

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

IA 2682/2022 in CP (IB) 265/MB/2020

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016.

D B Realty Limited

DB Central Maulana Azad Road, Rangwala Compound, Jacob Circle, Mumbai-400011

...Applicant/Original Respondent

Versus

Reliance Commercial Finance Limited

7th Floor, B Wing, Trade World, Kamala Mills Compound, S.B. Marg, Lower Parel, Mumbai 400013

...Respondent/Original Petitioner

In the matter of

Reliance Commercial Finance Limited

... Financial Creditor

Versus

D B Realty Limited

...Corporate Debtor

Order Delivered on 23.12.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Sh Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Gaurav Joshi, Sr. Advocate
Counsel.

For the Respondent : Mr. Prateek Seksaria, Ld. Counsel.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The present Interlocutory Application is filed by **D B Realty Limited** ("the Applicant/Original Respondent") against **Reliance Commercial Finance Limited** ("Respondent/Original Petitioner"), under Section 60(5) of the Insolvency Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 ("the Code").
2. This Application is filed strictly without prejudice to the Applicants/Original Respondent's contentions in the captioned Company Petition, and more particularly the Original Respondent's pleadings viz. Interlocutory Application No.1493 of 2021 and the Affidavit in Reply to the Company Petition annexed thereto. Vide this Application the Applicant sought following reliefs:
 - a. That this Tribunal be pleased to implead Authum Investment and Infrastructure Limited having its address at 707, Raheja Centre, Free Press Journal Marg, Nariman Point, Mumbai-400021 in the present matter in place of the Original Petitioner before proceeding with further hearing of the captioned Company Petition;
 - b. In the alternate to the above prayer clause (a), that this Hon'ble Tribunal be pleased to implead Authum Investment and Infrastructure Limited having its address at 707, Raheja Centre, Free Press Journal Marg, Nariman Point, Mumbai- 400021 as party to the present proceedings before further hearing of the captioned Company Petition;

c. For such other orders as may be necessary in the interest of justice.

Brief facts:

3. In view of defaults by Reliance Capital Limited ("RCL") in meeting its various payment and debt servicing obligations to its creditors, on November 29, 2021, the Reserve Bank of India ("RBI") superseded the Board of Directors of RCL. A copy of the press release dated November 29, 2021, by the RBI is annexed and marked as Exhibit "A" to this Application.
4. Accordingly, on December 6, 2021, this Tribunal passed an order admitting the petition filed by the RBI and appointed Mr Y Nageswara Rao as the administrator of RCL with the powers of an IRP under the Code. A copy of the order dated December 6, 2021, passed by this Tribunal is annexed and marked as Exhibit "B" to the Application.
5. Therefore, in view of the Resolution Plan, it is evident that all claims including the present claim due and payable to the Original Petitioner is covered under the Resolution Plan approved in favour of Authum. In view thereof, the Original Petitioner cannot prosecute the present claim against the Applicant / Original Respondent. The right and correct party, if any, to prosecute the present claim will be Authum as per the Resolution Plan. In any event, given the impending takeover of the Original Petitioner by Authum, it would be wholly inappropriate for the Original Petitioner in its present avatar/ through its present management (who are in any event illegitimate given the Administrator's appointment) to take crucial decisions as to the Applicant / Original Respondent and the Facilities, particularly when an eminently reasonable settlement proposal has been forwarded, with tangible demonstration of good faith and bona fides.

6. Recently, an order dated August 30, 2022 ("Order") passed by the Hon'ble Supreme Court approving a resolution plan of the Original Petitioner. A copy of the order dated August 30, 2022, passed by the Hon'ble Supreme Court is annexed and marked as Exhibit "G" to the Application. It appears that Authum is the successful resolution applicant in respect of the Original Petitioner and will very shortly take over the Original Petitioner entirely. Various media articles in this regard are annexed and marked as Exhibit -"H" Colly to the Application.

Submission of Applicant by way of Interlocutory Application:

7. In December 2016, Reliance Capital Limited ("RCL") had sanctioned a credit facility of Rs.2,00,00,000/- (Rupees Two Crore only) ("Facility 1") to the Original Respondent.
8. Thereafter, RCL, the Original Petitioner and their respective shareholders and creditors proposed a Scheme of Arrangement, whereunder all properties, assets, liabilities, permits, licenses, registrations, approvals, contracts and employees etc. of RCL would be transferred to the Original Petitioner.
9. Accordingly, by an order dated December 9, 2016, the Hon'ble Bombay High Court sanctioned the Scheme of Arrangement. Consequently, all properties, assets, liabilities, permits, licenses, registrations, approvals, contracts and employees etc. of RCL were transferred to the Original Petitioner ("Scheme of Arrangement").
10. Subsequent to the Scheme of Arrangement, in March, 2018, the Original Petitioner sanctioned credit facility of Rs.107,05,00,000/- (Rupees One Hundred and Seven Crore and Five Lakh only) ("Facility 2"). Facility 1

and Facility 2 together are collectively referred hereinunder as the "Facilities".

