

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

**IA(IBC)/1603(CHE)/2022**

**In  
IBA/706/2020**

*(filed under Section 60(5) of IBC, 2016)*

*In the matter of* **MAAN SAROVAR PROPERTIES DEVELOPMENT PVT. LTD.**

**H.S.CHANDRASEKAR,**  
Resolution Professional of  
Maan Sarovar Properties Pvt. Ltd.  
No.31-2, 1<sup>st</sup> Floor, MCC Artments,  
1<sup>st</sup> Main, Manivilas Garden,  
Basaveshwaranagar, Near Veera badreshwar  
Theatre, Back to BBMP Ward No.102, Bangalore,  
Karnataka – 5600 79.

*... Applicant*

*Order Pronounced on* **04<sup>th</sup> April 2024**

**CORAM**

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)  
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:

*For Applicant  
For Objector*

*:Ms.Lakshana Viravalli, Advocate  
:Mr. P.Elayaraj kumar, Advocate*

**ORDER**

This application has been filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 by the erstwhile Resolution Professional and continued by the present RP Mr.Ashish Vyas of the Corporate Debtor viz. **MAAN SAROVAR PROPERTIES DEVELOPMENT PVT. LTD.** seeking reliefs as follows,

*"Adjudicating Authority may be pleased to pass an appropriate order accepting the above report of the Resolution Professional in the matter of Reliance Net Limited*

*Vs Maan Sarovar Properties Development Pvt Ltd reconstituting the Committee of Creditors with the above creditors and any other order or direction in the facts and circumstances of the case and thus render justice."*

2. It is stated that CIRP in respect of the Corporate Debtor was initiated on 01.07.2022. Ms.J.Karthika was appointed as the Interim Resolution Professional (IRP).

3. Pursuant to that the IRP issued paper publication to invite claims from the creditors. After collating the claims received from the creditors the IRP constituted Committee of Creditors (CoC). The IRP submitted a report dated 28.07.2022 certifying the following as the Committee of Creditors.

<b>Constitution of Committee of Creditors by the IRP</b>				
S No.	Name of the Creditor	Amount Claims (in Rs)	Amount Admitted (in Rs.)	Voting Share.(%)
1.	Reliance Net Limited	3323802823.00	3323802823.00	94.97
2.	Reliance Asset Reconstruction Company Ltd.	176031316.64	176031316.64	5.03

4. It is stated that this Tribunal vide order dated 30.08.2022 in IA(IBC)/904(CHE)/2022 allowed the appointment of the Applicant as RP. After taking charge, based on the available records the Applicant gathered that the Reliance Asset Recovery Company had submitted a claim of Rs.17,60,31,316.64/-. It was provisionally admitted by the IRP subject to the verification of accounts. As per the Recovery Certificate issued in favour of Reliance Asset

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Recovery Company (RARC) by the DRT-2, Chennai the total outstanding upon CD is Rs.17,60,31,316.64/-.

5. It is stated that the RARC got loan assignment from SBI along with many properties, two among the property are,

i) 2.06 Acres of Kottivakkam Property (hereinafter referred to a property-1). Titles of this property is in the name of Jaffer Bai and Meharoon bai.

ii) Sy.No.362 and Sy.No.362/2 measuring about 0.49 acres of property at manapapak village (hereinafter referred to a property-2). Titles of this property is in the name of the Corporate Debtor.

6. It is stated that the corporate Debtor created 2<sup>nd</sup> charge for the Property-1 in favour of SBI, Adyar branch for the term loan of Rs.15 crore. Instrument for the aforesaid loan was signed by Mr.Navneet Jain, Director of the CD.

7. It is stated that in the audited financials of the Corporate Debtor for the FY 31.03.2020 and FY 31.03.2021 it is recorded that the `credit facilities from the Financial Institutions are secured by a pari pasu first and second charge on the properties of the company. In the note of the same the Property-1 is mentioned.

8. Further, in the Report of the Statutory Auditor of the CD Mr.S.Sridharan for the FY 2017-18 it is recorded as under:

*"Project land of Kottivakkam was sold bearing Sale Deed No.727/215 dated 20.03.2015 registered with SRO Adyar Chennai but has not recognized as Revenue Income as proposed by the Management. The Management is of the opinion that the income from the sale of project land of*

*Kottivakkam would be treated for the repayment of loans borrowed from Reliance Net Limited."*

9. It is stated that the buyer of the Property-1 viz. Gamesa Investment Management Private Limited has deducted a sum of Rs.47,26,425/- as TDS on the sale of said property. It is further stated that the Property-1 was owned by the Corporate Debtor and remained as a security for the loan availed from the SBI, who had first charge over the Property-1. The same got transferred to RARC subsequently 2<sup>nd</sup> mortgage was created for the loan availed by the CD from Reliance Net Limited subject to the first charge created above.

