

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

Company Petition No. 326/(IB)-MB-V/2021

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

Satec Envir Engineering (India) Private Limited,

Plot No. A/107-108, TTC Industrial Area, MIDC,

Khairane, Thane- Belapur Road,

Navi Mumbai, Thane, MH- 400705

.... Petitioner/Financial Creditor

Vs.

Renaissance Corporation Limited,

802, Floor- 8, Plot- 175, Cotton Exchange

Building, Kalbadevi Road, Near Cotton Exchange,

Bhuleshwar, Kalbadevi, Mumbai- 400002

...Corporate Debtor/Respondent

Order Reserved on: 25.02.2022

Order Pronounced On: 15.03.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Adv. Akshay Gosavi

For the Respondent : Adv. Dev Upadhyay

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Petitioners/Applicant viz. 'Satec Envir Engineering (India) Private Limited'. (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Renaissance Corporation Limited' (hereinafter as '**Corporate Debtor**').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 3,68,49,887/- including interest of Rs.1,15,79,887/-. The date of default is stated to be 31.01.2021.

Brief Facts-

3. The Petitioner has granted loan to the Corporate Debtor, under the Loan Agreement dated 19.10.2015. The Petitioner had enclosed the letters of Corporate Debtor dated 30.09.2015 requesting for sanction of loan and have also enclosed the Board Resolution dated 15.10.2015. The Terms and conditions of the Loan Agreement stipulated that the Petitioner had granted a Loan of an amount of Rs. 2,55,00,000/- and that the loan shall be disbursed in multiple tranches and the first tranche being Rs. 30,00,000/- Certain relevant terms and conditions of the Loan Agreement are as follows:

1.1 Loan- The Lender agrees to grant a loan to the Borrower, based on the Borrower's request, Representations and Warranties and covenants as contained herein, and the Borrower agrees to borrow from the Lender, an approximate amount of Rs. 2,55,00,000/- (Rupees two crores fifty five lakhs) ("Loan") on the terms and conditions as contained in this Agreement. The Loan shall be disbursed in multiple tranches with the first tranche of Rs. 30,00,000/- (Rupees Thirty Lacs only to be provided by the Lender to the Borrower within 15 days from the day of Execution Date.

1.2 Purpose of Loan- The Loan shall be utilised by the Borrower for its various business requirements.

2.1 Interest- The Borrower agrees to pay a simple interest on the Loan at the rate of 10% per annum ("Interest", together with Loan as "Total Loan") which shall accrue from the relevant disbursement

dates of the relevant tranche of the Loan until the expiry of the Tenure (as defined hereinafter) or the date on which the Total Loan is repaid in full, whichever is earlier.

2.2 Tax on Interest- Interest Tax and other taxes/levies as may be applicable from time to time on the Loan and as liable to be paid by the Borrower under applicable law, shall be borne solely by the Borrower.

3.1 Repayment of Loan- The Borrower shall repay the Total Loan on or before 31.03.2019, unless extended by the Lender, in its sole discretion (“Tenure”)

3.2 Prepayment- The Borrower shall be entitled to make pre-payments of all or any part of the Total Loan during the Tenure. In the event the Borrower makes any pre-payments of a part of the Total Loan (in one or more instalments), during the tenure, the amount(s) so paid shall automatically stand reduced from the Total Loan. Consequently, the interest at the simple rate of 10% per annum shall only be calculated on the reduced principal amount basis.

4. As there was delay in repayment of the said loan amount by the Corporate Debtor, Memorandum of Understanding dated 10/04/2019 was executed. It was expressly agreed by the parties that the Corporate Debtor would repay the unsecured loan of Rs. 2,52,70,000/-.

