



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-I**

C.P. No. 845/IBC/MB/2022

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudication Authority) Rule
2016)

In the matter of

AXIS TRUSTEE SERVICES LIMITED

Having registered office at: Axis House,
Bombay Dyeing Mills Compound,
Pandhurang Budhkar Marg, Worli Mumbai
City 400025

.....**Financial Creditor**

Vs

RELIANCE BIG PVT. LTD.

(CIN: U92131MH2006PTC218162)

Registered office at: 502, Plot No. 91/94
Prabhat Colony, Santacruz (East), Mumbai
City, 400055

.....**Corporate Debtor**

Order delivered on: 18.08.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Anu Jagmohan Singh, Member (Technical)

For the Applicant: Mr. Mustafa Doctor, Senior Advocate

For the Respondent: Mr. Prateek Seksaria, Senior, Advocate i/b Crawford
Bayley & Co.

Per: Shri H.V. Subba Rao, Member (Judicial)



1. This Company petition is filed by *Axis Trustee Services Limited* (hereinafter called as “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Reliance Big Pvt. Ltd.* (hereinafter called as “Corporate Debtor”) by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 424,76,73,889/- (Rupees Four Hundred Twenty-Four Crore Seventy-Six Lakhs Seventy-three Thousand, Eight Hundred and Eighty-nine only)
2. The submissions of the Financial Creditor are as follows:
 - a. The Applicant subscribed to 5,750 unlisted, rated, redeemable and non-convertible Debentures having face value of Rs. 10 Lakhs each in a single tranche through private placement. As condition precedent to the issuance of Debentures by Corporate Debtor, various Documents all dated 13th December 2017 (Transaction Documents) were executed in favour of the Applicant. In accordance with the terms of the Transaction Documents, Corporate Debtor was required to always maintain a security cover and in the event the security cover fell, the Corporate Debtor was obligated to top up the same by providing additional security.
 - b. Sometime in February 2019, there was a fall in the security cover. Therefore, the same resulted in the Mandatory Prepayment Event in accordance with the provisions of Clause 9 of the Debenture Trust Deed dated 13th December 2017. Accordingly, a Mandatory Prepayment Notice dated 7 February 2017 was issued calling upon the Corporate Debtor to ensure that all the outstanding amounts are deposited in the designated account.
 - c. The Corporate Debtor have on numerous occasions admitted the default in the payment of outstanding dues. By and under a Deed



- of Undertaking dated 22 May 2019 the Corporate Debtor inter alia acknowledged their liability and undertook to reduce the Outstanding amounts by a minimum amount of Rs. 200,00,00,000 by making payment of the said amount on or prior to June 30th, 2019. Thereafter, vide email dated 1st July 2019 the Corporate Debtor referring to the Undertaking dated 22nd May 2019 and reiterated their commitment to pay Rs. 200,00,00,000 immediately upon disposal of the entire/residual stake in Code masters. By a further email dated 23rd July 2019 the Corporate Debtor recorded their intention to pay the Debenture holder the entire amounts under the Debentures in full by March 2020.
- d. On failure to deposit the said amounts, notice dated 27th July 2020 to the Corporate Debtor and Notice for Invocation of Corporate Guarantee dated 27th July 2020 to the Corporate Guarantor was issued by the Applicant to call upon them to pay the total outstanding amount. However, the Corporate Debtor and the Corporate Guarantors failed to honour the said Notices issued by the Applicant. In light of the above, the Corporate Debtor having defaulted in the repayment of dues, the Applicant is constrained to file the present Application for triggering Corporate Insolvency Resolution Process of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016.
3. The Corporate Debtor filed affidavit in reply through Mr. Devang Desai, authorized signatory of the Corporate Debtor opposing the admission of the above Company Petition on various grounds. The Important paras of the affidavit in reply are as follows:
- a. **The present Application is not maintainable in absence of a legally enforceable debt and on account of the already pending arbitration proceedings between the Financial Creditor and**



Respondent before the Ld. Arbitrator SJ Kathawalla (Retired Judge, Bombay High Court) which is prior in time.

