



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) No.02/(PB)/2022

**ORDER UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE INSOLVENCY
AND BANKRUPTCY (APPLICATION TO ADJUDICATING
AUTHORITY) RULES, 2016.**

IN THE MATTER OF:

Religare Enterprises Ltd.

Through Authorised Representative
Ms. Ankita Sharma
Registered Office: 1st Floor, P-14, 45/90 P Block,
Connaught Place, New Delhi-110001
CIN No.: L74899DL1984PLC146935

..... APPLICANT/FINANCIAL CREDITOR

VERSUS

Ligare Aviation Ltd.

Registered Office: G-16, Marina Arcade,
Connaught Circus, New Delhi-110001
CIN No.: U63040DL1996PLC166014

..... RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 18.07.2023

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant/ : Adv. Sunil Fernandes and Adv. Siddharth
Financial Creditor : Sharma, Adv. Varun Chopra, Adv.



Priyansha Sharma, Adv. Diksha Dadu
For the Respondent : Sr. Adv. Sudhir K Makkar, Adv. Suhasini
/ Corporate Debtor Sen, Adv. Haripriya Padmanabhan, Adv.
Rea Bhalla and Adv. Supriya V.

ORDER

1. This is an application filed on 18.01.2021 by **Religare Enterprises Ltd. (REL)** (Applicant/Financial Creditor), through its authorized representative Ms. Ankita Sharma, D/o Ravi Dutt, having registered office at 1st Floor, P-14, 45/90 P Block Connaught Place, New Delhi-110001 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Respondent/Corporate Debtor (CD) viz., **Ligare Aviation Ltd**, for a total financial default of **Rs.5,87,27,454/-** (Rupees Five Crore Eighty-Seven Lacs Twenty-Seven Thousand Four Hundred Fifty-Four Only).
2. The Respondent/Corporate Debtor was incorporated on 23.09.1996, having CIN No.: U63040DL1996PLC166014, under the Companies Act, 1956, with the purpose of doing business of providing supporting and auxiliary transport activities and activities of travel agencies. The registered office is at G-16, Marina Arcade, Connaught Circus, New Delhi-110001. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Master Data of the Respondent/Corporate Debtor as accessed from the MCA website is annexed at **Annexure P-3** at Pg. 39-40 of the Application.



3. The present application was filed on 18.01.2021 before this Adjudicating Authority on the ground that the Respondent/Corporate Debtor is currently in default to the Applicant/Financial Creditor for an aggregate amount of **Rs.5,87,27,454/-** (Rupees Five Crore Eighty-Seven Lacs Twenty-Seven Thousand Four Hundred Fifty-Four Only), as on 15.01.2021. This amount includes the Principal Outstanding Amount of Rs.3,82,37,012/- and Interest Outstanding Amount of Rs.2,04,90,451/-. A copy of the workings for computation of amount and days of default in a tabular form is annexed at **Part- IV** of the Application.
4. IA-4217/2022 and 4724/2022 have already been disposed of vide earlier dated 06.03.2023, the same is extracted below:

“IA-4217/2022 & IA-4724/2022

Heard Mr. Sunil Fernandes, Ld. Counsel appearing for the Petitioner and Ms. Haripriya, Ld. Counsel appearing for the Respondent. On 02.09.2022, we passed the following order in IA-4217/2022:-

IA-4217/2022

“Ld. Counsel Mr. Sunil Fernandes appeared for the Petitioner. He seeks time to file an application to bring additional documents on record which is to be considered as a part of rejoinder. He is hereby permitted to do the same. List the matter on 07.09.2022.”

Pursuant to that, Mr. Fernandes has filed an application bearing no. IA-4724/2022 seeking permission to file additional



documents. The same has been served to the Ld. Counsel for the Respondent who has placed her objections to the same.

*In view of the judgment passed by Hon'ble Supreme Court in **Dena Bank (Now Bank of Baroda) vs C. Shivakumar Reddy on 4 August, 2021** we allow the IA-4724/2022 whereby the Financial Creditor sought permission to place on record the additional documents. In view of the above, IA-4724/2022 stands allowed. IA-4217/2022 has already been disposed of.*

In view of the above, both the parties are directed to file their brief arguments and notes.

