



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB) No. 536(PB)/2022

In the matter of:

M/s Sharma Gandhi Hire Purchase Limited

...Financial Creditor

Having Registered Office At:

Flat 12-B, Block E, 12th Floor,
Ideal Regency 46 Diamond Harbour Road,
Kolkata (WB)-700063

Having Corporate Office At:

3721/1, First Floor, Netaji Subash Marg
Daryaganj, Delhi-110002
Sharmagandhi2016@gmail.com

Versus

**M/s Best News Company Private
Limited**

...Corporate Debtor

Having Registered Office At:

136-B, Pocket-C, Sidharth Extension
New Delhi-110014

shashankbansal@hotmail.com

Order pronounced on: 17.05.2023

**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.**

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances :

For the Financial Creditor

: Mr. Rishi Sood Adv.

For the Corporate Debtor

: Mr. Harshit Agarwal, Adv.



ORDER

PER SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicant/Financial Creditor (M/s Sharma Gandhi Hire Purchase Limited), a Non-Banking Finance Company incorporated under the provisions of the Companies Act, 1956 with **CIN No. U65921WB1994PLC140867** and is registered with the Reserve Bank of India. The Applicant is engaged in the business of Financial intermediation including but not limited to hire purchase, investment, general finance, housing and industrial financing, money lending, deposits, and leasing. The Applicant is seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s Best News Company Limited** [CIN: U92190DL2011PTC229165] (“Corporate Debtor”).
2. The Corporate Debtor was incorporated under the Companies Act, 1956 having CIN: 92190DL2011PTC229165. Its registered office is at 136-B, Pocket-C, Siddharth Extension, New Delhi-110014. The Authorised Share capital of CD is Rs. 55,00,00,000/- and its paid-up share capital is Rs. 29,00,00,000/-. The Corporate Debtor is engaged in the business of news and programming services through its regional channels Buland News Samachar Plus and Samachar Plus.

BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE FINANCIAL CREDITOR ARE AS FOLLOWS:

3. Applicant is claiming Rs. **64,35,00,000/-** (Rupees Sixty Four Crores Thirty Five Lakhs only) excluding interest of Rs. 1,31,68,936/-



(Rupees One Crores Thirty One lakhs Sixty Eight Thousand Nine Hundred and Thirty Six) due and payable by the Corporate Debtor to applicant against the default committed by the Corporate Debtor. Copy of the workings of the total amount in default has been annexed as **Annexure J** and the Ledger account of the Corporate Debtor maintained by the Financial Creditor duly reflecting the disbursal of the amount over a period of time is annexed as **Annexure I (Colly)**

4. Applicant submitted that in 2016, the Corporate Debtor in order to expand its business activities- to carry on public relation services and to run its academy approached the applicant to borrow sums for its capital requirements and as such based upon representations, the Applicant agreed to advance a sum of **Rs. 75,00,00,000/-** (Rupees Seventy Five Crores Only) @ 12% p.a. for a term of 5 years to the Corporate Debtor for which the parties executed a Loan Agreement dated 10.05.2016. Copy of loan agreement dated 10.05.2016 is annexed as **Annexure F**.
5. Applicant states that the entire amount was to be disbursed in tranches over 5 years @ 12 percent p.a. In terms of the clause 4 of the loan agreement the Applicant agreed for a moratorium on the repayment of principal loan amount till **31.03.2018**, however, interest against the same was payable by the Corporate Debtor. The Corporate Debtor on **29.07.2017** wrote to the lender seeking waiver of interest during moratorium period on account of financial instability in his business but the Applicant denied the said request, however, revised the interest rate from 12 percent p.a. to 11 percent p.a.
6. On **15.06.2018**, the Applicant demanded repayment of outstanding loan and interest due against the same, however, instead of discharging its obligations under the Loan Agreement, the Corporate



Debtor vide its letter dated **20.06.2018** and **30.06.2018** sought further sought extension in moratorium period for 2 more years. The Applicant vide letter dated **12.07.2018** extended moratorium for a further period of 2 years i.e. till **31.03.2020**.

