

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - 1

CP (IB) - 1231/MB/2021

In the matter of:

A petition under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019;

and

In the matter of:

Reserve Bank of India

.... Petitioner/ Appropriate Regulator

Vs.

Reliance Capital Limited

... Respondent/ Financial Service Provider

Order reserved on: 06.12.2021

Order pronounced on: 06.12.2021

Coram:

Hon'ble Justice Shri Pradeep Narhari Deshmukh, Member (J)

Hon'ble Shri Kapal Kumar Vohra, Member (T)

Appearances (through video conferencing)

For the Petitioner: Adv Ravi Kadam, Senior Counsel

For the Administrator: Mr Nageswara Rao Y, Administrator, Adv Rohan Rajadhyaksha a/w Adv Nirman Sharma i/b Adv Abhishek Adke

For the Respondent: Adv D J Kakalia, for the promoters of Respondent

ORDER

Per: Coram

1. This is an application filed by the Reserve Bank of India (Appropriate Regulator) under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 (Code) for initiation of Corporate Insolvency Resolution Process (CIRP) against Reliance Capital Limited (RCL), the Financial Service Provider (FSP).

2. To a specific query to Ld Sr Counsel for petitioner with regard to challenge to order of appointment of administrator, on instructions, it is stated that no proceedings are pending before any court of law nor there is any stay.

3. We have heard Mr. Ravi Kadam, Ld Sr Counsel appearing for the Petitioner/Appropriate Regulator and perused the records.

4. The respondent/FSP is a company registered under the Companies Act, 1956, having CIN as L65910MH1986PLC165645 and registered with the Registrar of Companies, Mumbai. Therefore, this Bench has jurisdiction to deal with the present petition.

5. Learned Senior Counsel appearing on behalf of the Petitioner/Appropriate Regulator submits as follows:

- i. In view of the powers conferred under Section 45-IE (1) of the Reserve Bank of India Act, 1934, the Reserve Bank of India (RBI) superseded the Board of Directors of RCL/Respondent/FSP on 29.11.2021 in view of the defaults by RCL in meeting various payment obligations to its creditors (page 14 of petition);
- ii. There are many financial creditors to whom the RCL is liable to

pay and has defaulted (page 489 of petition). In particular, Yes Bank Limited (YBL) intimated to RBI on 02.12.2021 that the amount claimed to be in default in relation to 9,870 secured non-convertible debentures (NCDs) is Rs 987,00,00,000 (principal amount) and Rs. 430,80,51,298 (interest) [page 26] totalling to Rs. 1417,80,51,298.

iii. Date of default with reference to repayment is stated to be 13.10.2019.

6. The supporting documents submitted by the YBL to RBI contain the following:

- a. Debenture Trust Deed dated 21.07.2017;
- b. Information Memorandum dated 13.10.2017;
- c. Letter dated 15.10.2019 from YBL to the Respondent for accelerating repayment of all NCDs (page 478 of petition);
- d. Demat statement of accounts as of 30.11.2021;
- e. Account statement; and
- f. Certificate under the Bankers Books Evidence Act, 1891.

Letter dated 02.12.2021 from YBL referred to report of Central Repository of Information on Large Credits (CRILC) as on 29.11.2021 demonstrating that the account is in default with the status of 'doubtful' (i.e. account has been classified as a NPA for more than 12 months, in accordance with the RBI master circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to advances).

7. The RBI vide its notification dated 29.11.2021, in exercise of its powers under section 45-IE of the Reserve Bank of India Act, 1934, superseded the Board of Directors of RCL and appointed Mr Nageswara

Rao Y, as the Administrator (page 14 of petition). RBI has also constituted a three-member Advisory Committee on 30.11.2021 to assist the Administrator of RCL in the discharge of its duties. RBI has proposed the same person (Mr Nageswara Rao Y) to be appointed as the Administrator of the FSP.

8. Ld Senior Counsel appearing for the Appropriate Regulator submits that in view of the default committed by the FSP, there is a need to initiate CIRP against the respondent. He, therefore, urged this Adjudicating Authority (AA) to pass appropriate order expeditiously keeping in view the public interest in the matter.

