



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

IB-232/(ND)/2022

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:

MR. SUBODH KUMAR NATH

At: 114-F-26, Mahagun, Sector – 50, Noida,
Gautam Buddha Nagar, Uttar Pradesh 201301

...Applicant/Financial Creditor

Versus

M/s SADHNA COMMUNICATIONS PRIVATE LIMITED

(CIN: U74110DL2011PTC220039)

At: 5/6 S/F Side, West Patel Nagar, New Delhi 110008

...Respondent/ Corporate Debtor

Coram:

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

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

**Counsel for Petitioner/Financial Creditor: Mr. Deepak
Kumar Garg**

**Counsel for Respondent/Corporate Debtor: Ms. Sushma
Singh**

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ORDER

Per RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date:19.07.2022

1. The present application is filed by Mr. Subodh Kumar Nath 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 Communications Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 1,15,95,049 (Rupees One Crore Fifteen Lakh Ninety Five Thousand and Forty Nine). The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Corporate Debtor through its Director, Mr. Arpan Gupta, approached the Financial Creditor and requested them to give business loan of Rs. 1,11,00,000. The Financial Creditor considered the request made by Corporate Debtor and disbursed the business loan of Rs. 1,11,00,000 on various dates.
- ii. That the Corporate Debtor and Financial Creditor executed Loan Agreement on 17th September,

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- 2021 by which Corporate Debtor and Financial Creditor decided the Terms and Conditions.
- iii. That as per Clause 4 and 5 of the Loan Agreement, loan was disbursed for a period of 3 months from 17.09.2021 to 16.12.2021 @ 9% per annum.
 - iv. That as per Clause 6 of the Loan Agreement, Corporate Debtor was liable to pay principal along with interest amount on or before 16.12.2021 to the Financial Creditor, which Corporate Debtor failed to do.
 - v. That due to default in payment by the Corporate Debtor, Financial Creditor served with Corporate Debtor reminder letter on 25.12.2021 to make the payment. In reply to the Letter dated 25.12.2021, Corporate Debtor sent request letter dated 31.12.2021 to extend the time period of payment by 15 days which Financial Creditor accepted the requested and extended time by 15 days till 15th January, 2022.
 - vi. That due to non-response and default in payment, Financial Creditor again sent a reminder letter dated 17.01.2022 to the Corporate Debtor to make payment of loan along with interest. After which Financial Creditor through Advocate sent a legal notice dated 20.01.2022 to the Corporate Debtor.
 - vii. That even after various reminder and legal notice Corporate Debtor failed to make the payment of Loan and interest.

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2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- i. That the Respondent availed the debts in the form of loan from the Financial Creditor for running the business and executed the loan agreement dated 17.09.2021 for the period of 3 months for an amount of Rs. 1.11 crore @ 9% per annum.
- ii. That the business of the Respondent was running in loss and due to such financial crises, the Respondent requested to extend the time period of loan and the same was extended by the Financial Creditor for 15 days.
- iii. That for smooth running of the business, the Respondent availed such loan from the Financial Creditor due to dire need and executed the aforesaid loan agreement dated 17.09.2021 for 3 months only for an amount of Rs. 1.11 Crore @ 9% interest per annum by repaying the loan amount till 16.12.2021.
- iv. That due to financial discrepancy, the Respondent requested vide letter dated 31.12.2021 to extend the loan period for 15 days and the Financial Creditor duly accepted request of the Respondent vide its letter dated 15.1.2022 to repay the entire loan amount along with the interest @ 9% p.a. till 15.01.2022.

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- v. That due to worldwide pandemic attack of Covid-19, the Respondent's business suffered loss since its inception. Due to above, the Respondent could not clear its debt.
- vi. That the respondent is trying to resolve the issue and undertakes that the loan will be repaid by the Respondent as and when the Respondent Company will be earning profits in upcoming years. Hence, the present application is liable to be dismissed with this ground alone.
- vii. That no such cause of action has arisen in favour of the Financial Creditor and against the Respondent to initiate the insolvency proceedings as no injury has been stated to be caused to the Financial Creditor by any act of the Respondent. To the contrary, the Respondent Company suffered huge losses. The present application as such is not maintainable and is liable to be dismissed with exemplary costs being false, frivolous and vexatious and is liable to be dismissed on this ground alone.
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. 1,15,95,049 (Rupees One Crore Fifteen Lakh Ninety Five Thousand and Forty Nine).

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4. In daily order dated 02.06.2022, it was noted as follows, “the counsel for the Corporate Debtor has submitted that as per the instructions of the Corporate Debtor, the claim is admitted.”
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 in 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. Manoj Kulshrestha for appointment as Interim Resolution Professional having

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registration number IBBI/IPA003/IP-N00005/2016-17/10024. Mr. Manoj Kulshrestha 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 21.03.2022. 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 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. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Manoj

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Kulshrestha has submitted the declaration in Form 2 dated 21.03.2022. The proposed Interim Resolution Professional Mr. Manoj Kulshrestha has also submitted an "Authorisation for Assignment" dated 24/01/2022 issued by Insolvency Professionals Agency of Institute of Cost Accountants of India.

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. Manoj Kulshrestha having registration number IBBI/IPA003/IP-N00005/2016- 17/10024 is appointed as an Interim Resolution Professional.

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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,

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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

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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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MEMBER (TECHNICAL)

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