List the matter on 14.03.2023 for physical hearing.”

5. Facts of the Case

- i. It is submitted that the Applicant/Financial Creditor is a Core Investment Company registered with the RBI and it is a widely held publicly listed company as per amended Form No.1 annexed in IA. 533 of 2022 at Pg.9-10.
- ii. On 30.03.2009 the Respondent/Corporate Debtor- Ligare Aviation Limited (previously known as Religare Aviation Limited) approached Religare Arts Investment Management Ltd. (RAIML) for short Term Loan facility for a sum of Rs.5,00,00,000/- (Rupees Five Crore) in the form of an Unsecured Demand Loan and executed a Memorandum of Understanding dated 30 March 2009 ("1st MoU") with RAIML, whereby RAIML agreed to lend as unsecured demand loan upto Rs.5,00,00,000/- (Rupees Five Crores Only) to the Respondent/Corporate Debtor. The Respondent/Corporate Debtor agreed to pay interest at the rate of 13% per annum (payable at quarterly rest) from the date of disbursement till the date of



repayment. A copy of the MoU dated 30.03.2009 is annexed as **Annexure P-4** at Pg.41-43 with the Application.

- iii. The repayment date of the loan amount was further extended by way of execution of subsequent MoUs. The last MoU was executed on 30 March 2016 between the RAIML and the Respondent/Corporate Debtor wherein it was agreed that the Principal Amount would be repaid with interest at the rate of 12% per annum (payable at quarterly rest) on 27 March 2017. A copy of the MoU dated 30.03.2016 is annexed as **Annexure P-4** at Pg.44-46 with the Application.
- iv. The RAIML disbursed total an amount Rs.4,65,65,000/- (Rupees Four Crores Sixty-Five Lakhs and Sixty-Five Thousand Only) (Principal Outstanding) to the Respondent/Corporate Debtor (Erstwhile “Religare Aviation Limited”) between 01.04.2009 and 09.09.2016 from the sanctioned loan amount. A copy of the Interest Calculation Sheet is annexed as **Annexure P-5** at Pg.47 with the Application, details of which are as follows:

S.No.	Details of Loan Disbursement	Amount of Loan
1	01.04.2009	3,60,00,000/-
2	06.07.2015	68,00,000/-
3	13.04.2016	27,75,000/-
4	09.09.2016	9,90,000/-
Total Disbursement of loan amount		Rs.4,65,65,000/-

- v. The Respondent/Corporate Debtor had also signed and executed Balance Confirmations on 11.05.2012 and 22.04.2014 to the



Applicant/Financial Creditor, thereby, acknowledging the outstanding payment under the aforesaid MoUs. The copies of Balance Confirmations dated 11.05.2012 and 22.04.2014 are annexed as **Annexure-C** @ Pg. 42-43 with Additional Documents in I.A. No.4724/2022.

- vi. The Applicant/Financial Creditor further submitted that this Tribunal by way of its Order 08.12.2017 allowed 12 (Twelve) Religare Group Companies which include erstwhile Religare Arts Investment Management Ltd. (RAIML) to amalgamate with the Applicant Company, in (CAA)-168 (PB) /2017 connected with CA (CAA)-46 (PB) /2017 and the Scheme of Merger/Amalgamation of 12 (Twelve) Religare Group Companies with the Transferee Company/Applicant/Financial Creditor herein was allowed under Section 230-232 of Companies Act, 2013. On account of the aforesaid amalgamation, all the liabilities and assets of RAIML were transferred to the Applicant Company/ Financial Creditor. A copy of the Amalgamation Order dated 08.12.2017 is annexed as **Annexure P-2** at Pg.20- to 38 the Application.
- vii. Since, erstwhile Religare Arts Investment Management Ltd. (RAIML) had disbursed money to the Respondent/Corporate Debtor and amounts due to (RAIML) were transferred to the Applicant/Financial Creditor in accordance with the Amalgamation Order, the Applicant is a Financial Creditor of the Respondent/Corporate Debtor. As the Respondent/Corporate Debtor has failed to repay the borrowed amount till date, there is a default committed by the Respondent/Corporate Debtor under Section 7 of the Code.
- viii. As per the last MoU dated 30.03.2016 [**Annexure P-4** at Pg.44-46], a Principal Amount of Rs.3,82,37,003/- was due and payable from the Respondent/Corporate Debtor as on 27.03.2017 (Date of Default)



