

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

**C.P. No. 4001/IBC/MB/2019**

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

*In the matter of*

**Reliance Commercial Finance  
Limited**

(CIN: U66010MH2000PLC128301)  
Reliance Centre, 6<sup>th</sup> Floor, South  
Wing, Off. Western Express Highway,  
Santacruz (East), Mumbai - 400055  
.....**Financial Creditor**

**Vs**

**Broadband Pacenet (India) Private  
Limited**

(CIN: U72900MH2000PTC125900)  
Registered office at: A-Wing, 602,  
Everest Grande, Building, Mahakali  
Caves Road, Opp. Ahura Centre,  
Andheri (East), Mumbai - 400093  
.....**Corporate Debtor**

**Order delivered on: 10.03.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Ayush J. Rajani, PCA

**For the Respondent:** Mr. Madhar Zatakia, Advocate

**Per: Shri H.V. Subba Rao, Member (Judicial)**

1. This Company petition is filed by Reliance Commercial Finance Limited (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Broadband Pacenet (India) Private Limited (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 14,73,29,525/-.
2. The brief facts of the case are as follows:-
  - i. The Corporate Debtor had approached the Financial Creditor to avail loan facilities to be utilized for working capital requirements. The Financial Creditor agreed to grant loan to the Corporate Debtor vide letter dated 31.08.2017, for a sum Term Loan of Rs. 9,20,00,000/-.
  - ii. A Facility Agreement was entered by the Financial Creditor and the Corporate Debtor on 31.08.2017 and security documents were executed by the Corporate Debtor through its Directors and Personal Guarantors of directors viz Mr. Jagjit Singh Kohli and Mr. Yogesh Shah in favour of the Financial Creditors.
  - iii. The Financial Creditor further submits that other security documents such as Deed of Hypothecation, Pledge Agreement as well as Guarantee Agreements were executed to grant the Loan Facilities.
  - iv. Further, the amount of Loan of Rs. 9,20,00,000/- was disbursed by the Financial Creditor on 31.08.2017. However, on 09.05.2019 the Corporate Debtor failed to repay the dues, pursuant to which the loan account was declared as Non-Performing Asset (“NPA”).

- v. As on 13.08.2019, the Corporate Debtor has to pay to the Financial Creditor an amount of Rs. 14,73,29,525/- (Rupees Fourteen Crores Seventy Three Lakhs Twenty Nine Thousand Five Hundred and Twenty Five Only)]. The Financial Creditor is filed the present petitioner under Section 7 of the code as the Corporate Debtor had defaulted in payment their dues to the financial creditor.
3. The Corporate Debtor has on the contrary, denied all the averments and allegations raised by the Financial Creditor. The contentions of the Corporate Debtor are summed up as follows:
    - i. The Corporate Debtor/Respondent submitted in his reply that there was no contract, arrangement or agreement with the Financial Creditor. The amount claimed by the Financial Creditor is not a 'financial debt' as defined under the Insolvency and Bankruptcy Code, 2016 ("**Code**") but a share premium paid by the Financial Creditor to the Corporate Debtor.
    - ii. The Corporate Debtor submits that, on 01.20.2010, a Company Scheme Petition no. 616 of 2010 was filed by him before the Bombay High Court under Section 391 to 394 to the Companies Act, 1956 for the purpose of seeking the approval of the Bombay High Court for a scheme of arrangement presented for transfer and vesting of Reliance Communications Infrastructure Limited ("**Demerged Company**") into the Corporate Debtor.
    - iii. On 25.02.2011, the Scheme of Arrangement between the Demerged Company and the Corporate Debtor was sanctioned by the Bombay High Court.

- iv. On 05.02.2011, a facility loan agreement is executed between the Corporate Debtor and Demerged Company i.e. during the pendency of the Scheme, the Financial Creditor has agreed to grant a loan of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) subject to the terms and conditions. This sum given by the Financial Creditor as quasi equity and on the premise, understanding and agreement that the Financial Creditor (either directly or through the Reliance Group) would be buying party equity in the Corporate Debtor and it was expressly agreed and understood that no interest thereon would not be repaid, by Corporate Debtor at all.
- v. It was decided by both the parties, through the proposed arrangement of loan to be converted into equity was accepted by the Corporate Debtor. The application before the Hon'ble High Court to approve the said arrangement was accepted on 25.02.2011. Thereafter, on 20.07.2012 both the parties accepted revolving term of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) and on the terms and conditions.
- vi. Further, the Ministry of Information & Broadcasting (**"MIB"**) disallowed and objected to the above arrangement due to Cross Media Restriction i.e. a Company cannot conduct DTH Business and Cable Business at the same time and under the same Company. Accordingly, the arrangement was withdrawn through an application before the Bombay High Court by an order dated 01.02.2013, the said arrangement was withdrawn from the Bombay High Court.