- I. The present Application has been instituted by the Financial Creditor on the strength of a Debenture Trustee Agreement, a Debenture Trust Deed and a Memorandum of Hypothecation, all dated 13.12.2017. The Financial Creditor has also sought to rely on a Corporate Guarantee and an Unattested Share Pledge Agreement (“the said documents”).
- II. However, the Financial Creditor has failed to disclose that on the basis of the said documents, the Financial Creditor has instituted a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon’ble Bombay High Court on 23.10. 2020 for seeking grant of urgent ad-interim and interim reliefs. On 30.08.2021, the Financial Creditor has instituted a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon’ble Bombay High Court seeking appointment of Arbitrator.
- III. In the facts and circumstances of the present proceedings, at the first hearing of the Petition filed by the Financial Creditor before: the Hon’ble Bombay High Court on 8th December 2020, the Hon’ble Bombay High Court inter alia directed that any transactions that the 1st and 2nd Respondents may effect in regard to their assets hereafter may be made subject to further orders of this Court. Thereafter, by the Order dated 21st June 2022, Mr. SJ Kathawalla (Retired Judge, Bombay High Court) was appointed as the Arbitrator by the Hon’ble Bombay High Court. Vide the aforesaid order, it was further directed that the ad-interim Orders operating shall continue to operate until disposal of the present Applications under Section 17.



- IV. Since then, the Arbitration proceedings have commenced. The Financial Creditor has filed its Statement of Claim as well as Application under Section 17 of the Arbitration and Conciliation Act, 1996 seeking grant of ad-interim and interim reliefs. The Respondent has filed Reply to Section 17 Application and is in the process of filing its Statement of Defense. The Respondent has a good case on merits and is defending the illegal and baseless claims of the Financial Creditor vigorously before the Ld. Arbitrator. The Application under Section 17 was heard at length on 10.09.2022 and 24.09.2022 and accordingly, the matter was reserved for orders. The Respondent craves leave to refer to and rely upon the papers and proceedings of the arbitration proceedings pending before the Ld. Arbitration Mr. SJ Kathawalla as and when produced.
- V. Hence, the alleged debt due and payable by the Respondent is pending adjudication before the Hon'ble Arbitral Tribunal. At this juncture, the Financial Creditor cannot be allowed to initiate the corporate insolvency resolution process against the Respondent knowing very well that the if the present petition is admitted, it would lead to a moratorium thereby putting a halt to the arbitration proceeding and resultantly curtailing the rights of the Respondent to plead its case on merits including the filing of a Counter Claim against the Financial Creditor.
- b. **The contract as contained in the documents sought to be relied upon in the present petition, cannot be acted upon in view of the fact that the stamp duty of the documents relied upon by the Applicant is insufficient.** The Applicant's petition has been instituted on the strength of the said documents. The aforesaid



documents being executed and stamped in the National Capital Territory of Delhi, have been brought into the State of Maharashtra by the Applicant.

- VI. The Applicant by seeking to rely on the said documents in its Petition before the Hon'ble Bombay High Court had rendered the same liable for stamp duty under the provisions of the Maharashtra Stamp Act, 1958, particularly in view of the provisions of Sections 3, 18 and 19 of the Maharashtra Stamp Act, 1958. The aforesaid provisions would apply in the facts and circumstances of the present proceedings, inasmuch as the Applicant has by relying on the said documents subjected them to be liable for stamp duty under the provisions of the Maharashtra Stamp Act, 1958. In this regard, it is also apposite to note that even if the originals of the said documents are still in Delhi, the said documents are yet liable to be stamped under the Maharashtra Stamp Act, 1958 having brought copies into the State (including provisions of Section 7(2) of the Maharashtra Stamp Act, 1958) by annexing them to the petition filed before the Hon'ble Bombay High Court. The applicant has produced no proof of payment of stamp duty in Maharashtra for the said documents.
- c. It is the contention of the Respondent that the contract as contained in the documents sought to be relied upon in the present Petition. Cannot be acted upon in view of the fact that there is no legally enforceable debt due and therefore the present Petition is liable to be dismissed.
- d. It is submitted that the Petitioner is a solvent company and is engaged in day-to-day activity. Hence, the present dispute ought to be resolved through Arbitration by the Arbitral Tribunal instead of invoking jurisdiction of Adjudicating Authority by initiating the



Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code. Hence, the Corporate Debtor prayed for dismissal of the above Company Petition.