alongwith interest due of Rs.2,04,90,451/- calculated upto 15.01.2021. [as per amended Form No.1 annexed in IA. 533 of 2022 at Pg.9-11]. Thus, a total amount outstanding against the Respondent/Corporate Debtor in unsecured Term Loan as on 15.01.2021 is as under:

Particulars	Amount due as on 15.01.2021
Principal	Rs.3,82,37,003/-
Interest	Rs.2,04,90,451/-
Total	Rs.5,87,27,454/-

- ix. It is further submitted by the Applicant/Financial Creditor that as on 15.01.2021 a total amount due under the above stated loan account against the Respondent/Corporate Debtor is **Rs.5,87,27,454/-** (Rupees Five Crore Eighty-Seven Lacs Twenty-Seven Thousand Four Hundred Fifty-Four Only).
- x. The Respondent/Corporate Debtor has also acknowledged the aforesaid Financial Debt in its Standalone Financial Statements for the period 01.04.2019 to 31.03.2020 which was filed with the Ministry of Corporate Affairs. As per the **Note No. 13.3** under the category '**Loans from Others**', the Respondent/Corporate Debtor has acknowledged and admitted the Financial Debt to the extent of Rs. 382.37 Lakhs from the Applicant/Financial Creditor. A copy of Financial Statements for the period 01.04.2019 to 31.03.2020 of the Respondent/Corporate Debtor is annexed as **Annexure-D** @ Pg. 46 with Additional Documents in I.A. No.4724/2022.
- xi. The Applicant/Financial Creditor also submitted that as per the last MoU dated 30.03.2016, the scheduled date of repayment was 27.03.2017 (as per **Annexure P-4** at Pg.45). The 3 (three) years limitation period from this date would have ended on 26.03.2020.



However, in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation, the Hon'ble **Supreme Court** held that this period i.e. 15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. Therefore, the period of limitation for filing the instant Application, which may have otherwise ended on 27.03.2020 now extends till 28.02.2022. The copy of Order of Hon'ble Supreme Court dated 10.01.2022 @ Pg. 34 to 41 is annexed as **Annexure-B** with Additional Documents in I.A. No.4724/2022. Hence, on 18.01.2021 the Applicant/Financial Creditor filed the Application U/s 7 of IBC before 28.02.2022 i.e., is within limitation as prescribed by the Hon'ble Supreme Court.

- xii. The averments of the Applicant/Financial Creditor are set out in detail in its Original Application and therefore, these are not being stated here afresh to avoid a repetition of facts.

6. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- i. The notice was issued to the Respondent/Corporate Debtor for appearance as well as for filing reply. After due service the Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. It is inter-alia contended that the Application is not maintainable as the Applicant is neither a Financial Creditor nor the debt in dispute is a Financial Debt as it is contended that the amount claimed by the Applicant was not advanced for the purpose of creating any Financial Debt but was only for the purpose of transferring the amount into other corporate entities controlled by the Applicant which is evident from the account statement of the Respondent/Corporate Debtor for the relevant period. It is a case of round stripping as contended by the respondent counsel.



