

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-II), CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 32/Chd/Hry/2024

Under Section 7 of IBC, 2016

In the matter of C.P. (IB) No. 32/Chd/Hry/2024

Amit Jain

S/o Prem Chand Jain,
R/o 250 Himmat Nagar,
Jaipur- 302018
Rajasthan.
PAN: AAKPJ1162A
Phone no. 09971477111
Email- amitjaina1@gmail.com

...Financial Creditor

Vs.

Paytail Commerce Private Limited

CIN: U72900HR2020PTC089043,
Having Regd. office at Unit No. 502-B,
Fifth Floor, Unitech Commercial Tower-2,
Near Greenwood city, Gurugram-122001,
Haryana, India
Email- accounts@paytail.com

...Corporate Debtor

Judgement delivered on: 12.08.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. ASHISH VERMA, MEMBER (TECHNICAL)**

Present :

For the Petitioner/Financial Creditor : Mr. Vaibhav Sharma, Advocate

For the Respondent/Corporate Debtor : Mr. Utkarsh Bhargava, Advocate

**Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. Ashish Verma, Member (Technical)**

JUDGEMENT

The present petition has been filed by Shri Amit Jain, (hereinafter referred to as the “**Petitioner/Financial Creditor**”), under Section 7 read with section 6 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) against Paytail Commerce Private Limited, (hereinafter referred to as the “**Respondent/Corporate Debtor**”), claiming a default of Rs. 1,04,50,000/- (Rupees One Crore Four Lakhs and Fifty Thousand Only) including interest at the rate of 12% per annum on the part of the Corporate Debtor.

2. The facts stated in the application are as under:

- A. The Corporate Debtor is a private limited company incorporated on 07.09.2020 having authorized capital of Rs. 3,000,000 and paid-up capital of Rs. 1,686,690, having its registered office at Unit No. 502-B, Fifth Floor, Unitech Commercial Tower-2, Near Greenwood City, Gurugram, Haryana – 122001 and therefore, the present petition is within the jurisdiction of this bench. A copy of master data of the Corporate Debtor has been annexed as Annexure P-1 of the petition.
- B. The Financial Creditor is an individual, residing at 250 Himmat Nagar, Jaipur, Rajasthan - 302018. This petition is filed by the Petitioner in his capacity as a Financial Creditor of the Corporate Debtor.
- C. As per the Loan Agreement dated 30.06.2023 and supplementary loan agreement dated 31.07.2023, the Petitioner extended loans of Rs. 50 Lakhs

on each date totaling to Rs. 1 Crore to the Corporate Debtor to be repaid within 12 months with 12% interest per annum. The said loan agreements dated 30.06.2023 and 31.07.2023 have attached as Annexure P-2 and P-3 respectively of the petition.

- D. As per the loan agreement dated 30.06.2023, the Financial Creditor exercised his right to call for interest payment by sending first notice dated 16.10.2023 requesting payment of interest accrued till 1.10.2023, in response to which the Corporate Debtor vide communication dated 25.10.2023 sought extension till 15.11.2023, which was granted by the Financial Creditor on 9.11.2023. However, the Corporate Debtor failed to make payment even by the extended timeline. Thereafter, the Financial Creditor issued final notice on 25.11.2023 asking for payment within 7 days and the Corporate Debtor again sought extension of loan tenure citing financial challenges vide communication dated 05.12.2023.
- E. Despite repeated notices and requests by the financial creditor, the Corporate Debtor failed to pay the interest due on the loans which amounts to default as per Clause 3 and 5 of the Loan Agreements dated 30.06.2023 and 31.07.2023 respectively. This also qualifies as default under Section 3(12) of the IBC.
- F. By email dated 08.12.2023, the Petitioner gave final notice to make interest payment within a week by 09.12.2023 failing which default proceedings under IBC shall be initiated against the Corporate Debtor. However, no payment has been made. The date of default as stated in part-III of the form-1 is 09.12.2023. The ledger statement issued by corporate debtor as on 30.11.2023 and

communications between Financial Creditor and Corporate Debtor including a copy of email dated 08.12.2023 has been annexed as Annexure P-4 and P-5 respectively of the petition.

