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# IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

## IBA/706/2020

*(filed 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 **M/s Maan Sarovar Properties Development Private Limited***

**Reliance Net Limited ('RNL')**
Registered office @ Manek Mahal,
6th Floor, 90 Veer Nariman Road,
Mumbai, Mumbai City,
Maharastra- 400 020.

*... Applicant/Financial Creditor*

-Vs-

**Maan Sarovar Properties Development Private Limited**
No.33/2 Gangai Street,
Kalakshetra Colony, Besant Nagar Extension,
Chennai- 600 009.

*...Respondent/Corporate Debtor*

*Along with*

## IA/756/CHE/2021

*(filed under Section 60 (5) of IBC, 2016 r/w Rule 11 of NCLT, Rule, 2016)*

**Reliance Net Limited ('RNL')**
Registered office @ Manek Mahal,
6th Floor, 90 Veer Nariman Road,
Mumbai, Mumbai City,
Maharastra- 400 020.

*... Applicant/Financial Creditor*

-Vs-

**Maan Sarovar Properties Development Private Limited**
No.33/2 Gangai Street,
Kalakshetra Colony, Besant Nagar Extension,
Chennai- 600 009.

*...Respondent/Corporate Debtor*

Order Pronounced on 1st July 2022

CORAM:
**JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**
**ANIL KUMAR B, MEMBER (TECHNICAL)**

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| *For Petitioner* | : | *Mr. Vipin Warrier, Advocate Led by Senior Counsel PH Arvind Pandian.* |
| *For Respondent* | : | *Mr. Ramakrishnan, Advocate.* |

## ORDER

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

**A. IA/756/CHE/2021**

With respect to IA/756/CHE/2021 it has been filed by the Applicant Financial Creditor under Section 60 (5) of the IBC, 2016 read with Rule 11 of the NCLT, Rules 2016 for amendment of the Application IBA/706/2020. The same was heard comprehensively by this Tribunal and by the virtue of this Tribunal proceedings dated 07.01.2022 this Tribunal granted the permission to rectify the date of default in Part-IV of IBA/706/2020 to 19.03.2015 and directed the Applicant to serve the amended copy of the Application to the Respondent Corporate Debtor. In view of this Tribunal order dated 07.01.2022, this present IA/756/CHE/2021 stands **closed.**

**B. IBA/706/2020**

This Application has been filed by one **RELIANCE NET LIMITED** (hereinafter referred to as 'Financial Creditor') on 20.11.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **MAAN SAROVAR PROPERTIES DEVELOPMENT PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a public company limited by shares incorporated under the Companies Act, 1956. The verifying Affidavit in support of this present Application is placed at Page 10 of the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. As per the Application the Corporate Debtor is a Private Limited company incorporated under the Companies Act, 1956 on 04.02.1992 with CIN: U45201TN1992PTC022124. The registered office of the Corporate Debtor as per the Application is stated to be at No: 33/2, Gangal Street, Kalakshetra Colony, Besant Nagar Extension, Chennai- 600 009.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Ms. J. Karthiga with Registration No: *IBBI/IPA-001/IP-P00752/2017-2018/11284* as the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.255,45,22,996/- (Rupees two hundred and fifty five crore forty five lakhs twenty two thousand nine hundred and ninety six only) which is due and payable by the Corporate Debtor along with interest. The date of default is 19.03.2015 by the virtue of this Tribunal order dated 07.01.2022 in IA/756/CHE/2021. Further, it is averred in Part-IV of the Application that Corporate Debtor is liable to pay the interest in terms of the Loan Agreements.

6. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default and the same is enumerated hereunder :-

(i) Statement of Accounts [Exhibit A-4]
(ii) Share & Warrants Subscription & Share Holders Agreement (SWSS) 29.03.2007 [Exhibit A-5]
(iii) Termination Agreement of SWSS 31.07.2008 [Exhibit A-6]
(iv) Debt Agreement-01.08.2008 [Exhibit A-7]
(v) Loan Agreement-23.12.2009 [A-8]
(vi) Supplemental Loan Agreement -26.04.2013 [Exhibit A-9]
(Vii) Letter to the Corporate Debtor-27.03.2014 [Exhibit A-10]

6. The Ld. Senior Counsel for the Applicant submitted that Loan Agreement dated 23.12.2009 (Original Loan Agreement') entered into between Corporate Debtor as the Borrower and Financial Creditor as the Lender, Financial Creditor sanctioned and disbursed Corporate Debtor a financial assistance of Rs. 66,00,00,000/- (Rupees sixty-six crore only) ('Loan') for a period of 12 months from the date on such terms and conditions, as more particularly mentioned in the said Original Loan Agreement. Further it is submitted by the Ld. Counsel that Corporate Debtor agreed to repay the said with interest @20% p.a. with quarterly rest, exclusive of interest tax, subject to TDS (as applicable).