FINDINGS

1. Heard Mr. Doctor Mustafa, learned counsel appearing for the Financial Creditor and Mr. Pradeep Seksaria, counsel appearing for the Corporate Debtor and perused the record.
2. Before going into the merits of the matter, it is appropriate to mention here that the arguments of both sides in this matter were heard on 22.06.2023 and the matter was reserved for orders. While perusing the records for dictating the order, it was observed that some of the documents relied upon by the petitioner namely OTS letters sent by the Corporate Debtor to the Financial Creditor, NeSL Certificate of record of default were not available on record and therefore, the matter was de-reserved and ordered to be listed on board on 18.07.2023 for clarification. Accordingly, it was adjourned from 18.07.2023 to 02.08.2023 and from 02.08.2023 to 09.08.2023. In the meantime, counsel appearing for the Financial Creditor filed additional affidavit dated 31.07.2023 along with record of default issued by NeSL and OTS letters dated 22.11.2023 and 05.01.2023 addressed by Reliance Innoventures Private Limited and the OTS rejection letter dated 30.11.2023 issued by Franklin Templeton rejecting the OTS offer.
3. Mr. Sakseria, learned counsel appearing for the Corporate Debtor strongly objected for taking the above documents on record by way of additional affidavit after reserving the matter for order contending that it is not legally permissible. In this context, it is appropriate to mention here that the matter was already de-reserved for clarification and there is no bar to hear the matter afresh and filing documents by either of the parties in order to finally set at naught the controversy of the matter and to afford complete opportunity since the matter is before the



adjudicating authority which is more or less a trial court and not a court of appeal. Therefore, the objection raised by the counsel appearing for the Corporate Debtor is rejected.


4. The main contention of the counsel appearing for the Corporate Debtor both in the affidavit in reply as well as during the course of the final arguments is that the Financial Creditor has already initiated arbitration proceedings before the Learned Single Arbitrator, Justice SJ Kathawalla who has also passed an interim order directing the Corporate Debtor to deposit certain amount against which the Corporate Debtor filed appeal before the Hon'ble Bombay High Court which is subjudice and therefore the Financial Creditor having initiated arbitration proceedings, once again cannot file the present proceeding under Section 7 of the code or in the alternative prayed for stay of the present Company Petition till the arbitration appeal is decided by the Hon'ble Bombay High Court.
5. The main contention of the Corporate Debtor both in the arbitration proceedings as well as before this adjudicating authority is that the Financial Creditor is basing their claim mainly on the strength of a Debenture Trustee Trust Deed and Memorandum of Hypothecation dated 13.12.2017 and also relying on a Corporate Guarantee and an unattested Share Pledge Agreement which were not properly stamped in accordance with the Maharashtra Stamp Act even for initiating arbitration proceedings before the arbitrator as per the recent constitutional judgment of the Hon'ble Apex Court in *N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd and other* and therefore the entire claim of the Financial Creditor has to be rejected basing on such unstamped documents.

Opposing the above contention of the Corporate Debtor, the learned counsel appearing for the Financial Creditor argued that the law laid down by the recent judgment of constitutional bench of Hon'ble Apex




Court in *N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd and other* is nothing but reaffirming the earlier law and there is no change in the judgment of the constitutional bench. He further contends that the Financial Creditor is proving the existence of debt and default in the present company petition by relying on the following documents including:


