

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH (Court-I),  
KOLKATA**

IA.(IBC)No. 720/KB/2022

in

C.P (IB) No.129/KB/2021

*An application 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 (CIN: U66010MH2000PLC128301)

*...Financial Creditor*

Versus

**In the matter of:**

Rosewood Projects Private Limited,(CIN: U70200WB1999PTC089011)

*...Corporate Debtor*

Order Pronounced on 24.04.2024

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Balraj Joshi, Member (Technical)***

**Counsels appeared through Video Conference**

**For the Financial Creditor:**

1. Mr. Sujit Banerjee,Adv.;
2. Mr.Nilay Sengupta,Adv.

**For the Corporate Debtor:**

Ex- parte

**ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. The Court is convened by video conference today.

2. This petition 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 has been filed by **Reliance Commercial Finance Limited**, having its Registered office at 7<sup>th</sup> Floor, B-Wing, Trade World, Kamala Mills Compound, S.B. Marg, Lower Parel, Mumbai- 400013 (hereinafter referred as the Financial Creditor), through Mr. Jayanta Mondal, seeking initiation of Corporate Insolvency Resolution Process against the **Rosewood Projects Private Limited**, having its Registered office at 63/1, Charu Chandra Place East Ground Floor, Tolly Gunge, Kolkata, West Bengal- 700033 (hereinafter referred as the Corporate Debtor).
3. The Corporate Debtor is a private limited company incorporated on 19.03.1999. The authorized share-capital of the company ₹50,00,000/- and the paid-up share capital of the company is ₹29,39,000/-.
4. The total amount claimed to be in due to the Financial Creditor, is Rs. . 1,13,39,345/-. The dates of default are 31.11.2017 and 31.01.2018.
5. The Financial Creditor has relied on the various documents in support of its claims, including:
  - a) Statement of Accounts and Foreclosures of the loan accounts, annexed as Annexure P-5;
  - b) Loan-cum-Hypothecation Agreements, annexed as Annexure P-7(Colly);
  - c) Order dated 10.10.2019, annexed as Annexure **P-6**;
  - d) Minutes of 5<sup>th</sup> CoC Meeting of Rosewood Trexim Private Limited, annexed as Annexure E to I.A. 720/KB/2022;

### **Facts of the Case**

- i. That in or around August 2015, the sister company of the Corporate Debtor, namely Rosewood Trexim Private Limited, sought for a loan for Construction Equipment from the petitioner. For the said purpose, ten loan-cum-hypothecation Agreements were signed between the petitioner and the sister concern & for which the Respondent

Company acted as the co-borrower.

- ii. The loans were sanctioned for a period of 3 years beginning from respective date of Agreements.
- iii. However, the borrower defaulted in the re-payment of the loans in pursuance of which, the Financial Creditor issued loan recall notice to the borrower.
- iv. The principal borrower failed to re-pay the loan amounts, the Financial Creditor sought to initiate Corporate Insolvency Resolution Process against the Principal Borrower. It is further stated that *vide* order dated **10.10.2019**, this Adjudicating Authority admitted the Company Petition bearing **CP (IB) No. 413(KB)/2019** preferred by the Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 against the Principal Borrower, namely **Rosewood Trexim Private Limited**.
- v. The aforesaid Principal Borrower is presently undergoing CIRP and at the stage of publication of Form –G for inviting Expression of Interest.
- vi. That even so, by way of the present petition, the Financial Creditor seeks to initiate CIRP against the co-borrower, i.e. the Respondent herein, in respect of the following loan accounts:

LOAN –CUM- HYPOTHECATION AGREEMENTS NO.	AMOUNT SANCTIONED (IN RS.)	AMOUNT DUE INCLUDING PRINCIPAL INTEREST(in Rs.)
RLCEDELOOO307166	28,33,333	1,367,968
RLCEDELOOO307167	28,33,333	1,371,877
RLCEDELOOO307168	28,33,333	1,372,099
RLCEDELOOO307169	28,33,333	1,359,274
RLCEDELOOO307170	28,33,333	1,367,968
RLCEDELOOO326328	42,00,000	4,500,150

