

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.148/Chd/Chd/2022

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Religare Finvest Limited

(CIN No. U74999DL1995PLCO64132)

Having its Registered Office at:

1st Floor, P-14 45/90, P-Block,
Connaught Place, New Delhi-110001

....Financial Creditor

VERSUS

Sadashiv Capital Services Private Limited

(CIN No.U67190CH2005PTC028678)

Having its Registered Office at

SCO-9, Sector 7-C,
Chandigarh-160017

....Corporate Debtor/Guarantor

Judgment delivered on: 23.02.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**


Present:

For the Petitioner-Financial Creditor : Mr. Sanjeev Singh, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 30.01.2024.

**PER: SHRI. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SHRI. L. N. GUPTA , MEMBER (TECHNICAL)**

JUDGMENT



The present petition has been filed by **Religare Finvest Limited** (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Sadashiv Capital Services Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Lokesh Kumar Mittal with the affidavit verifying the contents of the application appended thereto. Mr. Lokesh Kumar Mittal has been duly authorized to file the petition.

2. The Corporate Debtor is stated to be incorporated on 15.07.2005 under the Companies Act. The company having its Registered Office at: # SCO-9, Sector 7-C, Chandigarh-160017, CIN No. U67190CH2005PTC028678. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-P4 of the petition.

3. It is averred that the Financial Creditor is a public limited company and Corporate Debtor is a non-government private company, both registered under the Companies Act, 1956. In the year 2010, Mr. Sunny Garg, Mr. Sumit Garg, Mr. Prem Chand Garg, Mr. Kewal Garg and M/s Sadashiv Casting Private Limited (borrowers) approached the Financial Creditor seeking financial assistance. The Corporate Debtor Sadashiv Capital Service Private Limited gave a Corporate Guarantee to secure the financial facility. Vide sanction letter dated 11.03.2010, a loan against property for the amount of Rs. 8,80,00,000/- was sanctioned to the borrowers. However, the disbursement of the loan was reduced to Rs. 6,52,00,000 and the Corporate Debtor executed a deed of guarantee dated 29.03.2010. It was



agreed to pay the loan in installments on the first of every month. The last part payment was made on 30.04.2019. The financial creditor was constrained to issue a recall notice and invocation of arbitration notice on 28.12.2019.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 6,15,62,413.85 (Rupees Six Crore Fifteen Lakhs Sixty Two Thousand Four Hundred and Thirteen and Paise Eighty Five Only) and the date of default is 01.05.2019 i.e. the date of last part payment of Rs. 10,51,904/- was received on 30.04.2019. Copy of loan/facility agreement dated 29.03.2010 (Annexure P-6), disbursement request form (Annexure P-7), declaration cum undertaking (Annexure P-8), Gaurantee deed and board resolution of the Gaurantor company dated 29.03.2010 (Annexure P-9), Form-8 dated 29.03.2010 (Annexure P-10), Foreclosure statements and statement of accounts dated 04.05.2022 (Annexure P-11), Interim Security Agreement alongwith list of shareholders and directors as on 28.03.2010 (Annexure P-12), CERSAI certificates dated 02.03.2022 and 27.05.2017 (Annexure P-13), Valuation Report (Annexure P14), Arbitral Order dated 10.01.2022 passed by Hon'ble High Court of Delhi (Annexure P-15), agreement to assign dated 31.03.2016 (Annexure P-16), Deed of assignment dated 31.03.2016 (Annexure P-17) and Servicing Agency Agreement dated 31.03.2016 (Annexure P-18) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of Service were filed vide Diary Nos. 00935/01 dated 19.07.2022 and 00935/2 dated 17.10.2022. The reply was filed vide Diary No. 00935/3 dated 18.04.2023 wherein it is stated that the present petition is time-barred. It is alleged that in the present petition



referring the respondent as guarantor is completely unjustified and unexplained nor supported by any valid documents. Without agreeing to any signatures and specifically stating that the agreements on which reliance is being placed are invalid, the agreements as allegedly executed have been under duress and the alleged signatures were obtained on blank papers and therefore, any execution of documents has to be strictly proved and the alleged execution of documents is denied herein. The petitioner has chosen to file this petition against the respondent, who is alleged to be the guarantor, whereas no such petition has been filed by the petitioner against the principal borrower. The petitioner has chosen not to raise any claim against the principal borrower and has straight away come against the present respondents, which is completely illegal and unjustified. There is no debt admitted by the Respondent Company. The petitioner company has suppressed the material facts and the petition is not supported by any valid documents.

