

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

In the matter of Vasan Health Care Private Limited

IA/1165/IB/2020 in CA/1/2017

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

Reliance Commercial Finance Ltd.

A Company Registered under
The Companies Act 1956
Having registered office at
Reliance Centre, 6th Floor
South Wing, Off. Western Express
Highway, Santacruz (East)
Mumbai- 400 055.

... Applicant

-VS-

Mr. Rajendran Shanmugam

Resolution Professional vide order 23/04/2021
(V. Mahesh,
Interim Resolution Professional (IRP),
M/s. Vasan Health Care Private Limited,
Having his office at
No.39/19, Aspen Court, III Floor,
6th Main Road, R.A. Puram,
Chennai – 600 028.)

... Respondent /RP

Along with

IA/1166/IB/2020 in CA/1/2017

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

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The Companies Act 1956
Having registered office at
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Chennai – 600 028.)

... Respondent /RP

Present:

For Applicant : Mr. Tushad Kakalia for Mr. Karan Dalal, Advocate

For Respondent: Ms. Yajura Devi, Advocate

Order pronounced on **22nd July 2022**

CORAM

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA/1165/2020 and IA/1166/2020 are filed by the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016') seeking relief as follows;

IA/1165/IB/2020

"5.1 The Hon'ble Tribunal may be pleased to review, rectify and negate the erroneous decision of the Interim Resolution Professional dated 28.07.2020 and honour the claim amounting to **Rs. 2,01,36,780/- (Rupees Two Crore one Lakh Thirty Six thousand Seven Hundred and Eighty only)** for the Loan Account **RLSLCOR000322139** submitted by the Applicant to the Interim Resolution Professional.

5.2 That the Hon'ble Tribunal may be pleased to direct the Interim Resolution Professional to treat the claim submitted by the Applicant as Financial Debt and not as Operational Debt.

5.3 Any further steps made by the Resolution Professional in the CIRP process should acknowledge and admit the Applicant's Claim and consider the Applicant in its capacity as a Financial Creditor in the process.

5.4 The Hon'ble Tribunal may be pleased to pass such further or other order(s) as may be deem fit and proper in the facts and circumstances of the case."

IA/1166/IB/2020

"5.1 The Hon'ble Tribunal may be pleased to review, rectify and negate the erroneous decision of the Interim Resolution Professional dated 28.07.2020 and honour the claim amounting to **Rs. 50,28,95,370/- (Rupees Fifty Crore Twenty Eight Lakh Ninety Five Thousand Three Hundred and seventy only)** for Loan Account **RLSLCOR000317687** submitted by the Applicant to the Interim Resolution Professional.

5.2 That the Hon'ble Tribunal may be pleased to direct the Interim Resolution Professional to treat the Claim submitted by the Applicant as Financial Debt and not as Operational Debt.

5.3 Any further steps made by the Resolution Professional in the CIRP process should acknowledge and admit the Applicant's claim and consider the Applicant in its capacity as a Financial Creditor in the process.

5.4 The Hon'ble Tribunal may be pleased to pass such further or other order(s) as may deem fit and proper in the facts and circumstances of the case."

2. Since the issue involved in IA/1165/2020 and IA/1166/2020 pertains to rejection of the claim by the Respondent Resolution Professional on the ground that the said claim is not a 'Financial Debt', both the IA's are taken up together to pass a common order. The facts as averred in IA/1165/2020 are taken up for adjudication.

3. Before venturing into the facts of the case, it is required to be noted that the erstwhile IRP viz. V. Mahesh, has filed a memo dated 17.07.2021 stating that he has been replaced by the Resolution Professional one Mr. Rajendran Shanmugam by the virtue of this Tribunal order dated 23.04.2021 and has been

discharged of his statutory duties as per the provisions of IBC, 2016. Further it can be seen that the present Resolution Professional has entered appearance through vakalat filed in S.R.No 4589 dated 12.10.2021.

4. FACTS OF THE CASE:

4.1. A Master Rental Agreement dated 29.06.2011 (MRA) was executed between Rentworks India Pvt. Ltd (RWIPL) and the Corporate Debtor. Pursuant to the MRA, RWIPL agreed so provide certain equipment to the Corporate Debtor in consideration of rent. The said MRA dated 29.06.2011 is placed as Annexure B to the Application typeset.

