NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

C.P. 979 of 2022

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

Catalyst Trusteeship Limited
GDA House Plot No. 85, Bhsuari Colony, Paud Road, Pune – 411 038

..... Financial Creditor

V/s

Renaissance Indus Infra Private Limited
601, 6th Floor Hubtown Solaris Saiwadi, N.S. Phadke Road, Near Gokhale Bridge, Andheri (E), Mumbai -400 069 **......Corporate Debtor**

Order Delivered on: 31.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner/Financial Creditor: - Mr. Nishit Dhruva

For the Corporate Debtor/ Respondent: - Mr. Jayaprakash Sen, senior counsel

<u>Per: Shri Kuldip Kumar Kareer, Member (Judicial)</u>

ORDER

1. The above Company Petition is filed by Catalyst Trusteeship Limited, hereinafter called as "**Petitioner**" on behalf of seeking to initiate of Corporate Insolvency Resolution Process ("**CIRP"**) against Renaissance Indus Infra Private Limited, hereinafter called as "**Corporate Debtor**" by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 4,43,81,29,913/-.

Facts of the Case

2. The Corporate Debtor is part of Renaissance Group (**"Group"**) and was incorporated on October 12, 2012. As per the Debt Term Sheet dated June 11, 2018, Renaissance Group through its SPV project i.e. RUIPL and Renaissance Indus Infra Private limited **("RIIPL" / "Corporate Debtor")** which were promoted and managed by one Mr. Mayur Suckak and Ms. Dipti Suchak **("Promoters")** and being involved in the business of warehousing and industrial development in or around Bhiwandi had initially availed of funding from Edelweiss Financial Services Limited and were now proposing to re-finance the amount outstanding with Edelweiss, and avail of additional funding for the project development expenses. Accordingly, the Debt Term Sheet dated June 11,2018 has captured the rights and obligations of the lenders i.e. the financial creditor and the Corporate Debtor. The Debt Terms Sheet dated June 11, 2018 captures the terms of sanction by and Corporate Debtor. The present Application has been filed against **RIIPL** i.e. the Corporate Debtor.

3. In terms of the Debt Term Sheet, as stated above, executed between Altico Capital India Limited **('Altico')** and the Corporate Debtor, Altico had agreed to subscribe to the NCDs amounting to Rs. 390 crores, pursuant to which, an amount of Rs. 280 crores has been disbursed.

4. Accordingly, a Debenture Trust Deed **("DTD")** dated June 26, 2018 was executed between the Corporate Debtor as the Issuer and Vistra ITCL (India)

Limited as the Debenture Trustee *(acting for and on behalf of the Debenture Holders)* i.e. the Financial Creditors.

5. Further, vide Assignment agreement dated March 4, 2021 ***("Assignment Deed")*** Altico as the debenture holder has transferred all the rights under the Debentures along with all underlying security interest and rights created by the Corporate Debtor and the other Obligations in connection with the Debentures, together with the Debentures, together with all of Altico's rights and benefits to the Financial Creditor (acting in its capacity as the trustee of the Real Estate Receivables Trust). Pursuant to the execution of the Assignment Agreement dated 04.03.2021, the NCDs were transferred to the account of the Financial Creditor.

6. Among other Security (including but not limited to mortgage over immovable and movable properties, pledges, etc. as set out in the DTD, Guarantee Agreements and the other documents executed in connection with the Debentures) ***("Debenture Documents")*** created to secure the Debentures, the Debentures were also secured by way of a first pari passu charge and mortgage created by the Corporate Debtor over certain properties, assets and receivables more particularly described in Schedule in favour of Vistra ITCL (India) Limited pursuant to the Debenture Trust Deed.

7. Further, vide guarantee agreement dated June 26, 2018 under the Corporate Guarantee and the Personal Guarantee, the Guarantors have undertaken to repay the demand amount claimed by the Financial Creditor, if the Corporate Debtor fails to re-pay the same to the Financial Creditor. It is pertinent to state that RUIPL has provided Corporate Guarantee whereas the Promoters has provided Personal Guarantee in terms of DTD.

