



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH – I

CP (IB) 249/MB/2022

Under section 7 of the Insolvency and Bankruptcy  
Code, 2016

*In the matter of*

**Idea Commercials  
(Lender – I) A Partnership Firm**

Office address:

Marwari Para, Agresan Chow, Jharsuguda,  
Odisha -768201.

**R. P. Lath & Sons  
(Lender – II) A Partnership Firm**

Office address:

Ramjee Lath's House, Bamra, Sambalpur, Odisha  
– 768221.

... Financial Creditors / Petitioners  
(Lender I & Lender II Collectively)

Versus

**NAVDURGA ADVISORY PRIVATE  
LIMITED**

**[CIN: U65991MH2009PTC348166]**

F/No. 103, Mangalam Icon, Cement Road, 186,  
Shivaji Nagar, Nagpur - 440010. MH

... Corporate Debtor /Respondent

**Order Delivered on: 28.03.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao  
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam,

***Appearances:***

For the Financial Creditor : Mr. Shadab S. Jan a/w Mufaddal  
Paperwala.  
For the Corporate Debtor : Mr. Aniket Worlikar, Advocate.



**ORDER**

*Per: Shyam Babu Gautam, Member (Technical)*

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Idea Commercials (Lender No. I) and M/s. R.P. Lath & Sons, (Lender No. II) (“the Financial Creditors”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Navdurga Advisory Private Limited** (“the Corporate Debtor”).
2. The present Petition was filed on 21.03.2022 before this Adjudicating Authority on the ground that a loan for a sum of Rs.1,15,00,000/- (Rupees One Crore Fifteen lakhs only) along with interest at the rate of 18% p.a. is payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.1,17,05,496/- (Rupees One Crore Seventeen lakhs Five thousand and Four hundred and Ninety-six only) with interest at the rate of 18%. Principal and Interest computation table annexed as **Exh.E (pg.26)** to the Petition. The date of default stated to be is 02.12.2021.
4. The Corporate Debtor is company incorporated on 07/03/2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at F/No - 103, Mangalam Icon, Cement Road, 186, Shivaji Nagar, Nagpur - 440010. Therefore, this Bench has jurisdiction to deal with this petition.



**Submissions made by the Financial Creditor:**

5. The Financial Creditor Idea Commercials submits that it is a Partnership Firm, having registered Office situated at Marwari Para, Agresan Chow, Jharsuguda, Odisha – 768201 (Lender No. I) and Financial Creditor R. P. Lath & Sons, a Partnership Firm, having registered Office situated at Ramjee Lath's House, Bamra, Sambalpur, Odisha 768221 (Lender No.II) had jointly disbursed the loan to the Corporate Debtor amounting to Rs.30,50,000/- on 21.10.2021, Rs.24,50,000/- on 25.10.2021, Rs.40,00,000/- on 01.11.2021 and Rs.20,00,000/- on 02.11.2021 interest @ 18% p.a.
6. The Financial Creditors submits that the Corporate Debtor needed financial assistance, therefore, requested the Financial Creditors (Lenders I & II) to lend and advance a sum of Rs.1,15,00,000/- (Rupees One crore Fifteen lakhs only). The Financial Creditors agreed to do through its various accounts on the terms and conditions reduced in writing. The Financial Creditors and the Corporate Debtor executed Loan Agreement dated 21.10.2021. It was also agreed by the Financial Creditors that total disbursement of Rs.1,15,00,000/- (Rupees One crore Fifteen lakhs only) shall be done on or before 02.11.2021 into the Bank Accounts of the Corporate Debtor. The Corporate Debtor has also agreed to pay to the Financial Creditors interest @ 18% p.a. on the principal amount of Rs.1,15,00,000/-.
7. The Corporate Debtor agrees and covenant with the Financial Creditors to repay the said sum along with interest thereon @ 18% p.a. on 02.12.2021.



8. To insure and secure the payments under this Agreement of the said sum along with interest thereupon, the Corporate Debtor created floating charge free from all encumbrances on all the movable current and non-current assets of the company.
9. As per the Loan Agreement the Corporate Debtor had to pay the principal amount with interest @ 18% per annum on 02.12.2021 aggregating to Rs.1,17,05,496. Copy of the Loan Agreement is annexed as **Exh - D** to this Petition (**pg.21-25**).
10. The Corporate Debtor failed to make the payment as per the Loan Agreement dated 21.10.2021. The Financial Creditors issued Demand Notice dated 13.12.2021 to the Corporate Debtor to make immediate payment. Copy of the Demand Notice and proof of delivery of Demand Notice is annexed to this Petition as **Exh – B1 & B2 (pg.14-15)**. Even after the issuance of the Demand Notice dated 13.12.2021, no payment has been made by the Corporate Debtor. Hence, this Petition was filed by the Financial Creditors to initiate Corporate Insolvency Resolution Process under Sec.7 of the Insolvency and Bankruptcy Code, 2016 in the matter of Corporate Debtor.
11. The Financial Creditors have annexed to the Petition copies of their Statement of Bank Accounts and certified copies of Statement of Bank Accounts with Union Bank of India, Jharsuguda Branch as **Exh-“C-1” to “C-4” (pg. 16-20)** to prove the disbursements of Loan of Rs.1,15,00,000/- into the accounts of the Corporate Debtor.
12. The Financial Creditor submits that the Corporate Debtor has admitted the debt of the Financial Creditors as “Short-term Borrowings” in its audited Balance Sheet for the year ended 31.03.2022 and the defences



sought to be raised are unsustainable in law. Consequently, the Financial Creditor submits that the present Company petition ought to be admitted and the insolvency resolution process under IBC, 2016 be commenced in respect of the Corporate Debtor.