7. It is averred in part-IV of the Application that on account of failure of Corporate Debtor to repay the said Loan with interest, additional interest and other charges to Financial Creditor, Corporate Debtor approached Financial Creditor with a request to restructure the repayment obligations of Corporate Debtor and other terms and conditions, including those in relation to the security, which request was accepted by Financial Creditor. Accordingly, Supplemental Loan Agreement dated 26.04.2013 ('Supplemental Loan Agreement") was entered into between Corporate Debtor as the Borrower, following persons as the Promoters of Corporate Debtor and Financial Creditor as the Lender on such terms and conditions as more particularly mentioned in the Supplemental Loan Agreement:

a. Naveen Jain;

b. Navneet Jain;

c. Saikumar Jain; and

d. Nalin Gulecha

8. The Ld. Senior Counsel for the Applicant submitted that, as per the Supplemental Loan Agreement Corporate Debtor and its Promoters agreed and undertook to that interest shall be payable @20% pa. from the date of Original Loan Agreement i.e. 23.12.2009 till date of Supplemental Loan Agreement i.e. 26.04.2013 on principal loan amount of Rs. 66,00,00,000/- (Rupees Sixty Six Crore). Further the Ld. Counsel submitted that, it was agreed between the parties that the entire Loan amount together with interest thereon @16% XIRR [Extended Internal Rate of Return] would be repaid in two years as per Schedule IV to the Supplemental Loan Agreement.

9. The Ld. Senior Counsel for the Applicant submitted that despite restructuring the repayment obligations and various opportunities awarded to the Corporate Debtor, Corporate Debtor continued to commit defaults in repayment of the Loan, Interest, Additional Interest and other charges under the Supplemental Loan Agreement. Further the Ld. Counsel submitted that post-dated cheques given by Corporate Debtor towards discharge of its liability under the Supplemental Loan Agreement were dishonoured for insufficiency of funds.

10. The Ld. Senior counsel for the Applicant submitted that demand Notice was issued by the Applicant on 09.10.2020 for which the Respondent has issued a Reply dated 12.10.2020 and the same is placed as pages 257-302 of the Application typeset. Further the Ld. Counsel for the Applicant submitted that on account of such default committed by the Corporate Debtor, a sum of Rs. 255,45,22,996/- [Rupees two fifty five crore forty five lakhs twenty two thousand nine hundred and ninety six] has become due and payable to Financial Creditor as of 31.10.2020 along with interest @ 16% XIRR from 01.01.2016 till the date of payment of the alleged debt amount claimed to be in default.

11. The Ld. Counsel for the Applicant submitted that this is a clear case of debt and default due and payable by the Corporate Debtor as the same is reflected in the Audited Financial statements for the year ending on 31.03.2015, 31.03.2016, 31.03.2018. The Audited financial statements are placed as page 43-44, 90-91 and 139-140 of the additional typeset of documents filed by the Applicant.

11. The Respondent has filed an extensive counter statement in this said matter on 18.02.2022. The Ld. Counsel for Respondent submitted that Civil Suit (L) No. 20 of 2016 was filed before the Hon'ble High Court of Bombay against the Respondent for recovery of Rs.118,76,64,226/-. Further the Hon'ble High Court in the said matter

had granted interim relief restraining the Respondent from alienating or encumbering the immovable properties of the Respondent Company and the same is pending for disposal.

