

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

CP (IB)/383 (MB)/2023

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

In the matter of

Reliance Commercial Finance Limited

[CIN:U66010MH2000PLC128301]

...Financial Creditor/Applicant

Versus

Carnival Techno Park Pvt. Ltd.

[CIN:U65990MH1996PTC098249]

...Corporate Debtor/Respondent

Order Pronounced on 13.02.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Sharan Jagtiani, Ld. Sr. Advocate a/w Mr. Pulkit Sharma, Mr. Ankur Loona, Ms. Aparna Wagle and Ms. Siddhi Somani, Advocates

For the Corporate Debtor : Mr. Vikram Nankani, Ld.
Sr. Counsel a/w Mr. Amir
Arsiwala, Advocate.

ORDER

Per: Prabhat Kumar

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Reliance Commercial Finance Limited** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Carnival Techno Park Pvt. Ltd.** ("hereinafter referred to as the Corporate Debtor/Respondent").
2. The Applicant is a body corporate constituted under the Companies Act, 1956 having Company Identification no. U66010MH2000PLC128301 with its head office at 'D' Wing, 4th Floor, Trade World Building, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai – 400013.
3. The Respondent is also a body corporate constituted under the Companies Act, 1956 having Company Identification no. U65990MH1996PTC098249 with its head office at 5th Floor, Carnival House, Gen. A. K. Vadiya Marg, Off. Western Express Highway, Dindoshi, Malad East, Mumbai – 400 097. Its authorized share capital is Rs. 10,00,00,000/- and Paid up share Capital is Rs. 9,99,97,970/-.
4. It is submitted that Reliance Capital Limited (hereinafter referred to as 'Lender') had sanctioned Term Loan of Rs. 75,00,00,000/- (Rupees Seventy-Five Crores Only) to the Corporate Debtor along with Advantage Overseas Private Limited (Co-borrower No. 1) and Carnival Soft Private Limited (Co-borrower No. 2).

5. Vide Order dated December 09, 2016 passed by the Hon'ble Bombay High Court under Sections 391 to 394 of the Companies Act, 2013, the commercial finance business undertaking of Reliance Capital Limited (Transferor Company) was transferred and vested in Reliance Commercial Finance Limited (Transferee Company) under the Scheme of Arrangement between Reliance Capital Limited, Reliance Commercial Finance Ltd and their respective shareholders and creditors.
6. The Corporate Debtor had requested Lender to grant secured financial assistance and accordingly the said loan, at the request of the Corporate Debtor vide its letter dated January 20, 2017, was disbursed on January 27, 2017.
7. The Lender agreed to provide financial assistance by way of a term loan facility aggregating to Rs. 75,00,00,000/- (Rupees Seventy-Five Crores Only) subject to the terms and conditions stated in the Sanction Letter dated January 16, 2017.
8. A Facility Agreement dated January 20, 2017 was entered into by and between the Lender and Corporate Debtor along with the Co-borrowers, where under a term loan facility of 75,00,00,000/- (Rupees Seventy-Five Crores Only) (the "said Facility") was granted to the Corporate Debtor along with the Co-borrowers for a tenure of 84 months at the interest rate of 15.00% per annum, and in case of default in payment, the defaulted amount to carry further interest at the rate of 36% per annum compounded monthly, subject to the terms and conditions stated therein subject.
9. From October 01, 2018 the Corporate Debtor had started defaulting on its payment towards loan installment and interest. Hence, the Financial Creditor declared the Corporate Debtor's account as a Non-Performing Asset (NPA) on January 23, 2019.

