



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 100/MB/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/s. Reliance Commercial Finance Limited

The Ruby, 11th Floor, North-west wing, Plot No. 29, Senapati Bapat Marg, Dadar (west), Mumbai – 400028 (Maharashtra)

...Petitioner/Operational Creditor

Vs

M/s. Azalia Distribution Private Limited

Unit No. 503, 5th Floor, ARC Plaza Industrial Estate, 48, Oshiwara Village, Jogeshwari (west) Mumbai - 400120, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 06.09.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Siddha Pamecha (PH)

For the Corporate Debtor: Adv. Yashwant Dhanegave (PH)



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ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **Reliance Commercial Finance Limited** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on 20.10.2023 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Azalia Distribution Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 453,31,41,027/-**.

2. **Facts and submissions of the Financial Creditor-**

I. The Financial Creditor, formerly known as Reliance Gilts Limited, was registered as a Non-Banking Financial Institution on 21.05.2009. As submitted by the Financial Creditor, Reliance Home Financial Limited (“RHFL”) advanced a loan for working capital facility to the Corporate Debtor. The details of the Loan Facilities, aggregating to Rs. 386,50,00,000/-, are as follows-

- a) Loan Facility No.1 was extended by RHFL vide Sanction letter dated 29.10.2018 for an amount of Rs. 121,50,00,000/- at an interest rate of @13.50% per annum;
- b) Loan Facility No. 2 was extended by RHFL vide Sanction letter dated 05.11.2018 for an amount of Rs. 90,00,00,000/- at an interest rate of @12.50% per annum;
- c) Loan Facility No. 3 was extended by RHFL vide Sanction letter dated 20.03.2019 for an amount of Rs. 175,00,00,000/- at an interest rate of @14% per annum.



- II.** The Corporate Debtor, in view of the respective Loan Facilities, entered into Facility cum Hypothecation Agreements and executed other required documents with RHFL.
- III.** As submitted by the Financial Creditor, the Corporate Debtor, in view of Loan Facility No. 1, made a total payment of Rs. 211,00,00,000/- to RHFL on 19.03.2019. This payment was made in two tranches of Rs. 121,50,00,000/- and Rs. 89,50,00,000/-, towards the principal amount and interest component respectively.
- IV.** The Financial Creditor submitted that the Corporate Debtor duly acknowledged the debt owed to RHFL by giving Balance Confirmation dated 30.09.2021 for an amount of Rs. 332,14,69,795/-, inclusive of interest.
- V.** As stated by the Financial Creditor, on 30.11.2021, RHFL sent a Loan Recall Notice/ Termination of Agreement Notice to the Corporate Debtor, calling upon the Corporate Debtor to make the outstanding payment. However, no response was received from the Corporate Debtor's side.
- VI.** According to the submissions of the Financial Creditor, RHFL got into financial stress and the Financial Creditor, pursuant to the Resolution Plan implemented in terms of the RBI Circular No. RBI/2018-19/203, DBR.No.BP.BC.45/21.04.048/2018-19 dated 07.06.2019 on Prudential Framework for Resolution of Stressed Assets and the order of the Hon'ble Supreme Court dated 03.03.2023, acquired the Business Undertaking of RHFL on a slump sale and going concern basis. Thus, by way of the assignment deed dated 31.03.2023, the loan advanced by RHFL and all the rights and securities attached thereto were assigned to the Financial Creditor.
- VII.** Further, the Financial Creditor, via registered post, sent a Loan Recall Notice/ Termination of Agreement Notice dated 31.07.2023 to the



Corporate Debtor in view of the outstanding payment. However, the Corporate Debtor failed to respond to the same.

VIII. Thus, the Financial Creditor preferred the present application before the Hon'ble Tribunal, claiming the amount of Rs. 453,31,41,027/- as the total amount of debt from the Corporate Debtor. The said amount stands inclusive of Rs. 175,50,00,000/- as principal amount, Rs. 113,66,92,397/- as interest, and Rs. 164,14,48,630/- as Penal Interest. In view of the above-stated submissions, the Financial Creditor prayed for the present application to be admitted.

