

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.110/ALD/2022

In the matter of

An application 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:

NAMAN INFRADEVELOPERS PRIVATE LIMITED

Having its Registered Office at:

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

..... Applicant/Financial Creditor

Versus

VARUN MEDIA PRIVATE LIMITED

Having its Registered Office at:

C-457, Sector-10, Noida,
Uttar Pradesh, PIN-201301, India.

.....Respondent/Corporate Debtor

Order pronounced on 14.07.2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Deepak Kumar Garg, Adv. : For the Financial Creditor

Ms. Sushma Singh, Adv. : For the Corporate Debtor

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ORDER

Facts of the Case

1. The present application is filed by the applicant namely, M/s Naman Infradevelopers Private Limited for initiating corporate insolvency resolution process against the Respondent/Corporate Debtor i.e Varun Media Private Limited 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.
2. The Corporate Debtor i.e M/s Varun Media Limited is registered under the companies Act, 1956 having its registered Office at C-457, Sector 10, Noida-201301.
3. It is contended by the Financial Creditor that Corporate Debtor availed the loan facility of amount INR 1,08,00,000 for the period of three months from 14 February 2022 to 13 May 2022 at 18% p.a. For this purpose, Financial Creditor executed the loan agreement dated 11 October 2021 with Corporate Debtor with certain terms and Conditions which is annexed as Annexure A-8. After the expiration of three months, Corporate debtor defaulted

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in the repayment of the loan amount on 13 May 2022. The Financial Creditor also contends that despite sending three reminders, dated 16th May 2022, 25th June 2022, and 21st July 2022, to the Corporate Debtor for the repayment of the loan amount, no response was received (Letters dated 16th May 2022, 25th June 2022, and 21st July 2022 have been annexed as Annexures No. A- 11, A-12 and A-13 of the Petition).

4. Finally, the Financial Creditor resorted to legal recourse by issuing a legal notice dated 28th July 2022 to the Corporate Debtor annexed as Annexure A-14.
5. The total amount of debt along with interest due from the corporate debtor is INR 1,22,26,880 including interest i.e 14,26,882 as on 13.05.2022.

Reply on Behalf of the Corporate Debtor

6. It is submitted by the Corporate Debtor in its reply affidavit that due to COVID-19 Pandemic his business accrued huge loss. This pandemic created financial crisis in his business owing to which debt remains unpaid. While admitting its liability of financial debt,

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it is asserted by the Respondent that debt will be repaid as soon as the financial condition of the corporate debtor improves

7. On the above mentioned ground the Corporate Debtor has prayed for dismissal of this application.

Written Submission on behalf of the Financial Creditor

8. It is contended by the Financial Creditor that Corporate Debtor has admitted its liability towards the default in repayment of the total loan amount. Currently, Respondent is not in a position to repay the same. Therefore, this case fulfils the criteria of financial debt as per Section 5(8) and is eligible for initiation of CIRP Proceedings against the Corporate Debtor.

9. The Company Petition filed by the Financial Creditor is within the four corners of the law. It is respectfully submitted that, it is an admitted fact that there is a financial debt which is due and payable by the Corporate Debtor to the Financial Creditor. There is a default in repayment of such financial debt which has occurred on part of the Corporate Debtor.

Findings

10. We have heard the submissions of the Ld. Counsels of both the parties and perused the material available on record.

11. It has been argued that financial debt of Rs. 1,22,26,880 has been outstanding against the Corporate Debtor for carrying out business activities. The factum of non-payment of has never been denied by the Corporate Debtor. The debt owed to the Applicant Financial Creditor is acknowledged in the ledger account of the Corporate Debtor from 01 April 2021 to 31st August 2022 annexed as Annexure No.A-15 as shown below:-

Naman Infradevelopers Pvt Ltd
Varun Media Pvt Ltd.
 Ledger Account
 1-Apr-2021 to 31-Aug-2022

Date	Particulars	Vch Type	Vch No.	Debit	Credit
11.10.2021	To (as per details) SBI A/c No. 31943580523 Bank Charges Amt transfer on a/f of ;loan	Payment 35,00,047.20 Cr 47.20 Dr	9	35,00,000.00	
04.12.02021	To (as per details) SBI A/c No. 31943580523 Bank Charges TR a/c of Loan	Payment 25,00,047.20 Cr 47.20 Dr	16	25,00,000.00	
09.12.2021	To (as per details) SBI A/c No. 31943580523 Bank Charges Amt tr a/c of loan	Payment 20,00,047.20 Cr 47.20 Dr	17	20,00,000.00	
14.02.2022	To (as per details) SBI A/c No. 31943580523 Bank Charges tr a/c of loan	Payment 28,00,047.20 Cr 47.20 Dr	19	28,00,000.00	
By Closing balance				1,08,00,000.00	1,08,00,000.00
				1,08,00,000.00	1,08,00,000.00
1.4.2022	To Opening balance			1,08,00,000.00	
31.08.2022	To Interest A/c <i>begin amt debited a/c of interest till August 2022</i>	Journal		14,26,882.00	
				1,22,26,882.00	
	By closing balance				1,22,26,882.00
				1,22,26,882.00	1,22,26,882.00

12. The Liability of respondent to pay was also acknowledged by its counsel during the course of arguments. Further, the disbursement of loan amount of Rs.1,08,00,000 to Corporate Debtor by the Financial Creditor is evidenced by the Bank Statement of account maintained by the Financial Creditor with SBI Bank which has been annexed as Annexure No. A-9.
13. Thus, we are satisfied that the loan amount of Rs.1,08,00,000/- disbursed by the Corporate Debtor to Petitioner/Financial Creditor in this case has become due and payable.
14. It is clear that Corporate Debtor has committed default in repayment of the total loan amount including interest which stood as 1,22,26,882. It is admitted by the Corporate Debtor in paras 04 and 05 of the Reply Affidavit that the loan agreement was executed for availing the debt facility of Rs. 1,08,00,000.
15. In view of the foregoing discussion, we are of the considered view that the present petition is well within limitation, complete in all respect, and there being a default in repayment of a financial debt by the Corporate Debtor, therefore, the present petition deserves to be admitted under Section 7 of the Code

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16. In Part-III of the Application, the Financial Creditor has proposed the name of the Mr. Pradeep Kumar, Registration No. IBBI/IPA-002/IP-N01100/2021-22/13648, R/o WZ-108, Shadipur Main Bazar, New Delhi, E-mail: pkrayip@gmail.com and also upon verification from the IBBI website, it is seen that said IRP holds valid authorization till 25 May 2024. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Pradeep Kumar, and there is nothing adverse found against him.

17. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than threshold limit of one crore. As a necessary consequence of the moratorium in terms of Section 14, the

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following prohibitions are imposed, which must be followed by all and sundry:

“(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.

(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.

(f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) 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.”

18. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors 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,

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and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

19. The IRP is Directed to take Steps as mandated under the IBC, especially under Sections 15,17,18,20 and 21 of the IBC, 2016.

20. We direct the Financial Creditor to deposit a sum of Rs.2,00,000/- (Two Lakhs) with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

21. A certified copy of the order may be issued to all the concerned parties if applied for upon completion of usual formalities. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith. The

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Financial Creditor shall also cause a copy of this order delivered to IRP.

22. List the matter on 22nd August, 2023 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)