

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-769/(ND)/2021

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

In the matter of:

M/s. Naman Infradevelopers Private Limited

Registered office at:

56, Rajpur Road, Behind HDFC Bank,
Dehradun, Uttarakhand - 248001

...Financial Creditor

Versus

M/s. Sadhna Media Private Limited

Registered office at:

38, Rani Jhanshi Road,
Jhandewalan, New Delhi- 110034

...Corporate Debtor

IB-769/ND/2021



Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant :Mr. Deepak Garg and Ms. Preety
Gupta, Advocates.
Counsel for Respondent :Ms. Sushma Singh, Advocate.

ORDER

Per SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 30.03.2022

1. The present application is filed by M/s Naman Infradevelopers Private Limited under Section 7 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 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s Sadhna Media Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 1,0086,967 (One Crore Eighty Six Thousand Nine Hundred and

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Sixty Seven Rupees only) as on 10.06.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Financial Creditor's company is involved in the business of developing the land and building etc. That the Corporate Debtor is engaged in the business of setting up of TC channel and network, linking hub, teleports and Indian News agencies.
- ii. That in Feb 2021, the Corporate Debtor was in dire need of funds on account of working capital requirement and other general corporate purposes. The Corporate Debtor approached the Financial Creditor and requested to advance an amount of Rs. 1,00,00,000/- (Rupees One Crore) to it for carrying and pursuing the business operations effectively and the same was accepted by the Financial Creditor.
- iii. That to further process the grant of loan, the Financial Creditor entered into a loan agreement dated 18.02.2021 with the Corporate Debtor, thereby agreeing to advance a short term loan of Rs. 1,00,00,000/- upon payment of



interest at the rate of 4% per month for a period of 3 months with a condition that the entire loan amount along with the interest shall be repaid to the Financial Creditor after the expiry of 3 months on 10.06.2021.


- iv. That the Financial Creditor sought from the Corporate Debtor the authority from the Board of Directors of the Corporate Debtor company to avail such loan. The Corporate Debtor supplied the certified copy of the board resolution duly passed in the board meeting of the Corporate Debtor.
- v. That in terms of the loan agreement dated 18.02.2021, the Financial Creditor advanced a loan of Rs. 1,00,00,000/- in accordance with the agreement in following manner:

- Rs. 23,00,000.00 – 10.02.2021
- Rs. 10,00,000.00 – 12.02.2021
- Rs. 9,50,000.00 – 24.02.2021
- Rs. 11,00,000.00 – 25.02.2021
- Rs. 5,00,000.00 – 25.02.2021
- Rs. 8,00,000.00 – 04.03.2021
- Rs. 33,50,000.00 – 06.03.2021





- vi. That as per the agreement, the loan was to be repaid on or before 10.06.2021, but the Corporate Debtor did not pay anything towards repayment of loan amount including interest during the period of loan tenure as per loan agreement.
 - vii. That the Corporate Debtor vide their letter dated 11.06.2021 requested the Financial Creditor to extend the loan period which was not agreed to by the Financial Creditor. The Financial Creditor, in reply to the letter dated 11.06.2021, sent a loan recall notice dated 15.06.2021.
 - viii. That even after the expiry of such a long period, the Corporate Debtor has repaid nothing towards repayment of loan at the time of filing this application.
2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:
- i. That the Respondent availed the debts in the form of loan from the Financial Creditor for running the business and



executed loan agreement, dated 18.02.2021 for an amount of Rs. 1 crore @ 4 % interest per month.

- ii. That the business of the Respondent was running in loss and due to such financial crises, the Respondent had requested the Applicant to extend the time period of loan and the same was extended by the Financial Creditor till 10.07.2021.
- iii. That due to fiscal deficit in the account of the Respondent, the Respondent further requested the Applicant vide letter dated 11.06.2021 to extend the loan period for 6 months. The Financial Creditor declined the request of the Corporate Debtor vide its letter dated 15.06.2021 by granting 7 days' time to repay the entire loan amount till 21.06.2021.
- iv. That the Financial Creditor directly approached this Adjudicating Authority and no legal notice was issued to the Corporate Debtor. As per the settled law, in the civil proceedings, the legal notice has to be issued and in the present case, there is no such legal notice and, on such ground, the present petition is liable to be dismissed.



- v. That due to unavoidable circumstances, the business of the Corporate Debtor is not running smoothly and financial crisis still exists. The Corporate Debtor is trying to resolve the issue and undertake the same will be paid by the Corporate Debtor as and when the Company of the Corporate Debtor will be earning profits in upcoming years.
- vi. That the Financial Creditors are guilty of *suppression veri* and *suggestio falsi*. The Financial Creditor has not approached this Adjudicating Authority with clean hands. The Financial Creditor has not only concealed the relevant and material facts from this Adjudicating Authority but has also attempted to conceal, twist, misrepresent, mislead and over-reach this Tribunal by making frivolous, and baseless allegations.
3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 1,00,86,967 (One Crore Eighty Six Thousand Nine Hundred and Sixty Seven Rupees only) as on 10.06.2021.



4. From the daily order dated 11.03.2022, it is clear that the Counsel for the Corporate Debtor has submitted that the present state of affairs of the Corporate Debtor is not favourable and they require time to pay the amount to the Financial Creditor. The counsel for the Corporate Debtor has admitted the debt.
5. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.
6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.



7. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Pradeep Kumar Ray for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N-01100/2021-2022/13648. Mr. Pradeep Kumar Ray has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 07.12.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

10. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Declaration in Form 2 (under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) made by the proposed Interim Resolution Professional dated 07.12.2021 clearly states that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. The proposed Interim Resolution Professional Mr. Pradeep Kumar Ray has also submitted an "Authorisation for Assignment" dated 22/06/2021 issued by Institute of Insolvency Professionals.



11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. Pradeep Kumar Ray having registration number IBBI/IPA-002/IP-N-01100/2021-2022/13648 is appointed as an Interim Resolution Professional.



15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) 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;

“(b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in



accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)