- ii. There has been no admission of liability by the Respondent/Corporate Debtor; on the other hand, there has been a specific denial of the debt by the Respondent/Corporate Debtor in its letter dated 31.03.2017 (Pg 34 of Reply).
- iii. The subject transactions are utterly vitiated by fraud as admitted to by the Applicant itself and could never constitute a valid financial debt for the purposes of the IBC: The evidence on record and in the public domain is sufficient to conclude that the subject transactions and the MoUs upon which they were based are fraudulent and cannot be considered to be 'financial debt' within the meaning of the Code.
- iv. At the time at which the subject transactions took place, the Applicant exercised a deep and pervasive control over the day-to-day affairs of the RAIML as well as the Respondent/Corporate Debtor casting a serious cloud upon the genuineness of the MoUs. At the relevant period of time when the transactions took place, i.e. between 2009 to mid-2016 there was a commonality of directors and common control of the Applicant and Respondent and the transactions were carried out at the Applicant's behest and were not a genuine financial debt.
- v. It is further stated that the Applicant is guilty of gross suppression of the material facts and it was further contended that the amount claimed by the Applicant as debt had been transferred into the account of the Respondent/Corporate Debtor by an entity known as Religare Arts Investment Management Limited and not by the present Applicant though the Applicant has stated that amalgamation has been allowed by this Tribunal vide order dated 08.12.2017 of Religare Arts Investment Management Limited with the Applicant. However, the Applicant being an assignee of the



alleged debt has not filed any document showing that the liability in respect of the disputed amounts of the Religare Arts Investments Management Ltd. have been assigned to the present Applicant.

- vi. Hence, the Respondent/Corporate Debtor has prayed for a dismissal of the Application. The contentions of the Respondent/Corporate Debtor are set out in detail in its Reply. Therefore, they are not being stated here afresh to avoid a repetition of facts.

7. Rejoinder of the Applicant/Financial Creditor in reply to the Respondent/Corporate Debtor are :

- i. The Applicant/Financial Creditor also filed Rejoinder to the Reply filed by the Respondent/Corporate Debtor which was not taken on record being not filed within stipulated period granted by the Tribunal.
- ii. Thereafter, the Applicant/Financial Creditor filed I.A. No.4724/2022 U/r 11 of NCLT Rules, 2016 to place on record additional documents in support of the Application filed U/s 7 of the IBC alongwith **Annexure-A to Annexure-O** which was allowed by the Tribunal vide its order dated 06.03.2023 and additional documents were taken on record on the basis of decision of the Hon'ble **Supreme Court** rendered in ***Dena Bank Vs C. Shivakumar Reddy, (2021) 10 SCC 330.***

8. The Applicant/Financial Creditor in support of the Application placed the following documents on record:-

Annexure P-1 MCA Master Data of the Financial Creditor

Annexure P-2 Copy of the Order dated 08.12.2017 passed by this Hon'ble Tribunal amalgamating Religare Arts Investment Management Limited with Religare Enterprises Limited.

Annexure P-3 MCA Master Data of the Respondent/Corporate Debtor.



Annexure P-4 Memorandum of Understandings dated 30.03.2009 and 30.03.2016.

Annexure P-5 Interest Calculation Sheet.

Annexure-B: Copy of the Order dated 10.01.2022 passed by the Hon'ble Supreme Court of India in Sou moto Writ Petition (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation.

Annexure-C: Corporate Debtor's signed balance confirmations to the Financial Creditor on 11.05.2012 and 22.04.2014.

Annexure-D: Relevant extract of the Financial Statement for the period 01.04.2019 to 31.03.2020 of the Respondent/Corporate Debtor.

Annexure-E: List of shareholders of the Respondent/Corporate Debtor as on 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016 filed with the annual return by the Respondent/Corporate Debtor for the relevant year.

Annexure-F: List of shareholders of the Respondent/Corporate Debtor as on 31.03.2017 filed with annual return of the relevant year.

Annexure-G: List of shareholders of the Respondent/Corporate Debtor as on 31.03.2018, 31.03.2019 and 31.03.2020 filed with annual return of the relevant year.

Annexure-H: Copy of the public announcement dated 21 October 2016 issued on the Bombay Stock Exchange.

Annexure-I: Copy of the Final Report dated 06.01.2020 and Supplementary Final Report dated 20.01.202 in in FIR No. 50 of 2019 registered by EOW.

Annexure-J: Copy of the Order dated 05.04.2019 passed by the Hon'ble Supreme Court of India in IA No. 58004 of 2019 in SLP © No. 20417 of 2019.

Annexure-K: Copy of the Order dated 12.05.2021 passed by the Hon'ble Supreme Court of India in SLP © No. 20417 of 2019.