8. The Corporate Debtor was facing a server delay in its underlying projects and was in financial difficulties. The Corporate Debtor made various Creditor on March 30, 2020 and June 01, 2020 to the Financial Creditor for revising/extending the repayment of the facilities. Thereafter, considering the impact of the COVID-19 pandemic in India and the consequent effect on various

businesses, the Financial Creditor on September 14, 2020, granted a moratorium for the period as described by RBI vide its circulars dated March 27, 2020 and May 3, 2020.

9. The Corporate Debtor started committing defaults in repayment of its dues since March 31, 2021, and every quarter-end thereafter. Thus, a default of Rs. 4,43,81,29,913/- (Rupees Four Hundred and Forty Three Crore Eighty One Lac Twenty Nine Thousand Nine Hundred and Thirteen only) was committed by the Corporate Debtor as on June 30, 2022.

10. In view of the above, vide letter dated July 13, 2022, the financial creditor issued a demand notice recalling the overdue amount. A copy of demand notice dated July 13, 2022.

11. Further, vide the acceleration and enforcement notice dated July 26, 2022 the Financial Creditor, accelerated the amounts payable under the NCDs and declared the entire outstanding amount in respect NCDs as due on June 30, 2022 aggregating to Rs. 444,00,00,000/- approximately.

12. However, as no payments have been made by the Corporate Debtor as a borrower nor in capacity of the corporate guarantor of RUIPL. Hence the Petition.

Reply by Respondent

13. The Respondent submits, that under the DTD, only the debenture trustee is empowered to take any action and the Financial Creditor has no locus to declare a default or take any action in respect of the same. In the present case, the Debenture Trustee is one Vistra ITCL (India) Limited ***(hereinafter, "Vistra")*** therefore, in view of the Debenture Trust Deed, it is only Vistra who is legally entitled to take any action against the Corporate Debtor.

14. As per the DTD, neither the Debenture Trustee nor the Issuer were authorized to assign any of its rights or obligations under the Debenture Documents.

Therefore, it is Vistra who is the Debenture Trustee for the Corporate Debtor and it cannot assign its powers under the DTD in favor of the Financial Creditor therefore, the Financial Creditor has **no locus to initiate** any proceedings against the Corporate Debtor.

15. As per letter dated 10 March 2021, the Financial Creditor purportedly addressed a letter to both the Corporate Debtor and RUIPL thereby informing them that Altico had transferred Non-convertible Debentures along with all the underlying securities/rights/benefits of Altico to the Corporate Debtor in their capacity as the trustees of Real Estate Receivable Trust. However, there was no proper board meeting convened of the debenture holders with the Corporate Debtor or RUIPL regarding the same. Further, there was no tripartite agreement whereby the said NCD's were transferred.

16. The Deed of Assignment dated 4 March 2021 clearly states that the said Deed was executed between Altico and the Financial Creditor in its capacity as the Trustee of the Real Estate Receivable Trust. Therefore, the Financial Creditor is a trustee of Real Estate Receivable Trust and not of the NCD's issued by the Corporate Debtor.

17. The Financial Creditor has failed to establish under what document, the Financial Creditor is seeking enforcement of its rights in capacity of being a Debenture Trustee of the Corporate Debtor, as there are no definitive contracts, documents, writing, etc. relied upon by the Financial Creditor by virtue of which the they have been able to clarify their position of allegedly claiming to be the Debenture Trustee. The Financial Creditor have claimed to be the purported Debenture Trustee on the basis of a Deed of Assignment dated 10 March 2021 executed between Altico and the Financial Creditor. However, the DTD explicitly provides for a non-assignment clause, therefore, Vistra could not have assigned its rights under the DTD to the Financial Creditor in any manner.

18. The Respondent submits that a bare perusal of clause of the DTD, it is clearly established that it is Vistra ITCL (India) who was appointed as the Debenture Trustee for the Debenture Holder. Further, in an event if the Debenture Trustee

was to be removed, a proper board meeting was to be conducted and a resolution of 75% was to be passed by the debenture holders for the removal. However, no such resolution for the removal of the Debenture Trustee was ever-passed nor did the Debenture Trustee resign from its office. Further, there is a non-assignment clause which explicitly lays down that the Debenture Trustee cannot assign any of its rights under the Debenture Documents. Therefore, till date it is Vistra who is the Debenture Trustee and not the Financial Creditor. It is significant that the Financial Creditor has conveniently suppressed the Intercreditor Agreement which would expose the limitation on the rights of the Financial Creditor.

