IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP- IB-50(PB)/2021

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:

1.M/s. Acute Daily Media Private Limited & Ors
2.Ms. Rekha Jain
3.Ms. Deepanshi Jain
4.Ms. Ojaswi Jain

.... Petitioners/Financial Creditors

Vs.

M/s. Sharp Eye Advertising Private Limited
R/o 38,Rani Jhansi Road, Jhandewalan,
New Delhi-110055

.... Corporate Debtor

Order delivered on:17.05.2022

Coram:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the FC: Mr. Deepak Kumar Garg, Adv.
For the CD: Ms. Sushma Singh

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ORDER

PER: AVINASH K. SRIVASTAVA MEMBER (TECHNICAL)

1. This is a joint application, filed by 4 financial Creditors namely (1) M/s. Acute Daily Media Private Limited (2) Ms. Rekha Jain (3) Ms. Deepanshi Jain (4) Ms. Ojaswi Jain, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), against the Respondent/Corporate Debtor namely, M/s. Sharp Eye Advertising Private Limited.

2. The Corporate Debtor (CD) is a Private Limited Company, incorporated on 03.04.1997, having Company Identification Number (CIN) U74300DL1997PTC086415 and is situated at 38, Rani Jhansi Road, Jhandewalan, Central Delhi, 110055.

3. The petitioners have submitted that, the Corporate Debtor had entered into various Loan agreements with each Financial Creditor as mentioned hereunder:

Financial Creditor No. 1 (FC-1): M/s Acute Daily Media

21.07.2016	A loan Agreement was executed between the Financial Creditor No. 1, (FC-1) and Corporate Debtor (CD) for an amount of Rs. 50.00 Lakh at the rate of 12% per annum for a period of 03 years.

21.07.2016	Rs. 50.00 Lakh was disbursed to the CD.
15.07.2019	Request by the CD to extend the loan period by 06 months.
21.07.2019	The FC-1 accepted the request to extend the period of Loan.
01.08.2019	The Loan extension agreement between the FC-1 and the CD was executed to extend the tenure of loan repayment by 06 months.
24.02.2020	Notice recalling the Loan.

Financial Creditor No. 2 (FC-2): Rekha Jain (Prop. Hotel Amar Vilas)

27.05.2019	A loan agreement was executed between the Financial Creditor No.2 and the CD for an amount of Rs. 07.00 Lakh at the rate of 12% per annum for a period of 09 months.
02.03.2020	Demand to repay the loan amount
06.03.2020	CD expressed its inability to pay
08.03.2020	Notice recalling the loan.

Financial Creditor No. 3 (FC-2): Deepanshi Jain

03.12.2019	A loan agreement was executed between the Financial Creditor No. 3 and the CD for an amount of Rs. 30.00 Lakh at the rate of 12 % per annum for a period of 03 months.

01.03.2020	Demand Letter to repay the Loan amount
04.03.2020	CD expressed its inability to repay
08.03.2020	Notice recalling the Loan

Financial Creditor No. 4: Ojaswi Jain

31.12.2019	A loan Agreement was executed between the Financial Creditor No. 4 and the CD for an amount of Rs. 10.00 Lakh at the rate of 12 % per annum for a period of 02 months.
31.12.2019	Loan disbursed
02.03.2020	Request to repay the loan
06.03.2020	CD expressed its inability to repay
09.03.2020	Notice recalling the Loan

4. The details of the loan agreements are as follows:

S.No.	*Name of Financial Creditors*	*Amount of the Loan*	*Date of Disbursement*	*Date of default*	*Amount due and payable*
1.	*M/s Acute Daily Media Private Limited*	*50,00,000/-*	*21.07.2016*	*31.01.2020*	*72,33,710/-*
2.	*Ms. Rekha Jain*	*7,00,000/-*	*27.05.2019*	*26.02.2020*	*7,63,000/-*
3.	*Ms. Deepanshi Jain*	*30,00,000/-*	*03.12.2019*	*28.02.2020*	*30,73,972/-*

4.	*Ms. Ojaswi Jain*	*10,00,000/-*	*31.12.2019*	*28.02.2020*	*10,20,000/-*
					Total: 1,20,90,682/-

5. It is further submitted that, despite being granted sufficient time to extend the loan period upto 31.01.2020 by the Financial Creditor No. 1, in response to the request by the Corporate Debtor vide its letter dated 15.07.2019, the debt remained unpaid. The Corporate Debtor has expressed its inability to pay the debt and defaulted in repayment of principal amount along with interest thereon as mentioned in respective loan agreements.