11. The Applicant/Original Respondent had availed the Facilities as corporate loan in order to develop a real estate residential project "Orchid Golf View Park" located at Yerwada, Pune ("Project").
12. The Administrator has been appointed in respect of RCL, the Original Respondent addressed a letter dated June 24, 2022, to the Administrator and core committee of RCL comprising inter alia Bank of Baroda, Yes Bank, State Bank of India, NABARD, Union Bank of India, and Corporation Bank, stating that the Original Respondent is ready and willing to pay a sum of Rs.142,94,00,000/- (Rupees One Hundred and Forty-Two Crores Ninety-Four Lakh only) towards repayment of the Facilities and interest due thereon in accordance with the repayment schedule as more particularly mentioned in the said letter. A copy of the letter dated June 24, 2022, along with the previous correspondence addressed by the Original Respondent is annexed and marked as Exhibit "C" to the Application.
13. As there was no response to the said letter, the Original Respondent addressed a letter dated July 13, 2022, to the Hon'ble Governor of the RBI and Hon'ble Secretary of Finance stating the aforesaid circumstances and expressing how unfortunate it was that when a borrower is ready and willing to pay the entire principal amount along with interest at a reasonable rate, the lenders do not want to accept the money and initiate frivolous litigation against the borrower to arm-twist and extort money.
14. On June 7, 2019, the RBI issued the Reserve Bank of India Prudential Framework for the Resolution of Stressed Assets Directions 2019 ("RBI

Circular"), to provide a framework for early recognition, reporting and time bound resolution of stressed assets. Under the RBI Circular, certain lenders may opt for a resolution strategy available to them under the existing legal framework, including entering into a resolution plan or initiating legal proceedings for recovery or insolvency. If the lenders chose to implement a Resolution Plan, they were required to enter into an inter-creditor agreement ("ICA"). Accordingly, Bank of Baroda the lead bank and other lenders of the Original Petitioner entered into an ICA on July 6, 2019, pursuant to the RBI Circular.

15. The members of the ICA opted for a resolution plan in accordance with the RBI Circular. In view thereof, The Resolution Plan was submitted by Authum Investment and Infrastructure Limited ("Authum") on January 15, 2021, which came to approved on July 15, 2021.
16. Pertinently, under the Resolution Plan, it was agreed that as per "Clause 40-Financial Claims or FC Claims or Financial Creditor Claims or FC Dues means all amounts or claims to a financial creditor"
17. Accordingly, upon being aware of the Order, the Applicant addressed a letter dated September 13, 2022, very briefly narrating the aforesaid facts and expressing its bonafide made a reasonable and acceptable offer of Rs.142,94,00,000/- (Rupees One Hundred Forty-Two Crores Ninety-Four Lakhs only) towards full and final settlement of the Facilities availed from the Original Petitioner. A copy of the letter dated 13 September, 2022 addressed by the Applicant to Authum is annexed and marked as Exhibit "I" to the Application.
18. Therefore, it is of utmost important to implead Authum in place of the Original Petitioner in the present matter as the Original Petitioner has been acting in a high-handed manner and not accepting the reasonable

and acceptable offer of the Applicant. It is trite that when a resolution plan is approved of a company, then the resolution applicant, which is Authum in the present case, steps in the shoes of the erstwhile company and take over the management of such companies. Thus, it is imperative even under law to implead Authum in place of the Original Petitioner.

19. The Respondent/Original Petitioner has not filed its Reply in the present Application. Mr. Prateek Seksaria, Ld. Counsel appearing for the Respondent/Original Petitioner has relied on the following Judgements
 - i. E.S. Krishnamurthy and Ors. Versus Bharath HI-TECCH Builders Private Limited 2022 3 SCC 161.
 - ii. Sharadamma versus Mohammed Pyreyan (Dead) Through Legal Representatives and Anr. 2016 1 SCC 730
20. Having considered the submission of the Ld. Counsels appearing for both sides and totality of the circumstances, this Bench is of the view that it is appropriate that this Application be allowed in terms of prayer clause (b).
21. We find that this is a fit case to implead Authum Investment and Infrastructure Limited, having its address at 707, Raheja Centre, Free Press Journal Marg, Nariman Point, Mumbai- 400021 as party to the present proceedings before further hearing of the captioned Company Petition.

22. Ordered accordingly. The Application is hereby **allowed** in above terms and disposed of.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

23.12.2022

Priyal

Sd/-

JUSTICE P.N. DESHMUKH

Member (Judicial)