

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/35(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Ashirwad Developers
V/s
SR Digital TV & Broadband Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 25/09/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

CP(IB)/35(MP)2024

This case is fixed for pronouncement of the order.

The order is pronounced in open Court vide separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Neeraj

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 35 of 2024

(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)

In the Matter of:

Ashirwad Developers

F – 102, The Address Township,
Ring Road
Indore - 452010

**Financial Creditor/
Applicant**

Versus

**SR Digital TV and Broadband Private
Limited**

355th, 3rd Floor, Orbit Mall,
A.B. Road
Indore - 452010

**Corporate Debtor/
Respondent**

Order pronounced on: 25.09.2024

Coram:

Hon'ble Mrs. Chitra Hankare, Member (J)

Hon'ble Kaushalendra Kumar Singh, Member (T)

Present:

For the Applicant: Mr. Neeraj Kumar Gupta, Advocate

For the Respondent: Mr. Kumar Deepraj, Advocate

JUDGMENT

1. The instant application was filed on 12.06.2024 by Ashirwad Developers (Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (CODE) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against SR Digital TV and Broadband Private Limited (Respondent) for the default amount of Rs. 2,13,60,781/- (Principal Amount of Rs. 1,95,00,000/- + Interest of Rs. 18,60,781/-). The date of default as stated in Part IV of the application is 10.05.2023.

2. The applicant is a partnership firm incorporated on 03.05.2014. Mr. Shailesh Hargod is an authorized representative of the applicant vide Power of Attorney dated 18.03.2024 to file the present application. The respondent is a private limited company (CIN: U64201MP2014PTC033397) incorporated under the provisions of the Companies Act, 2013 on 10.11.2014.

3. The averments made by the financial creditor/applicant in its petition and as presented/argued by the learned counsel for the applicant are summarized hereunder:

- i. The Applicant and Respondent entered into a Memorandum of Understanding (MoU) dated 02.02.2016 for the purpose of setting up cable TV network and supply of 25,000 Set top Boxes in the District Dewas, Madhya Pradesh.
- ii. The respondent undertook the job of installing and commissioning cable TV network in the said district, on turnkey basis. For the same, applicant paid an amount of Rs. 1,95,00,000/- to the respondent in February 2016 as

Mobilization Advance for the implementation of the project work.

- iii. The planning for the project was to be concluded within four months from the date of signing of MoU, but the said planning was not completed within the said period. Therefore, the applicant sent a letter dated 03.08.2016 to the respondent inquiring about the same. In response to the said letter, the respondent through letter dated 07.09.2016 answered that a new broadcasting system- Digital Access System (DAS) is rolled out. The said system (DAS) will recalibrate the existing system and processes and therefore, project should be implemented only after clarity about DAS.
- iv. The applicant in 2017, when DAS was completely rolled out, sent another letter dated 21.06.2017 to the respondent for planning and implementation of the project as soon as possible. However, the respondent started avoiding communications and calls of the applicant.
- v. Subsequently, the respondent's office space was sealed by police owing to some issues and in February 2019, the key person of the respondent company was arrested in a criminal case.
- vi. Further, in December 2019, the applicant got to know that the respondent is in talks for sale of its business. However, upon informal enquiry, the respondent denied the information as mere speculations.
- vii. Further, the COVID 19 pandemic caused major disruption in import of equipments from China and reduced the prospects of cable TV business as consumers shifted to OTT platforms making DTH services more popular than cable TV networks.

- viii. The applicant decided to drop the plan of going ahead with setting up cable TV network and sought refund of the Mobilization Advance vide withdrawal letter dated 10.04.2023 in accordance with Paragraph 12 of the MoU.
 - ix. The due date for refund of mobilization advance as per MoU was 30 days from the date of issue of withdrawal letter i.e. 10.05.2023. However, the respondent failed to repay the said amount on the stipulated date and therefore, the said advance is to be refunded with 9% interest from the due date of refund.
 - x. The money advanced by the applicant to the respondent is a financial debt under section 5(8)(f) of the Code which defines the amounts as Financial Debt if '*any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing*'. The counsel also relied on the judgment in *Pioneer Urban Land & Infrastructure vs Union of India* 2019(8) SCC 416.
 - xi. The said advance was consistently shown by the respondent in its audited balance sheet over the years from 2016 to 2022. The same is also confirmed from the balance confirmation letters as issued in the years 2018, 2020 and 2022 by the respondent to the applicant. Therefore, the application is filed well within the limitation period.
4. The objections raised by the corporate debtor/respondent in its reply dated 02.09.2024 and as presented/argued by the learned counsel for the respondent are summarised as under:

- i. The applicant had advanced the amount of Rs. 1,95,00,000/- to the respondent for the purpose of setting up cable TV network as per the terms of MoU dated 02.02.2016.
- ii. The said project could not be completed due to various reasons. However, post COVID-19 pandemic, the business of cable TV has lost its relevance in the market which severely affected the business of the respondent.
- iii. The respondent has been trying hard to repay the amount owed to the applicant but there is no revenue generation for keeping the company afloat making it impossible to repay the amount demanded by the applicant.
- iv. The existence of liability and termination of MoU is not denied by the respondent, however, the management of corporate debtor needs time to make payment to the applicant.

5. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is noted that the applicant and the respondent entered into a Memorandum of Understanding dated 02.02.2016 for setting up of cable TV network and supply of 25,000 Set top Boxes in the District Dewas, Madhya Pradesh. It is also noted that the applicant advanced a mobilisation advance of Rs. 1,95,00,000/- to the respondent. Further, the applicant has placed on record the NeSL certificate which shows the default amount of Rs. 2,13,00,000/- & the date of default is 10.05.2023 and the status of authentication of default is 'Deemed to be Authenticated'.

