

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA 1071/2022  
AND  
IA 2462/2022  
IN  
CP (IB) No.308/MB-IV/2022**

Under Section 7 of the IBC, 2016

*In the matter of*  
Clearwater Capital Partners Singapore  
Fund V Private Limited  
[UEN: 201535567D]

...Financial Creditor

v/s.

Renaissance Urban Infra Private Limited  
[CIN: U31901MH2001PTC220378]

...Corporate Debtor

**Order Delivered on: 02.05.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner:

Ms. Priyanka Shetty, Ld. Counsel

For the Respondent:

Mr. J.P Sen, Ld. Counsel

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) Clearwater Capital Partners Singapore Fund Private Limited, (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Renaissance Urban Infra Private Limited, (“the Corporate Debtor”).

1.1. The Corporate Debtor and its group company RIIPL are engaged in the business of infrastructure developments and creation of industrial smart cities.

1.2. The total amount outstanding is Rs.76,66,74,797/- as on January 31, 2022 which comprises of the Principal amount of Rs. 51,12,87,158/- together with repayment instalment of Rs. 7,14,00,000/-, Capitalised interest of Rs. 33,45,599/- interest of Rs. 17,70,77,207/- and penalty interest of Rs. 35,64,833/- as on January 31, 2022. The Date of Default as Specified in Part IV of the petition is 28.07.2021/- (due date for payment of outstanding amount demanded vide the payment default notice dated July 23, 2021, the entire outstanding amount was repayable within 3 days from the dated of Notice).

1.3. The Corporate Debtor issued 260 (two hundred and sixty) unlisted, secured, redeemable non- convertible debentures of a nominal value of Rs. 1,00,00,000 (Rupees one crore) each on a private placement offer,

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aggregating to Rs. 260,00,00,000 (Rupees two hundred sixty crore) to specific investors, including the Financial Creditor pursuant to a debenture trust deed dated June 26, 2018 ("DTD"), inter alia executed between the Corporate Debtor, Renaissance Indus Infra Private Limited ("RIIPL"), Mr. Mayur Ratilal Suchak, Mrs. Deepti Mayur Suchak and Vistra ITCL (India) Limited in its capacity of a debenture trustee ("Debenture Trustee").

- 1.4. Out of the 260 non-convertible debentures, the Corporate Debtor issued 50 non-convertible debentures, for a principal amount aggregating up to Rs. 50,00,00,000 (Rupees fifty crore), to the Financial Creditor on June 29, 2018 ("NCDs").
- 1.5. The Corporate Debtor defaulted in payment of interest aggregating up to Rs. 4,64,97,284/- in respect of NCDs in the following manner:
  - i. for quarter ended March 31, 2021, an amount of Rs. 2,31,20,196/- ; and
  - ii. for the quarter ended June, 2021, an amount of Rs. 2,33,77,087/-.
- 1.6. The Financial Creditor issued a notice dated July 23,2021 to the Corporate Debtor and also notified the Debenture Trustee, RIIPL, Mrs. Deepti Mayur Suchak and Mr. Mayur Ratilal Suchak to immediately and in any event within 3 days pay an amount aggregating up to Rs. 4,68,43,137/- as on June 30, 2021, with further interest on the aforesaid sum at the rate specified in DTD, till receipt of payment of the same to the Financial Creditor's satisfaction.

