



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P. (IB) 104/MB/2024

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule
4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016

In the matter of

**M/s Reliance Commercial Finance
Limited**

Having address at:

The Ruby, 11th Floor, North-West Wing,
Plot No. 29, Senapati Bapat Marg, Dadar
(West), Mumbai – 400 028.

... Petitioner/ Financial Creditor

Versus

**M/s RPL Star Power Private Limited
[CIN: U40300MH2015PTC267257]**

Having Registered Office at:

Raheja Point, B-Wing, 07th Floor,
Nehru Road, Near Shamrao Vithal Bank,
Vakola, Santacruz (East),
Mumbai – 400 055.

... Respondent/ Corporate Debtor

Order Pronounced on: 15.10.2024

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)



Appearances:

For Financial Creditor: Adv. Siddha Pamecha, Adv. Payal Gupte i/b
Thodur Law Associates

For Corporate Debtor: Adv. J. Disouza i/b Couresh Mogre
Adv. Aditya R. Deolekar i/b Trnsa Legal

Per: MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

1. The present Company Petition (IB) – 104(MB)/2024 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**IBC**'/ '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Reliance Commercial Finance Limited (hereinafter referred to as '**Financial Creditor**'/ '**Petitioner**') through its authorized person Mr. Kislay Kanu, Deputy Manager - Mumbai for initiating Corporate Insolvency Resolution Process (hereinafter referred to as '**CIRP**') against M/s RPL Star Power Private Limited (hereinafter referred to as '**Corporate Debtor**'/ '**Respondent**') for default of Rs. 533,83,83,562 (Rupees Five Hundred Thirty-Three Crores Eighty-Three Lakhs Eighty-Three Thousand Five Hundred and Sixty-Two Only/-) as on 31.08.2023 (**'said default'**).

Brief Facts:

2. The Reliance Home Finance Limited (hereinafter referred to as '**the original lender**') was incorporated on 05.06.2008, and started its operations as a Housing Finance Institution *vide* Certificate of Registration No. 07.0101.12 dated 16.07.2012 (*Original Certificate of Registration No. 02.0069.09 dated 06.01.2009*).
3. The Corporate Debtor was incorporated as a private limited company on 07.08.2015. It is involved in the business of supply of steam and hot



water supply. The original lender in its usual course of business extended loans and advances as General-Purpose Working Capital Loan (**'GPCL'/'said loan'**) to the Corporate Debtor *in lumpsum* at a Rate of Interest of 13.5% p.a. The details of which are as follows:

<u>Date of Sanction/ Disbursal*</u>	<u>Nature of Facility extended</u>	<u>Loan Account No.</u>	<u>Loan Amount (in Rupees)</u>	<u>Facility Tenor</u>
28.03.2018	GPCL	RHWCCOR000068204	100 crores	12 Months
22.08.2018	GPCL	RHWCCOR000072588	50 crores	12 Months
24.08.2018	GPCL	RHWCCOR000072659	50 crores	12 Months
<u>Total Amount Sanctioned</u>		200 crores <i>(Rupees Two Hundred Crores Only/-)</i>		

Remark: The date of disbursal of said loan is referred to from Exhibit- "G" Statement of Accounts of Borrower (as on 31.08.2023) maintained by the Financial Creditor from the petition.

4. The said loan was sanctioned on the basis of a *Facility cum Hypothecation Agreement* executed as on date of sanction of each of these facilities.
5. Further, a *Certificate of Registration of Charge* over current assets of the corporate debtor is issued by Registrar of Companies, Mumbai in favour of the original lender as follows (**'said certificate of registration of charge'**):



<u>Date of Creation of Charge</u>	<u>Charge Identification Number (CIN)</u>	<u>Loan Account No.</u>	<u>Loan Amount (in Rupees)</u>
28.03.2018	100178892	RHWCCOR000068204	100 crores
22.08.2018	100222516	RHWCCOR000072588	50 crores
24.08.2018	100222519	RHWCCOR000072659	50 crores