3. Facts and submissions of the Corporate Debtor-

- I.** The Corporate Debtor is a company engaged in the business of providing digital marketing and creative services. The Corporate Debtor, at the outset, denied all contentions of the Petitioner.
- II.** The Corporate Debtor stated that the Financial Creditor has preferred the present application before the Hon'ble Tribunal, claiming the amount of Rs. 453,31,41,027/- as the total amount of debt from the Corporate Debtor. The said amount stands inclusive of Rs. 175,50,00,000/- as principal amount, Rs. 113,66,92,397/- as interest, and Rs. 164,14,48,630/- as Penal Interest.
- III.** The Corporate Debtor further stated that RHFL has advanced financial debt of principal amount aggregating to Rs. 386,50,00,000/- arising out of the Loan Facility No. 1, Loan Facility No. 2, Loan Facility No. 3 vide the Sanction Letter cum Hypothecation Agreements dated 29.10.2018, 05.11.2018 and 20.03.2019 respectively.
- IV.** The Corporate Debtor also submitted that on 19.03.2019, the Corporate Debtor duly paid a sum of Rs. 211,00,00,000/-. This payment was made in two tranches of Rs. 121,50,00,000/- and Rs. 89,50,00,000/-.
- V.** As stated by the Corporate Debtor, the date of default which is mentioned in the petition as 01.10.2019, is with respect to the amount of Rs.



90,00,00,000/-, out of which Rs. 89,50,00,000/- has already been repaid on 19.03.2019. Further, the petition mentions the date of default with respect to an amount of Rs. 175,00,00,000/- as 01.06.2019.

- VI.** The Corporate Debtor submitted that due to unforeseen circumstances, owing to the downturn in business, and the Covid-19 Pandemic, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it was unable to repay the outstanding debt owed to RHFL. However, as submitted, the Corporate Debtor did not deliberately default on the repayment and also made numerous efforts to negotiate a settlement with RHFL but the same never materialized.
- VII.** The Corporate Debtor denied the Loan Recall Notice dated 30.11.2021 and further stated that RHFL issued a Loan Recall Notice dated 30.11.2021 to the Corporate Debtor with respect to the loan amount of Rs. 90,00,00,000/-, as contented, out of which Rs. 89,50,00,000/- was already paid on 19.03.2019 to RHFL.
- VIII.** The Corporate Debtor contended that there is no record before the Hon'ble Tribunal to show that RHFL has issued any Recall/Termination of Agreement Notice to the Corporate Debtor with respect to an amount of Rs. 175 Crores as advanced by RHFL and thus, it cannot be ascertained that there is any default in respect of Rs. 175 Crores as advanced by RHFL.
- IX.** The Corporate Debtor further contended that there exists no Privity of Contract between the Corporate Debtor, and the Financial Creditor in view of the loans advanced by RHFL because the Corporate Debtor's consent was obtained in view of the Deed of Assignment dated 31.03.2023 which was executed between RHFL and the Financial Creditor, pursuant to which all the Loan Facilities extended by RHFL and the rights and securities attached thereto were assigned to the Financial Creditor. Henceforth, there exists no Privity of Contract between the Corporate Debtor and the Financial Creditor and the only Privity of Contract that exists is between




RHFL and the Corporate Debtor. Therefore, as submitted, the Corporate Debtor is not liable to pay the financial debt to the Financial Creditor.

- X.** The Corporate Debtor submitted that the Financial Creditor has no locus standi to file the present petition and the Corporate Debtor was never intimated about the above-said Deed of Assignment and had no knowledge of the same. It was further submitted that the Financial Creditor and RHFL have not provided any board resolution authorizing the said companies to enter into the said Deed of Assignment.
- XI.** The Corporate Debtor submitted that the Financial Creditor has not provided any necessary proof with respect to the said Assignment Deed's registration with the Sub-Registrar of Assurances (SRO) and thus, the Assignment Deed dated 31.03.2023 is invalid and not legally enforceable.
- XII.** The Corporate Debtor further submitted that the Present application is barred by limitation as the date of default for the loan advanced by RHFL of an amount of Rs. 90,00,00,000/- is 01.10.2019 and the date of default for the loan for an amount of Rs. 175,00,00,000/- is 01.06.2019. However, the present Petition has been filed by the Financial Creditor on 20/10/2023 and thus, the same is clearly time-barred and not maintainable.
- XIII.** The Corporate Debtor submitted that the Balance Confirmation dated 30.09.2021 cannot be relied upon for the reason that the said Balance Confirmation is in favour of RHFL and not in favour of the Financial Creditor. The Corporate Debtor further emphasized that the Privity of Contract does not exist between the Corporate Debtor and the Financial Creditor and the Deed of Assignment between RHFL and the Financial Creditor is not legally enforceable as the same has not been registered and executed with the consent of the Corporate Debtor.
- XIV.** Thus in light of the abovementioned submissions, the Corporate Debtor prayed for the dismissal of the present Petition.