10. The Financial Creditor addressed several demands and reminders vide email(s) to Corporate Debtor for the overdue amount towards principal and interest on September 18, 2019, July 22, 2019, April 19, 2019, April 3, 2019, and November 21, 2018.
11. The Financial Creditor addressed Recall Notice dated October 22, 2019 to the Corporate Debtor and the Co-borrowers whereby it recalled the said Facility and called upon them to pay the entire outstanding amount of Rs.79,59,75,559/- (Rupees Seventy-Nine Crores Fifty-Nine Lakhs Seventy-Five Thousand Five Hundred and Fifty-Nine Only) due as on October 10, 2019
12. The authorized officer of the Corporate Debtor sent a revised proposal on loan re-structuring of Asian Business Connections Private Limited and Carnival Techno Park Private Limited as of January 2020 to the Chief Executive Officer ("CEO") of the Financial Creditor vide email dated January 21, 2020 and thereby acknowledged the liability under said Facility which remained due and payable.
13. On April 12, 2021 the authorized officer of the Corporate Debtor once again forwarded the aforesaid revised proposal for loan re-structuring to the CEO of the Financial Creditor vide email dated April 12, 2021 in order to carry forward the loan re-structuring discussions and thereby once again acknowledged the liability under the said Facility which remained due and payable by the Corporate Debtor to the Financial Creditor.
14. The Financial Creditor then issued Demand Notice dated May 23, 2022 for an outstanding amount of Rs. 138,44,32,660/- (Rupees One Hundred Thirty-Eight Crores Forty-Four Lakhs Thirty-Two Thousand Six Hundred and Sixty Only) as on May 23, 2022 to the Borrower and Co-borrowers.
15. The Corporate Debtor sent Reply to the Demand Notice vide letter dated June 08, 2022.

16. Aggregate outstanding amount as on January 01, 2023 is Rs. 201,38,92,545/- (Rupees Two Hundred One Crore Thirty-Eight Lacs Ninety-Two Thousand Five Hundred and Forty-Five Only) as submitted by the Applicant.
17. Vide order dated 17.05.2023, this bench had issued notice to the respondent directing the respondent to place on record an Affidavit in reply within a period of 2 weeks from the date of the order by duly serving copies to the other side. Since the Respondent did not place on record an Affidavit in reply within the stipulated period, vide order dated 21.06.2023, this bench set the Respondent ex-parte in the present Company Petition. The Respondent hence filed IA 4081 of 2023 for setting aside the exparte order, which was allowed by this bench and reply of the Respondent was taken on record.

Submissions of the Applicant-

18. The Applicant has contended that the Respondents allegation that there is no contractual obligation between the parties has no locus since plain reading of the Scheme as well as orders passed by the Hon'ble Supreme Court establish that the Applicant is vested with Commercial Finance Business undertaking of Reliance Capital Ltd. Which includes the present Application.
19. The Applicant has relied upon the decision of the Hon'ble Supreme Court given in the case of *Marshall Sons & Co. (India) Ltd. V. Income Tax Office*.
20. The Applicant has further contended that the Respondent's primary defence that the debt is not a genuine financial debt is an afterthought and belied by the admitted documents on record.
21. The Corporate Debtor vide its response email dated March 7, 2023 acknowledged not only the manner of disbursement but also acknowledged liability and the debt by responding to one of the

concern about insufficient funds in the bank account of the Corporate Debtor as can be noted from the correspondences produced on record.

22. The Corporate Debtor further submits that the said facility was legitimately executed by the lender, Reliance Capital Limited, in accordance with law. By virtue of the Scheme of Arrangement, the debt payable under the said Facility by the Corporate Debtor to the Lender forming part of the Transferred Undertaking, stood transferred to the Financial Creditor herein.
23. The bank statements produced on record by the Applicant prove the disbursement of amount claimed in the present Application.
24. Moreover, the Corporate Debtor addressed a Restructuring Proposal to the Financial Creditor vide its emails dated January 21, 2020 and April 12, 2021. The Restructuring Proposal itself states the Lender to be "Reliance Commercial Finance Limited" and hence, the Corporate Debtor's contention that Reliance Commercial Finance Limited is not the Financial Creditor is an afterthought.
25. The Additional Affidavit submitted by the Applicant has fresh averments and five additional documents which have not been referred to in its Affidavit in reply.

Submissions of the Respondent-

26. The Respondent has contested the Application on the following grounds:

- A. The documents sought to be relied upon by the Petitioner are insufficiently stamped**

The Respondent has contended that the Facility Agreement is insufficiently stamped as only Rs. 200/- has been paid as stamp duty on the Facility Agreement and that too only in the State of Delhi and hence there is no concluded contract between the

parties. The said Facility Agreement should hence not be acted upon.

