IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP- IB-231(PB)/2022

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:

M/s. Religare Comtrade Limited
Through Authorised Representative
1st Floor, P-14,45/90,
P-Block Connaught Place,
New Delhi-110001

.... Petitioners/Financial Creditors

Vs.

M/s. RHC Holding Private Limited
Through Authorised Represenative
G-16, Marina Arcade,
Connaught Circus,
New Delhi-110001,

.... Corporate Debtor

Order dated: 13.05.2022

Coram:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the FC: Mr. Krishnendu Datta, Senior Adv, Mr. Sandeep Das, Mr. Siddharth Sharma, Ms. Mehak Khurana & Ms. Aishwarya Singh.

For the CD: None.

ORDER

PER: AVINASH K. SRIVASTAVA MEMBER (TECHNICAL)

1. This is an application, filed and registered on 24.03.2022, by the financial Creditor namely M/s. Religare Comtrade Limited (Petitioner), 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. RHC Holding Private Limited.

2. The Corporate Debtor ('CD') is a Private Limited Company, incorporated on 19.04.2007, having Company Identification Number ('CIN') U67190DL2007PTC162322 and is situated at G-16, Marina Arcade, Connaught Circus, New Delhi-110001.

3. It is further submitted that the Petitioner had disbursed the loan amount of Rs. 99,00,00,000/- (Ninety-Nine Crores) to the Corporate Debtor, by way of executing a Memorandum of Understanding ('MOU') dated 29.03.2017, as a short-term loan, repayable on 28.04.2017 at the interest rate of 14% per annum from the date of disbursement of the loan, till the date of repayment. ([Annexure-F @pg. 92]).

4. It is further submitted that the CD, being unable to repay the loan amount with interest, sought extension by way of following MoU(s) as mentioned below:

Sl. No.	Details of MoU	Date of Repayment/ Pg. reference
1.	2nd MoU dated 28.04.2017	29.05.2017 [Annexure-C (Colly) @pg. 32]
2.	3rd MoU dated 29.05.2017	29.06.2017 [Annexure-C (Colly) @pg. 35]
3.	4th MoU dated 29.06.2017	28.07.2017 [Annexure-C (Colly) @pg. 38]
4.	5th MoU dated 28.07.2017	07.08.2017 [Annexure-C (Colly) @pg. 41]
5.	6th MoU dated 07.08.2017	06.09.2017 [Annexure-C (Colly) @pg. 44]
6.	7th MoU dated 06.09.2017	27.10.2017 [Annexure-C (Colly) @pg. 47]
7.	8th MoU dated 28.10.2017	13.10.2018 [Annexure-C (Colly) @pg. 50]

5. However, the corporate debtor had failed to repay the total outstanding amount of Rs. 1,47,44,73,067.90/- (One hundred and forty-seven crores forty-four lakhs seventy-three thousand sixty-seven only) to the Petitioner as on 08.01.2021.

6. It is further seen that, after repeated reminders and delivery of demand notices dated 04.09.2018 and 10.07.2020 to the CD, the debt has still remained unpaid. However, this application is filed and registered on 24.03.2022, giving the debt due and payable as on 08.01.2021, however in the present case the date of default is

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13.10.2018, in terms of the 8th (last) MoU and the period of limitation would expire on 12.10.2021.

7. However, the Ld. Counsel for the Petitioner is supported by the Hon'ble Supreme Court's vide order dated 10.01.2022 **In Re: Cognizance for Extension of Limitation [Suo Motu Writ Petition (C) 3 of 2020]** where the apex court directed the exclusion of the period from 15.03.2020 till 28.02.2022 for the purposes of calculating limitation. The relevant extracts of the order is reproduced below:

> *I. The order dated 23.03.2020 is restored and 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.*
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> *II. Consequently, the balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022*
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> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

8. Notice was ordered by this Adjudicating Authority to be issued by the Petitioner on 28.03.2022. Accordingly, the respondent was served duly by way of Dasti as well as through mail. However, CD remained absent nor

filed any reply , hence he was proceeded ex-parte on 12.4.2022.

9. We have heard the Ld. Counsel for the petitioner and perused the documents submitted by it. Considering the submissions made and documents placed on record, we find that default has occurred in repayment of the financial debt as on 13.10.2018 and no representation has been made by the Corporate Debtor . In view of above, we are inclined to allow this Petition.

10. Further, 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 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."*

11. Therefore, we are satisfied that, in the present petition financial debt is due and payable. Petitioner has approached this Tribunal, within the period of limitation as extended by Hon'ble Supreme Court in suo motu W.P.© 3 of 2020.

12. The 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.

13. The Applicant has proposed the name of Interim Resolution Professional (IRP), Mr. Gautam Singhal, having registration No. IBBI/IPA-001/IP/P-01437/2018-19/12240, and email id gautam@klfindia.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. Gautam 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. Gautam Singhal as the IRP of the Corporate Debtor.

14. 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.

15. 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.

16. We direct the Petitioner/ Financial Creditor to deposit a sum of Rs. 2 lacs with the IRP Mr. Gautam 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.

17. 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-

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)