10. The sale consideration of the Property-1 was apportioned as below,

1.	Amount paid to M/s Reliance Asset Reconstruction Company Ltd .	Rs.5,00,00,000
2.	Amount paid to M/s Reliance Net Limited Company Ltd .	Rs.41,79,16,075
3.	TDS	Rs.47,26,425
	<b>Total</b>	<b>Rs.47,26,42,500</b>

11. It is stated that the RARC who is first charge holder of the Property-1, instead of adjusting total loan outstanding i.e Rs.15.86 crore adjusted only Rs.5 crore and left the remaining Rs.41.79 crore to the Reliance Net Limited account which is contrary to the condition mentioned at the time of creation of 2<sup>nd</sup> charge in 2008.

12. It is stated that the RP has sought clarification for above act as follows.

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- a. Why RARC being the first charge holder of the kottivakkam property did not adjusted total loan outstanding as on the date of sale of Kottivakkam property, since sales proceeds of the property was Rs. 47 Crore would have sufficient towards adjustment of Rs. 15.86 Crores of loan due as on the date of the sale. (under section 13(7) of SARFAESI ACT)
- b. In view of the above, when loan of CD would have fully satisfied, what was the necessity of selling Manapakkam 0.49 Acres property which was unwarranted.

In turn, the RP received reply dated 12.12.2022 from RARC. The RP having not satisfied with the reply, the RP vide email dated 15.12.2022 rejected the entire claim of the RARC as the entire outstanding has already been realized through sale of Property-1.

13. It is further stated that the RARC who had sold the Property-2 for sum of Rs.5.1 crore to Shri Srinivasan Ponnuvel and 2. Shri Manogaran Arumugam are liable to surrender the sale consideration to the RP.

14. Consequently, the RP reconstituted the CoC by removing RARC and the details of the reconstituted CoC as on 15.12.2022 is reproduced below,

S No.	Name of the Financial Creditor	Nature of Creditor	Claim Admitted by RP			Voting Share. %
			Principal Amount	Interest	Total	
1.	Reliance Net Ltd	Secured FC	23,66,38,925	3,08,71,63,898	3,32,38,02,823	93.79
2.	Dr Subramanian	Fin. Creditor-Class	6,83,50,000	9,22,72,500	16,06,22,500	4.5
3.	Poonam Enterprises	Fin. Creditor-Class	2,00,00,000	3,54,00,000	5,54,00,000	1.56
4.	Jasbinder Singh	Fin. Creditor-Class	10,00,000		10,00,000	0.03
5.	Manvata Properties LLP	Fin. Creditor-Class	30,00,000		30,00,000	0.08

In view of the above facts the RP sought to accept this reconstituted CoC on record.

15. *Per contra*, RARC in objection stated that the Property-1 was owned by Mr.Jaffer Bhai and Mr.Mehroon Bhai. Both of them executed Power of Attorney in favor of Mr. Naveen Jain who is Director of the Corporate Debtor.

16. The Corporate Debtor approached the Reliance Capital Limited for availing credit facilities. To secure the credit facilities Mr.Navin Jain created a mortgage over Property-1 in favour of Reliance Capital Limited in the capacity of Power Agent.

17. It is stated that Mr.Naveen Jain executed an affidavit in favour of SBI stating that he was offered to create a mortgage claiming to be owner of Property-1. Further in the affidavit Mr.Naveen Jain stated that he will execute a fresh Memorandum of Deposit of Title Deed (MOTD) in the capacity of Power Agent of Mr.Jaffer Bhai and Mr.Mehroon Bhai. But Mr.Naveen Jain or the Corporate Debtor had not created any mortgage as agreed upon.

18. It is stated that the Corporate Debtor defaulted in repayment of dues and hence the loan was declared as NPA by SBI. Subsequently, SBI filed OA No.47 of 2011 in DRT-II Chennai and the same was allowed. Consequently, Recovery Certificate in DRC No.126 of 2012 was issued. In the execution of the said Recovery Certificate SBI attached the Property-1.

19. On 28.05.2014 the SBI assigned the said debt to the RARC by an Assignment Agreement. Meanwhile, the Corporate Debtor defaulted to pay the Reliance Capital Limited. To repay the said debt Mr.Jaffer Bhai and Mr.Mehroon Bhai were offered to sell the Property-1 through their power Agent Mr. Naveen Jain.

20. Thereafter, RARC expressed their consent for release of their charge over the Property-1 to enable the Recovery Offer to raise the attachment order on the Property-1. Subsequently, Mr. Naveen Jain in the capacity of Power Agent sold the Property-1. On completion of sale the RARC appropriated Rs.5 crore.