6. The rejoinder has been filed by Diary No. 00935/4 dated 28.07.2023, wherein it is stated that the Corporate Guarantee Agreement was executed between the parties on 11.03.2010 and the first default occurred on 01.05.2019. The last payment was made on 20.04.2019 and Hon'ble Supreme Court in Suo-moto writ petition no. 3/2020 vide order dated 10.01.2022 restored the previous orders and the directed period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation. The Corporate Debtor failed to furnish any evidence that there exists no debt or default. The petition is not barred by limitation. The corporate debtor has raised false allegations that the agreements executed were under duress and signatures were obtained on blank papers. The corporate debtor had executed a corporate guarantee deed in favour of the



petitioner to secure the financial facility availed by the borrowers from the petitioner and therefore, the Corporate Debtor is within the meaning of Section 3(8) of IBC. It is settled law that the liability if a guarantor is co-extensive with that of the borrowers. The reliance is placed on the judgment passed by Hon'ble Supreme Court in the case of ***K.Paramasivam vs. Karur Vysya Bank Ltd. and Anr reported in 2022 SCC OnLine SC 1163 (Para 16) while relying on Laxmi Pat Surana v. Union Bank of India reported in (2021) 8 SCC 481 [Para 21, 23]*** has observed that liability of the Corporate Guarantor is co-extensive with that of the Principal Borrower. Further, that it is open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower. Against the arbitration proceedings, the petitioner neither paid the dues of the arbitrator nor supplied a copy of the petition to the respondents.

7. It is noted that vide order dated 30.01.2024 of this Adjudicating Authority, when none appeared on behalf of the respondent-corporate debtor despite repeated calls, the respondent-corporate debtor was proceeded ex parte.

8. The written submissions were filed by the petitioner-financial creditor vide Diary No.00935/6 dated 02.02.2024 reiterating the facts mentioned in the rejoinder.

9. We have heard the Learned counsel for the petitioner and have also perused the record carefully.

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 01.05.2019 when the last part payment of Rs. 10,51,904 was received on 30.04.2019. The present petition is filed vide diary No. 00935 dated 20.05.2022. The period from 15.03.2020 till 28.02.2022 stands excluded by virtue of an order dated 27.04.2021



passed by the Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020. The operative portion of the order passed by the Hon'ble Apex Court on 27.4.2021 is as follows:-

"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders."

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

"In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings".

11. Reliance can also be placed on the judgment passed by **Telangana High Court in the case of Khodiyar Harish Kumar and two others v. The State of Telangana and three others Writ Petition No.44427 of 2022 decided on 23.12.2022** wherein it is stated that,

"10. Then coming to the order passed by the Hon'ble Apex Court in the case of "cognizance" for extension of limitation, the Hon'ble Apex Court held as under:-

"Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.



III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements".

From the above, it is evident that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded and the balance period of limitation remaining as on 15.03.2020, if any, shall become available w.e.f. 03.10.2021. If that be the case, as already noted above, the Award in question was passed on 21.11.2019 and as on 15.03.2020, out of 3 years period of limitation that was available for the petitioners, only 3 months 24 days (from 21.11.2019 to 15.03.2020) have elapsed and the remaining period of two years eight months six days is available w.e.f. 03.10.2021. That means the limitation is available almost up to the month of December, 2023".

Reliance can also be placed on the judgment passed by the **Hon'ble Supreme Court in the case of Prakash Corporates v. Dee Vee Projects Limited (2022) 5 SCC 112** wherein it is stated that,

"28. As regards the operation and effect of the orders passed by this Court in SMIWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020, this Court provided that the period of limitation in all the proceedings irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021, this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government. The excluded period, as a necessary

consequence, results in enlargement of time, over and above the period prescribed”.

The present petition is filed on 20.05.2022. In view of the above judicial pronouncements the period from 15.03.2020 till 28.02.2022 stands excluded. Therefore, the present petition is deemed to be filed within limitation.