19. The Respondent submits that an aggregate amount of Rs. 525,00,00,000/- (Rupees Five Hundred and Twenty-Five Crore only) out of the total sanctioned limit of Rs. 650,00,00,000/- (Rupees Six Hundred and Fifty Crore only) has been disbursed. The balance amount of Rs. 125,00,00,000/- (Rupees One Hundred and Twenty Five Crore Only) was also proposed to be disbursed and utilized towards the balance land acquisition in the RISC Project.

20. However, in or around September 2019, RUIPL and the Corporate Debtor were informed by Altico that the disbursement of balance debt funding of Rs. 125,00,00,000/- (Rupees One Hundred and Twenty Five Crore Only) could not take place. Further, the Corporate Debtor and RUIPL were made aware of the fact, through various newspapers and other publications that Altico had defaulted in payment to its existing lenders and consequently has been declared as a *"Defaulter".* Further, it came to the knowledge of the Corporate Debtor and RUIPL that the investors of Altico have initiated the process of taking over the management of Altico.

21. RUIPL and the Corporate Debtor were regularly paying the interest of Altico as per the Debt Term Sheet dated 11 June 2018, from the first disbursement quarter which was June, 2018 to the quarter end of December, 2019. For the quarter end of March, 2020, the Corporate Debtor was all set to service the interest. However, from the latter half of the month of February 2020, due to

the impact of the Covid-19 pandemic and consequent lock downs and restrictions imposed by the Central and State Government, there was a standstill in the business activities of the Corporate Debtor and RUIPL and the work site of the RISC project.

22. In view of the aforesaid, the Corporate Debtor and RUIPL through the Corporate Debtor, addressed a letter dated 25th March 2020 to Altico with respect to the delay in sales collection on account of the lockdown and uncertainty about the time period of the said lockdown. Altico was further informed that due to the imposition of the lockdown, the project site was completely closed down and there was no further generation of revenue as the cash flow movement had stopped. This also affected the progress of the project and hampered the receipt of consideration by the Corporate Debtor and RUIPL which was to be used for meeting the interest payments to be made to Altico.

23. During the period of imposition of lockdown, the Reserve Bank of India *(hereinafter* ***"RBI"****)* on 27th March 2020, issued a circular for Covid-19 Regulatory Package **(First Regulatory Package).** On the basis of the said circular, RUIPL through the Corporate Debtor, and Corporate Debtor addressed emails both dated 30th March 2020 to Altico, requesting it to consider the moratorium period of 3 months upto the quarter ending March 2020 in view of Covid-19 pandemic.

24. As the lockdown continued beyond the month of May 2020 and as there was no certainty about the subsistence of such lockdown, therefore, on 23rd May 2020, RBI issued another Circular-19 Regulatory Package **(Second Regulatory Package).** On the basis of the said RBI Circular and also due to the severe impact on the business, RUIPL, through the Corporate Debtor and the Corporate Debtor, both, addressed another email to Altico on 1st June 2020, for considering the moratorium period upto 31st August 2020.

25. In response to the said letters dated 1st June 2020, Altico addressed a letter to RUIPL and the Corporate Debtor on 14th September 2020, regarding the moratorium on payment obligations in line with RBI Circulars for Covid-19

Regulatory Package thereby allowing capitalization of interest due for the quarter ending on 31st March 2020 and quarter ending on 30th June 2020 and thereby extending the period for repayment of the principal amounts by a period of 6 months, i.e., 2 quarters, which period was originally to start from 31st March 2021 and to end on 30th June 2024. Thereafter, vide letter dated 10th March 2021 addressed to the Corporate Debtor and RUIPL, *inter alia,* the Financial Creditor informed the Corporate Debtor that Altico had assigned / transferred 260 Debentures (i.e., the Debentures originally issued to Altico by RUIPL) to the Financial Creditor. By way of the said letter, the Financial Creditor further informed the Corporate Debtor and RUIPL that the said assignment took effect as on 10th March 2021, and consequently, the Financial Creditor was entitled to enforce all the rights under the Financing Documents. Pertinently, the letter further stipulated that all future correspondence between the Financial Creditor and Corporate Debtor be also addressed to Altico. The relevant portion of the said letter is reproduced hereinbelow"