G. As per Section 7 of the IBC read with Section 6, the Financial Creditor can file an application upon occurrence of default for initiating CIRP. Accordingly, the present petition has been filed stating the relevant facts and supported by documents evidencing the debt and default to initiate insolvency resolution process against the Corporate Debtor. Therefore, the Financial Creditor has prayed for initiation of CIRP of the Corporate Debtor.

3. After filing of the present petition, vide order dated 07.02.2024, the Financial Creditor was directed to serve notice of the petition to the Corporate debtor and file an affidavit that the present petition is not a collusive petition and how the parties are related to each other. In compliance with the same, the Financial Creditor filed an affidavit of service via diary no. 00125/11 dated 15.05.2024 along with updated Master data, postal receipts, tracking report and copy of service through email.
4. Further, the Financial Creditor filed a Compliance Affidavit vide diary no. 00125/12 dated 15.05.2024 in which it is stated that the petition is not collusive and the petitioner is not related in any manner to the promoters or management of the Corporate Debtor. The petitioner is an angel/ strategic investor in various companies including the corporate debtor such as Fitspire, Ekank Technologies, Financepeer, The Nestery, Karma life AI, Minion Labs etc. The petitioner is a global leader with over 25 years of experience, lived and worked in Asia, Middle East, Central and Northern America and the UK with multicultural teams and have built a portfolio of companies that together have a turnover

of hundreds of million dollars per annum. Enticed by this vision, the Financial Creditor was invited to invest in the corporate debtor and was assured that he will get healthy returns. Thereafter, the Financial Creditor acquired a 7.5% stake in the Corporate Debtor on 24.03.2021 by making a payment of 50 Lacs. In 2023, the Corporate Debtor expressed the need to raise further funds without dilution of equity and the Financial Creditor provided a loan in the nature of venture debt and in default of the same, the present petition was filed. Thus, the transactions between the Financial Creditor and Corporate debtor were carried out at arm's length and in the nature of venture debt.

5. The Respondent filed its reply/written statement via diary no. 00125/14 stating the following -

- A. The Corporate Debtor does not dispute the validity of the loan agreements dated 30.06.2023 and 31.07.2023, or the quantum of debt as stated in the ledger account statement dated 30.11.2023.
- B. However, the Corporate Debtor submits that there have been ongoing discussions and negotiations with the Financial Creditor regarding the repayment of the debt. The Corporate Debtor had understood from these discussions that the Financial Creditor was amenable to providing additional time for repayment, given the temporary financial constraints faced by the Corporate Debtor.
- C. The Corporate Debtor has been making sincere efforts to improve its financial position and had every intention of honouring its debt obligations. The sudden filing of this petition has taken the Corporate Debtor by surprise, especially in light of the aforementioned discussions.

- D. It is also stated by the Corporate Debtor that he respects the legal rights of the Financial Creditor to initiate proceedings under the IBC, and submits that the initiation of the Corporate Insolvency Resolution Process (CIRP) at this juncture is not in the best interests of all stakeholders involved. The Applicant must realize that initiation of CIRP against the answering Respondent is no guarantee that the Applicant shall be able to recover his dues and should not use it as a tool to enforce recovery. The Corporate debtor further submits that though existence of a debt and its default are sufficient grounds for the admission of a petition under Section 7 of the Code, it is also clear that the IBC should not be used as a tool for blackmail, extortion and recovery.
- E. Further, the Corporate Debtor admits the existence of the financial debt as claimed by the Applicant/Financial Creditor, acknowledges the loan agreements dated 30.06.2023 and 31.07.2023 as valid and binding documents, confirms that the total amount claimed of Rs. 1,04,50,000/- (Rupees One Crore Four Lakhs Fifty Thousand Only), including the principal amount and interest component, as reflected in the ledger account statement (Annexure P-4), is due and payable.
- F. The Corporate debtor further submits that there were ongoing discussions between the parties regarding the repayment of the debt. The Corporate debtor had understood from these verbal communications that the Financial Creditor was willing to provide additional time for repayment. The Corporate debtor has been facing temporary financial constraints but has been making sincere efforts to improve its financial position to honor its debt obligations.