6. That in consequence of financial distress, the original lender was acquired on a slump sale basis by one Authum Investment and Infrastructure Limited (**'Acquirer'**) by virtue of the Hon'ble Supreme Court of India decision in ***Authum Investment and Infrastructure Limited versus R.K. Mohatta Family Trust and Others (Civil Appeal No. 1581 of 2023)*** dated 03.03.2023.
7. Subsequent to such acquisition, the loan(s) advanced by original lender ('assignor') along with all rights and securities attached thereto was assigned to the Financial Creditor, as an 'assignee' by way of a Deed of Assignment dated 31.03.2023 (**'said deed of assignment'**).
8. The assignee, M/s Reliance Commercial Finance Limited (**'RCFL'**) (*formerly known as 'Reliance Gilts Limited'*), was incorporated on 17.08.2000 with Registrar of Companies (RoC) at Mumbai, Maharashtra. During the course of its business, the RCFL registered itself *vide* Certificate of Registration No. N-13.01933, as a Non-Banking Financial Institution with the Reserve Bank of India, in accordance with Section 45-IA of the Reserve Bank of India Act, 1934.



Submissions of the Financial Creditor extracted in brief:

9. The Financial Creditor in accordance with the terms as laid in said deed of assignment issued a Loan Recall Notice/ Termination of Agreement Letter to the Corporate Debtor for payment of the outstanding loan amount including interest due as follows (**'said loan recall notice'**):

<u>Date of Issue</u>	<u>Ref. No.</u>	<u>Loan Account No.</u>	<u>Outstanding Loan Amount (inclusive of interest) (in Rupees) as on 30.06.2023</u>
31.07.2023	RHFL-LOT-01-LRN-04	RHWCCOR000068204	267,97,94,520.55
31.07.2023	RHFL-LOT-01-LRN-19	RHWCCOR000072588	126,83,28,767.12
31.07.2023	RHFL-LOT-01-LRN-24	RHWCCOR000072659	126,79,58,904.11
<u>Total Amount Outstanding</u>			521,60,82,191.78 <i>(Rupees Five Hundred Twenty-One Crores Sixty Lakhs Eighty-Two Thousand One Hundred and Ninety-One and 78 paisa Only/-)</i>

However, no response against the said loan recall notice was received from the Corporate Debtor.

10. The Financial Creditor states that the Corporate Debtor has defaulted repayment from first instalment due of said loan to the original lender. The aggregate amount of default as on 31.08.2023 as disclosed under Part-IV of Form I as Particulars of Financial Debt (under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,



2016) with reference to Exhibit – “G” of the petition filed by the Financial Creditor is as follows:

<u>Loan Account No.</u>	<u>Date of Default</u>	<u>Outstanding Loan Amount</u> (includes principal amount, interest and penal interest) <i>(in Rupees) as on 31.08.2023</i>
RHWCCOR000068204	10.03.2019	2,74,09,45,205.00
RHWCCOR000072588	22.08.2019	1,29,89,04,110.00
RHWCCOR000072659	24.08.2019	1,29,85,34,247.00
<u>Total Outstanding Debt</u>		533,83,83,562 <i>(Rupees Five Hundred Thirty-Three Crores Eighty-Three Lakhs Eighty-Three Thousand Five Hundred and Sixty-Two Only/-)</i>

11. Further, the Corporate Debtor has disclosed its debt and acknowledged its liability to pay the outstanding loan amount in Exhibit – “N” of its Audited Financial Statement for the Financial Year 2021-2022 (**‘said Independent Auditor’s Report’**). The said Independent Auditor’s Report emphasizes its qualified opinion on corporate debtor’s ability to continue as a going concern. The Balance Sheet as of 31.03.2022 indicates the corporate debtor’s accumulated losses exceeding net worth of the company, current liabilities exceeding its current assets and default in repayment of dues to lenders. In accordance with point ix) (a) of Annexure A attached to the said Independent Auditor’s report, the corporate debtor is to have defaulted for 1100 days from the date of disbursement of said loan.