SN	DATE	LIST OF DOCUMENTS WHERE DEBT IS ADMITTED	ANN	PG.NO.
1.	13.12.2017	Form No CHG-9 filed with Ministry of Corporate Affairs by 2017 the Corporate Debtor evincing creation of charge on 13 December 2017 in favour of Financial Creditor.	I	114-121/Vo1-I
2.	22.04.2019	Email addressed by the Corporate Debtor to the Applicant thereby requesting not to take any preceptive steps against the Corporate Debtor as they are in touch with an Investor to find out an amicable solution.	R	365-366/Vo1-V
3.	25.04.2019	(Acknowledgement) Reliance Innoventures Pvt. Ltd (Corporate Guarantor) vide a letter acknowledged the amount due and payable to the Financial Creditor and thereby proposed a plan to make full payment of the outstanding funds	S	367-368/Vo1-V
4.	22.05.2019	(Acknowledgement) Deed of Undertaking executed by the Corporate Debtor in favour of the Applicant inter alia agreeing and confirming the	M	226-235/Vo1-II



		principal amount outstanding in relation to the debentures as on the date thereof as Rs. 820,40,00,000/- and agreeing and undertaking to reduce the Outstanding amounts by a minimum amount of Rs. 200,00,00,000/- by making payment of the said amount on or prior to June 30, 2019.		
5.	13.06.2019	Email addressed by the Corporate Debtor to the Applicant thereby informing the Applicant to recover the interest on the Debentures by invocation and sale of Pledge shares	T	369/VO1-V
6.	01.07.2019	(Acknowledgement) Email addressed by the Corporate Debtor referring to the Deed of Undertaking dated 22nd May 2019 and reiterating their commitment to pay Rs. 200 Crore immediately upon disposal of the entire/residual stake in Code masters.	U	370/VO1-V
7.	23.07.2019	(Acknowledgement) Email addressed by the corporate debtor recording their intention to pay the debenture holder the entire amounts under the debenture in full by March 2020 thereabouts.	V	371-372/VO1-V
8.	15.06.2020	(Acknowledgement) Email addressed by the Corporate Debtor acknowledging that they were unable to pay due to the	W	373/VO1-V



		ongoing pandemic, overall recession and liquidity challenges and requesting the Applicant for time of 90 days to pay the outstanding interest.		
9.	02.09.2020	Reply by the Corporate Debtor to the Applicant to the Notice for Redemption of Debentures dated 27th July 2020 referring to the economic slump in business for past few years coupled with monetary and logistics uncertainty emanating due to the pandemic. (Relevant Para 15)	AA	401-404/VO1-V
10.	31.03.2021	(Acknowledgement) Financial Statement of the Corporate Debtor acknowledging the liability of the Corporate Debtor to pay the outstanding amount. Reflects the Financial Status of the Company @Pg 445 Borrowings Pg 450-466	HH	450 & 466/VO1-V
11.	22.11.2022	1st OTS offer Reliance Innoventures Pvt. Ltd. (Corporate Guarantor) vide letter dated 22nd November 2022 proposed to make a full and final payment of Rs, 25Crores towards the outstanding Dues		
12.	30.11.2022	Response to the 1" OTS Letter The Applicant vide letter dated 20th November 2022 rejected the proposed Settlement offer		



13.	05.01.2023	2nd OTS Letter Reliance Innoventures Pvt. Ltd. (Corporate Guarantor) once again called upon the Applicant to amicably settle the matter vide letter dated 5th January 2023.		
14.	06.01.2023	Last Order of the Hon'ble NCLT The Hon'ble Tribunal vide its Order recorder: "Counsel appearing for the Corporate Debtor submits that the Corporate Debtor will make all sincere efforts to get the matter settled within a period of two weeks."		
15.	12.01.2023	Response to the 2nd OTS Letter The Applicant responded vide letter dated 12th January 2023 and recorded that they were yet to receive any concrete offer of settlement from the last date of hearing and the 2nd OTS letter dated 5th January 2023 is only a mere statement in the absence of any proposal of settlement as such. In absence of the same the matter will proceed for Hearing.		
16.	27.03.2023	Pronouncement of Order under Section 17 of the Arbitration & Conciliation Act, 1996 Ld. Arbitrator Justice S.J. Kathawala pronounced the Order in the Applications under Section 17 of the		