B. That there is no creditor-debtor relationship between the Petitioner and the Respondent

- i. As per the Facility Agreement, the Applicant of the present Application is not a party to the Agreement. Reliance Capital Limited was the lender in the said Agreement which implies that the Applicant is not a financial creditor of the Respondent. Moreover, the Applicant has relied upon the Scheme of Arrangement sanctioned by the Hon'ble Bombay High Court in its order dated 09.12.2016 wherein the Applicant has attempted to show that the receivables under the Facility Agreement were "transferred" from Reliance Capital Limited to the Applicant by virtue of the said Scheme.
- ii. Upon perusal of the clauses of the Scheme of Arrangement it can be concluded that the undertaking of Reliance Capital Limited which was being demerged was its "Commercial Finance Business" in existence as on the Appointed Date. The Scheme of Arrangement defines the Appointed Date as the 1st of April, 2016. It is also clear that the Scheme of Arrangement would come in effect from the Effective Date which was defined to mean the date on which the certified copy of the order sanctioning the scheme is filed with the Registrar of Companies having jurisdiction. In the present case, the Scheme of Arrangement was sanctioned by the Hon'ble Bombay High Court on the 9th of December, 2016. From the documents produced on record by the Applicant, it would appear that the certified copy of the said order dated the 9th of December, 2016, was made available on the 16th of January, 2017.
- iii. Thus, the demerger of the Commercial Finance Business of Reliance Capital Limited into the present Applicant stood

complete as of the 1st of April, 2016. Whatever transactions/assets/receivables formed a part of the Commercial Finance Business of Reliance Capital Limited as on the 1st of April, 2016, vested into the present Applicant. However, the Facility Agreement obviously did not form a part of the Commercial Finance Business which was demerged from Reliance Capital Limited and transferred to the present Applicant. This is for the simple reason that the Facility Agreement was entered into by Reliance Capital Limited subsequent to the Scheme of Arrangement taking effect. In other words, Reliance Capital Limited entered into the Facility Agreement after its erstwhile Commercial Finance Business had already vested in the Applicant company. Therefore, the Scheme of Arrangement did not have the effect of vesting the Facility Agreement in the present Applicant. Hence, there is no contractual relationship between the Applicant and the Respondent. Moreover, request of disbursement letter dated 20th January, 2017 sent by the Respondent was addressed to Reliance Capital Limited.

- iv. Further, when the emails dated 21st January, 2020 and 12th April, 2021 were sent the Respondent had not been provided with a copy of the Scheme of Arrangement or the order of the Hon'ble Bombay High Court dated 9th December, 2016 and hence the Respondent was unaware that the Facility Agreement had not in fact been transferred to the Applicant.

C. That there is no financial debt owed by the Respondent to the Petitioner.

- i. The Respondent has contended that under the Facility Agreement the Applicant had never disbursed the amount of 73,32,00,000/-.

-
- ii. The Applicant has sought to rely upon a statement described as "*Statement of Accounts maintained by the Financial Creditor in accordance with the Bankers Books Evidence Act, 1891*". However, upon bare perusal of this document it can be concluded that it cannot possibly be a statement of accounts under the Bankers Books Evidence Act, 1891. This is for the simple reason that the Applicant is not a bank, i.e., it is not a company incorporated under the relevant provisions of law for the purpose of conducting the business of banking. Rather, it is an admitted position that the Petitioner is a NBFC, i.e., a Nonbanking Finance Company. Hence, it would have produced bank statements.
- iii. Moreover, the amount of Rs. 23,00,00,000/- was not disbursed by the Applicant in reality, but the amount was shown to have been transferred only through a journal entry.
- iv. The Respondent has contested the invoices raised by Reliance Money Solutions Private Limited and Reliance Securities Limited, wherein the amounts of these invoices correspond exactly with the purported and alleged disbursements by Reliance Capital Limited to Advantage Overseas Pvt. Ltd. According to the Respondent, these appear to be accounting adjustments. The same contentions have been made by the respondent as regards the amount of Rs. 50,32,00,000/- claimed by the Applicant. Further, no actual amounts were transferred either to Cinema Ventures Pvt. Ltd. or the Respondent.
27. Vide the Additional Affidavit the Corporate Debtor submitted that the 'debt' forming subject matter of the present Application was assigned by the Corporate Debtor to Asian Business Connections Pvt. Ltd. based on a right of assignment given to the Corporate Debtor under an alleged Addendum dated 16.01.2017. It is stated that no amount is shown as payable by the Corporate Debtor under the Facility Agreement for the financial year ending

on 31.03.2021 since this debt was assigned to Asian Business Connections Pvt. Ltd. with effect from 30.09.2020.