12. The corporate debtor has contended that the present petition referring the respondent as guarantor is completely unjustified and unexplained nor supported by any valid documents. The petitioner has chosen to file this petition against the respondent, who is alleged to be the guarantor, whereas no such petition has been filed by the petitioner against the principal borrower. The petitioner has chosen not to raise any claim against the principal borrower.

However, this contention of Ld. counsel for the corporate debtor is devoid of legal force because the corporate debtor had executed a corporate guarantee deed dated 29.03.2010 (Annexure-P9) in favour of the petitioner to secure the financial facility availed by the borrowers from the petitioner and therefore, the Corporate Debtor is within the meaning of corporate debtor under Section 3(8) of IBC. It is settled law that the liability of a guarantor is co-extensive with that of the borrowers.

Here, reliance can be placed upon the case of ***Ferro Alloys Corporation Ltd. v. Rural Electrification Corporation Ltd. [Company Appeal (AT) (Ins.) No. 92 of 2017]*** passed by Hon'ble National Company Law Appellate Tribunal, New Delhi wherein it was held that,

“39. In view of the aforesaid decision of the Hon'ble Supreme Court, we hold that it is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantors'. Without initiating any 'Corporate Insolvency Resolution Process' against the 'Principal Borrower', it is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency



Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'.

Therefore, it cannot be said that the present petition is not maintainable against the respondent corporate guarantor. In these circumstances, the respondent corporate guarantor cannot shirk its liability under the garb of the plea that no action has been taken against the principal borrower before filing the present application against the respondent.

13. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by-

- 1) Loan/facility agreement dated 29.03.2010 (Annexure P-6)
- 2) Disbursement request form (Annexure P-7)
- 3) Declaration cum undertaking (Annexure P-8)
- 4) Gaurantee deed and board resolution of the Gaurantor company dated 29.03.2010 (Annexure P-9)
- 5) Form-8 dated 29.03.2010 (Annexure P-10)
- 6) Foreclosure statements and statement of accounts dated 04.05.2022 (Annexure P-11)
- 7) Interim Security Agreement alongwith list of shareholders and directors as on 28.03.2010 (Annexure P-12)
- 8) CERSAI certificates dated 02.03.2022 and 27.05.2017 (Annexure P-13)
- 9) Valuation Report (Annexure P14)
- 10) Arbitral Order dated 10.01.2022 passed by Hon'ble High Court of Delhi (Annexure P-15)
- 11) Agreement to assign dated 31.03.2016 (Annexure P-16)



12) Deed of assignment dated 31.03.2016 (Annexure P-17)

13) Servicing Agency Agreement dated 31.03.2016 (Annexure P-18)

As per the financial records placed, it is evident that an amount of Rs. 6,15,62,413.85 (Rupees Six Crore Fifteen Lakhs Sixty Two Thousand Four Hundred and Thirteen and Paise Eighty Five Only) is still pending which amounts to default when the corporate debtor avoided the payment of the outstanding amount despite repeated requests by the financial creditors/applicants.

14. It may be noted that as per Section 5(8)(i) of the Insolvency and Bankruptcy Code, 2016, the amount of any liability in respect of guarantee falls within the definition of 'financial debt' and hence, debt is proved by the financial creditor.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and




- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

16. In Part-III of Form No. 1, Mr. Sandeep Lamba, Interim Resolution Professional (IRP) has been proposed by the petitioner. However, his AFA Certification has expired on 24.01.2024. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arun Gupta, there is nothing adverse against him. In view of the above, we appoint Mr. Arun Gupta, Registration No.IBBI/IPA-001/IP-P01323/2018-19/12055,Email:arunsapna.ca@gmail.com,Mobile No. 9878991186, the Interim Resolution Professional from the list provided by the Insolvency and Bankruptcy Board of India with the following directions: -

- i.) The term of appointment of Mr. Arun Gupta shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;




- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of




Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit



documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government



Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We direct the Financial Creditor to deposit a sum of ₹3,00,000/- (Rupees Three Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

18. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution



Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. The petition is admitted accordingly.

Sd/-

(L.N. GUPTA)
Member (Technical)

February 23, 2024

PKA/TBG

Sd/-

(HARNAM SINGH THAKUR)
Member (Judicial)