5. Terms of MoU are as follows:

A. *RCL obtained an unsecured loan of Rs. 2,52,70,000 (Rupees two crores fifty two lakhs seventy thousand only) “Loan”, at interest for its business requirements from Satec pursuant to a loan agreement*

dated 19th day of October 2015 (Loan Agreement”) entered into between Satec and RCL;

- B. As on the effective Date, an amount of Rs. 3,22,17,053/- (Rupees Three Crore Twenty Two Lac Seventeen Thousand Fifty Three Only) including interest amount of Rs. 69,47,053/-(Rupees Sixty Nine Lac Forty Seven Thousand Fifty Three Only) is due and payable from RCL to Satec in terms of the Lona Agreement (“Outstanding Amount”); and*
- C. The Parties, subsequent to various discussions and negotiations, have now decided to enter into this MOU for the settlement of the Outstanding Amount and to reduce in writing the settlement terms, under this MOU.*

6. 2. Repayment of Outstanding Amounts

- 2.1 Repayment of Outstanding Amounts- RCL undertakes to repay the Outstanding Amounts to Satec in the manner set out in Schedule I (Repayment Schedule) and in accordance with the terms of this MOU.*
- 2.2 Payment of Instalments- RCL shall repay the instalments on the due date (“Tenure”), unless extended by Satec, in its sole discretion.*
- 2.3 Pre-payment - RCL shall be entitled to make pre-payments of all or any part of the Outstanding Amount during the Tenure.*
- 2.4 Outstanding Amount- In the event of any re-payments or pre-payments by RCL, in accordance with this MOU, the term ‘Outstanding Amount’ shall deem to mean Outstanding Amount reduced by such amounts re-paid and pre-paid by RCL as on such date.*

2.5 Payment on Demand- Notwithstanding any thing to the contrary in this MOU, the Parties agree that the entire Outstanding Amount shall become payable by RCL unconditionally and immediately upon demand as provided for under this MOU, more particularly Clause 5.2.1 (Acceleration of Loan).

2.6 Default in Payment- In the event RCL fails to make the payment as per the Schedule I (Repayment Schedule), then Satec may at its sole discretion, inter alia proceed with initiation of any legal action against RCL.

7. Therefore, the Corporate Debtor/ Respondent is liable to pay the outstanding debt amounting to Rs. 3,68,49,887/- (Rupees Three Crores Sixty-Eight Lakh Forty Nine Thousand Eight Hundred and Eighty Seven only) as on 31/01/2021.
8. The Petitioner vide a letter dated 03.04.2019 sought repayment of the entire money as due, in pursuance of the loan agreement. The Corporate Debtor replied to the letter, dated 03.04.2019, and stated that the Company is going through temporary operational losses, and currently would not be able to make the immediate payment of the due principal loan amount and the interest on it.
9. The Corporate Debtor failed to pay amount despite execution of MoU and hence the petitioner issued notice of default on 11.07 2019. The Corporate Debtor further replied to the letter on 02.01.2020 and stated that the Company's operations at Bheema Sar Taluka Anjar district, Kutch Gujarat, is facing major issues including litigations of Secured Creditor due to which it is causing the impact on the financials obligation on the Company and has sought further time to pay outstanding dues.

10. Thereafter, the Petitioner intimated the Corporate Debtor, through notice dated 09/02/2021, demanded payment of outstanding dues of Rs. 3,41,12,303/-, inclusive of interest and overdue charges, as on 31.12.2019.
11. The Corporate Debtor appeared in person and admitted his liability during the course of hearing on 25.02.2022.

Findings:

12. Upon perusal of the Petition and hearing both the parties, it is established that there is a contract of Loan Agreement dated 19.10.2015 wherein the money of Rs. 2,55,00,000/- was disbursed by the Petitioner and further upon non-payment of monies, both the parties had executed an MoU dated 10.04.2019 which categorically stated that the Corporate Debtor had been granted an unsecured loan of Rs. 2,52,70,000/- for his business requirement under the Loan Agreement however, was not able to repay the amount and an amount of Rs. 3,68,49,887/- (inclusive of interest) is due and outstanding. The Corporate Debtor during the course of hearing had admitted the liability hence, this Bench concludes that it is established beyond doubt that there is debt and default. Hence, the Petition is admitted.
13. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and the Corporate Debtor failed to pay.
14. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.

Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.

15. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
16. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Manoj Sehgal having registration No. IBBI/IPA-002/IP-N00108/2017-2018/10256, having address at Flat 304, Tower 5 Ansal Valley View Estate Gwal Pahadi, Gurgaon, Haryana-122003, having email id: manojsehgal_1121@yahoo.co.in, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
17. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering

any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

18. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
19. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
20. In view of the above, the Bench “**Allows**” the Company Petition No. **326/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor Renaissance Corporation Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
21. Ordered Accordingly.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)