12. The Ld. Counsel for the Respondent submitted that the Applicant had issued the Demand Notice dated 09.10.2020 under IBC, 2016 demanding the alleged debt amount of Rs. 118,76,64,226/- (Rupees one hundred and eighteen crore seventy lakh sixty four thousand two hundred and twenty six) along with interest. The Ld. Counsel submitted that in response to the Demand Notice issued by the Applicant the Respondent had issued a detailed reply statement dated 12.10.2020 and the same is placed as Annexure R20 of the Counter statement typeset in which the Respondent has categorically denied the alleged amount of debt owed i.e. Rs. 118,76,64,226/- (Rupees One Hundred and Eighteen Crore Seventy Lakh Sixty Four Thousand Two Hundred and Twenty Six) along with interest.

13. The Ld. Counsel for the Respondent submitted that IA/756/CHE/2021 was filed by the Applicant to amend the date of default in the main Application to 19.03.2015 and the same was allowed by this Tribunal by the order dated 07.01.2022. Further the Ld. Counsel submitted that this Application is hit by limitation as the Application has been filed with a delay of more than six years from the date of recall of the Loan. The Ld. Counsel for the Respondent pressed emphasis on the judgement of the Hon'ble Supreme Court in the case

of **Babulal vardharji Gujar –Vs- Veer Gurjar Aluminium Industries Private Limited** [2020 SCC SC 647] in which it was held that provisions of the Limitation Act shall be applicable for the cases arising under the IBC 2016 and the Limitation period for filing an application under Section 7 of the IBC 2016 is three years as provided under Article 137 of the Limitation Act.

14. The Ld. Counsel for the Respondent closed his arguments stating that this is a peculiar case in which it can be seen that the security documents relied upon by the Applicant has become unenforceable by the virtue of the Applicant failing to fulfil the reciprocal promises. Further there is a civil suit pending on the file of the Hon'ble High Court of Bombay for the similar cause of action i.e. for recovery of the alleged debt of Rs. 118,76,64,226/- (Rupees one hundred and eighteen crore seventy lakh sixty four thousand two hundred and twenty six) along with interest. Thus this present Application is liable to be dismissed *in liminie.*

15. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven beyond reasonable doubt. Furthermore the audited financial statements of the Corporate Debtor for the year ended on 31.03.2015, 31.03.2016 and

31.03.2018 clearly proves the presence of a debt due and payable by the Corporate Debtor to the Applicant Financial Creditor.

16. Apropos, the Hon'ble Supreme Court in the matter of **ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED -VS- BISHAL JAISWAL & ANR.** in *Civil Appeal No.323 OF 2021* has categorically held that the entries made in the balance sheet would amount to acknowledgment of debt. In the present case, from the balance sheet filed by the Applicant / Financial Creditor in respect of the Corporate Debtor, it could be seen that the Corporate Debtor has committed default in repayment of the financial debt to the Financial Creditor.

17. Further, the date of default is stated to be 19.03.2015 by the virtue of this Tribunal order dated 07.01.2022 in which the Applicant was 'allowed' to amend the date of default in Part-IV of the main Application IBA/706/2020. In the question of limitation, the Hon'ble Supreme Court in the case of **LAKSHMI PAT SURANA-VS- UNION BANK OF INDIA & ANOTHER** has clearly stated that fresh period of limitation will come into play on the due acknowledgement of debt by the Corporate Debtor. The Application stands well within the period of limitation by the virtue of reflection of debt amount reflected in the Balance Sheet of the Corporate Debtor for the year ended on 01.09.2018 and the same shall be treated as acknowledgement of debt by the virtue of the Hon'ble Supreme Court judgement in **ASSET**

RECONSTRUCTION COMPANY (INDIA) LIMITED -VS- BISHAL JAISWAL & ANR. in *Civil Appeal No.323 OF 2021 [Supra].* Further this Applicant has filed this present Application on 20.11.2020, thus this Application stands well within the period of limitation.

18. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited,** where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

> 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 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.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a 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 that the adjudicating authority may reject an application and not otherwise.

19. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

20. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

21. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

22. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

23. The Financial Creditor has proposed the name of **Ms. J. Karthiga** (email id: karthigasri@hotmail.com ) with *Reg. No. IBBI/IPA-001/IP-P00752/2017-2018/11284* as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 20.02.2023.

24. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as

prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

27. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

29. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

30. Post this IBA/706/2020 for hearing on 16.08.2022.

-SD-

**ANIL KUMAR B**
MEMBER (TECHNICAL)

-SD-

**JUSTICE (RETD.) S. RAMATHILAGAM**
MEMBER (JUDICIAL)