- vii. It is a settled principle of law, that the Financial Creditor is duly

empowered to invoke its claim against the co-borrower as well as the Principal Borrower until the claim is settled. The Financial Creditor placed reliance upon the following precedents to substantiate the aforesaid claim:

- a) *Maitreya Doshi vs, Anand Rathi Global Finance Ltd. & Anr.* [2022 SCC OnLine SC 1276];
- b) *Sandeep Garg, Director, M/s Abloom Infotech Pvt. Ltd. & Anr. vs. DMI Finance Pvt. Ltd. & Anr.* [2022 SCC OnLine NCLAT 2389].

viii. The Director of the Respondent, namely Mr.Satya Prakash Bagaria, during the fifth meeting of Committee of Creditors of Rosewood Trexim Private Limited furnished an undertaking to the effect that he shall have no objection to the initiation of insolvency resolution process against the Respondent.

ix. The claim of the petitioner is undisputed, admitted and payable as per the schedule mentioned in the Agreements.

**Submissions of the Ld.Counsel for the Financial Creditor:-**

i. It is submitted by the Ld.Counsel for the Financial Creditor that in or around August 2015, ten loan-cum- hypothecation agreements were signed between the Financial Creditor and the sister company of the Corporate Debtor, namely Rosewood Trexim Private Limited (Principal Borrower), out of which, in six of the loan agreements, the Corporate Debtor acted as the Co-borrower. Details of such loan agreements are mentioned herein below: -

Date of Disbursement	Loan A/C no.	Amount Disbursed	Date of Default
21.08.15	RLCEDELOOO307166 Page No. 18-19	28,33,333	30.11.2017
21.08.15	RLCEDELOOO307167 Page No. 20-21	28,33,333	30.11.2017
21.08.15	RLCEDELOOO307168	28,33,333	30.11.2017

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	Page No. 22-23		
<b>21.08.15</b>	RLCEDELOOO307169 Page No 24-25	28,33,333	<b>30.11.2017</b>
<b>21.08.15</b>	RLCEDELOOO307170 Pafw No. 26-27	28,33,333	<b>30.11.2017</b>
<b>30.06.16</b>	RLCEDELOOO326328 Page No.28-30	42,00,000	<b>31.01.2018</b>
		<b>1,83,66,665.00</b>	

- ii. The aforesaid loans were to be repaid along with interest @ 14.53%,14.51% and 14.2% p.a. in 35 EMIs. Further delayed payment charges @ 2% p.a. on monthly rates basis was also agreed between the parties in the loan- cum-hypothecation Agreements between the parties herein<sup>1</sup>.
- iii. The Rosewood Trexim Private Ltd. /Rosewood Project Pvt.Ltd. demand promissory Notes amounting to Rs. 1,69,99,998/- dated 21/08/2015, Rs. 1,30,00,000/- dated 31/08/2015 and Rs. 1,26,00,000/- dated 31/05/2016 and letter for continuity for demand promissory notes were signed by the Corporate Debtor in favour of Financial Creditor.
- iv. Soon after entering into those agreements, charges were created immediately and copies of those charge documents are annexed as Letter-D.
- v. That the Financial Creditor had maintained the requisite statement of accounts, in respect of the aforesaid 6 (six) Loan accounts, in their ordinary course of business.
- vi. There is a total default of Rs.1,83,66,685/- on account of payment of overdue, LPP Charges, cheque bouncing charges, pre-payment charges and principal outstanding. That the date of default of the said loan amount was 15<sup>th</sup> November 2017.