- 7.** Applicant further submitted that despite the extension granted, the Corporate Debtor failed to make payment towards principal loan amount as well as interest accrued upon the same. The Applicant sent a notice dated **15.06.2020** to the Corporate Debtor seeking repayment of the loan amount, however on account of Covid-19 pandemic and nationwide lockdown, CD again requested for accommodation. The Applicant vide its letter dated **15.07.2020** further extended the moratorium period till **31.03.2021**. The Applicant on **10.04.2021**, upon expiry of the extended moratorium issued notice for repayment of loan but to no avail. The Corporate Debtor vide its reply dated **17.04.2021** reiterated its financial incapability and sought extension of moratorium period.
- 8.** The Applicant vide its letter dated **22.04.2021** denied the request to the Corporate Debtor for extension and demanded repayment of loan In furtherance of the irregularities at the behest of the Corporate Debtor its account was declared as NPA on **30.06.2021** and the same was informed to the Corporate Debtor vide notice dated **14.07.2021** annexed as **Annexure G**. Applicant further submitted that upon failure of the Corporate Debtor in discharge of its debt towards the Applicant, Applicant recalled its loan vide its loan Recall letter dated **25.08.2021**.
- 9.** Applicant further submitted that the Corporate Debtor replied to the Loan Recall Letter vide its reply dated **20.09.2021** requesting to recall the letter dated **25.08.2021** in the light of these pressing times in the



wake of Covid-19 pandemic and sought further extension till **31.03.2022**. The Applicant did not accommodate the request seeking extension however, indulged in reconciliation and settlement of the dues at the request of the Corporate Debtor till 31.03.2022. Copies of letters exchanged between Applicant and Corporate Debtor are annexed as **Annexure-G (colly)**. It is further submitted by the Applicant that till date CD has only made repayment of Rs. 8,10,00,000/- against the total sanctioned amount of Rs. **72,45,00,000/-**. Thus a sum of Rs. **65,66,68,936/-** including interest of **Rs. 1,31,68,936/-** is due and payable by CD. A copy of the Record of Default for CD as available with NeSL is annexed as **Annexure K**.

**BRIEF SUBMISSIONS ON BEHLAF OF THE CORPORATE DEBTOR
ARE AS FOLLOWS:**

- 10.** CD submits that the Application is not maintainable as Applicant is not a Financial Creditor and that there is no default on the part of CD. CD submits that Applicant and CD met each other in one of the corporate events wherein the Corporate Debtor informed the Financial Creditor was contemplating expansion of its venture and was looking for an investment partner. Further, Applicant expressed its interest to be part of the said new venture and agreed to invest Rs. 100 crores. Therefore, the amount given by the Financial Creditor was in the nature of an investment and not as 'financial debt'.
- 11.** CD in its reply contended that Applicant represented that, initially the investment be treated as loan as it wanted to see the progress of the new venture, to which, the Corporate



Debtor agreed with a clear understanding that it shall always be treated as an investment. An agreement was got signed by the Applicant alleging that it is an investment agreement and copy thereof was not shared with the Corporate Debtor. It is now that the Financial Creditor is stating that the same was a loan agreement. CD contended that Applicant has duped the CD.

- 12.** CD further submitted that there is no debt due of alleged money claimed by the Applicant. CD states that The alleged debt claimed by the applicant being a disputed debt, cannot be adjudicated in a summary proceeding as contemplated under the Insolvency & Bankruptcy Code and it requires evidence to be led by the parties. There is no default on the part of CD and no amount is legally due or payable to the Applicant. Further, it is the submission of the CD that The default has not even been proved by the Financial Creditor as no calculations whatsoever or days of default have been provided.
- 13.** CD submits that there is no debt under Section 3(11) of the IBC, 2016 as no amount is due or payable by the CD and the Applicant failed to place any evidence on record that amount is due or payable by the CD Therefore, the onus is on the applicant to discharge this obligation and satisfy this Hon'ble Adjudicating Authority that any amount is due or payable by the CD.