> *"7. Please note that Altico has been engaged by the Assignee to provide certain services in connection with monitoring of the Facility and until otherwise notified to yourselves in writing by the Assignee do keep Altico copied on correspondences issued by yourselves to the Assignee."*

Similar letter was issued to the Corporate Debtor as well.

26. The Respondent has made several efforts to refinance the debt and therefore, they addressed letter to Altico, to grant 1 year moratorium for the interest payment so that the Corporate Debtor and RUIPL will be in the position to pay the interest regularly from the month of 2022 and 1.5 years moratorium for the repayment of principal amount so that the Corporate Debtor and in the meantime they left no stone unturned to repay the outstanding debts of Altico.

27. RUIPL and the Corporate Debtor were extremely anxious as the situation was getting no better. Therefore, vide letter dated 3rd December 2021, addressed to SDG, Altico and Clearwater, RUIPL and the Corporate Debtor expressed serious

issues faced by them and requested for shifting of the outstanding loan from the books of the Corporate Debtor to the books of RUIPL.

28. The Corporate Debtor and RUIPL's finances were affected by the unprecedented economic shock caused to the entire system and the real-estate market in particular on account of the Covid-19 pandemic and the associated Government lockdowns especially since the project of the Corporate Debtor was for creation of commercial and industrial units such as warehouses. Notwithstanding the same, the Corporate Debtor and RUIPL has made all efforts to honor its obligations towards Altico.

29. Thereafter, on 13 July 2022, the Financial Creditor in its capacity as the Debenture Holder issued a Payment Default notice to the Corporate Debtor to pay the overdue amount outstanding alongwith 6% interest as on 30 June 2022 in respect of the 390 non-convertible debentures issued by the Corporate Debtor.

30. On 26 July 2022, the Corporate Debtor received an Acceleration and Enforcement Notice issued by the Financial Creditor in respect of the 390 non-convertible debentures issued by the Corporate Debtor. In the said notice, the Financial Creditor also invoked clauses 9.2 of the DTD. The Corporate Debtor was called upon to pay a sum of Rs. 4,44,00,00,000/- (Rupees Four Hundred Crores Forty Four Lacs only) as on 30 June 2022 within 1 business day from the receipt of the said notice. However, it is pertinent to note that the Financial Creditor was not the Debenture Trustee as per the clauses of the DTD and, therefore the question of invoking any clauses under the said DTD does not arise.

31. Thereafter, on 27 July 2022, the Financial Creditor issued a Demand Certificate under the Deed of Guarantee dated 26 June 2018 in respect of the obligations of RUIPL in connection with the issuances and allotment of 260 Non-convertible Debentures calling upon the Corporate Debtor to pay a sum of Rupees 3,12,00,00,000 (Rupees Three Hundred and Twelve Crores only) as on 30 June 2022, jointly and severally within 1 business day from the receipt of the notice.

32. Pertinently, the Financial Creditor has suppressed the Inter Creditor Agreement and has not placed any reliance on the same for initiation of CIRP proceedings against the Corporate Debtor.

33. In its Company Petition, the Financial Creditor has also annexed an Assignment Agreement dated 4 March 2021 executed between Altico being the Assignor and the Financial Creditor being the Assignee, in the capacity as trustee of Real Estate Receivable Trust. The said Agreement was executed by the Financial Creditor in its capacity as the trustee of the Real Estate Receivable Trust. Pertinently, no prior intimation was ever given to the Corporate Debtor being the issuer of the debentures regarding the transfer of the said debentures prior to the execution of the said Agreement. It was only by virtue of the letter dated 10 March 2021 addressed by the Financial to the Corporate Debtor got to know about the transfer of the non-convertible debentures.