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<sup>1</sup> Annexure P-7 (Colly) – pages 204, 208, 211, 214, 222, 224 of the petition

- vii. By using the said disbursed loan amount, the said Corporate Debtor purchased 6 Motor vehicles, as referred in Column (1) of Part (V) of the said application and those were hypothecated with the applicant. The said vehicles/equipment were sent to North-Eastern Region and Corporate Debtor is unable to tell the location.
- viii. The registered office of the Principal Borrower was at New Delhi. Thus a prior separate application under section 7 of the Code was filed with the Hon'ble National Company Law Tribunal, New Delhi and same was admitted *vide* order dated 10/10/2019 and CIRP proceeding is going on in which Mr. Shailendra Singh, was appointed as an IRP.

***Analysis and Findings***

6. Heard the Ld. Counsels on behalf of the Financial Creditor and perused the records.
7. On 18.08.2022, when the present petition was taken up for hearing, the Corporate Debtor, due to his continued absence, was set *ex- parte*.
8. It is noted that on 22.07.2021 and thereafter on 23.11.2021, this Adjudicating Authority directed the registry to issue notice to the Respondent by speed post and by e-mail. The Counsel on Record for the Financial Creditor was also directed to effect service on the key managerial personnel in terms of the Master Data in the MCA Portal. Further, leave was given to the Corporate Debtor to file reply affidavit within 3 weeks of receiving the Court notice.
9. It is further noted that I.A. 720/KB/2022 had been filed by the Financial Creditor, seeking to bring on record loan agreements, charge agreements, and the minutes of 5<sup>th</sup> Meeting of Committee of Creditors (CoC) of Rosewood Trexim Private Limited. In respect thereof, this Adjudicating Authority, *vide* order dated 13.09.2022, directed the Financial Creditor to place on record the loan agreements in original, that were mentioned in para 8 of the said application.
10. In compliance of the said order dated 13.09.2022, the Financial Creditor filed a supplementary affidavit dated 30.11.2022, annexing therein, the aforesaid

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original documents. The said supplementary affidavit has been taken on record.

11. At the outset it is helpful to extract the precepts of consideration of the Section 7 applications under IBC from the judgement of Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank***<sup>2</sup>. The Apex Court has held as follows:

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be*

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<sup>2</sup>2017 SCC SC 1025

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*satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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.”*

As such, in order to admit a petition filed under section 7 of the Code, the following requirements are required to be fulfilled:

- a) A debt must exist;
  - b) The debt must be due and payable;
  - c) The Corporate Debtor must have defaulted on the payment of such debt;
  - d) The application must be filed within the prescribed limitation period;
  - e) The quantum of debt must exceed the minimum threshold set under section 4 of the Code.
12. In the instant matter, it is clear from the loan agreements annexed to the Supplementary Affidavit dated 03.11.2022 along with the account statements of Corporate Debtor that the Financial Creditor had advanced loan to the sister company of the Respondent herein and the Respondent signed the said loan agreements as a co-borrower. It is also clear that the said loan was payable within 3 years in 35 installments. As such, a ‘debt’ exists that was ‘due and payable’ by the Principal Borrower and the Co-Borrower i.e. the Corporate Debtor herein.
13. Coming to proof of ‘default’, it is settled law that for ascertaining the default,

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the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

14. **In the instant case , it is seen that the amount of money though not disbursed directly to the corporate debtor, but by virtue of his being a co-borrower the respondent herein fulfils all the ingredients of a corporate debtor from whom a financial debt is due and receivable.**
15. In this regard, we place reliance on the Hon’ble Supreme Court’s decision in *Maitreya Doshi (supra)*, wherein the Apex Court, while upholding the Adjudicating Authority’s decision to admit the co-borrower into CIRP has held that:

*“37. If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over.*

*38. We find no grounds to interfere with the impugned judgment and order of the Appellate Authority. The appeal is, accordingly, dismissed.”*

16. Further, reliance is placed on the decision of the Hon’ble National Company Law Tribunal (NCLAT) in the matter of *DMI Finance Pvt. Ltd.(supra)* wherein the Appellate Authority has held as follows:

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*“32. Therefore, when the liabilities of the principal borrower and surety are co-extensive under an agreement, it stands to reason that the liabilities of co-borrowers who have equal and similar liabilities under a loan agreement will also be there and CIRPs against them can run simultaneously. Moreover, till the financial creditor is able to get payment of his claim, he can file claim in all the CIRPs and also have voting rights in the respective CoCs based on the quantum of his financial debt. Thus we infer that the liabilities of the corporate debtor and the co-borrower companies are joint and co-extensive in nature and that claims of similar amounts could be submitted by the financial creditor in all the CIRPs.”*

17. As such, it is clear that since the liabilities of the principal borrower and co-borrower are co-extensive, in the event of default being committed by the principal borrower, the corporate debtor herein in the capacity of a co-borrower shall be liable to repay the balance amount after the recovery of dues from the Corporate Debtor has taken place. It is further clear that there is no bar to initiation of insolvency proceedings against a co-borrower under section 7 of the Code, even if no amount was disbursed to it.
18. It is further seen that in the fifth CoC Meeting of Rosewood Trexim Private Limited<sup>3</sup> Mr. S.P.Bagaria, whose is a director in both Rosewood Trexim Private Limited as well as the Corporate Debtor herein, has given an undertaking that he has no objecting to the initiation of insolvency resolution process of the Corporate Debtor herein. He has also confirmed therein that he, on behalf of the Corporate Debtor, has signed the loan-cum-hypothecation Agreement dated 31.08.2015 in the capacity of a co-borrower.
19. Coupled with such undertaking, the fact that the principal borrower was admitted into CIRP for committing default of the aforesaid loan- repayments makes leaves no doubt as to the default in the instant matter. Regarding the date of default, the Petitioner has annexed statement of the six loan accounts of the

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<sup>3</sup> Annexure “E” to I.A.720/KB/2022, page 36

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Corporate Debtor, according to which the date of default in the said six accounts ranges between 31.11.2017 and 31.01.2018 considering the same, the limitation period would end on 31.11.2020 or 31.01.2021. However, in light of the aforesaid undertaking dated 20.02.2020 given by Mr. S.P. Bagaria, the limitation period would be extended till 20.02.2023. As such, the instant petition filed on 10.05.2021 is within limitation period and thus, maintainable. Lastly, the amount claimed i.e Rs. 1,83,66,665/- exceeds the minimum pecuniary threshold set under section 4 of the Code.

20. In light of the aforesaid facts, circumstances and precedent, we are satisfied that both debt and default exist and the petition is complete in all respects. As such, the instant petition deserves to be admitted.
21. It is, accordingly, hereby ordered as follows: -
  - i. The application bearing **CP (IB) No. 129/KB/2021** filed by **Reliance Commercial Finance Limited** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Rosewood Projects Private Limited** (CIN: U70200WB1999PTC08011), the Corporate Debtor, is **admitted**.
  - ii. There shall be a moratorium under section 14 of the IBC.
  - iii. 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.
  - iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
  - v. **Mr. Shailendra Singh**, having registration number: IBBI/IPA-002/IP-N00471/2017-18/11372, **email: [shailendralaw@gmail.com](mailto:shailendralaw@gmail.com)**, is hereby appointed as Interim Resolution Professional (IRP) of the

Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Financial Creditor shall initially deposit a sum of ₹ 3,00,000/- (Rupees Three lakh 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp

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immediately, and in any case, not later than two days from the date of this Order.

- xi. **Additionally**, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

- 6.1 **CP (IB) No. 129/KB/2021** to come up on **24.05.2024** for filing the progress report. **I.A. 720/KB/2022** shall stand *disposed of*.
- 6.2 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

*Signed on this, the 24<sup>th</sup> day of April, 2024*

PJ(PS)/SM(LRA)