4.2. As per, Clause 26 of the said MRA, RWIPL was entitled to absolutely assign any of its rights and/or obligations under the MRA and/or to the equipment to any other person. Further it is averred in para 3.2 of the Application that the said MRA provided that upon such assignment, the Corporate Debtor acknowledged that:

(i) RWIPL was entitled to transfer all renter related information to such person and

(ii) The Corporate Debtor would recognise the person as the new owner of the equipment and that the said equipment would be held by the Corporate Debtor on behalf of the person and subject to the terms and conditions of the MRA.

4.3. Thereafter, vide various Sale of Receivables Agreements executed between RWIPL and Reliance Capital

Ltd., RWIPL sold the Receivables under the Rental Agreement and assigned the Collateral Securities, if any to Reliance Capital Ltd. Concurrently, RWIPL and Reliance Capital Ltd. executed various Deeds of Hypothecation whereby RWIPL created a Charge over the equipment owned by RWIPL. A copy of the various Sale of Receivables Agreements and Deeds of Hypothecation have been placed in the Application typeset as Annexure-E-M and N-V respectively.

4.4. It is averred in the application that the Corporate Debtor made ad-hoc, intermittent payments in relation to the rental dues owed to the Applicant from time to time, however as on December 2015, the Corporate Debtor was in arrears in respect of the said rental and other charges to the extent of Rs.31,35,43,346/-, Thereafter, the Applicant and Corporate Debtor agreed that the said arrears under the MRA would be treated as a loan from the Applicant to the Corporate Debtor. The said relevant extract from the Application is extracted hereunder :

- a) That the Corporate Debtor's arrears of rental charges under the MRA would be treated as the principal under the proposed loan transaction.
- b) That the date on which the arrears were converted to principal under the proposed loan transaction would be treated as the date of disbursement.
- c) That the tenure of the proposed loan transaction would be 24 months from the deemed date of disbursement.
- d) That the Corporate Debtor would pay interest on the arrears (i.e., the principal under the proposed transaction) from the deemed date of disbursement.

e) That the Corporate Debtor would execute all requisite documentation to give effect to the above.

4.5. It was submitted that Pursuant to the aforementioned terms and conditions, a Facility Agreement dated 21.01.2016 and 17.02.2016 were executed between Applicant, Vasan Dental, Corporate Debtor, and Mr. Arun Arunachalam Murugiah which treated the portion of Corporate Debtor's outstanding debt under the MRA dated 29.06.2011 as a loan upon which the Corporate Debtor was liable to pay an interest amount.

4.6. Further it was submitted that the Facility Agreement dated 21.01.2016 and 17.02.2016 effectively lays out the terms of the Term Loan Facility, including the tenure, repayment, pre-payment premium and interest chargeable on the Loan Facility.

4.7. Subsequently, it is seen from the Application that 21.01.2016 and 17.02.2016, Deeds of Hypothecation were executed by Vasan Dental, Corporate Debtor, and Mr. Arun Arunachalam Murugaih in favour of Reliance Capital Ltd. whereby a First and Exclusive Charge on the entire current assets, all amounts owing to, and received by, the Borrower and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of the business of the Borrower including the operating cash flows, receivables, book debt and revenues present and future (including all receivables and intangibles), were created and secured in favour of Reliance Capital Ltd.

4.8. It is averred in the Application that the Corporate Debtor denied the occurrence of any debt in favour of the Applicant despite admitting to the amount due and payable by them in correspondence exchanged between the Applicant and Corporate Debtor subsequent to the invocation of the arbitration proceedings before Ld. Sole Arbitrator Mr. Rohit Kapadia. However, No Award was passed in the course of Arbitration proceedings initiated by the Applicant against the Corporate Debtor in light of the moratorium imposed by this Tribunal and remains undecided as on the date of this present Application. The emails exchanged between the representatives of the Applicant and the Corporate Debtor is placed in the Application as Annexure D.

4.9. Pursuant thereto, the Corporate Insolvency Resolution Process ("CIRP") initiated against the Corporate Debtor and vide Order dated 21.04.2017 in C.A./1/(IB)/2017 by this Tribunal and one Mr. V. Mahesh was appointed as the IRP vide Order dated 21.04.2017 in the above captioned matter.