34. The Corporate Debtor time and again approached various financial institutions and has negotiated with them to obtain funds to reimburse Altico. The Financial Creditor is fully aware of all the efforts undertaken by the Corporate Debtor, but has chosen nevertheless to recklessly adopt vexation litigation in form of the present Petition to create pressure on the Corporate Debtor.

35. Till the sudden on-set of the Covid-19 pandemic and the subsequent imposition of the lockdown by the Central Government as well as the State Government, it is undisputed that, the Corporate Debtor has timely serviced the interest which was due and payable to the Altico. It is pertinent to note that the NCDs were issued for the purpose of raising finance for the RISC Project. The object of such issuance of the NCDs is defined in the DTD. The funds for the payment of interest were secured from the sales of the premises in the RISC project. Admittedly, as the real estate sector was the worst affected sector during the Covid-19 Pandemic, there were no sales in the RISC project, and hence the Corporate Debtor was finding it difficult to service the repayment of the amounts on the terms and conditions as were mutually agreed. Hence the Corporate

Debtor had sought for extension of time in the repayment schedule, so as to enable the Corporate to honor the payments in a timely manner.

36. Prior to the imposition of lockdown and after the relaxation, a lot of purchasers have invested their earnings in the RISC projects. The RISC project has given and provided employment to around 130 people. Passing of any adverse order will, surely, affect the entitlements of such purchasers and will affect the livelihood of all those employed by the Corporate Debtor for the Corporate Debtor for the RISC project. To keep the project afloat, the Corporate Debtor has time and again pursued and found various financers, who had readily agreed to infuse funds in the RISC project. As Altico had failed to give their NoC for such infusions, the said deals did not fructify. This is despite the fact that the Corporate Debtor had procured such deals during the period of subsistence of the lockdown.

37. I submit that the Financial Creditor has not entered into any definite Term Sheet and/or any agreement with the Corporate Debtor. Hence, in my respectful submission, the Financial Creditor could not proceed under section 7 of the IBC, 2016 as there is no definitive document between the Financial Creditor and Corporate Debtor and all the.

38. Furthermore, even under the DTD, the Financial Creditor has no right to seek repayment from the Corporate Debtor and all rights as aforesaid are vested only with the debenture trustees, which is Vistra in the present case.

39. The DTD explicitly provides for a non-assignment clause, therefore, Vistra could not have assigned its rights under the DTD to the Financial Creditor in any manner whatsoever.

40. The claim of the Financial Creditor, today, is infructuous and has been claimed with an ulterior motive to extract monies from the Corporate Debtors. The Financial Creditor is not a signatory to the DTD or to the Inter Creditor Agreement. The DTD is executed between Vistra ITCL and the Corporate

Debtor. The Debt Term Sheet was issued by Altico in favor of the Corporate Debtor. The Financial Creditor has no locus to file the present Petition.

41. The time frame for the repayment of the funds is crystalized under the DTD. The completion of redemption of the debentures was to be completed on 30th June 2024. It is matter of fact that the Government of India, after realizing the adverse impact of the Covid-19 and Lockdown on the economy, has extended, time and again, the timelines for the repayment of loans/debt. In view of the same, the final settlement date as per the DTD also stood revised by virtue of Novation. Further, the Corporate Debtor had addressed various communications to Altico, requesting it to extend the timelines for the repayment, which Altico has orally agreed to do. Hence, as on date, the time period of the final settlement and/or redemption of the debentures stands novated.

42. It is submitted that assuming there is any default on the part of the Corporate Debtor in making timely payment to the Debenture Holders; the same has to be adjudicated under the terms of the DTD. The Financial Creditor is not a signatory to the DTD. In the event of any default in terms of the DTD, it is the Debenture Trustee, i.e., Vistra ITCL and not the Financial Creditor, who is entitled to take appropriate steps against the Corporate Debtor.

43. In view of the above, it is clear that Financial Creditor has *no locus standi* to initiate the present proceedings against the Corporate Debtor, when both the signatory parties, i.e., Altico and Viastra ITCL, have not taken any actions against the Corporate Debtor on account of the bonafides of the Corporate Debtor.