		<p>Arbitration & Conciliation Act, 1996 filed by Axis Trustee Services Limited against the Corporate Debtor granting interim relief in terms of a deposit in favour of Axis Trustee under:</p> <ul style="list-style-type: none">➤ Reliance Big Pvt. Ltd. Shall deposit the entire claim. Amount aggregating to a sum of Rs.424,76,73,889/- along with interest till the date of deposit within a period of 8 weeks in a designated bank account.➤ In the alternative to depositing the amounts, the above entity may furnish a Bank Guarantee for these amounts from a nationalized bank. The Bank Guarantee will be kept alive throughout the period of the present Arbitration proceedings and for a period of 12 weeks thereafter. <p>Pending compliance with the Order of deposit/furnishing of bank guarantee, there shall be an Order of injunction restraining the above entity from selling, disposing of or creating 3rd party rights, title or interest in respect of their assets</p>		
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--



Therefore, he contends that the question of applicability of the constitutional bench judgment on the issue of stamp duty raised by the Corporate Debtor does not arise in this case. Further contends that even according to the provisions of the Code the existence of “debt” and “default” can be proved through the record of default issued by the NESL certificate in the absence of NESL certificate through other documents. He also contends that the admitted facts need not be proved as per the provisions of the Evidence Act and therefore the Corporate Debtor is stopped from disputing the existence of debt and default having executed several documents including several OTS letters. He has further argued that the adjudicating authority has to merely look into the existence of ‘debt’ and ‘default’ in a section 7 application filed by the Financial Creditor and once these two essential averments are established, it cannot be dismissed on the flimsy grounds of un-stamping or non-stamping of documents which were not relied upon by the Financial Creditor. In support of his above contention, he has relied upon the order of coordinate bench of NCLT, Mumbai in *Vistra ITCL India Limited Vs. Satra Properties (India) Limited* in which the Section 7 admission order passed by the Adjudicating Authority in similar circumstances was upheld by the Hon’ble NCLAT. Similarly, he has also relied upon the order of the Hon’ble NCLAT in *Ashique Ponnamparambath Vs. The Federal bank Limited in Company Appeal (AT) (CH) (Insolvency) No. 22 of 2021* whereunder the Hon’ble NCLAT confirmed the admission order passed by the adjudicating authority rejecting the similar contention in the above instance case.

6. As stated above, the Financial Creditor filed additional affidavit along with the record of default issued by the NeSL where under the debt and default are clearly mentioned. The financial creditor also filed the above referred OTS letters evidencing the existence of ‘debt’ and ‘default’ and also the inclination of the Corporate Debtor in settling the matter under



OTS. Apart from the above documents, the counsel appearing for the Corporate Debtor made a statement in the open court across the bar on 06.01.2023 that the Corporate Debtor will make a sincere effort to get the matter settled within a period of 2 weeks. Even otherwise, during the course of final hearing on 22.06.2023, the counsel appearing for the Corporate Debtor except arguing the point of insufficiency of stamp duty on the Debenture Trustee Trust Deed and Memorandum of Hypothecation and Share Pledge Agreement as per the law laid down by Hon'ble Supreme Court in *N.N. GLOBAL MERCANTILE PRIVATE LIMITED Vs. M/S. INDO UNIQUE FLAME LTD. & ORS*, neither disputed the debt nor the default in this case.

7. Therefore, after hearing both sides and upon perusing the above referred documents, this bench is of the considered opinion that there is a legal force in the above contention of the Financial Creditor that the existence of 'debt' and 'default' otherwise stands proved in the present case through the above referred documents which are the only conditions required for admission of a section 7 petition by the Adjudicating Authority. The above Company Petition is also within 3 years from the date of default and is within law of limitation. The Financial Creditor also suggested the name of the Interim Resolution Professional along with his consent letter in Form-II and thus, the present Company Petition satisfies all the necessary requirements for admission and this Bench did not find any reasons to reject the same. Accordingly, the Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -845(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Reliance Big Pvt. Ltd.



- b. This Bench hereby appoints **Mr. Rohit Mehra** (rohitmehra@hotmail.com) (rohit@hansaca.in), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00799/2017-2018/11374 having registered office at: C/o EY Restructuring LLP, 17th floor, the ruby, Tulsi Pipe Road, (Senapati Baopat Marg), Kasaravadi, Dadar, Mumbai 400079 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.10 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MS. ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
/Rakesh/

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)