Annexure-L: Copy of the Order dated 13.05.2022 passed by the Hon'ble National Company Law Tribunal in CP (IB) No. 231 (PB) of 2022.

Annexure-M: Copy of the Order dated 03.06.2022 passed by the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Ins.) No. 645 of 2022.

Annexure-N: Copy of Memorandum of Understanding dated 01.04.2008 executed between RFL and the Respondent/Corporate Debtor.

Annexure-O: Copy of the relevant pages of the Financial Statement of RFL for FY 2013-14 along with the ledger maintained by RFL.

9. The Respondent/Corporate Debtor in support of the Reply also placed the following documents on record:-

Annexure R-1: A true copy of the communication between the parties dated 31.03.2017

Annexure R-2: A true copy of the article dated 29.06.2021 published in the Economic Times

Annexure R-3: True Copy of the newspaper report dated 11.01.2020 published in the Economic Times

Annexure R-4: A true copy of the article dated 15.02.2022 published by CNBCTV18

Annexure R-5: A true copy of the relevant Notes forming part of the extract of the Financial Statements for the year ended 31.03.2014

Annexure R-6: A true copy of the excerpts of the bank statement dated 30-31.03.2009 of the Respondent showing the mirror transactions

Annexure R-7: A true copy of the list of directorships held by Mr. Anil Saxena and Mr. Shachindra Nath from the year 2007 till date, showing commonality on the board of directors of the Applicant, RAIML. And the Respondent

Annexure R-8: A true copy of the email dated 21.09.2011



Annexure R-9: A true copy of the email dated 06.10.2011

Annexure R-10: A true copy of the email dated 27.04.2015

Annexure R-11: A true copy of the email dated 16.03.2010

Annexure R-12: A True Copy of two emails dated 12.05.2011

Annexure R-13: True copies of bank statements pertaining to 2015

Annexure R-14: A True Copy of the Form 32 for the appointment of Anil Saxena and Shachindra Nath as Additional Directors on the Board of Ran Air Services Limited

Annexure R-15: A True Copy of the Form 32 for the resignation of Anil Saxena and Shachindra Nath from the Board of Ran Air Services Limited

Annexure R-16: A True Copy of the emails dated 09.06.2011 and 10.06.2011

Annexure R-17: A true copy of the email dated 29.01.2010

Annexure R-18: A True Copy of the email dated 03.03.2010

Annexure R-19: A true copy of the MoU dated 30.03.2009

Annexure R-20: A true copy of the MoU dated 30.03.2012

Annexure R-21: A true copy of the MoU dated 30.03.2013

Annexure R-22: A true copy of the MoU dated 30.03. 2014

Annexure R-23: A true copy of the MoU dated 30.03.2015

Annexure R-24: A true copy of the relevant extracts of the Financial Statements for the year ended 31.03.2016

Annexure R-25: A true copy of the MoU dated 30.03.2016

Annexure R-26: A true copy of the list of dates prepared by the Respondent.



10. Analysis and Findings

- i. Ld. Sr Counsel Sudhir Makkar on behalf of the CD appeared before us and vehemently argued that the amount claimed by the Petitioner Company was not advanced for the purpose of creating any financial debt, but was moved into the account of the respondent company only for the purpose of further moving into other corporate entities owned and controlled by the same Religare group and further this entire transaction is a transaction of financial layering and round tripping of funds. Ld. Sr Counsel Mr. Makkar also drew Bench's attention towards to the copy of Final Report dated 06.01.2020 and Supplementary Final Report dated 20.01.2021 in FIR No. 50 of 2019 filed on behalf of Religare Finvest i.e. the subsidiary of the petitioner against the petitioner company Religare Enterprises Limited (REL) alleging various acts of siphoning of funds from REL and its subsidiaries, and registered by EoW (Annexure H of FC's rejoinder). This is highlighted to show that there was common ground in the allegation of fraud and financial irregularities in the group companies

- ii. To counter the above submissions, Ld. Counsel for the applicant, Mr. Sunil Fernandes states that all the contentions raised by Ld. Sr. Counsel for the respondent have no bearing on the present section 7 application. Ld. counsel further states that an accused person cannot cite the contents of an FIR to claim that he is not concerned with the present transaction in hand. In any event this report has no bearing on the transaction in question.