6. It is noted that the amount claimed by the applicant is admitted by the respondent as advance for setting up cable TV network in its

reply dated 02.09.2024. Further, the said amount is also recorded by the respondent in its audited balance sheets for the Financial Years 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022. The respondent has also issued letters dated 03.09.2018, 01.09.2020 and 31.08.2022 regarding the advance of Rs. 1,95,00,000/- which is pending with the respondent for setting up of cable network installation project. However, during the course of oral arguments, respondent denied the admission of default and stated that the present application is to be filed under section 9 of the Code and not under section 7 of the Code. Further, it was also contended by the respondent's counsel that the application was filed in the year 2024 but the mobilisation advance was given in the year 2016 meaning thereby that the present application is filed after the time period of three years and is barred by limitation.

7. It is noted that the overall budget of the project in the MoU dated 02.02.2016 was Rs. 13,00,00,000/- and 15% of the contract value i.e. Rs. 1,95,00,000/- was to be advanced as mobilisation advance by the applicant to the respondent. It is stated in paragraph 4 of the MoU that the project is likely to take about 2 years from the date of execution of the said MoU. Further, paragraph 12 and 13 of the MoU states that if the applicant withdraws from the project, then the respondent shall refund the mobilization advance within 30 days from the date of the issuance of withdrawal letter. If the same is not refunded within the stipulated time, the amount shall be treated as loan bearing interest @ 9% per annum. For ready reference, paragraph 12 and 13 of the said MoU are reproduced hereunder:

12. In the event Client decide to withdraw from project before starting implementation, the Contractor shall forthwith and not later than 30 days from the date of notifying of its decision by the client

to the Contractor, refund the entire mobilization advance after deducting Rs. 30,00,000/- (Rs. Thirty lakh towards) the charges for preparation of implementation plan and scheme of financial outlay. However, in the event the Contractor is not able to prepare detailed implementation plan, the Client shall after giving the notice of 30 (thirty) days, ask the contractor to refund the mobilization advance, and Contractor shall refund the amount to the client.

13. In the event the mobilization advance is not refunded within the time specified in para 12, the amount refundable to the client shall be treated as a loan bearing interest @9% per annum commencing from expiry of 30 days from the notice of withdrawal served under para 12, till the date of payment by the Contractor to the Client.

8. It is also noted that the applicant vide withdrawal letter dated 10.04.2023 terminated the MoU agreement and withdrew from its capacity as a Client to the project. Accordingly, as per paragraph 12 of the MoU, the mobilization advance was to be refunded within 30 days. Thus, the date of default would be 10.05.2023 as also stated by the applicant. The present application is filed by the applicant on 12.06.2024 and accordingly, the said application is filed well within the limitation period. Further, the audited balance sheets of the respondent for Financial Years 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 along with the balance confirmation letters dated 03.09.2018, 01.09.2020 and 31.08.2022 issued by the respondent confirm the payment of Rs. 1,95,00,000/- (mobilisation advance) by the applicant to the respondent for setting up of cable TV project. We also note that these audited balance sheets of the aforesaid years would also be considered as acknowledgement of debt, and in case, the default date is taken prior to 10.05.2023, even then, the present application would remain well within the limitation period.

9. Furthermore, we also note that as per paragraph 13 of the MoU, the debt in issue will be treated as a loan @ 9% interest if the mobilisation advance is not refunded on or before the expiry of 30 days from the date of issuance of the withdrawal letter. It is noted that the refund of mobilisation advance has not been made by the respondent to the applicant. Accordingly, as per section 5(8)(f) of the Code, Financial Debt includes “*any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing*” which provides a very wide coverage to include several transactions within the ambit of financial debt. The same is opined by the Hon’ble Supreme Court in *Pioneer Urban Land & Infrastructure vs Union of India* 2019(8) SCC 416 and the relevant paragraphs are reproduced hereunder for ready reference–

“64. What is clear from what Shri Venugopal has read to us is that a wide range of transactions are subsumed by paragraph (f) and that the precise scope of paragraph (f) is uncertain. Equally, paragraph (f) seems to be a “catch all” provision which is really residuary in nature, and which would subsume within it transactions which do not, in fact, fall under any of the other sub-clauses of Section 5(8).

65. And now to the precise language of Section 5(8)(f). First and foremost, the sub-clause does appear to be a residuary provision which is “catch all” in nature. This is clear from the words “any amount” and “any other transaction” which means that amounts that are “raised” under “transactions” not covered by any of the other clauses, would amount to a financial debt if they had the commercial effect of a borrowing.”

Therefore, the present debt is to be treated as a financial debt and the application is maintainable under section 7 of the Code.

10. In view of the above, we are of the considered opinion that there exists financial debt which is payable and defaulted by the respondent. The same is also recorded in their audited balance sheets. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the IBC. This application is filed within limitation and is defect-free; and as such it is a fit case to be admitted under section 7 of the Code.

11. Accordingly, we admit this application and order as under:

ORDER

(i) Corporate Debtor – SR Digital TV and Broadband Private Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(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 Securitisation 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.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) As proposed by the financial creditor, we appoint Ms. Chaya Gupta having registration No. IBBI/IPA-002/N-00984/2020-2021/13133; to act as an IRP under Section 13(1)(c) of the IBC, 2016 in respect of the CIRP of the corporate debtor. IRP shall conduct the Corporate Insolvency Resolution Process of the corporate debtor as per the provisions of the Insolvency & Bankruptcy Code, 2016 read with Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of

the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two lakh only) to the IRP as regards the CIRP of each of the corporate debtor within two weeks from the date of receipt of this order for smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against

Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

(xii) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)

Sd/-

Chitra Hankare
Member (Judicial)

RR (LRA)