**Submissions made by the Corporate Debtor by way of Affidavit in reply:**

13. The Ld. Counsel for the Corporate Debtor states that the necessary documents establishing the debt and default were not furnished by the Financial Creditors more particularly copy of the Banker's Book Certificate from the financial institutions maintaining accounts of the Applicant, which is a sine qua non for proving default. Hence the Ld. Counsel for the Corporate Debtor submits that the Financial Creditor has failed to furnish any certificate as required under the Banker's Books Evidence Act, 1891 ('BBE Act'). The Corporate Debtor has reproduced Section 4. Mode of proof of entries in banker's books which reads as under:

*Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.*

*Furthermore, also reproduced Section 2A. Conditions in the printout.*

14. Ongoing Settlement Process:

It is submitted that the Corporate Debtor is a company providing advisory services to various companies. Several clients of the Corporate



Debtor have availed services during the COVID-19 pandemic. Due to financial stress, market conditions and other prevalent circumstances during this period, the clients are unable to pay their dues to the Corporate Debtor. The Corporate Debtor do follow up with the clients and is initiating appropriate proceedings against its clients for the recovery of the dues. Due to non-payment by the clients, the Corporate Debtor was unable to repay the loan amount to the Financial Creditor. Thus, the Corporate Debtor submits that failure on the part of the Corporate Debtor is solely due to factors which are beyond the control of the Corporate Debtor and therefore the default cannot be attributable to the Corporate Debtor.

15. Further submits that despite the above circumstances, the Corporate Debtor is endeavouring to amicably settle the matter with the Financial Creditors. The settlement talks are at advance stage and are likely to conclude shortly. The Financial Creditors have filed the present Application to arm twist the Corporate Debtor into making payments of the claim amount neglecting the on-going settlement process.
16. The Corporate Debtor states that they are willing to conclude the settlement talks with the Applicant and put a quietus to this matter. The Corporate Debtor states that there are no facts on record which would necessitate the Financial Creditors to file the present Petition against the Corporate Debtor. In case the Corporate Debtor is admitted into Corporate Insolvency Resolution Process, all the stakeholders will be affected in adverse manner and irreparable loss will be caused.
17. The Corporate Debtor submits that with respect to the contents of Part I & II of the Petition, the same are a matter of record and warrants no response; with respect to the contents of Part III, it do not warrant to



appoint an interim resolution professional; the contents of Part IV are denied; and with reference to Part V, the contents thereof being formal in nature do not warrant a response from the Corporate Debtor.

**Findings:**

18. Heard the arguments of Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
19. It is noted that the Corporate Debtor has admitted the debt of the Financial Creditors as “Short-term Borrowings” in its audited Balance Sheet for the year ended 31.03.2022 for which date of default is stated to be 02.12.2021 which is well within period of limitation. Therefore, the defences sought to be raised by the Corporate Debtor are unsustainable in law.
20. We also consider the facts of the case in the lights of the Order passed by Hon’ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a ‘dispute’ as far as Section 7 petition is concerned. As soon as a ‘debt’ and ‘default’ is proved, the adjudicating authority is bound to admit the petition.
21. Upon perusal of records, this Tribunal is of the considered opinion that the Corporate Debtor is in default of debt and owes money to the Financial Creditors.
22. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of



minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

23. The Financial Creditors have proposed the name of **Mr. Dilipkumar Natvarlal Jagad**, Registration No. IBBI/IPA-001/IP-P00233/2017-2018/10462, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 annexed as **Exh - 'A' (pg. 11-13)**
24. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
25. It is, accordingly, hereby ordered as follows: -
  - (a) The Petition bearing **CP (IB) 249/MB/2022** filed by **Idea Commercials (Lender No.I) and R.P. Lath & Sons, (Lender No.II)** the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to





Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Navdurga Advisory Private Limited [CIN: U65991MH2009PTC348166]**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, regarding the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

(i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;



- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Dilipkumar Natvarlal Jagad**, Registration No. IBBI/IPA-001/IP-P00233/2017-2018/10462, having address at 803/804, Ashok Heights, Opp: Saraswati Apartments, Old, Nagardas X Road, Gundavali, Andheri (East), Mumbai – 400069, Contact No.09821142587 Email: [dilipjagad@hotmail.com](mailto:dilipjagad@hotmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The



officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**SHYAM BABU GAUTAM**  
**Member (Technical)**

28.03.2023  
SAM/Jenny

Sd/-

**H. V. SUBBA RAO**  
**Member (Judicial)**