ANALYSIS AND FINDINGS

- 14.** We heard the learned Counsels appearing for the Financial Creditor and the Corporate Debtor and perused the record. During the proceedings, Counsel for the CD gave an oral undertaking for conversion of debt to equity.
- 15.** On perusal of the record with NeSL, Loan Agreement, Ledger Accounts, Bank Statements and the Letters exchanged between the parties, it can be fairly ascertained that there is a debt payable by CD to Applicant. The date of default as alleged by the Applicant is 31.03.2021. However it is seen that the account of CD was declared NPA on **30.06.2021, and the Applicant indulged in reconciliation and settlement of dues at the request of the CD till 31.03.2022.** Be that as it may, the application is within the limitation. Evidence of default has been put on record establishing the default.
- 16.** It is noteworthy to mention that on one hand CD alleges that there is no debt due from CD to Applicant and the CD alleges that the agreement which the parties entered upon is one of the investment type. On perusal of the agreement annexed with the application on page no 44, the very recitals of the agreement states that it is a loan agreement. Relevant extracts of the agreement are reproduced below:



LOAN AGREEMENT

This Loan Agreement (hereinafter refer to as "Agreement") made at Delhi on 10th day of May, 2016-

BY AND BETWEEN

SHARMA GANDHI HIRE PURCHASE LIMITED, a Non-Banking Financial Company incorporated under Companies Act, 1956, registered with Reserve Bank of India and having its registered office at 157 Jessore Road, Michael Nagar, Kolkata – 700 130 and corporate office situated at 3721/1, First Floor, Netaji Subhash Marg, Daryaganj, Delhi-110002 through its authorized representative Ms. Asha Nand Sharma duly authorized vide board resolution dated 18.04.2016 (hereinafter called the '**Lender**') which term shall include each of their representatives, executors, administrators, successors and assigns;

AND

BEST NEWS COMPANY PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 having its office at 136-B, Pocket C, Sidharth Extension, New Delhi-110 014 through its authorized representative Mr. Shashank Bansal authorized vide board resolution dated 8th April, 2016 (hereinafter referred to as '**Borrower**') which expression shall include its representatives, executors, administrators successors and assigns.

(The Borrower and the Lender are hereinafter also individually referred to as a "Party" and collectively as the "Parties")

WHEREAS:

- A. The Borrower Launched Regional Hindi News Channels, (Buland News Samachar Plus Uttar Pradesh /Uttarakhand) in June 2012 and (Samachar Plus



3. Unsecured Loan

3.1 The Loan shall be unsecured but is made with full recourse against the Borrower and his successors.

4. Repayment of the Principal Loan Amount and Interest

4.1 The Lender agrees that there shall be a moratorium on the repayment of Principal Loan Amount till the financial year ending on 31.03.2018. However, the Borrower shall be liable to pay the interest calculated on the disbursed amount during the said period of moratorium as per Clause 4.3.

4.2 The Borrower shall pay the Principal Loan Amount in equal quarterly instalments after the expiry of the moratorium as per Clause 4.1.

4.3 The Borrower shall pay interest @ 12% p.a on the Principal Loan Amount in equal quarterly instalments, failing which, the lender has the right to recall the entire Principal Loan Amount disbursed alongwith interest outstanding.

17. On perusal of the documents, record of Information utility and on the basis of arguments advanced, we find that there is default of debt on the part of the CD and the application for initiating CIRP against the CD is within the period of limitation. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record stating that no disciplinary proceedings are pending against him. The application filed under section 7 of the Code, is otherwise complete and meets all other procedural requirements of the Code and Regulations made there under.

18. In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing (IB)-536(PB)/2022 filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for



initiating CIRP against the Corporate debtor i.e. **M/s Best News Company Private Limited**, is hereby **ADMITTED**.

- ii.** As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** The Financial Creditor has proposed the name of **Mr. Hemant Sharma**, registration number IBBI/IPA-002/IP-N00015/2016-17/10019, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration annexed as **Annexure-D (colly) page num 36 to 41** of the paper book.
- iv.** **Mr. Hemant Sharma** Registration number IBBI/IPA-002/IP-N00015/2016-2017/10019; Address: D-54, First Floor, Defence Colony, New Delhi-110027; Email id hemant78sharma@yahoo.com is appointed as the Interim Resolution Professional (“IRP”).
- v.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- vi.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- ix.** The FC shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.



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Best News Company Limited

- 20.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 21.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

-sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Order pronounced under Rule 151 of NCLT Rules, 2016, by Chief Justice (Retd.) Ramalingam Sudhakar, President on behalf of the Bench comprising of Chief Justice (Retd.) Ramalingam Sudhakar, President and Avinash K. Srivastava, Member (Technical)

-sd/-

Nirmala Vincent
(Court Officer)