



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

CP (IB) No. 126/MB/2024

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Reliance Commercial Finance Limited,
having its Registered Office at: - The Ruby,
11th Floor, North-West Wing, Plot No.29,
Senapati Bapat Marg, Dadar (West),
Mumbai- 400028.

**..... Applicant/ Financial
Creditor**

Versus

Tulip Advisors Private Limited,
Having its Registered Office at:
07th Floor, B-Wing, 07th Floor, Nehru Road,
Near Shamrao Vithal Bank, Vakola,
Santacruz (East), Mumbai-400055.

..... Corporate Debtor

Order Delivered on :- 27.06.2024.

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**



Appearances (Hearing in Physical Mode):

For the Financial Creditor: Adv. Akhil Sarathy.

For the Corporate Debtor: Adv. Yashwant D. a/w Harshvardhan B.

ORDER


Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This is an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed by M/s. **Reliance Commercial Finance Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) of M/s. **Tulip Advisors Private Limited** (hereinafter referred to as "Corporate Debtor") by reason of default committed by the Corporate Debtor amounting to **INR 1319,34,66,596.00/-** (Rupees One Thousand Three Hundred and Nineteen Crores, Thirty-Four Lakhs, Sixty-Six Thousand, Five Hundred and Ninety-Six only) in repayment of total outstanding debt (including interest) under various loan facilities advanced by Reliance Home Finance Limited which were subsequently assigned to the Financial Creditor by way of Assignment Deed dated March 31, 2023. The dates of default, as stated in the application, are 01st May 2019, 29th March 2019, 25th April 2019 and June 25, 2019.




Facts of the Case as per the Applicant are briefly stated hereunder:

2. The Financial Creditor formerly known as Reliance Gilts Limited, was incorporated on August 17, 2000 with the Registrar of Companies (RoC), Maharashtra, Mumbai. Subsequently, on May 21, 2009, the Financial Creditor was registered as a Non-Banking Financial Institution with Reserve Bank of India, as defined under Section 45-IA of the Reserve Bank of India Act, 1934 vide Certificate of Registration No. N-13.01933.
3. The Financial Creditor advanced loan for working capital facility to the Corporate Debtor vide Sanction letters dated April 10, 2018 and June 22, 2018 for an amount of Rs. 278,95,00,000/- (Rupees Two Hundred Seventy-Eight Crores and Ninety-Five Lakhs Only) and Rs. 19,00,00,000/- (Rupees Nineteen Crore Only) respectively aggregating to Rs. 297,95,00,00,000/- (Rupees Two Hundred Ninety-Seven Crore Ninety-Five Lakh only) at an interest of 13.50 % per annum. In respect of the same, the Corporate Debtor entered into Facility cum Hypothecation Agreement dated April 10, 2018 and June 22, 2018 and also executed other documents with Financial Creditor.
4. Reliance Home Finance Limited ("RHFL") was incorporated on June 5, 2008 and is registered with National Housing Bank as Housing Finance Institution as per Certificate of Registration No. 07.0101.12 dated July 16, 2012 (Original Certificate of Registration No. 02.0069.09 dated January 6, 2009). RHFL advanced loan for working capital facility to the Corporate Debtor vide Sanction letters dated 29.05.2018; 30.05.2018 and 31.05.2018 respectively for an amount of Rs. 60,00,00,000/- (Rupees Sixty Crores Only), Rs. 100,00,00,000/-




(Rupees One Hundred Crores Only), Rs. 55,00,00,000/- (Rupees Fifty-Five Crores Only) aggregating to Rs. 215,00,00,000/- (Rupees Two Hundred and Fifteen Crores only) at an interest of 13.50 % per annum. Accordingly, the Corporate Debtor entered into Facility cum Hypothecation Agreements dated 29.05.2018; 30.05.2018 and 31.05.2018 and executed other documents with RHFL. It is submitted that Corporate Debtor made payment of Rs. 13,00,00,000/- (Rupees Thirteen Crore only) on March 29, 2019.