12. The Financial Creditor submits that it is been on multiple occasions that the Financial Creditor has requested repayment of the outstanding dues from the Corporate Debtor. The Corporate Debtor has acknowledged its debt to Balance Confirmation Letter as well for total amount outstanding dated 30.09.2021 as follows (**'said Balance Confirmation Letter'**):

<u>Loan Account No.</u>	<u>Outstanding Loan Amount</u> <u>(inclusive of interest)</u> <i>as on 30.09.2021 (in Rupees)</i>
RHWCCOR000068204	2,05,05,34,247
RHWCCOR000072588	95,36,98,630
RHWCCOR000072659	95,33,28,767
<u>Total Amount Outstanding</u>	395,75,61,644 <i>(Rupees Three Hundred Ninety-Five Crores Seventy-Five Lakhs Sixty-One Thousand and Six Hundred and Forty-Four Only/-)</i>

13. The Financial Creditor placed reliance upon Record of Financial Information – Form C maintained with the Information Utility (National E-Governance Services Limited) as on Exhibit- “O” of the petition that following date of defaults and outstanding loan amount due was as follows (**'said Record of Default'**):

<u>Loan Account No.</u>	<u>Date of Default</u>	<u>Outstanding Loan Amount</u> <u>(exclusive of interest)</u> <i>(in Rupees) as on</i> <i>13.09.2023</i>
RHWCCOR000068204	07.04.2019	11,24,143,889.00
RHWCCOR000072588	26.08.2019	56,90,80,556.60
RHWCCOR000072659	26.08.2019	56,85,18,056.60



<u>Total Outstanding Debt</u>	226,17,42,502.20 <i>(Rupees Two Hundred and Twenty-Six Crores Seventeen Lakhs Forty-Two Thousand Five Hundred and Two and Twenty Paise Only/-)</i>
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14. The Petitioner/ Financial Creditor has relied upon the following documents as annexed to this petition:

- a. Sanction Letter by RHFL – Exhibit “D Colly”
- b. Facility cum Hypothecation Agreement – Exhibit “E Colly”
- c. Assignment Deed by and between RHFL and RCFL – Exhibit “I”
- d. Balance Confirmation received by RHFL from the Corporate Debtor – Exhibit “J”
- e. Loan Recall Notice/Termination Agreement – Exhibit “L Colly”
- f. Record of Default by Corporate Debtor in Information Utility – Exhibit “O”

15. With reference to the given circumstances, the Petitioner has filed the instant petition on 12.10.2023 for default amounting to **Rs. 533,83,83,562 (Rupees Five Hundred Thirty-Three Crores Eighty-Three Lakhs Eighty-Three Thousand Five Hundred and Sixty-Two Only/-)** outstanding as on 31.08.2023.

Submissions made by the Corporate Debtor:

16. The Corporate Debtor filed an affidavit-in-reply to the petition on 12.06.2024. It states that the corporate debtor had approached the original lender for financial assistance in carrying out its business operations and admits to have availed the said loan facility.



17. Further, the Corporate Debtor laid emphasis on the following grounds as summarised hereinbelow:

I. Financial Distress

The Corporate Debtor contends that due to certain unforeseen and unexpected circumstances owing to downturn in business, and the Covid-19 pandemic resulted in a liquidity crunch thus, the default in repayment of GPCL was inevitable. But, the Corporate Debtor asserts existence of no deliberate intention to default in repayment of outstanding dues and submits that several efforts were made to negotiate settlement with RHFL.

II. Prior Consent of Corporate Debtor to be obtained for execution of Deed of Assignment, unless obtained there exists no privity of contract

It is emphasised by the Corporate Debtor that its consent was not obtained and there is no privity of contract with the assignee (Financial Creditor) therefore, the Corporate Debtor is not liable to pay the financial debt to the Petitioner.

III. Petition is barred by Limitation

The Corporate Debtor states that the limitation period to file claim be determined *three years* from the due date to repay the outstanding dues that begins from completion of tenor of the loan facility sanctioned:

<u>Date of Sanction</u>	<u>Nature of Facility extended</u>	<u>Loan Account No.</u>	<u>Facility Tenor</u>	<u>Date of Default in Petition</u>
28.03.2018	GPCL	RHWCCOR0 00068204	12 Months	10.03.2019



22.08.2018	GPCL	RHWCCOR0 00072588	12 Months	01.08.2019
24.08.2018	GPCL	RHWCCOR0 00072659	12 Months	01.08.2019

It is further submitted by the Corporate Debtor that the purported Balance Confirmation dated 30.09.2021 as given in Exhibit – “J” of the Petition cannot be considered as a Date of Default. Since, the date of actual default was to be ascertained as due date of said loan (as date of default in petition), whereas the present Petition is filed by the Financial Creditor beyond the period of limitation as on 12.10.2023.