4.10. Subsequent thereto, it can be seen from the Application that, the Applicant filed their Submission of Claim under Loan Account RLSLCOR000322139. However, the IRP "REJECTED" the Applicant's claim and advised to resubmit the claims with respect to the Corporate Debtor as an Operational Creditor in FORM - B vide its letter dated 28.07.2020. The said rejection Letter dated 28.07.2020 issued by the IRP Mr. V. Mahesh is placed in the Application as Annexure W. The reasons for rejection of the Applicant's Claim is extracted hereunder:-



- "(i) The commercial transaction between the CD and RWIPL, confirmed by RWIPL and CD is only in the nature of an "Operational debt" and not classified/ treated as a Loan or Finance transaction by the respective parties. We have written and got confirmation from RWIPL through their counsel that RWIPL neither granted any Loan nor disbursed any amount to the CD nor it took any Loans from any Bank or NBFC.
- (ii) It is admitted and seen from the records that these Rent Receivables and/or Hire Charges have been sold by RWIPL at a discounted price and documents attached clearly shows it is only an Acknowledgement of Ownership and Acknowledgement of Delivery and Authority to Pay. Based on the Legal opinion and the examination done by the IRP & his office, it is abundantly clear that this Liability is purely an Operational debt and not a Financial Debt.
- (iii) In terms of Section 21(5) of IBC, 2016, where an Operational creditor has assigned or legally transferred any Operational Debt to a Financial Creditor, the assignee or transferee shall be considered as an Operational Creditor to the extent of such assignment or legal transfer.
- (iv) The explanations offered by you do not apply to this instant case and also Section 5 (8) (e) of IBC, 2016 does not come to the rescue to the extent it pertains to this transaction.
- (v) What is contemplated under 5 (8) (e) of IBC, 2016, is Assignment of Receivables of a Financial nature and not Assignment of any Receivables per se. Hence, the IRP is of the opinion that if this is permitted as Financial Debt, then any Operational Creditor, whose debts or dues for supply of Goods and Services can Assign their Receivables to a BANK/ NBFC and Claim the same as a Financial Debt. This cannot be the Legislative intent of Section 5(8)(e) of IBC, 2016. Further, the Assignee cannot Claim a treatment which is better or superior to that of the Assignor."

4.11. As against the said rejection letter 28.07.2020 passed by the IRP, the Applicants have preferred the present Applications.

5. **APPLICANT SUBMISSIONS:**

5.1. The Ld. Counsel for the Applicant submitted that although the Corporate Debtor paid some portion of the said rental charges from time to time to the Applicant and that as on the date of this present Application the Corporate Debtor continues to be in default of significant portion thereof.

5.2. Further the Ld. Counsel submitted that the terms and conditions of the Facility Agreement dated 17.02.2016 executed between Applicant and Corporate Debtor, whereby "Term Loan Facility" as mentioned in the said Facility Agreement clarifies that the said debt is a 'Financial Debt'. The terms and conditions of the said Facility Agreement are that of a loan agreement such as the tenure, repayment, pre-payment premium and interest chargeable on the Loan Facility.

5.3. Therefore, the Ld. Counsel submitted that execution of the said Facility Agreement arising out, due to non-payment of the rent as agreed upon under the Sale of Receivables Agreement, and outstanding thereof is in the nature of Financial Debt and thereby permitting the Applicant to file a FORM-C Submission of Claim of Financial Creditors' dated 13.12.2019 with the IRP for a sum total of Rs.2,05,67,878/- (Rupees Two Crore, Five Lakhs, Sixty Seven Thousand, Eight Hundred and Seventy Eight Only).

5.4. Further the Ld. Counsel for the Applicant pressed emphasis on ***Nikhil Mehta & Sons v. AMR Infrastructure***

Ltd. 2017 (8) TMI 1017 in which it was categorically held that "As per Section 5(8) of the Code, the essential requirement of a 'Financial Debt' is that in order for a debt to be construed as a Financial Debt, the debt should have been disbursed against the consideration for the time value of money".

5.5. The Ld. Counsel for the Applicant submitted that, in the present case, a portion of the outstanding amount owed to the Applicant was wilfully converted into a loan by way of the said Facility Agreement. Furthermore, the said Facility Agreement was entered into by the Applicant and Corporate Debtor with a clear intention to treat the arrears as a Loan with the following conditions:

- A. The arrears of the rental charges under Master Rental Agreement will be treated as the principal under the proposed loan transaction.
- B. The date on which the arrears were converted will be treated as date of disbursement.
- C. The Tenure of the proposed loan transaction will be 24 months from the deemed date of disbursement.
- D. That the Corporate Debtor will pay an interest on the arrears.