5. It is further submitted that later on, RHFL got into a financial stress and pursuant to the Resolution Plan implemented in terms of the RBI Circular No. RBI/2018-19/203, dated June 07, 2019 on Prudential Framework for Resolution of Stressed Assets and the order of Hon'ble Supreme Court of India dated March 03, 2023, the Financial Creditor acquired the Business Undertaking of RHFL on a slump sale on going concern basis. The loan advanced by RHFL along with all rights and securities attached thereto was assigned to the Financial Creditor by way assignment deed dated March 31, 2023. Thus, in all the Corporate Debtor owes Rupees 499,95,00,000/- (Rupees Four Hundred Ninety-Nine Crore and Ninety-Five Lakh Only) to the Financial Creditor.
6. RHFL sent Demand Notice dated June 24, 2019 which was duly acknowledged by the Corporate Debtor and requested the Corporate Debtor to make the outstanding payment as the payments were stopped from the side of Corporate Debtor since March 29, 2019. However, no response was received from the side of the Corporate Debtor. RHFL sent Loan Recall Notice/Termination of Agreement Notice via Registered Post, dated August 26, 2019, and requested the Corporate Debtor to make the outstanding payment as the payment was stopped



from the side of Corporate Debtor since March 29, 2019. However, no response was received from the side of the Corporate Debtor. The Financial Creditor sent and the Demand Notice via Registered Post, dated February 5 2021, and requested the Corporate Debtor to make the outstanding payment. However, no response was received from the side of the Corporate Debtor. The Corporate Debtor acknowledged the debt owed to Financial Creditor by giving Balance Confirmation dated September 30, 2021 for an amount of Rs. 599,39,33,555/- including interest, and also Balance Confirmation dated September 30, 2021 was given by the Corporate Debtor with respect to the debt amount of Rs. 403,88,70,137/- (Four Hundred and Three Crore Eighty-Eight Lakh Seventy Thousand One Hundred Thirty-Seven Only), including interest, which was originally owed to RHFL. Hence, the Corporate debtor has acknowledged the total amount of Principal debt and Interest debt of Rs. 4,99,95,00,000 and Rs. 5,03,33,03,692/- as on September 30, 2021, respectively, which is liable to be paid to the Financial Creditor.

7. The Financial Creditor sent Loan Recall Notice/Termination of Agreement Notice via Registered Post, dated July 31, 2023 and requested the Corporate Debtor to make the outstanding payment as the payment was stopped from the side of Corporate Debtor since March 29, 2019. However, no response was received from the side of the Corporate Debtor.
8. Hence, a Principal amount of Rs. 499,95,00,000/- (Rupees Four Hundred Ninety-Nine Crore and Ninety-Five Lakhs Only) is due and payable in respect of which the Corporate Debtor has committed



default despite demands for payment by the Financial Creditor. The Financial Creditor claims interest on the outstanding Principal amount calculated @ 13.50% per annum and penal interest @ 22.50% p.a. from due date, as per the terms of the Loan Agreement referred-to-hereinafter till the principal amount is paid.


Reply on Behalf of the Corporate Debtor: The Corporate Debtor has filed its affidavit-in-reply dated 24th April, 2024 on record. The reply of the Corporate Debtor is briefly recapitulated below:

9. The Corporate Debtor admits that the factum of disbursement of debt by the Financial Creditor. Due to certain unforeseen and unexpected circumstances owing to the downturn in business which was further compounded by the world-wide Covid-19 Pandemic, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it was unable to repay the working capital loan facilities extended by Financial Creditor and Reliance Home Finance Limited ('RHFL'). However, there was no deliberate intention on the part of the Corporate Debtor to default on repayment and, in fact, the Corporate Debtor made several efforts to negotiate a settlement with the Financial Creditor and Reliance Home Finance Limited but the same did not materialise.
10. There is absolutely nothing on record before this Tribunal to show that the said Reliance Commercial Finance Limited has issued any Recall/Termination of Agreement notice to the present Corporate Debtor in respect of the Rs. 297.95 crores advanced by Reliance Commercial Finance Limited to Corporate Debtor and resultantly there cannot be said to be any default in respect of the Rs. 297.95 crores

advanced by Reliance Commercial Finance Limited to Corporate Debtor.