- iii. Be that as it may, the issues for consideration before this Adjudicating Authority are:
- a) Whether the alleged transactions are covered within the ambit of “financial debt” as defined under the IBC? **OR** the subject transactions and the MoUs upon which they were based are fraudulent and cannot be considered to be 'financial debt' within the meaning of the Code?
 - b) Whether the Applicant is a Financial Creditor as provided under the IBC?
 - c) Whether there has been default on the part of the Respondent?
 - d) Whether the present Application has been filed within limitation?
- iv. Under the scheme of the IBC, the Insolvency Resolution Process begins, when a default takes place, in the sense that a debt becomes due and is not paid. Some of the relevant provisions of the IBC are set out herein below for convenience:

Section 3(11) of IBC defines “*debt*”: It means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Section 3(12) of IBC defines “*default*” means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;



Section 5(7) of IBC defines “*financial creditor*”: It means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

Section 5(8) of IBC defines “*Financial Debt*”: It means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) money borrowed against the payment of interest;

.....

Section 7 of IBC defines “*Initiation of corporate insolvency process by financial creditor*”:

Section 7(1) of IBC defines: A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

- v. A perusal of record reflects that between 01.04.2009 and 09.09.2016, the RAIML disbursed unsecured loans of Rs.4,65,65,000/- under six (6) MoUs which was repayable by the Ligare Aviation Ltd. (earlier known as "Religare Aviation Ltd.") with 12 % interest per annum payable at quarterly rest. The Respondent in its Reply has acknowledged the execution of all 6 MoUs, in particular the last MoU dated 30.03.2016. However, on this admitted fact the Respondent has raised a defence against the aforementioned transactions inter-alia on the ground the funds transferred were not for time value of money, but were transferred further to other sister-concerns of the Applicant which reflects from the **Bank Statement of the Respondent at Page 46 (Annexure R-**



13 annexed with its Reply). Further, the purported MoUs upon which such transfers were allegedly based were also nothing but a sham most probably meant for the purpose of round-tripping of funds. This modus operandi of the Applicant's management in executing these one-page MoUs for the purpose of financial layering is the subject matter of numerous investigations by various investigating agencies. The MoUs, which were of single page were shorn of any particulars as to the purpose for the advancement of the amounts etc. The transactions which form the subject matter of the present Application were clearly a part of this larger fraud perpetrated by the management of the Applicant company. The defense raised by the Respondent is that the amounts as received from RAIML was not for a valid debt as the same were transferred to other sister-concerns of the Petitioners i.e. Religare Aviation Ltd and Religare Arts Investment Management Ltd and the directors of Religare were having an indirect control over the entire transaction and also towards onward transfer to a third company. This contention is not sustainable as this particular submission is patently contrary to the terms of the six MoUs validly executed between the parties; none of the 6 MoUs at any of the clauses provide that the payment received by the Respondent was for onwards transmission to a third party.

- vi. Further, the purported denial of liability by the Respondent in the Loan Balance Confirmation letter dated 31.03.2017 at page Pg. 48 of the Application is contrary to the own admitted record. The Respondent itself acknowledged the aforesaid Financial Debt in its Standalone Financial Statements for the period 01.04.2019 to 31.03.2020 which was filed with the Ministry of Corporate Affairs. As per the Note No. 13.3 under the category 'Loans from Others', the Respondent has acknowledged and admitted the Financial Debt to



the extent of Rs. 382.37 Lakhs from the Applicant. The relevant extracts of the aforesaid note is reproduced herein below:-

"13.3 Loan from Others:

(a) Rs. 382.37 Lakhs loan from Religare Enterprises Limited (after amalgamation of Religare Arts Investment Management Limited with Religare Enterprises Limited) unsecured in nature and repayable on demand, Rate of interest 12.00% Stipulated Tenor of the Unsecured Loan has Expired and no fresh agreement has been entered and neither has the Unsecured Loan been recalled by the Party. "

We do not see as to who this tacit admission can be overlooked. Therefore, plea of the Respondent that subject transactions and the MoUs upon which they were based are fraudulent and cannot be considered to be 'financial debt' is a moonshine defense and therefore not acceptable.