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- 1.7. As no amounts were forthcoming, the Financial Creditor issued a payment default notice dated July 23, 2021, an acceleration notice dated July 29, 2021 and eventually a guarantee invocation notice dated November 1, 2021. However, the Corporate Debtor failed to pay the outstanding amounts.
2. The Corporate Debtor has filed affidavit in reply stated that, the Financial Creditor is neither signatory to the Debenture Trust Deed nor is a named beneficiary under the Debenture Trust Deed; there is no contract or a definitive agreement entered between the Financial Creditor and the Corporate Debtor; the Financial Creditor has suppressed facts; he has failed to establish under what document, the Financial Creditor is seeking enforcement of its rights, as there is no contracts, documents, writings etc. entered into between the Corporate Debtor and the Financial Creditor; The Financial Creditor has not followed the procedure prescribed under the inter-creditor agreement dated 26 June 2018; the entire loan forms part of one composite transaction between the Corporate Debtor, Financial Creditor and M/s Altico Capital India Limited; petition is not duly notarized.
3. The Financial Creditor has filed Affidavit in Rejoinder in which the Financial Creditor has denied all the allegations, averments made by the Corporate Debtor.
  - 3.1 The Renaissance group i.e. the Corporate Debtor and Renaissance Indus Infra Private Limited (RIIPL") issued non-convertible debentures on a private placement basis to certain investors. The Corporate Debtor issued 260 (two hundred and sixty) unlisted, secured, redeemable non-convertible debentures of a nominal value of Rs. 1,00,00,000 (Rupees one

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crore) each on a private placement offer, aggregating to Rs. 260,00,00,000 (Rupees two hundred sixty crore) to specific investors, including the Financial Creditor pursuant to DTD. RI IPL (which is also the corporate guarantor to the 260 non-convertible debentures issued by the Corporate Debtor) issued 390 (three hundred ninety) unlisted, secured, redeemable non-convertible debentures for an amount aggregating to Rs. 390,00,00,000 (Rupees three hundred ninety crore) ("RI IPL's NCDs") on the terms and conditions set out in the debenture trust deed dated June 26, 2018 ("RI IPL DTD"). The present Financial Creditor has been issued 50 non-convertible debentures issued by the present Corporate Debtor. The rest of the non-convertible debentures issued by both RI IPL and the Corporate Debtor were held by M/s Altico Capital India Limited ("Altico"). The non-convertible debentures issued by the Corporate Debtor were initially held by Altico and subsequently transferred to Real Estate Receivable Trust with Catalyst Trusteeship Limited as the trustee. The Corporate Debtor is the corporate guarantor and the pledgor to RI IPL's NCDs. Even though Altico was the majority debenture holder, the present Financial Creditor owns more than 10 (ten percent) of the total non-convertible debentures issued by the Corporate Debtor and hence complies with the requirement to file an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 CIBC).

- 3.2 The DTD was inter alia executed between the Corporate Debtor, RI IPL, Mr. Mayur Ratilal Suchak, Mrs. Deepti Mayur Suchak and Vistra TTCL (India) Limited ("Vistra") in its capacity of a debenture trustee (Debenture Trustee'). Vistra in its capacity of a Debenture Trustee is only an agent of the debenture holder i.e. the Financial Creditor. Vistra and the Corporate

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Debtor had also executed a debenture trustee appointment agreement dated 21st June 2018 ("DTA"). Neither the DTD nor the DTA restrains any of the debenture holders, including the Financial Creditor, from seeking to enforce its rights under the DTD. On the contrary, the DTD gives an unqualified and independent right to the Financial Creditor to take all such actions as may be necessary in case of an event of default. There is no fetter in law or even otherwise which states that the debenture holder cannot independently file an application seeking to initiate corporate insolvency resolution process ("CIRP") against the Corporate Debtor. Vistra in no way can limit/erase the rights of the Financial Creditor under any given circumstances.

- 3.3 The Corporate Debtor in the subsequent paragraphs of the same Reply, has categorically admitted the fact the Financial Creditor has disbursed a loan amount of Rs. 50,00,00,000 (Rupees fifty crores only) to the Corporate Debtor towards subscription of NCDs. Moreover, the Corporate Debtor has itself annexed letters addressed by the Corporate Debtor to the Financial Creditor, including a letter dated 27 June 2018 (at page 923- Exhibit 4), which categorically states that the Financial Creditor's name has been recorded for the proposed issue of non-convertible debentures on a private placement basis issued by the Corporate Debtor. Further, the Corporate Debtor has also annexed certain emails/letters addressed by the Corporate Debtor to the Financial Creditor to reconsider the moratorium period for payment of interest.
- 3.4 The ICA was executed between Vistra in its capacity of a debenture trustee of the Corporate Debtor and RIIPL for the purpose of coordinating the enforcement of security interest and the exercise of their