11. It is also submitted that there is no Privity of Contract between the Corporate Debtor and Petitioner/ Financial Creditor insofar as the loans advanced by Reliance Home Finance Limited to Corporate Debtor are concerned for the following reasons:

- a. the Petitioner in present case seeks to initiate CIRP against the Corporate Debtor in respect of the Loans advanced by Reliance Home Finance Limited to Corporate Debtor on the ground that Reliance Home Finance Limited has executed an assignment deed dated 31st March 2023 pursuant to which the subject loan facilities extended by Reliance Home Finance Limited to the Corporate Debtor along with all its rights and securities attached thereto was assigned to the Petitioner i.e. Financial Creditor.
- b. However, in respect of the said alleged Deed of Assignment, the consent of Corporate Debtor was not obtained and there is no privity of contract with the present Financial Creditor who claims to have acquired the said debt of Reliance Home Finance Limited in respect of the Financial Debt of Principal Amount aggregating to Rs. 215,00,00,000/- (Rupees Two Hundred and Fifteen Crore only) and as such the Corporate Debtor has privity of contract only with Reliance Home Finance Limited in respect of the Financial Debt of Principal Amount aggregating to Rs. 215,00,00,000/- (Rupees Two Hundred and Fifteen Crore only) and, therefore, the Corporate Debtor is not liable to pay the subject financial debt to the present Petitioner.


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- c. It is therefore submitted that Financial Creditor has no locus standi to file this Petition and the Corporate Debtor was never in knowledge of nor was intimated about the said Assignment Deed.
 - d. It is also submitted that the Financial Creditor has not provided necessary proof that the said Assignment Deed is registered with the Sub-Registrar of Assurances and, therefore, the said Assignment Deed dated 31/03/2023 executed between the RHFL and Financial Creditor is invalid and not legally enforceable.

12. The present petition is barred by limitation since the loan has fallen due on various dates in the year 2019 and the petition has been filed on 28.08.2023 which is after 3 years from the date debt became due but remained unpaid. Even otherwise, the Petitioner had issued a loan recall/termination notice to the Corporate Debtor on 28.08.2019 and since the petition has been filed after the expiry of prescribed period of 3 years, hence, the present petition is time barred.

13. As far as balance confirmation dated 30.09.2021 acknowledged by the Corporate Debtor in favour of Reliance Home Finance Ltd is concerned, since the Corporate Debtor has no privity of contract with the Financial Creditor in respect of the said loan facilities, the said acknowledgements are of no consequence, as the assignment deed executed between RHFL and the Financial Creditor is not a legally enforceable assignment deed.

ANALYSIS AND FINDINGS

14. We have heard the Counsel for the Petitioner and have also gone through the records.
15. During the course of arguments, Ld. Counsel for the Financial Creditor has referred to the Sanction letter dated April 10, 2018 whereby a loan of Rs. 278,95,00,000/- was advanced to the Corporate Debtor. Ld. Counsel for the Financial Creditor has further referred to the statement of account to prove the disbursement of loan of Rs. 278,95,00,000/-. In this regard, Ld. Counsel for the Financial Creditor has further referred to the demand notice dated 05.02.2021 issued by the Financial Creditor to the Corporate Debtor.
16. As regards the loan of Rs. 19,00,00,000/-, Ld. Counsel for the Financial Creditor has referred to the Sanction letter dated 12.06.2018 and Loan Recall Notice dated 31.07.2023. Ld. Counsel for the Financial Creditor has further referred to the NeSL report which states the date of default as 02.07.2019 in respect of the loan of Rs. 19,00,00,000/- and date of default in respect of the other loans is 01.05.2019.
17. From the documents placed on record and referred to by the Ld. Counsel for the Financial Creditor, the factum of financial debt and its default stands proved on record. Even otherwise, in the reply filed on behalf of the Corporate Debtor, the factum of availment of loan has not been disputed. Rather, in the reply, the advancement of loan of Rs. 278,95,00,000/- and Rs. 19,00,00,000/- by the Financial Creditor has been candidly admitted. Similarly, the advancement of loan of Rs. 215,00,00,000/- by the entity called Reliance Home Finance Limited has also not been disputed. On the contrary, it has only been mentioned