- vii. The Applicant has made clear and full disclosures that the MoUs were entered into with the Respondent by RAIML (Predecessor-in-interest of the Applicant). Also, this Adjudicating Authority vide its order dated 08.12.2017 in CA(CAA)-46(PB/2017) allowed the scheme of merger/amalgamation of 12 Religare group Companies with the transferee Company/Applicant. It is amply clear that once the scheme of merger/ amalgamation is approved by this Adjudicating Authority, then from the date of passing of order all the property, assets, rights and powers of the transferor companies stand transferred with any further act or deed to the transferee company. Further all the liabilities, obligations and duties of the transferor company stand transferred to the transferee company/the Applicant. Therefore, we find no merit in this particular submission



of the respondent that money was received from RAIML and not REL/the Applicant. Hence, the Applicant is a Financial Creditor as provided under the IBC.

viii. As per the last MoU dated 30.03.2016, a Principal Amount of Rs.3,82,37,003/- was due and payable with interest @ 12.00% per annum (payable at quarterly rest) from the Respondent on 27.03.2017 (Date of Default). Further, alongwith interest upto 15.01.2021 i.e. Rs.2,04,90,451/- a total amount due under the above stated loan account against the Respondent/Corporate Debtor is **Rs.5,87,27,454/-** (Rupees Five Crore Eighty-Seven Lacs Twenty-Seven Thousand Four Hundred Fifty-Four Only), a fact confirmed by CD in their own stand alone financial statement as recorded above.

ix. Further, Hon'ble Supreme Court in the ***Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407***, clearly held that:

“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 application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, 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 it may reject an application and not otherwise”



xi. The present Application was filed before this Tribunal on 18.01.2021 and as per the last 6th/last MoU dated 30.03.2016 (as per **Annexure P-4** at Pg.45) which was entered into between the parties the scheduled date of repayment was 27.03.2017. In a normal case the prescribed limitation period of 3 three years would have ended on 26.03.2020. However, Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. In the present case the limitation period for filing the Application U/s section 7 of the IBC extends till 28.02.20202. Therefore, we find that the present Application is filed well within the limitation period. The objection on limitation is rejected.

xii. The judgment of Hon'ble Supreme Court in **Dena Bank: (Now Bank of Baroda) Vs Shivkumar Reddy and Another (2021) SCC Online SC 543**, which clearly held that:

113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

118. *It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal*



Jaiswall (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, [“Bengal Silk Mills”] and in Re Pandem Tea Co. Ltd. , the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

- 11.** Therefore, In view of this decision also the Application filed under Section 7 of IBC, 2016 is maintainable and it is within the period of limitation. The existing financial debt is of more than rupees one crore and its default is also proved. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **C.P. (IB) – 02/(PB)/2022** filed by Religare Enterprises Ltd, the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **LIGARE AVIATION LIMITED**, the Respondent/Corporate Debtor, is hereby admitted.



- ii. As a consequence of the Application C.P. (IB) 02(PB)/2022 being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Applicant/(FC) has proposed the name of **Mr. Gautam Singhal** as the IRP. His email id is gautam@klfindia.com. His registration number is **IBBI/IPA-001/IP/P-01437/2018-2019/12240**. He has filed his written communication, **(Page 13 of the Application)** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Gautam Singhal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **Mr. Gautam Singhal** as the IRP of the Respondent/Corporate Debtor.
- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as



clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v. During the CIRP period, the management of the Respondent/CD 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 Respondent/CD 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. There shall be no future opportunities in this regard.
- vi. The IRP is expected to take full charge of the Respondent/CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- viii. The Applicant/FC shall deposit a sum of **Rs.5,00,000/- (Rupees five Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).



- ix. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Applicant/FC, the Respondent/CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Respondent/CD and specific mention regarding admission of this petition must be notified.
- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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**RAMALINGAM SUDHAKAR
(PRESIDENT)**

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**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**