G. Finally, The Corporate debtor reiterates that while it does not contest the validity or accuracy of documents submitted by the Financial Creditor, it had hoped for more time to repay the debt based on the verbal discussions with the Applicant.

6. The Financial Creditor filed its rejoinder dated 29.07.2024 via diary no. 00125/16, wherein it has been further submitted that by taking the baseless defense of seeking more time to repay the debt aside, the Corporate debtor has in fact acknowledged the financial debt owed by him and has not disputed the validity of loan agreements or quantum of debt as claimed in the petition. Further, the Financial Creditor denied the assertion of Corporate Debtor that there was any ongoing understanding or agreement to provide additional time for repayment beyond what was already stipulated in the loan agreements. The financial creditor also refuted the respondent's insinuation that the IBC is being used as a tool for blackmail, extortion and recovery, and states that he has approached this tribunal as a last resort after giving enough opportunity to the corporate debtor to repay the debt. Lastly, with regard to the contention of the Corporate debtor that CIRP is not in the best interest of all the stakeholders, the Financial creditor states that the CIRP is precisely the mechanism designed by the legislature to protect the interests of all the stakeholders.

7. We have heard the Ld. Counsels for both parties and gone through the facts and materials of the case available on record. The following issues arises for adjudication:-

A. The first issue is whether the present petition filed is within the period of limitation-

The Financial Creditor in Part-IV of Form-1 has contended that the date of default is 09.12.2023, and the present petition is filed on 25.01.2024 which is well within the period of limitation of 3 years.

B. The Another issue for consideration is whether there is existence of debt and its default -

The Corporate Debtor in its ledger statement dated 30.11.2023 attached as Annexure P-4 of the petition and further in its reply has clearly acknowledged the existence of debt and its default and also stated that it has been facing temporary financial constraints but has been making sincere efforts to improve its financial position. The Corporate debtor is seeking additional time for repayment of debt, which implies that the debt is due and payable. The clause 3 and 5 of the loan agreement dated 30.06.2023 executed between the Corporate Debtor and the Financial Creditor are as below-

*“3. **Interest:** The borrower shall pay to the lender, interest at the rate of 12% per annum, on the loan amount from the date of disbursement of loan amount. Lender shall have the right to call for interest amount any time as per his sole discretion. The said interest amount shall be payable within 15 (fifteen) days of such call being made, and failure to pay within 15 days period will amount to a default as provided in following clauses.*

*5. **It is agreed that in the event of a default, the entire outstanding loan amount, along with accrued interest and any other dues, shall become immediately due and payable without the need for any notice or demand.** Without prejudice to the foregoing, Lender shall have the right and entitlement to take any action that it may in his sole discretion deem appropriate and/or that is permitted or available under any applicable law or statute.*

*‘**Default**’ shall mean the failure of the borrower to meet payment obligations, including but not limited to, the repayment of the loan amount, interest payments or any other financial commitments under this agreement. Default shall also include (i)*

any misrepresentation by the borrower or breach of any terms, covenants, conditions, obligations, warranties or representations made under this Agreement.”

The Corporate debtor has not paid the due amount even after repeated requests by the Financial Creditor as evidenced from the proof of communications and the ledger accounts attached with the petition, which makes it evident that the Corporate Debtor has defaulted in making the payment of debt in terms of clause 5 of the Loan Agreement dated 30.06.2023 as reproduced above, which comes to entire amount of loan including interest amounting to Rs. 1,04,50,000/- and the said amount is more than the threshold limit as envisaged under the Code. The Hon'ble Supreme Court in the case of ***Innoventive Industries Limited vs ICICI Bank Ltd (2018) 1 SCC 407***, observed the scope and extent of the powers conferred with the Adjudicating Authority under Section 7. The Hon'ble Supreme Court held in this case that in an application under section 7 of the IBC, the Adjudicating Authority has to merely satisfy whether a default has occurred or not. Section 7(5) empowers Adjudicating Authority either to accept the application in lieu of section 7(5)(a) or to reject under section 7(5)(b). Therefore, no other order can be passed by the adjudicating authority in a petition under section 7.