that due to unforeseen and unexpected circumstances owing to the downturn in business, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it was unable to repay the aforementioned working capital loan facilities by the Financial Creditor as well as by the Reliance Home Finance Limited.

18. The only substantive defence raised by the Ld. Counsel for the Corporate Debtor is that the Corporate Debtor was never intimated about the assignment deed executed by the entity called Reliance Home Finance Limited to the Financial Creditor and further that the assignment deed dated 31.03.2023 has not been registered with the Sub-Registrar of Assurances. The assignment deed is available on record as Exhibit (J) and it, inter alia, shows that the debt was assigned by Reliance Home Finance Limited to the present Financial Creditor. Ld. Counsel for the Corporate Debtor has not been able to refer to any clause in any agreement between the Financial Creditor and the Corporate Debtor which might stipulate that in the event of assignment of debt, it is necessary to inform the Corporate Debtor before or after the assignment. Therefore, the contentions raised on behalf of the Corporate Debtor does not appear to be tenable.

19. The second objections raised by the Corporate Debtor is with regard to the limitation. In this regard, it has been argued that the balance confirmation letter dated 03.09.2021 is of no consequence as there is no privity of contract between the Corporate Debtor and Reliance Home Finance Limited nor the assignment deed is a legally enforcement document.

20. Having considered these contentions raised on behalf of the Corporate Debtor, we find that the even plea of limitation is also not sustainable.



The balance confirmation letter dated 03.09.2021 as Exhibit (T) is duly signed on behalf of the Corporate Debtor whereby outstanding dues of Rs. 5,99,39,33,555/- crores have been admitted. The loan was advanced in the year 2018 and dates of default as per the NeSL Report are 02.07.2019 and 02.04.2019 and the acknowledgment dated 03.09.2021 extends the limitation to 29.09.2024, the instant Petition which was filed on 30.08.2023, must be, therefore, deemed to have been filed within the limitation. Even if the debt assigned by Reliance Home Finance Limited is not taken into consideration for any reason, the other debt advanced by the Financial Creditor amounting to more than Rs. 500 crores is by itself sufficient to admit the present Petition.

21. As a result of above discussion, we hold that the Petitioner has been able to establish the existence of financial debt and its default having been committed by the Corporate Debtor and further that the Petition is filed wekk within the period of limitation. Therefore, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:


ORDER

- (a) The petition bearing **CP(IB)-126/MB/2024** filed by **RELIANCE COMMERCIAL FINANCE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor M/s. **TULIP ADVISORS PRIVATE LIMITED** [CIN: U74140MH2008PTC186876] is hereby **admitted**;



- (b) **M/s. Truue IPE Private Limited**, an Insolvency Professional Entity having registration No. **IBBI/IPE-0151/IPA-1/2023-2024/50052**, (email: jain_cp@yahoo.com), having its address at: 112, 01st Floor, Rex Chamber, Ballard Estate, Walchand Hirachand Marg, Fort, Mumbai-400001; **is hereby appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (c) The Financial Creditor shall deposit a sum of **₹ 5,00,000/-** (Rupees Seven Lakhs only) with the IRP 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) There shall be a moratorium under Section 14 of the IBC, in regard to 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 Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest
(SARFAESI) Act, 2002;

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- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (e) 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. That 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;
- (f) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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 IBC, as the case may be.
- (g) 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.
- (h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, 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.

- (i) The 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) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)