

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No. 78/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.11.2020**

Name of the Company: Religare Finvest Ltd
V/s
REDS Marine Services Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER
(Through Video Conferencing)

Advocate, Ms. Urvi Gulechha appeared on behalf of Nanavati Associates, Advocates for the respondent.

The order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 6th day of November, 2020.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 78/7/NCLT/AHM/2019

In the matter of:

Religare Finvest Limited
2nd Floor, Rajlok Building
24, Nehru Place
NEW DELHI 110 019

:

Petitioner
[Financial Creditor]

Versus

M/s. REDS Marine Services Limited
(formerly known as Pipavav Engineering and
Defence Services Limited)
Survey No. 658
Vill. Rampara – II,
Taluka Rajula
Vill. Lunsapur
Taluka Jafrabad,
Amreli 365 560
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 6th November, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

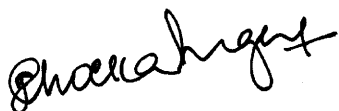
Appearance:

Petitioner : Mr. Sanjeev Singh, Advocate
Respondent : Ms. Kamyra Shah, Advocate

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Manpreet Singh Suri, Senior Manager-Legal, being authorised signatory of **Religare Finvest Limited**, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.





2. That the applicant/financial creditor M/s. **Religare Finvest Limited** is a body corporate incorporated under the provisions of the Companies Act, 1956 a non-banking financial company inter alia engaged in the business of financing, having its registered office at Nehru Place, New Delhi 110 019 and having identification number U74999DL1995PLC064132.
3. The respondent/corporate debtor M/s. **REDS Marine Services Limited** is a company incorporated under the Companies Act, 1956 on 04.06.2012, having identification No. U29219GJ2012PLC070565 and having its registered office at Taluka Jafrabad, Amreli District, Gujarat State. That, Authorised share capital of the respondent company is Rs. 5,00,000/- and paid up share capital is Rs. 5,00,000/-
4. The applicant has submitted that financial assistance of Rs. 110,00,00,000/- (Rupees one hundred and ten crore only) was granted to the corporate debtor vide loan agreement dated 24.12.2014 (51-128) executed between the applicant and respondent and the respondent did not adhere to the financial commitments. Therefore, the corporate debtor is indebted to the petitioner a sum of **Rs. 52,77,90,007.82 (Rupees fifty-two crores seventy-seven lacs ninety thousand seven and paise eighty-two only)** due as on 18.12.2018 along with the applicable interest and other charges.
5. That, the aforesaid financial assistance was secured by pari-pasu charge by way of mortgage over all those pieces and parcels of land admeasuring 24.78 hectare (approx.) at Taluka Uran, Dist. Raigad, pledge over 1,26,73,913 equity shares out of 2,65,00,000 shares of Pipavav Defence & Offshore Engineering Limited, 15,30,435 shares out of 32,00,000 of Everonn Education Private Limited in favour of Religare Finvest Limited by way of share pledge deed dated




26.03.2015, pari-pasu charge over the receivables and the escrow account, irrevocable and unconditional personal guarantee of personal guarantors.

6. It is stated by the financial creditor that the instant Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the loan, therefore, this petition.
7. The applicant has submitted copy of all the documents in support of its claim like; Board Resolution authorising Mr. Manpreet Singh Suri to submit the instant application (43-46), loan agreement dated 24.12.2014 (51-128), financial statements for the period 01.04.2018 to 19.12.2018 (129-130), loan recall notice dated 18.11.2015 (131-133), notice dated 17.05.2018 (134-148), loan recall cum pre-intimation notice dated 10.07.2018 (149-153) etc.
8. The respondent filed reply/objections and during the course of arguments also raised various objections. The respondent has further stated that operational revenues of the corporate debtor are dependent on the overall order booked and operational work executed by them. However, inspite of the substantial investment, the respondent company is still continuing to be under the financial stress due to the prolonged cycle of commercial shipbuilding, cancellation of contracts, substantial delay in acquisition of new defence orders etc. Pursuant to the aforesaid circumstances, constant efforts to attain an amicable financial resolution with the financial creditor so as to



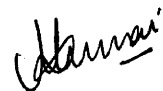
expedite the operational revival of the respondent company. However, neglecting the persistent efforts of the corporate debtor, the financial creditor has sought to invoke the provisions of the Insolvency and Bankruptcy Code, 2016.