44. The Hon’ble Apex Court has time and again also held that no relief can be granted to a party who has approached the courts with unclean hands. It is a settled proposition in law that the litigant cannot pick and choose and present the case and facts as per their own liking. In the present scenario, the Financial Creditor has suppressed vital documents and facts, which are important for the proper adjudication of the disputes and impartial dispensation of justice By

suppressing the documents, the Financial Creditor has tried to mislead this Tribunal.

In view of the above, it is submitted that the Petition is liable to be dismissed.

Findings: -

45. We have heard the Counsel for the Parties and have gone through the records.

46. It has been contended by the Counsel for the Petitioner that the Corporate Debtor has acknowledged its indebtedness and upon the occurrence of the event of default, the Financial Creditor is entitled to declare that the NCD automatically became due for redemption upon delivery of notice as per Clause 9.2 of the DTD.

47. The Counsel for the Financial Creditor has further argued that by virtue of Assignment Deed dated 04.03.2021, Altico assigned its rights in the NCDs in favour of the Financial Creditor with effect from 10.03.2021 and the Financial Creditor holds the NCDs issued by the Corporate Debtor following the Assignment Deed and this can be evidenced from NSDL Report. Moreover, vide letters dated 30.03.2020 and 01.06.2020, the Corporate Debtor has acknowledged its liability but expressed its financial difficulties to pay the outstanding amount.

48. The Counsel for the Financial Creditor has further contended that vide notice dated 13.07.2022 (Exhibit-L), the Debenture Trustee on behalf of the Financial Creditor called upon the Corporate Debtor to make the outstanding payment but despite notice, the latter has failed to pay and, therefore, a strong case of admission of the Petition under Section 7 is made out.

49. On the other hand, the Counsel for the Corporate Debtor has argued that the Petition is not maintainable and is liable to be dismissed. In this regard, the Counsel for the Corporate Debtor has argued that as per the terms and conditions incorporated in the DTD as well as the Inter-Creditor Agreement, only Debenture Trustee is empowered to take action or the Debenture Trustee

can take action jointly with the Debenture Holder. In the present case, the Trustee is one Vistra ITCL (India) Limited (hereinafter referred to as "Vistra") which was legally entitled to take action against the Corporate Debtor either by itself or jointly with the Debenture Holder and the Financial Creditor was not entitled to file the Petition under Section 7 and on this ground alone, the Petition is liable to be dismissed.

50. Secondly, it has been argued on behalf of the Corporate Debtor that the Financial Creditor has deliberately suppressed the Inter Creditor Agreement which would have demonstrated that the Enforcement notice issued was illegal being contrary to the terms of the Inter Creditor Agreement. The terms of the Inter Creditor Agreement is binding on the parties and the same make it clear that the Financial Creditor cannot adopt any action which is inconsistent with the Agreement and a harmonious reading of the terms of DTD and Inter Creditor Agreement makes it clear that the Financial Creditor has no locus standi to initiate any proceedings against the Corporate Debtor, otherwise than whatever is stated in the Inter Creditor Agreement. It was clearly agreed that no action shall be taken by a single Debenture Holder without taking the formal consent of the Debenture Holders or without giving approved instructions to the Debenture Trustees.

51. Lastly, it has been argued that the Corporate Debtor is a going concern and also a profit-making entity having around 70 employees and as many as about 200 buyers who, in the event of initiation of CIRP process against the Corporate Debtor, would be adversely affected. In support of his arguments, the Counsel for the Corporate Debtor has relied upon "***Vidarbha Industries Power Limited Vs. Axis Bank Limited 2022 8 SCC 352***" which says that is not mandatory for NCLT to admit Petition under Section 7 filed by a Financial Creditor even when there is existence of debt and default in payment.

52. The Counsel for the Corporate Debtor has further relied upon "***Dalip Singh Vs. Uttar Pradesh 2010 2 SCC 114***" whereby it has been held that the

Hon'ble Supreme Court has held that a party approaching the Court by suppressing facts is not even entitled to be heard on merits.

53. We have weighed the contentions raised by the Counsel for the Parties and have gone through the record in the light of the said contentions.