6. On 14.03.2020, Board Resolution was passed by the FC-1 to move an application for CIRP on its behalf and on behalf of FC-2, 3 and 4, for which the authorization from each FC had been received. Accordingly, the application under Section 7 of IBC was moved on 14.01.2021. Further, as on the day of filing of the petition i.e. on 14.01.2021 an aggregate loan amount of Rs. 1,20,90,682/- (Rupees One Crore Twenty Lakh Ninety Thousand Six Hundred Eighty-Two Only) was due and payable by the Corporate Debtor. Hence this Petition has been filed by the Financial Creditors jointly to initiate the CIRP under section 7 of the IBC, 2016.

7. The Respondent/CD has filed its reply on 15.11.2021 and submitted that, the respondent availed the debt in the form of loan from the Financial Creditor no. 1 (FC-1) for running their business

and executed the loan agreement dated 21.07.2016 for the period of 3 years for an amount of Rs. 50 lacs @ 12% interest p.a.

8. It is further, submitted that the business of the respondent/CD has been running in loss and due to such financial crisis, the respondent requested the FC-1 to extend the time period of loan and the same was extended by the FC-1 for the period of 6 months on 01.08.2019 till 01.02.2020. The CD has further submitted that it has availed the loans of Rs. 7 Lakhs from FC-2, Rs. 30 Lakh from FC-3 and Rs. 10 Lakh from FC-4 on the terms and tenure as stated in the Petition.

9. CD has further submitted that, due to worldwide pandemic attack of Covid-19, the business of the respondent is not running smoothly and financial crisis is still existing. However, the respondent is trying to resolve the issue and undertakes that the debts will be paid by the respondent as and when the company will be earning profits in upcoming years. Hence the present application is liable to be dismissed on this ground alone.

10. It is further submitted that no such cause of action has arisen in favour of the financial creditors and against the answering respondent to initiate the insolvency proceedings as no injury has been stated to be caused to the financial creditors by any act of the answering respondents, 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 cost.

11. We have heard the Ld. Counsels for both sides and perused the documents submitted by them.

12. Considering the submissions made and documents placed on record we find that default has occurred with respect to the financial debt as per Section 7 of IBC. No evidence has been produced by the CD showing any payment made to the applicant of its debt. Further, there is no document placed on record to substantiate the defence of the CD, that the default has not occurred. There is no document produced to show that the debt is not due and payable.

13. We are supported by the judgement of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr.(2018) 1 SC 407**. which clearly held that:

> *"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*
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> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that*

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it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise."

14. The date of maturity of loan of FC-1 is known as the date of default which is 31.01.2020. Likewise, the date of repayment of the other 3 loans were 26.02.2020, 28.02.2020 and 28.02.2020 respectively and since these remained unpaid, the date of default in respect of these loans is the due date of the repayment. The application is filed on 14.01.2021, which is well within the period of limitation and not barred by law.

15. This Petition is filed in the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code and is complete. We are satisfied that a default has occurred, and debt has remained unpaid. Accordingly, the application is admitted and CIRP is ordered to be initiated against the CD.

16. The Applicant has proposed the name of Interim Resolution Professional (IRP), Mr. Vinay Kumar Singhal, having registration No. IBBI/IPA-002/IP-N00624/2018-19/11880, and email id vinaysinghal.ip@gmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India (IBBI) or ICSI. In addition, further

necessary disclosures have been made by Mr. Vinay Kumar Singhal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Vinay Kumar Singhal as the IRP of the Corporate Debtor.

17. In pursuance of Section 13 (2) of the Code, we direct the IRP to make public announcement immediately with regard to 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.

18. As a consequence of the application being admitted, moratorium as envisaged under the provisions of Section 14(1) shall follow. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

19. We direct the Petitioner/ Financial Creditor to deposit a sum of Rs. 2 lacs with the IRP Mr. Vinay Kumar Singhal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the applicants. The amount however be subject to adjustment by the Committee of Creditors as accounted for by IRP and shall be paid back to the applicant.

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20. The registry is directed to communicate a copy of the order to the Applicants, the CD, the IRP and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

RAMALINGAM SUDHAKAR
(PRESIDENT)

Sd/-

7/5/2022

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)