Findings-

28. Heard learned counsel for both the parties and perused the material produced on record.
29. Upon perusal of the Statement of Accounts produced by the Applicant, the debt is clearly established, however, the Respondent has submitted that even though there exists a debt, the said debt cannot be held to be a Financial debt in view of non-disbursal of the said debt. This contention has arisen from the fact that amount of debt was disbursed to group companies of the Corporate Debtor on its behalf and under its instruction to do so. At this juncture we note that Hon'ble NCLAT in the case of *Mr. Rajeev Kumar Jain v. Uno Minda Ltd. and Anr. (2024) ibclaw.in 72 NCLAT* has held that disbursal of fund is required but the definition does not use the expression that disbursal should be made to the Corporate Debtor only. Hence, it can be implied that any disbursal made on behalf of the Corporate Debtor or at the instructions of the Corporate Debtor may also tantamount to disbursal made to the Corporate Debtor. In view of this we do not find any merit in the contention of the Corporate Debtor that no disbursal has taken place to the Corporate Debtor in view of the undisputed fact that the Financial Creditor disbursed the money to the group companies on account of Corporate Debtor under its instructions.
30. The Corporate Debtor has also raised the issue that the money so paid to the group companies under its instructions was paid by way of journal entry having been passed in the books of the financial creditor. We find from the financial statements of the Corporate Debtor as well as financial creditor that the said money

is standing in the name of Corporate Debtor and the amount is stated to be paid to the group companies was adjusted against the amount recoverable from those group companies. It is undisputed fact that these appropriations took place under the knowledge and consent of all the parties and disbursement of the loan to the Corporate Debtor in such manner is not prohibited by any law in force more so when such disbursement has been duly accounted for by all the parties, including Corporate Debtor, to the transactions. Hence, we find that there is a disbursal of loan and it has time value of money. Accordingly, the said amount qualifies to be financial debt.

31. The Corporate Debtor has also raised an issue of privity of contract stating that the facility agreement was entered between Reliance Capital Limited and Corporate Debtor after the appointed date of demerger, accordingly the financial creditor is not the creditor of the Corporate Debtor. We find that under the demerger scheme, the commercial finance division was demerged and said loan was granted by Reliance Capital Limited's Commercial Finance Division after the appointed date but before the effective date. It is in public knowledge that the affairs of a company are carried by the respective Company's in their own name after the appointed date and the arrangement takes effect only after necessary approvals as required under Companies Act are obtained and the laid down procedure are followed. It is undisputed fact that the whole of the Commercial Finance Division was demerged into a separate company which came into existence as the Applicant after the effective date and the assets and liabilities of the said Commercial Finance Division became the assets and liabilities of the Applicant. Further, the Corporate Debtor has declared the Applicant as its Financial Creditor in its audited Financial Statement drawn after the effective date and so

is the case with the Applicant as well. Accordingly, we find that the loan agreements entered into in the name of Reliance Finance Ltd is to transfer to the Applicant upon the scheme of demerger becoming affected. Hence the objection as to the absence of privity of contract between the parties has no merit.

32. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
33. The Financial Creditor has proposed the name of **Mr. Bhavesh Mansukhbhai Rathod**, Registration No. **IBBI/IPA-001/IP-P01200/2018-19/11910**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
34. It is, accordingly, hereby ordered as follows: -
35. The petition bearing **CP (IB)/383 (MB)/2023** filed by **Reliance Commercial Finance Limited** [U66010MH2000PLC128301], the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Carnival Techno Park Pvt. Ltd.** [CIN:U65990MH1996PTC098249], the Corporate Debtor, is **admitted**.
36. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
37. 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;
38. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
39. 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.

40. **Mr. Bhavesh Mansukhbhai Rathod**, Registration No. **IBBI/IPA-001/IP-P01200/2018-19/11910**, having registered address at 12th Floor, 12D, A Wing, CTS No. 165 & 163A, White spring, Rivali Park, Western Express highway, near metro mall, Magathanc, Borivali (East), Mumbai, Maharashtra – 400 066, **Email ID: bhavesh76@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
41. 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.
42. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
43. 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.
44. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master

Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Prabhat Kumar
Member (Technical)
<MK>

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)