9. Mr D. J. Kakalia, Counsel for the Promoters supported the Petition. Also heard Ld Counsel for the Administrator. Administrator is present,

10. Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 (Rules) mandates that no CIRP shall be initiated against an FSP which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6 of the Rules. Sub-clause (ii) thereof specifies that an application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7 of the Code.

11. As mentioned above, total amount of debt is Rs 1417,80,51,298 and default occurred on 13.10.2019. This petition has proved the existence of debt and default to meet the requirements of section 7 of the Code. The total amount in default is in excess of limit prescribed under section 4 of the Code, which at present is Rupees one crore. This petition is filed on 02.12.2021 Thus, the present petition is not hit by limitation.

12. Having considering the facts as afore stated, we are satisfied that this is a fit case for initiation proceedings under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 and the debt in question qualifies as financial debt under section 5(8)(c) read with section 3(11) of the Code.

13. The RBI vide its notification dated 29.11.2021 has superseded the Board of RCL and appointed Mr Nageswara Rao Y, ex-Executive Director, Bank of Maharashtra as the Administrator. The RBI has proposed the name of Mr Nageswara Rao Y, as the Administrator of the FSP. The Administrator has also filed his written consent in Form 2 to act as Administrator, which has been placed on record at pages 12-13 of the petition.

14. The Petition filed by the Reserve Bank of India is thus complete in all respects as required by law. It clearly shows that the Respondent/FSP is in default of a debt due and payable and the default is more than the minimum amount as stipulated under section 4(1) of the Code. The default stands established and there is no reason to deny the admission of the Petition. Therefore, this Adjudicating Authority hereby admits this Petition and orders as follows:

- a. The Petition bearing CP (IB) No. 1231/MB/2021 filed by the RBI, the Appropriate Regulator, under section 227 of the Code read with rule 5 of the Rules for initiating Corporate Insolvency Resolution Process against Reliance Capital Limited [CIN: L65910MH1986PLC165645], the Financial Service Provider, is hereby **admitted**.
- b. There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.

- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under section 31(1) of the Code or passes an order for liquidation of the FSP under section 33 of the Code, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code.
 - e. In terms of rule 5(a)(iii) of the Rules, Mr Nageswara Rao Y, Trade World, b- Wing, 7th floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai - 400013, e-mail id: Rbi.administrator@relianceada.com is hereby appointed as Administrator of the FSP to carry out the functions as per the Code. The Administrator shall carry out his functions as contemplated by sections 15, 17, 18, 19 and 20 of the Code.
 - f. During the CIRP period, the management of the FSP shall vest in the Administrator. The officers and managers of the FSP shall provide all documents in their possession and furnish every information in their knowledge to the Administrator.
 - g. The Registry is hereby directed to communicate this Order to the Petitioner/ Reserve Bank of India and the Administrator by Speed Post, e-mail immediately.
 - h. Additionally, the Administrator shall serve a copy of this Order on the Registrar of Companies, Mumbai by all available means for updating the Master Data of the Financial Service Provider. 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.
15. CP(IB)-1231/MB/2021 to come up on 21.02.2022 for filing the progress report.

16. Certified copy of this order be issued, if applied for, upon compliance with all requisite formalities.

SD/-
Kapal Kumar Vohra
Member (T)

SD/-
Justice Pradeep Narhari Deshmukh
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Sr. No. 1
CP (IB) 1231/MB/2021

IN THE MATTER OF:
Reserve Bank of India
V/s
Reliance Capital Ltd.

... Financial Creditor
... Corporate Debtor

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on **06.12.2021**

CORAM:
JUSTICE PRADEEP NARHARI DESHMUKH
HON'BLE MEMBER (JUDICIAL)

SH. KAPAL KUMAR VOHRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Mr. Ravi Kadam, Ld. Sr. Counsel

For the Administrator: Mr. Nageswara Rao Y, Administrator, Adv
Rohan Rajadhyaksha a/w Adv Nirman
Sharma i/b Adv Abhishek Adke.

For the Respondent: Adv D J Kakalia, for the promoters of
Respondent.

ORDER

Orders Pronounced. Petition is admitted.

List this matter on 21.02.22 for progress report.

Sd/-

(JUSTICE PRADEEP NARHARI DESHMUKH)
MEMBER (JUDICIAL)

Sd/-

(KAPAL KUMAR VOHRA)
MEMBER (TECHNICAL)

VEDANT