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rights, powers and remedies, which essentially arise from the DTD. Since the rights of the parties are already established in the DTD, the Financial Creditor did not specifically annex the ICA. The Financial Creditor had no intention to suppress the same as sought to be desperately suggested. The terms of the ICA are clear and categorically state that "any of the finance parties, which includes the present Financial Creditor, by itself or instruct the debenture trustee i.e. Vistra, can take any action for acceleration of the secured obligations or declaring that the same is due and payable." The ICA also specifically gives a right to the Financial Creditor to initiate or commence any insolvency process under the in respect of any of obligors. There is no clause in the ICA which mandates the debenture holders to act jointly for enforcing their rights under the ICA. Since the Financial Creditor is entitled to commence an enforcement action against the Corporate Debtor, the Enforcement Action Notice dated 23rd July 23, 2021 was issued to Altico and Vistra ITCL (India) Limited, thereby notifying them that an fundamental default has occurred.

- 3.5 There is a composite loan transaction between the Corporate Debtor, Financial Creditor and Altico. The Corporate Debtor has addressed separate emails and letters to the Financial Creditor with respect to the loan amount. Even assuming that Altico is a majority debenture holder, that does not make the transaction a composite one. The Corporate Debtor has neither relied upon nor annexed any single document to support the contention that Altico was the single point of contact for the Corporate Debtor, especially when the Corporate Debtor itself admits that the Financial Creditor has sanctioned/disbursed an amount of Rs.

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50,00,00,000/- (Rupees fifty crores only). The Corporate Debtor on one hand contents that no contract/agreement was executed between the Financial Creditor and the Corporate Debtor, however, on the other hand admits that Altico (who is also a debenture holder) was its sole point of a contact for all negotiations and discussions.

- 3.6 The Corporate Debtor furnished term sheets which were allegedly issued by Asia Pragati Strategic Investment Fund("PAG") and M/s Ascendas India Trust. In any event, the term sheet appears to be for "discussion purpose only" and "not binding on any parties". The term sheets are not signed by any party. Moreover, the term sheet annexed by the Corporate Debtor issued by PAG does not pertain to the present loan transaction, but the non-convertible debentures issued by RI IPL. Essentially, the Corporate Debtor has failed to make the payments to the Financial Creditor. The Financial Creditor has not executed any term sheets for extension of credit. Even in the unsigned term sheets, the Financial Creditor is classified as an existing lender.

Findings:

4. We have heard both the parties and perused the material on record.
5. As per the material on record, this bench of the considered view that, there is unequivocal admission of liability on the part of the Corporate Debtor in its reply. From the petition, pleadings made and arguments extended by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs. Rs.76,66,74,797/- is the total amount in default and payable by the Corporate Debtor to the Financial Creditor.
6. On perusal of the documents submitted by the Applicant, it is clear that Financial Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore

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Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount.

7. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.
8. Accordingly, in view of the findings the IA No 1071/2022 seeking dismissal of main Company Petition No. 308/2022 is hereby dismissed as infructuous.
9. In view of admission of Corporate Debtor into Corporate Insolvency Regulation Process, IA No. 2462/2022 seeking to restrain the Corporate Debtor from, transferring, selling, alienating, disposing off or creating any third-party rights in any of its assets along with other prayer of early hearing in CP No. 308/2022 is hereby dismissed as infructuous.

**ORDER**

10. The petition bearing CP(IB) No. 308/2022 filed by, Clearwater Capital Partners Singapore Fund Private Limited Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Renaissance Urban Infra Private Limited is **admitted**.

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- a) 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.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) 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;

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- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints Mr. Divyesh Desai, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00169/2017-18/10338 and email- divyeshdesai@singhico.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all

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documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)  
02.05.2023.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)