21. Ld. Counsel for the RARC further contended that the charge over Property-1 was created by them only after the order of the DRT-2 Chennai. The RNL obtained a mortgage in the year 2008 and hence the plea of the Applicant portraying RARC as a 1st charge holder of the Property-1 is factually incorrect.

22. Heard Ld. Counsels of both the parties and perused the documents on record. It is seen that the CIRP of the Corporate Debtor was initiated on 01.07.2022. Ms. J.Karthika was appointed as Interim Resolution Professional (IRP). The IRP constituted Committee of Creditors (CoC) comprising 1) Reliance Net Limited (NEL) and 2) Reliance Asset Reconstruction Company Limited (RARC).

23. On 02.08.2022 the CoC resolved to appoint Mr.H S Chandrasekar as the Resolution Professional (RP) of the Corporate Debtor. This Tribunal vide order dated 30.08.2022 in IA(IBC)/904(CHE)/2022 approved the replacement of Ms. J.Karthika IRP and appointed Mr.H.S.Chandrasekar as RP who has filed this Application. Thereafter vide order dated 30.01.2023 Mr. Ashish Vyas has been appointed as the RP of the Corporate Debtor who continuing this Application.

24. As submitted and from the records we see that as on Insolvency Commencement date i.e. 01.07.2022 RARC and RNL has claim of Rs.17,60,31,316.64/- and Rs.3,32,3802,823/-.

25. It seen from the Form-8 creation of charge filed by the Applicant that Reliance Capital Limited created charge over the Property-1 which was created on 16.08.2008. In clause '12(d)' of the Form-8 it is recorded as under,

(d). \*Extent and operation of the charge

Operates as second Charge in Favour of the lender. Charge on the Mortgaged assets shall be held by the lender as security till the Payment of Loan Plus all interest, cost, charges which may be payable from time to time. Subject to first charge created in favour of State Bank of India, Adyar Branch, Chennai against Term loan upto Rs.15 Crores.

In clause 4 of the declaration dated 16.08.2008 filed at page 22 of the application it is recorded as under,

iv) Under the terms and conditions of the Debt Agreements, the Debt is required to be secured, inter-alia, by mortgage of the immovable property of the Mortgagors admeasuring in aggregate 2.06 Acres together structures thereon situated at Plot No. 4/328, Old Mahabalipuram Road, Kottivakam, Chennai in the state of Tamilnadu both present and future, (subject to prior mortgage and charge created in favour of State Bank of India, Adyar Branch Chennai to secure its term loan of Rs.15 Crore to the Company and advance received against sale agreement as explained during the SSA).

BY MAAN SARQVAR PROPERTIES DEVELOPMENT PRIVATE LIMITED.

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MAAN SARQVAR PROPERTIES DEVELOPMENT PRIVATE LIMITED

The above statements clearly shows that SBI holds prior charge over the Property-1. In the Schedule-1 of the declaration it is recorded as follows,

SCHEDULE - I	
DETAILS OF THE ORIGINAL DOCUMENTS DEPOSITED BY THE MORTGAGORS FOR CREATING MORTGAGE	
List of original documents deposited with SBI	
1.	Original sale deed Doc.No 1879of 1921 showing sale to A.M.Kandasamy Nayagar (1 <sup>st</sup> cited item supra)
2.	Original Certified copy of Partition deed Doc No 1020 Of 1933 showing Kishappa's share (2 <sup>nd</sup> cited item supra).
3.	Original Sale Deed Doc No 1396 of 1955 showing sale to Usha Kumari( 4 <sup>th</sup> item cited supra)
4.	Original Sale Deed Document No 2247/1968 showing sale to Angetine Daniels ( 5 <sup>th</sup> item cited supra).
5.	Original Sale Deed Doc No 3342 of 1980 showing sale to Mehroon Bai ( 7 <sup>th</sup> item supra)
6.	Original Sale Deed Doc No 3344 of 1980 showing sale to Salman Bai ( 8 <sup>th</sup> item supra)
7.	Original Sale Deed Doc No 3343 of 1980 showing sale to Jaffer Bhai (9 <sup>th</sup> item supra)
8.	Fresh encumbrance certificate from 1/1/1980 and as well EC No.285 of Feb,1968.

S.No.5 & 7 of the above extract shows that at the time of creation of aforesaid charge the Sale Deed of the Property-1 is in the name of Mr.Jaffer Bhai and Mr.Mehroon Bhai.