- vii. Thereafter, in order to conclude the matter, various blank cheques were drawn in favour of the Financial Creditor by the Corporate Debtor. Further, the Corporate Debtor also made a payment of Rs. 16,12,54,664/- (Rupees Sixteen Crore Twelve Lakh Fifty Four Thousand Six Hundred and Sixty Four Only) along with interest to the Financial Creditor as part of quasi equity repayment towards the full and final settlement of the outstanding dues.
- viii. The Corporate Debtor further submits that on 13.12.2019, he received a notice from the Financial Creditor claiming a sum of Rs. 15,76,86,311. To which the Corporate Debtor replied on 30.12.2019 placing the facts on record and raised various objections to demonstrate that no debt is due and payable by him, to which the Financial Creditor failed and neglected to respond thereby admitting and confirming the contents of the same.
- ix. Further, the debt claimed by the Petitioner are in the nature of a dispute debt from Arbitration Petition No. 169 of 2020 filed by the Financial Creditor against the Corporate Debtor before the Hon'ble Bombay High Court. The Financial Creditor has suppressed this particular material fact from the Hon'ble Tribunal including non-disclosure of material and relevant discussions / correspondence between the Financial Creditor and the Corporate Debtor in respect of the alleged debt.
- x. The Corporate Debtor states that the Financial Creditor is seeking to recover substantial sums of money in the form of penal interest which is not only contrary to

terms of the alleged agreement with the Corporate Debtor but also guidelines issued by the Reserve Bank of India ("**RBI**").

- xi. Hence, this Petitioner has not approached this Hon'ble Tribunal with clean hands and on this ground along the Petition ought to be dismissed.

### **FINDINGS**

1. Heard both the sides and perused the record.
2. The Learned Counsel appearing for the Financial Creditor submitted his arguments in the light of pleadings. He submits that a term loan/ financial assistance was sanctioned to the Corporate Debtor vide sanction letter dated 31.08.2017. Annexed at page 32-38 of the application.
3. The Learned Counsel appearing for the petitioner invited the attention of this bench to the Board Resolution dated 31.08.2017 of the Digicable whereunder it was clearly mentioned that the Corporate Debtor has approached the RCFL for working capital loan Rs. 9,20,00,000/- against pledge of 60 % of the shareholding of the Corporate Debtor in Digicable. The counsel for the petitioner also invited the attention to the Facility Agreement and the promissory note dated 31.08.2017 signed by the Corporate Debtor and also shown the statement of account of the Corporate Debtor in the books of the Financial Creditor showing the details of disbursement of the amounts to the Corporate Debtor to establish the "debt" and "default". The counsel appearing for the Petitioner submits that the above Company Petition

being filed on 11.11.2019 is well within limitation from the date of sanction/disbursal of loan.

4. The Learned Counsel appearing for the Corporate Debtor made an unsuccessful attempt to convince this Bench as if there is no Financial Debt due and payable to the Financial Creditor and the alleged Financial Debt claimed by the Financial Creditor arises out of some scheme of arrangement that was sanctioned by the Hon'ble Bombay High Court in Company Petition No. 616/2010 filed by the Corporate Debtor before the Hon'ble Bombay High Court. In this connection this bench notes that the alleged scheme of arrangement was sanctioned way back in 2011 whereas the present loan was sanctioned by the Applicant in August 2017. The documents referred above and relied upon by the Financial Creditor clearly establish the sanction of loan to the Corporate Debtor in 2017. The Corporate Debtor did not file any documentary evidence before this bench to substantiate his pleas.
5. As discussed above, the "debt" and "default" are clearly proved in this case and the debt is also within limitation. The application is complete in all respects and the Financial Creditor also suggested the name of Mr. Ashok Kripalani as Interim Resolution Professional, the petitioner also filed form-2, consent letter of Mr. Ashok Kripalani along with the application. Thus, the present Company Petition satisfies all the necessary legal requirements for admission.
6. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -4001(MB)/2019 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Broadband Pacenet (India) Private Limited.
- b. This Bench hereby appoints **Mr. Ashok Kripalani**, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00009/2016-17/10071, having Registered Address at: 10/18, 1<sup>st</sup> Floor, Old Rajendra Nagar, New Delhi – 110060 and having Registered Email as: ashokkripalani1956@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**