4. Findings-

- I.** After having heard the Learned Counsel for the parties and perusing the documents on record, it stands clear that the present application has been preferred by the Financial Creditor before the Hon'ble Tribunal for the amount of Rs. 453,31,41,027/- as the total amount of outstanding debt owed by Corporate Debtor. The said amount is inclusive of Rs. 175,50,00,000/- as principal amount, Rs. 113,66,92,397/- as interest, and Rs. 164,14,48,630/- as Penal Interest.
- II.** On perusal of the reply submitted by the Respondent and also in view of the arguments advanced, it is evident that there is no denial and dispute concerning the question of advancement of different Loan Facilities. In the reply filed by the Corporate Debtor, it has been admitted that the Loan Facilities of Rs. 121,50,00,000/-, Rs. 90,00,00,000/- and Rs. 175,00,00,000/- were advanced by Reliance Home Finance Limited ("RHFL") to the Corporate Debtor vide the Sanction Letter cum Hypothecation Agreements dated 29.10.2018, 05.11.2018 and 20.03.2019 respectively. It has also been stated in the reply that due to unforeseen and unexpected circumstances due to the downturn in business which was further compounded by the Covid-19 Pandemic, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it could not repay the outstanding dues and committed default.
- III.** It is pertinent to note that the Corporate Debtor, by virtue of Balance Confirmation dated 30.09.2021, has duly acknowledged its liability towards the debt owed to RHFL. The said Balance Confirmation dated 30.09.2021 is evidently signed by both the parties meaning thereby Corporate Debtor has acknowledged the debt due. Thus, given the




above-stated facts, the debt and default on the part of the Corporate Debtor stand established.

- IV.** So far as the contention raised by the Corporate Debtor that the Deed of Assignment dated 31.03.2023, executed between RHFL and the Financial Creditor, is not valid on the ground that the Corporate Debtor's consent was not obtained for the same is concerned, it is to be noted that this contention was never agitated by the Counsel for the Corporate Debtor during the course of the hearing of the present case. Otherwise also, Section 5(7) of the Insolvency and Bankruptcy Code, 2016 clearly states that a Financial Creditor is, "*any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to*". Further, NCLT Delhi Bench, while dealing with a case on similar facts in the matter of **CFM Asset Reconstruction Private Limited Vs. M.G. Finvest Private Limited COMPANY PETITION IB (IBC) NO. 115/PB/2022**, has held as under-


"13. Proceedings under Insolvency and Bankruptcy Code, 2016 are summary proceedings and it is beyond the ambit of this Adjudicating authority to delve into the details regarding the requirement or exemption of registration of the Assignment Agreement dated 18.01.2021. Therefore, the assignment agreement cannot be challenged in the petition under Section 7 of the Code, 2016.

14. Further, the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein i.e., CFM Asset Reconstruction Private Limited would step into the shoes of SBI (original lender)



*with the Assignment Deed dated 18.01.2021 executed in its favour.
The contentions raised by the Corporate Debtor is accordingly
repelled.”*

- V.** Thus, in view of the aforementioned, the Corporate Debtor’s contention that the Deed of Assignment is not valid or that the debt in question could not have been validly assigned to the Financial Creditor does not hold merit.
- VI.** So far as the question of limitation is concerned, reliance is to be placed upon Balance Confirmation dated 30.09.2021, which bears the signature of both parties. Through the said Balance Confirmation, the Corporate Debtor has admitted and acknowledged its liability in respect of the Loans Facilities advanced by RHFL. Thus, In view of this acknowledgment dated 30.09.2021, the Loan Facilities advanced by RHFL must be treated to have been filed within the period of limitation. Thus, the issue of limitation stands closed and the petition is thus not barred by limitation.
- VII.** Therefore, the present application fulfills all the requirements as stipulated under Section 7(5) of the Code. The Financial Creditor is entitled to claim its dues as it has been duly established that the default in payment of the financial debt has occurred. Further, the amount stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC and in view of the settled law wherein the Hon’ble Supreme Court has been pleased to hold in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*
- “28. 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 applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be.”

VIII. Therefore, the present petition is **admitted** to CIRP by passing the following order:

ORDER

- a. The above Company Petition No.100/IBC/MB/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Azalia Distribution Private Limited**.
- b. The Petitioner has proposed the name of **Truue IPE Private Limited**, bearing Registration No. IBBI/IPE-0151, with place of residence at 112, 1st Floor, Rex Chamber Ballad Estate, Walchandi Hirachand Marg, Fort, Mumbai- 400001, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs 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. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the order of moratorium shall have effect from the date of pronouncement 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.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in



their possession and furnish every information in their knowledge to the IRP/RP.

- j.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k.** Accordingly, C.P. No. 100/IBC/MB/2024 is **admitted**.
- l.** The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

MADHU SINHA
Member (Technical)
/Jhanvi/

SD/-

REETA KOHLI
Member (Judicial)