



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

IB-645/(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. Kishore Bora

At: Swastika Apartment flat no. 5C, Juripar,
Panjaban, Kamrup Metro, Assam-781037

...Applicant/Financial Creditor

Versus

**M/s. Naman Broadcastings And Telecommunications
Private Limited**

At: 24/27-28, 2nd Floor, West Patel Nagar,
New Delhi 110008

...Respondent/ Corporate Debtor

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: Adv. Deepak Kumar Garg

Counsel for Respondent: Adv. Sushma Singh

IB-645/(ND)/2022



ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 24.04.2023

1. This is an application filed by Mr. Kishore Bora to initiate corporate insolvency resolution process (“CIRP”) against M/s. Naman Broadcastings and Telecommunications Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent in settling an amount of Rs. 1,05,07,500/- (Rupees One Crore Fifty-Five Lakhs Seven Thousand Five Hundred). 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. Sulabh Dixit approached the Financial Creditor and requested to give business of loan of Rs. 1,00,00,000/-. Financial Creditor considered the request made by Corporate Debtor and disbursed the business loan of Rs. 1,00,00,000 on various dates..



- ii. That the Corporate Debtor & the Financial Creditor executed Loan Agreement on 18.02.2021 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 4 months from 18.02.2021 to 17.06.2021 at the interest rate of 12% per annum.
- iv. As per Clause 6 of the Loan Agreement, Corporate Debtor was liable to pay principal along with interest amount on or before 17.06.2021 to the Financial Creditor, which the Corporate Debtor failed to do.
- v. That due to default in payment by the Corporate Debtor, Financial Creditor served the Corporate Debtor reminder letter on 28.06.2021 to make the payment. In reply to the letter dated 28.06.2021, Corporate Debtor sent request letter dated 02.07.2021 to extend the time period of payment by one month which Financial Creditor



accepted the request and extended time by one month till 01.08.2021.

vi. That due to non-response and default in payment, Financial Creditor again sent a reminder letter dated 04.08.2021 to the Corporate Debtor to make payment of loan along with interest, after which Financial Creditor through Advocate sent a legal notice dated 08.11.2021 to the Corporate Debtor.

vii. That even after various reminder and legal notice Corporate Debtor failed to make the payment.

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 was in dire need of funds and therefore took loan from the Applicant.
- ii. That the business of the Corporate Debtor suffered losses on account of Covid-19 pandemic and the Corporate Debtor could not repay the debt.



- 3.** We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties. The Applicant has claimed the default on part of the Respondent for an amount of Rs. Rs. 1,05,07,500/- (Rupees One Crore Fifty-Five Lakhs Seven Thousand Five Hundred).
- 4.** The Corporate Debtor has acknowledged the debt in its reply to the present Section 7 Application and submitted that the present state of affairs of the Corporate Debtor are not favourable and they require time to pay the amount to the Financial Creditor.
- 5.** Mere reading of the provision under section 7 of IBC 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. 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.

6. 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.
7. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, 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. Reetesh Kumar Agarwal for appointment as Interim Resolution Professional having



registration number IBBI/IPA-001/IP-P-00878/2017-2018/11475. 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. Reetesh Kumar Agarwal has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 04.07.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



9. Mr. Reetesh Kumar Agarwal having registration number IBBI/IPA-001/IP-P-00878/2017-2018/1147 is appointed as an Interim Resolution Professional.

10. 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.

11. 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.”

12. 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.

13. 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.

14. 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.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)