26. In the Recovery Certificate DRC No.126/2012 dated 02.07.2012 issued by DRT-II Chennai records as follows,

*"3. It is further ordered that the defendants 1 to 8 jointly and severally and defendants 9 (Mr.Jaffer Bhai ) & 10 Mr. Mehroon Bhai to the extent of the value of the properties in Schedule 'C' & 'D' do pay the sum of Rs.10,34,33,294.27 comprising of Rs.9,11,69,855.23 as principal and Rs.1,21,13,434.04 as interest and Rs.1,50,005/- as cost as per the schedule of costs annexed hereunder (Annexure-I) and further interest until realization."*

From the above it is clear that the Property-1 is in the name of Mr.Jaffer Bhai and Mr.Mehroon Bhai. Further, in the sale deed executed on 20.03.2015, Mr. Naveen Jain one of the Director of the Corporate Debtor in the capacity of Power Agent sold the

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property to the purchaser, relevant extract of the deed is reproduced below,

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**SALE DEED**

THIS DEED OF SALE EXECUTED AT CHENNAI ON THIS  
THE 20<sup>th</sup> DAY OF MARCH 2015 BY :

(1) **Mr.JAFFER BHAI**, son of Mr.Shaik Taiyebelly, Muslim, aged about 69 years and  
(2) **Mrs.Mehroon Bai**, wife of Mr.Jaffer Bhai, Muslim, aged about 63 years, both residing at Old No.279, New No.88, Linghi Chetty Street, Chennai - 600 001 represented herein by their Power Agent **Mr. Naveen Jain (PAN ADEPN6617P)**, son of Mr.Jaikumar Jain, aged about 42 years, currently residing at No.33/2, Gangai Street, Kalakshetra Colony, Besant Nagar Extension, Chennai - 600 090 (vide General Power of Attorney dated 27-10-2004, registered as Doc.No.2738 of 2004 in the Office of the Sub-Registrar, Virugambakkam) hereinafter called the **VENDORS**.

**TO AND IN FAVOUR OF**

**M/s.GAMESA INVESTMENT MANAGEMENT PRIVATE LTD.**, a Limited Liability company incorporated under the Companies Act having CIN No.U67120MH2008PTC183263, having its Registered Office at 7<sup>th</sup> Floor, Trade World, "B" Wing, S.B. Marg, Lower Parcel, Mumbai - 400 013 and represented herein by its Director, Mr.Yogesh Deshpande whose PAN No. is

From the above findings we are of the considered view that the Property-1 was in the name of Mr.Jaffer Bhai and Mr.Mehroon Bhai. Mr.Naveen Jain erstwhile director of the Corporate Debtor in the capacity of Power Agent gave this property as a security to SBI. Then DRT-II Chennai attached Property in favor of SBI. Thereafter, on 28.05.2014 SBI assigned the Debt to RARC. In any of the above transactions we do not find the title of the property-1 in the name of the Corporate Debtor. Moreover, the first part of the sale deed clearly shows that Mr. Naveen Jain executed this deed in his personal capacity not as Authorized Signatory of the Corporate Debtor.

27. Coming to the proceeds of the sale we found that the proceeds were distributed among the RARC and RNL as follows,

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i) For RARC	-	Rs.5,00,00,000/-
ii) For RNL	-	Rs.41,79,16,075/-
iii) For TDS	-	Rs.47,26,425/-

The contention of the Applicant is that the RARC adjusted only Rs.5,00,00,000/- from the sale proceeds instead of adjusting its entire claim i.e. Rs.17,60,31,316.64/- and left the remaining Rs.41,79,16,075/- to the other charge holder RNL in order to remain as a Financial Creditor of the Corporate Debtor.

28. At the outset we see that the transaction is entered before the initiation of CIRP of the Corporate Debtor. Regulation 12A and 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 (reproduced under)

**"12A. Updation of claim.**

*A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, **after the insolvency commencement date.***

**13. Verification of claims.**

*(1) The interim resolution professional or the resolution professional, as the case may be, **shall verify every claim, as on the insolvency commencement date,** within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

..."

The above regulation clarifies that the updation or verification of claims filed by the creditors shall be as on the date of Insolvency Commencement Date (ICD). This being so, questioning of intention behind the transactions entered much before the initiation of CIRP by the Resolution Professional at this stage is specious. Further,

the action disqualifying the membership of RARC in the CoC Corporate Debtor is unwarranted and it is not permissible as per the provisions of IBC, 2016.

29. In such circumstances, we direct the Resolution Professional to take necessary steps to include RARC in the CoC, verify its claim as on Insolvency Commencement Date and update the list of creditors and expedite the early resolution of the Corporate Debtor.

30. With aforesaid directions this application **IA(IBC)/1603(CHE)/2022** is **disposed of** accordingly. No order of costs.

**Sd/-**

**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

**Sd/-**

**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)