9. The first and foremost objection raised by the respondent is that the certificate attached to the application (page 129-130) does not comply with the requirements of the Banker's Books Evidence Act, 1891 in as much as it is not certified in accordance with the said Act, nor the entries produced are from the date of default. That, the financial creditor has merely produced the entries from the period 01.04.2018 to 19.12.2018, whereas the default, as alleged, had accrued on 18.11.2015. Therefore, the applicant is statutorily required to produce its bank accounts statement from the date of disbursement of the loan amount till the date of filing of the application.


Findings

10. Heard the counsels and perused the documents annexed to the application/reply and additional documents filed by both the parties.
11. On perusal of the records it is found that as per the loan agreement executed between the financial creditor and corporate debtor on 24th December, 2014, the financial creditor had issued a notice dated 18.11.2015 (page 131) calling upon the corporate debtor to forthwith pay the unpaid loan amount along with the accrued interest amounting to a total of Rs. 123,37,09,481.56 as on that date to the financial creditor. It is found that the said notice is replied by the corporate debtor wherein the corporate debtor had agreed to pay Rs. 7.27 crore on or before 31.12.2015 and to pay off the entire loan with interest before 15.2.2016.





12. On perusal of the records it is found that the debt owed by the corporate debtor and the default committed by it in the repayment of the interest and/or principal of the loan amount has not been disputed by the corporate debtor in the objections filed by them against the instant application. Moreover, the financial stress faced by the corporate debtor has been duly highlighted and acknowledged in the said objections.
13. On perusal of the record it is found that during the pendency of the instant application, the corporate debtor showed their intention to settle the matter and the same has been recorded in the orders dated 11.10.2019 and 04.2019 issued by the Adjudicating Authority. It is also found that no dispute qua debt and default coupled with the fact that during the pendency of the instant matter, the corporate debtor sought to settle the matter itself is evident of the fact that the corporate debtor has committed defaults in the repayment of debt which is due and payable by the corporate debtor. That the instant application under section 7 has been filed within the limitation of three years from the date of default in terms of provisions of Article 137 read with Section 18 and 19 of the Limitation Act, 1963.
14. Corporate Debtor did not disclose any bona fide defence based on substantial grounds for the claim made by the Financial Creditor before this Authority. The above said evidence is sufficient to substantiate the plea of the Applicant that a default has been committed by the Corporate Debtor in payment of amount due and payable to the Applicant.
15. It is also a matter of record that the Applicant had granted financial assistance to the Corporate Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions mentioned in the agreement.


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Therefore, the amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the **Hon'ble Supreme Court, in case of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017**, this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.

16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7(2) of the Code is also complete in all respect.
17. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.
18. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form – 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant has proposed the name of the Interim Resolution Professional namely Mr. Pinakin Shah (pinakin@yaho.com). Therefore, this Adjudicating Authority hereby appoint CS Pinakin Shah, A-201, Siddhi Vinayak Towers, B/h. DCP Office, Next to Kataria House, Off. S.G. Highway, Makarba, Ahmedabad 380 051 having IBBI registration No. IBBI/IPA-002/IP-00106/2017-18/10248. Form 2 along with the certificate of registration of the proposed interim resolution professional has been furnished by the applicant separately



where declaration is made that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

19. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
20. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (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 Act, 2002 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the

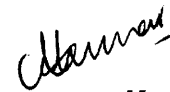


Central Government in consultation with any financial sector regulator.

22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the 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 corporate debtor under Section 33 as the case may be.
23. This Petition stands disposed of accordingly with no order as to costs.
24. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Nair