondent/Corporate Debtor.
7. That as per the Agreement, the Applicant has reminded the Respondent for repayment of the Loan vide its letter dated 28th September 2022 which was replied by the Corporate Debtor vide its letter dated 06th October 2022.
8. That, in spite of demanding repayment of loan through numerous phone calls and personal meetings, since the Corporate Debtor did not make any payment therefore, the Financial Creditor sent letters dated 28th September 2022, 15th November 2022 and 13th December 2022 to the Corporate Debtor which were duly received by the Corporate Debtor and were also replied vide its letters dated October 2022 and 6th January 2023 requesting more time citing the reason that the Corporate Debtor is in some financial difficulties but assured that it shall make payment on or before 25.01.2023.

9. That, thereafter the Financial Creditor as well as Corporate Debtor had meetings in order to settle the issue, however since there was no positive outcome of the meetings therefore, the Financial Creditor sent a legal notice dated 6th March 2023 through its Advocate to the Corporate Debtor. Corporate Debtor duly received that notice but did not reply to the same and failed and neglected to pay the outstanding amount to the applicant.
10. The Applicant has not received any reply from the Respondent/Corporate debtor disputing the unpaid financial debt till date.
11. Presently as on date the total outstanding amount due and payable by the Respondent Company to the Applicant is Rs. 1,68,57,123/- (Rupees One Crore Sixty-eight lakh Fifty Seven Thousand One Hundred Twenty three only) as on 20.03.2023 along with further interest @ 10% per annum simple interest from the date of filing of the present application till payment/realization as per the Particulars Applicant.

Reply filed by the Corporate Debtor:-

12. The Corporate Debtor had filed their Affidavit in Reply (“**Reply**”) and denied all the allegations and averments made in the Company Petition filed by the Financial Creditor against the Corporate Debtor.
13. It is further submitted that the Financial Creditor has failed to establish any default in respect of the Inter-corporate loan facility as against the Corporate Debtor.

14. It is further submitted that the Corporate Debtor is in the business of IT and Mobility Distribution Service since last 35 years and have good reputation in the market. It is a listed company and is registered with the Bombay Stock Exchange and National Stock Exchange.
15. It is further submitted that, due to recession in the IT Sector and stiff competition, emerging recessionary trend coupled with sustained losses in its business, stagnant market position and some other reason which were beyond control, business of the Corporate Debtor started declining. Hence, the scarcity of cash inflow is due to temporary financial crunch being faced by the Corporate Debtor on account of the aforesaid circumstances which are obviously beyond the control of the Corporate Debtor.
16. It is further submitted that the Corporate Debtor has secured creditors, Operational Creditors and many Financial Creditor. However, the Consortium of the secured creditors led by the Indian Bank has control on the cash outflows from the current account of the Corporate Debtor due to the aforesaid stress in cashflows. Thus, the Corporate Debtor cannot solely decide to make repayment at its own will from the current account which is now solely controlled by the consortium of lenders. The Corporate Debtor is trying its best to come out from the current financial crunch.
17. The Corporate Debtor tried its best to resolve the issue amicably by trying for a one-time settlement offer without getting into the merits on the claim of the Financial Creditor. However, due to prevailing situation the Corporate Debtor is not in a position to proceed with the settlement.

18. The Corporate Debtor has stressed a cash flow since sometime, however the Corporate Debtor is trying it's best to revive the company and to pay to its creditors. The Corporate Debtor is in discussion with the consortium of lenders for corporate debt restructuring.
19. It is further submitted that though the Corporate Debtor was intending to offer a one-time settlement proposal to the Financial Creditor, however for the reason beyond the control of the Corporate Debtor, the Corporate Debtor is not in the position to give any such offer to the financial creditor.
20. It is further submitted by the Corporate Debtor that the present Petition is not maintainable.

ANALYSIS AND FINDINGS

21. We have heard the counsel for the parties and gone through the records.
22. It is the case of the Petitioner that a loan of Rs. 3.65 crores were advanced to the Corporate Debtor in August 2021, out of which a sum of Rs. 2 crores were disbursed on 03.08.2021 and sum of Rs. 1.20 crores were disbursed on 16.08.2021 while the remaining amount was disbursed on 20.08.2021 out of which the amount advanced a sum of Rs. 2 crores were repaid by the Corporate Debtor on 16.10.2021 and the balance amount of Rs. 1.65 cores remained outstanding which has not been repaid. The petitioner has relied upon intercorporate loan agreement dated 02.08.2021 which was executed between the parties. As per the loan agreement, the Corporate Debtor was bound to pay the interest at the rate of 10% @ per annum.

23. The loan was repayable within a period of 180 days from the date of disbursement or until 25.10.2022. The loan has not been paid despite repeated demand made by the Petition vide letter notice which are annexed as annexure (j) to annexure (o). Finally, the legal notice dated 06.03.2023 was also issued to the Corporate Debtor. In the reply filed by the Corporate Debtor, the availment of the loan has not been disputed, it has simply been stated that the Corporate Debtor has tried its best to resolve the issue by offering of one-time settlement but he has not been able to proceed with the settlement due to stressed cash flow being faced by him. Since no substantive has been raised in the reply nor the availment the loan was disputed, we held that the Petitioner has been able to establish the factum of existence of financial debt and its default committed by the Corporate Debtor.
24. Therefore, we find the present Petition to be fit for admission under Section 7 of Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 329 (MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Compauge Infocom Ltd.**
- b. This Bench hereby **appoints Mr. Arun Kapoor, Registration No: IBBI/IPA-003/IP-N00030/2017-18/10230 as the Interim Resolution**

Professional having his registered office at G-601, Army Co-operative Housing Society, Sector-09, G.D. Somani Marg, Near G.D. Somani International School, Cuffe Parade, Mumbai-400005, Email:- arun.kapoor58@yahoo.in to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) 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 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, Mumbai for updating the Master Data of the Corporate Debtor.

25. **Accordingly, this Petition is admitted.**

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

Sd/-
ANURADHA SANJAY BHATIA
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)