5.6. Therefore, the assignment of Receivables and Collateral Securities to the Applicant by RWIPL followed by a Facility Agreement dated 17.02.2016 shall interpret that the outstanding amount owed to the Applicant was in the nature of a loan, satisfying the condition of amount "disbursed against the consideration for time value of money." In the light of the facts and aforesaid judgments, the present debt shall fall within the purview of section 5(8) of the Code and the Applicant should be considered as a Financial Creditor under section 5(8) of the Code.

5.7. The Ld. Counsel for the Applicant submitted that the IRP failed to take into consideration the aforesaid Facility Agreement by virtue of which the arrears were converted into a loan carrying interest thereon. Upon the assignment of receivables from RWIPL to Applicant, a Facility Agreement was entered between the Corporate Debtor and the Applicant by virtue of which, the Applicant and Corporate Debtor since the Corporate Debtor was unable to pay the rent under the Receivables Agreement to the Applicant, the Corporate Debtor and the Applicant agreed to treat the arrears of receivables as Financial Debt in respect of which further interest would be payable. However, it was submitted that the transaction has been overlooked by the IRP leading to his erroneous findings and decision in Letter dated 28.07.2020.

5.8. Furthermore, the Ld. Counsel for the Applicant submitted that a perusal of Section 5 (8)(b) of the IBC, 2016 makes it clear that if an amount is raised under any acceptance credit facility, the debt will be a financial debt. Since the amount raised under the Facility Agreement was accepted by the Corporate Debtor as a credit facility, the debt in question must be treated as financial debt.

6. RESPONDENT SUBMISSIONS:

6.1. The Ld. Counsel for the Respondent submitted that the documents related to MRA were executed much earlier to 2016, the year in which the alleged Facility Agreement has been executed according to the Applicant. And the Applicant has failed to establish any nexus between

the alleged Facility Agreement and the afore-said MRA. Further there is no mention about the MRA in the alleged Facility Agreement. Also, the MRA itself lacks sufficient documents and proof to establish the alleged transaction. The same is pointed out in para 3.3 of the Report filed by the RP.

6.2. Further the Ld. Respondent counsel submitted that the RP has categorically pointed out various observations and discrepancies in the Documents relied upon by the Petitioner in para 4 (regarding the alleged Facility Agreement) and para 5 of the Report dated 6th Apr. 2022 submitted by the RP as per the direction of this Hon'ble Tribunal in Interim Order dated 18.03.2022 in the instant matter. Further, the Applicant has been evasive in addressing to such discrepancies pointed out by the RP in the said Report.

6.3. The Ld. Counsel for the Respondent submitted that the Applicant in reference to Statement of Accounts, has admitted that no payments have gone from the CD's Account. This very statement, all the more confirms that the CD has at no point of time admitted any liability to this Claim. Thus, it was submitted that the Claim of the Applicant is neither an admitted liability by the CD nor the Applicant has sufficient proof to establish its Claim.

6.4. It was further submitted by the Ld. Counsel for the Respondent that, the Applicant has not submitted any fresh document evidencing the liability. Thus, after considering all the relevant information and records, the RP

has opined that the claim of Rs.2,01,36,780 / and Rs.71,83,84,024/- amounting to Rs.73,85,20,804/- is inadmissible.

7. FINDINGS OF THIS TRIBUNAL

7.1. Heard the submissions of both the parties and on the perusal of the documents submitted by the parties and submissions made during the course of hearing. As per the definition of the expression financial debt in sub-section 8 of Section 5 of IBC, 2016 which is as follows:-

5 (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively

assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

7.2. A perusal of Section 5(8)(d) of IBC, 2016 would posit the fact that the term 'financial debt' would include *"any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed"*. At this juncture, it is pertinent to refer to Indian Accounting Standards "AS-19" in respect of "lease", which is as follows;

AS-19

"5. The classification of leases adopted in this Standard is based on the extent to which risks and rewards incident to ownership of a leased asset lie with the lessor or the lessee. Risks include the possibilities of losses from idle capacity or technological obsolescence and of variations in return due to changing economic conditions. Rewards may be represented by the expectation of profitable operation over the economic life of the asset and of gain from appreciation in value or realization of residual value.

6. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incident to ownership. Title may or may not eventually be transferred. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incident to ownership.

8. Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than its form. Examples of situations which would normally lead to a lease being classified as a finance lease are: (1) the lease transfers ownership of the asset to the lessee by the end of the lease term:

- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable such that, at the inception of the lease, it is reasonably certain that the option will be exercised;
- (c) the lease term is for the major part of the economic life of the asset even if title is not transferred;
- (d) at the inception of the lease the present value of the minimum lease payments amount to at least substantially all of the fair value of the leased asset; and
- (e) the leased asset is of a specialised nature such that only the lessee can use it without major modifications being made.

9. Indicators of situations which individually or in combination could also lead to a lease being classified as a finance lease are:

- (a) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;
- (b) gains or losses from the fluctuation in the fair value of the residential fall to the lessee (for example in the form of a rent rebate equalling most of the sales proceeds at the end of the lease); and
- (c) the lessee can continue the lease for a secondary period at a rent which is substantially lower than market rent".

7.3. While applying the said principles enshrined under "AS-19" to the facts of the present case, it could be seen from the Master Rental Agreement between the Rentworks India Private Ltd., and Vasan Healthcare Private Limited is reproduced below:



"26. Agreement and Agency

26.1 We may sell or assign either absolute or by way of security all or any of our rights and/or obligations under the Agreement and/or to the Equipment to any other person. Upon such assignment, you acknowledge that:

- a) We shall be entitled to transfer all Rental related information to such person; and
- b) Where applicable, you will recognise the person as the new owner of the Equipment and that you will hold the Equipment on behalf of the person subject to the terms and conditions of this Agreement.

26.2 You shall not assign any of your obligations or rights hereunder to a third party".

7.4. A perusal of the aforesaid clause would show that the transaction takes the form of 'financial debt' in respect of which there is an amount of the liability in respect of the lease which is deemed as a '**financial lease**' under the Accounting Standards (AS) – ICAI. Further, as per Section 5(8)(e) a 'financial debt' includes receivables sold or discounted other than any receivables sold on non-recourse basis. Thus, the "MRA" would squarely fall under the definition of Section 5(8)(d) of IBC, 2016 in and by which the claim of the Applicant would constitute a 'financial debt'. Thus, we are of the view that the amount due to the Applicant constitutes a 'financial debt' which was disbursed to the successor for the time value of money. Since we are holding that the MRA itself constitutes a 'financial debt', we are not dwelling on the nature of 'Facility Agreement' entered into between the Applicant and the Corporate Debtor.

7.5. This Tribunal in a similar matter in IDBI Vs V. Mahesh IRP, Vasan Health Care in Application IA/322/IB/2020 vide order dated 21.04.2021 has categorically held that "*On a careful examination of these*

documents and relevant portions, we are of the considered view that the amount due to the Applicant Bank constitutes a 'financial debt' which was disbursed to the successor for the time value of money."

7.6 Accordingly, the rejection of the claim by the Respondent in respect of claim amounting to Rs.2,01,36,780/- (Loan Account RLSLCOR0003221390) is hereby set aside and since the claim of the Applicant in relation to Loan Account RLSLCOR000322139 qualifies to be a 'financial debt', we hereby direct the Respondent to admit the claim of the Applicant in relation to Loan Account RLSLCOR000322139 and treat the Applicant as a 'Financial Creditor' in terms of the provisions of IBC, 2016. Accordingly, IA/1165/2020 stands **allowed**.

7.7 Since the Respondent has passed similar Rejection letters in relation to other Loan Accounts of the Applicant which is under challenge in IA/1166/2020, the said Applications also stands **allowed** on the similar grounds mentioned above.

7.8. As a result of which, the Applicant would form part of the member of CoC in respect of the Corporate Debtor. It is understood that the Resolution Plan in respect of the Corporate Debtor has already been approved by the CoC and pending approval before this Tribunal. The Resolution Professional is directed to accordingly allocate the amount payable to the Applicant herein by virtue of the said

Resolution Plan as per the % of payout to be made to the
Financial Creditors.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice (Retd) S.RAMATHILAGAM,
MEMBER (JUDICIAL)

VV.K/Raymond