In another case of ***Pratap Technocrats Ltd and Ors. v. Monitoring Committee of Reliance Infratel Limited and Anr. (Civil Appeal No 676 of 2021)dated 10.08.2021*** , also , the Hon'ble Supreme Court ruled out that once Adjudicating Authority identify a default by the corporate debtor, then it is bounded by the statute (as per IBC) to admit the CIRP application under

section 7. The Adjudicating Authority cannot pass any other order at this instance.

- C. Further, the Corporate Debtor has pleaded that there were ongoing discussions between the parties regarding the repayment of the debt. The Corporate debtor had understood from these verbal communications that the Financial Creditor was willing to provide additional time for repayment. In another judgment in case of ***E.S.Krishnamurthy vs Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020) dated 14.12.2020***, the Hon'ble Supreme Court held that NCLT has no power u/s 7(5) of IBC to facilitate the parties to settle for payment of debt. In this case, the Hon'ble Supreme Court observed that the Adjudicating Authority is empowered only to verify whether a default has occurred or default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 5 of the Code.
- D. The Corporate Debtor also raised contention that in the present matter, the IBC cannot be used as a tool for blackmail, extortion and recovery and the admission of the present petition is not in the interest of the stakeholders. With regard to the same, this tribunal is of the considered view that the Corporate Debtor has failed to sufficiently prove this contention with any cogent and convincing evidence to substantiate his allegation.
- E. As the Corporate Debtor has admitted the debt claimed by the Financial Creditor in Part IV of the Application/Petition u/s 7 of the Code and the Financial Creditor

has also filed an affidavit vide diary no. 00125/12 dated 15.05.2024 stating that this is not a collusive petition and the petitioner is not related in any manner to the promoters and management of the Corporate Debtor, debt and default in terms section 7(5) of the Code is proved for admitting the instant petition to initiate CIRP against the Corporate Debtor.

8. As a sequel to the above discussion and reasons recorded hereinbefore, the present petition being complete and having established the default in payment of the Financial Debt for the default amount of Rs. 1,04,50,000/- (Rupees One Crore Four Lakhs and Fifty Thousand Only) including interest at the rate of 12% per annum being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, this tribunal also direct moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- 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."

- e. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

9. The Financial Creditor did not propose IRP in part-III of form-1, however, in annexure P-6 of the petition consent of the proposed IRP Ms. Manisha Rawat along with authorisation letter and Certificate of registration was annexed. Upon perusal of the same it is noted that the AFA filed was valid from 06.02.2023 to 05.02.2024. Thereafter, the antecedents of the proposed IRP have been verified by the Legal Research Associate (Miss. Vanshika) of this Adjudicating Authority from the website of IBBI and the updated AFA is valid till 18.01.2025, therefore, this Bench appoints the proposed IP Ms. Manisha Rawat, as IRP having Registration IBBI/IPA-002/IP-N00233/2017-2018/10684, Email: manisharawatfcs@gmail.com, Mobile No. 9999016929, with the following directions:-

- i.) The term of appointment of Ms. Manisha Rawat, shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code

read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor to enable IRP to perform his duties in terms of Section 17, 18,19 and 20 of the Code.
- vi.) The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with

the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The IRP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and

other entities are directed to render the necessary information and cooperation to the IRP to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors as Section 21 of the Code and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee;
- ix.) Thereafter, the Committee of the Creditors shall appoint a Resolution Professional as per section 22 of I&B Code, 2016 and get his appointment approved by this Tribunal .
- x.) A monthly progress report shall be filled by the IRP till the appointment of RP and thereafter , RP shall file the monthly progress report , providing the details of work done in respect of completing the CIRP within the time line as prescribed under the provision of section 12 of the I&B Code, 2016;
- xi.) The Interim Resolution Professional/Resolution Professional after his appointment by COC and confirmed by this tribunal , is directed to send a regular progress report to this Tribunal every month .

10. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the immediate expenses in accordance with Regulation 6 of

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Petitioner.

11. A copy of this Order shall immediately be communicated to the petitioner Financial Creditor, the Respondent Corporate debtor, and the IRP named above, by the Court Officer/Registry of this Tribunal.
12. The petition is admitted for CIRP of the Corporate Debtor and is disposed of accordingly.

Sd/-
(Ashish Verma)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 12, 2024
Vansh