54. Firstly, it has been contended on behalf of the Corporate Debtor that the Petitioner/Financial Creditor is not entitled to invoke Section 7 of the Code as it has no such authority to do so as per the documents executed between the parties and only the Debenture Trustees, i.e. Vistra ITCL India Limited could file the instant Petition.

55. In this regard, the Counsel for the Financial Creditor has referred to Clause 9.8 of DTD dated 26.06.2018 which provides as under:

> "*notwithstanding to the contrary contained in this Deed, the Issuer acknowledges the Debenture Trustee's and Debenture Holders' unqualified right to take all actions as may be available to them under various policies and schemes promulgated by the RBI from time to time and other remedies available to lenders in general in accordance with the provisions of the applicable laws, at any time until the final settlement date*"

A perusal of the above quoted clause clearly shows that the Debenture Trustee's as well as the Debenture Holders' have a right to pursue all remedies available under the law and on the basis of the strength of Clause 9.8, it can be safely held that the Petitioner/Financial Creditor, who is an Assignee from the original Debenture Holder vide Assignment Agreement 04.03.2021 and having stepped into the shoes of the Assignor/Debenture Holder, is clearly competent to file the present Petition as per Clause 9.8 of the DTD. Therefore, the Corporate Debtor cannot be heard harping that the Financial Creditor had not such rights especially when no such objection has been raised by any other Debenture Holders or the Debenture Trustee.

56. Secondly, it has been argued on behalf of the Corporate Debtor that the Petitioner/Financial Creditor has no locus to file the present Petition as per the

terms and conditions incorporate in Inter Creditor Agreement dated 26.06.2018 (Exhibit-B) which has been deliberately withheld by the Financial Creditor while filing the present Petition. Even this contention raised by the Counsel for the Corporate Debtor is of no consequence. In this regard, it is worth pointing out that in the Inter Creditor Agreement dated 26.06.2018, the finance parties are intended to collectively mean (a) Debenture Trust Deed (b) Debenture Holders' and (c) any agent of the Debenture Trustee as may be appointed by the Debenture Trustee from time to time. Further Clause 5.6 of the Agreement dated 26.06.2018 further clearly says that all or any of the finance parties shall be entitled to bring a suit or other legal proceedings or to take or to instruct the Debenture Trust Deed to take any steps for enforcement of the security created in its or their respective favour for realization of its respective security interests created under the Debenture document. This also shows that it is not necessary that only the Trustees are competent to launch the legal proceedings. Rather any of the Financial parties including the Debenture Holders' could initiate the proceedings for the Enforcement of the security interests created by the Debenture Documents. Therefore, the contention raised on behalf of the Corporate Debtor is not tenable.

57. So far as the case law laid down in "***Vidarbha Industries Power Limited Vs. Axis Bank Limited 2022 8 SCC 352"*** (*supra*) is concerned, in our considered view, the same cannot be applied to the facts and circumstances of the instant case considering the fact that in the instant case, it stands established that there has been a financial debt and a default. The Corporate Debtor has unequivocally admitted and acknowledged its liability while also expressing and requesting to make the delayed payments in the letters dated 30.03.2020 and 01.06.2020. Therefore, in this case, we do not find any ground to justify the non-admission of the Petition under Section 7 of the Code when there is an ample evidence of Financial Debt and its default and further, the present Petition is neither hit by the law of limitation nor suffers from any other legal infirmity.

58. No other points have been raised.

59. As a result of the above discussion, we are of the considered view that the Petition has been able to establish that there was a debt of more than of Rs. 1 Crore in respect of which the default has been committed by the Corporate Debtor. The Petition has been filed within the period of limitation. Therefore, we are of the considered view that a clear-cut case of admission under Section 7 is made out.

60. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

a) The above Company Petition No. (IB) 979/IB/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Renaissance Indus Infra Private Limited.**

b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Mr. Birendra Kumar Agarwal**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00564/2017-2018/11040, having Email id: bk@bhamaconsulting.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c) The Financial Creditor shall deposit an amount of Rs. 5 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 only towards expenses and not towards his fee till his fee is decided by COC.

d) That this Bench hereby prohibits 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 supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f) 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.

g) 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.

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 suspended directors and 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, the C.P. 979/IB/MB/2022 is **admitted.**

l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)

(z)