18. The Corporate Debtor in respect of the aforementioned submissions contends the Petition to be dismissed.

Findings

19. We have considered submissions of learned counsel for both the parties and perused documents on record.
20. It is noted that the Corporate Debtor has not denied availing of the said loan extended by the original lender in year 2018. And the Corporate Debtor has also acknowledged the debt owed on Balance Confirmation Letter dated 30.09.2021 for an amount of Rs. 395,75,61,644/- (Rupees Three Hundred Ninety-Five Crores Seventy-Five Lakhs Sixty-One Thousand and Six Hundred and Forty-Four Only/-), including interest payable thereon. Therefore, the existence of the “debt and default” is not denied by the Corporate Debtor.



21. The objections/ defence raised by the corporate debtor as mentioned in para 17 above is as follows:
- I. Financial Distress
 - II. Prior Consent of Corporate Debtor to be obtained for execution of Deed of Assignment, unless obtained there exists no privity of contract
 - III. Petition is barred by Limitation
22. The Corporate Debtor contends to have suffered financial distress. The failure of negotiation in settlement of default, arising out of difficulty in business operations which was further aggravated due to Covid-19 pandemic, does not entail this Tribunal to encourage settlements and cannot direct the parties for settlement.
23. We note that the debt was assigned to the Financial Creditor by virtue of acquisition proceeds (slump sale) over Reliance Home Finance Limited. The RHFL/ said original lender was acquired by the Petitioner as a going concern in accordance with Section 5(7) the Code that defines the Financial Creditor to include a person to whom such debt has been legally assigned or transferred to.
24. We observe from the data available in public domain that the corporate debtor is a sister concern of one M/s Reliance Power Limited and the holding company of both the original lender and assignee were acquired from M/s Reliance Capital Limited by the acquirer (Authum Investment and Infrastructure Limited) on 14.10.2022 and 29.03.2023, respectively. Hence, the assignee is a subsidiary to the acquirer. Furthermore, the members of “Promoter and Promoter Group” of M/s Reliance Power Limited and M/s Reliance Capital Limited have been the same as to constitute group companies under Reliance Group.



25. We refer to sub-clause (b) of clause (57) of Facility cum Hypothecation Agreement (Exhibit - "E Colly) on page number 67 of the petition which reads as hereunder-:

"57. Assignment, Novation and Participation:

.....

(b) RHFL shall at any time, without any consent of or notice/intimation to the Borrower(s), be entitled to encumber, securitise, sell, assign, discount or transfer, and/or create security interest on, all or any part of the RHFL's rights, benefits, entitlements and/or obligations under or pursuant to or in relation to the Credit Facility, Outstandings, Purchased Asset this Agreement, security, Facility Documents, to any Person(s)/ in favour of any person(s) and in such manner and on such terms as RHFL may decide in its absolute discretion. Any such sale, assignment, or transfer by RHFL, the new lender shall have the right to revise the RHFL's rate of interest by linking the same to its own prime lending rate."

26. From the aforementioned, we understand that the Financial Creditor by virtue of Deed of Assignment dated 31.03.2023 exercised all rights which were vested in RHFL, by operation of law. The Deed of Assignment herein is perused to be duly executed and registered and the same has not been denied by the corporate debtor. Thus, there is privity of contract between the petitioner/financial creditor and the corporate debtor.

27. We find that the Corporate Debtor has defaulted on several terms in abiding to the repayment schedule of the GPCL facilities extended by the RHFL. It is pertinent to consider that the Corporate Debtor has acknowledged the debt owed to the Financial Creditor (FPCL) in Exhibit - "L Colly" and Exhibit- "J" of the petition as-:

- i. Further, the Financial Creditor (RCFL) had issued a Loan Recall Notice/ Termination of Agreement Letter via Registered Post



(Acknowledgement Due) dated 31.07.2023 and requested the Corporate Debtor to pay the outstanding dues. However, no reply to the said letter was communicated by the Corporate Debtor, and

- ii. Balance Confirmation Letter dated 30.09.2021 for an amount of Rs. 395,75,61,644/- (Rupees Three Hundred Ninety-Five Crores Seventy-Five Lakhs Sixty-One Thousand and Six Hundred and Forty-Four Only/-) including interest, respectively.

28. Further, the debt owed by the corporate debtor for an amount of Rs. 226,17,42,502.20 (*Rupees Two Hundred and Twenty-Six Crores Seventeen Lakhs Forty-Two Thousand Five Hundred and Two and Twenty Paise Only/-*) is substantiated in accordance with said Record of Default and the date of default as ascertained from the Petition and Form C filed with the Information Utility (IU) is reproduced as under:-

<u>Date of Sanction/ Loan Account No.</u>	<u>Facility Tenor (in months)</u>	<u>Date of Default</u>	
		Date given in Petition	Form-C
28.03.2018/ RHWCCOR000068204	12	10.03.2019	07.04.2019
22.08.2018/ RHWCCOR000072588	12	22.08.2019	26.08.2019
24.08.2018/ RHWCCOR000072659	12	24.08.2019	26.08.2019

29. Upon considering the information obtained from paragraph nos. 25,26 and 27, this Tribunal considers it sufficient to that the acknowledgement of debt by the corporate debtor within three years of date of default entails a fresh limitation period to be computed from time to time. The date of default and acknowledgement are two different events and hence, date of default is not dependent on acknowledgement of debt. Such that the limitation period is to be calculated afresh from 30.09.2021 (date of acknowledgement of debt) which ends on



30.09.2024 (appx.). Accordingly, the Petition was filed on 12.10.2023, which is within limitation. Further, we place reliance on ***Laxmi Pat Surana versus Union of India (Civil Appeal No. 2734 of 2020)*** wherein the Hon'ble Supreme Court have observed that acknowledgement of debt by the corporate debtor would reinstate the cycle of limitation period for further three years from such acknowledgement of debt.


“40. ...The liability of the corporate debtor (corporate guarantor) also triggers when the principal borrower acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues and fails to pay the acknowledged debt. Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor.

42. Instead, we affirm the view taken by the NCLT and which commended to the NCLAT — that a fresh period of limitation is required to be computed from the date of acknowledgment of debt by the principal borrower from time to time...”

(emphasis supplied)

30. Further, it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under Section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr, (2018) 1 SCC 407***, wherein it was held as follows:

“28. ... 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' 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 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."*

(emphasis supplied)

31. From perusal of the record and the documents relied upon by the Petitioner, it is hereby proved that there has been a financial debt in respect of which default is committed by the Corporate Debtor and further the petition under Section 7 of the IBC is filed within the period of limitation period and the default amount is in excess of Rs. 1 Crore and is above the threshold limit mandated under Section 4(1) of the Code. Accordingly, we are satisfied that the present Petition is maintainable.
32. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition (IB)/104(MB)/2024 is admitted and ordered as follows:

ORDER

- i. The petition bearing CP (IB) – 104(MB)/2024 filed by the **Reliance Commercial Finance Limited**, the Financial Creditor, under section 7 of the IBC read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating



Corporate Insolvency Resolution Process against **RPL Star Power Private Limited**, the Corporate Debtor, is **admitted**.

- ii. This bench looking into the written communication dated 05.10.2023 hereby **appoints Truee IPE Private Limited, Registration No. IBBI/IPE-0151/IPA-1/2023-24/50052 as the Interim Resolution Professional ('IRP')** having **e-mail** jain_cp@yahoo.com to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016. The Written Communication is accompanied by Authorization for Assignment ('AFA') given by proposed IRP. Upon checking IBBI webportal, it is found that AFA is valid upto 30.06.2025.
- iii. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor
- iv. Notwithstanding the above, during the period of moratorium:



- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

- v. 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.

- vi. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.

- vii. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code. 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.

- viii. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

- ix. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.

- x. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.



- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xii. Accordingly, this Petition is **Admitted**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Akshita, L.R.A.