

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -3025/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

State Bank of India

Stressed Assets Resolution Group –
Commercial III, Tulsiani Chambers, 1st
Floor, Free Press Journal Marg, Nariman
Point, Mumbai – 400 021

.... Petitioner

Vs.

Reliance Communications Infrastructure
Limited

H Block, 1st Floor, Dhirubhai Ambani
Knowledge City, Navi Mumbai – 400 710

.... Corporate Debtor

Order delivered on: 25.09.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner : Ms. Fatema Kachwalla a/w Mr. Jash Shah, Advocates i/b J.
Sagar Associates

For the Corporate Debtor : Ms. Suchitra Maharana, Legal Officer

Per: V. Nallasenapathy, Member (T)

ORDER

1. State Bank of India (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Reliance Communications Infrastructure Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 3730,40,67,023/- including interest, as a guarantor of the loan facilities sanctioned by the Petitioner to M/s Reliance Communications Limited (RCOM), Reliance Telecom Limited (RTL) and Reliance Infratel Limited (RITL)(hereinafter called "Principal Debtors"), under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that on 27.12.2014 vide letter ref no. PFSBU/ASP/3066, the Petitioner sanctioned the following facilities to the Principal Debtors;

- a. Rupee Term Loan of Rs. 1500 crores to RCOM; and
- b. Rupee Term Loan of Rs. 125 crores to RTL.

It is submitted that vide a modification letter dated 28.12.2014, some terms of the loan were modified and the same is enclosed with the petition.

3. Thereafter on 20.02.2015 a Rupee Loan Facility Agreement was entered into between the Principal Borrowers and Obligors, Petitioner and Rupee lenders viz. Oriental Bank of Commerce, Central Bank of India, UCO Bank, Syndicate Bank, Bank of India, Corporation Bank, Union Bank of India, Canara Bank, Indian Overseas Bank and IDBI Bank, wherein it was shown that the RCOM's and RTL's rupee commitment amount was Rs. 6015 crores and Rs. 735 crores respectively.

4. Subsequently, on 29.08.2016, the Petitioner sanctioned Rs. 565 crores and Rs. 635 crores as Rupee Loan Facility to RCOM and RITL respectively and entered into Rupee Loan Facilities Agreement, and the same was amended on 08.09.2016, a copy of the said facility agreement is enclosed to the petition.

5. The Corporate Debtor herein along with RITL and RCOM executed a Corporate Guarantee Deed on 03.03.2017 in favour of Axis Trustee Services Limited (ATSL), security trustee of the secured parties i.e. Rupee lenders, for a sum of Rs. 6750 crores (RCOM loan of Rs. 6015 crores + RTL loan of Rs. 735 crores). It is agreed under their Corporate Guarantee Deed that the Guarantors should be jointly, severally, irrevocably and unconditionally liable to the Security Trustee, upon failure by RCOM to duly discharge its obligations, all or any of the Guarantors as required by the Security Trustee, shall immediately on demand and in no event later than 3 days thereof, and without any delay, demur or protest, pay the amount demanded by the Security Trustee, as stated in the Demand Certificate, without the right of any set off and/or deductions and/or adjustments of any kind whatsoever, in accordance with Clause 5 and the terms hereof, as if each were a principal obligor.

6. The Corporate Debtor herein along with RITL and RTL executed a Corporate Guarantee Deed on 19.01.2017 in favour of Axis Trustee Services Limited (ATSL), security trustee of the secured parties i.e. the Petitioner, for a sum of Rs. 1200 crores (RCOM loan of Rs. 565 crores + RITL loan of Rs. 635 crores).

7. The Corporate Debtor herein along with RCOM and RTL executed a Corporate Guarantee on 19.01.2017 in favour of Axis Trustee Services Limited (ATSL), security trustee of the secured parties i.e. the Petitioner, for a sum of Rs. 1200 crores (RCOM loan of Rs. 565 crores + RITL loan of Rs. 635 crores).

8. The Petitioner enclosed the acknowledgement of liability dated 09.02.2018 issued by the Principal Debtors with the petition.
9. The Axis Trustee Services Limited, on 01.02.2019, invoked the guarantee issued by the Petitioner and a copy of the same is enclosed to the petition wherein a sum of Rs. 7229,45,02,245.06/- and Rs. 810,32,47,830.65/- was demanded from the Corporate Debtor herein in respect of the outstanding of RCOM and RTL respectively.
10. The Petitioner, on 15.04.2019, recalled the outstanding loan of Rs. 8460,91,24,419/- from RCOM and RTL. Further the Petitioner on 25.04.2019 recalled the outstanding loan of Rs. 1428,05,80,961/- from RCOM and RITL.
11. The counsel for the Petitioner also submits that RCOM, RITL and RTL are currently undergoing the CIRP as per the provisions of the Code. The Principal Borrowers and Guarantor herein who have executed the corporate Guarantee Deed in favour of Axis Trustee Services Limited are part of the RCOM Group engaged in similar lines of business with aligned business goals.
12. The counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. The matter was listed on 30.08.2019, 05.09.2019 and on 11.09.2019 before this Bench. On 05.09.2019, one Ms. Suchitra Maharana, legal officer of the Corporate Debtor appeared before this Bench and time was granted to file reply by the Corporate Debtor and the matter was listed on 11.09.2019 for final hearing. On 11.09.2019, there was no representation from the Corporate Debtor's side and they also choose not to file reply to the petition.
13. The above facts clearly reveals that the Corporate Debtor is liable to make the payment as guarantor but defaulted in making the payment to the Financial Creditors.
14. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
 - (I) (a) 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;

- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (II) 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.
- (III) 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.
- (IV) That the order of moratorium shall have effect from 25.09.2019 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Anish Niranjana Nanavaty, 2a/208, Raheja Classique, New Link Road, Andheri (w), Mumbai – 400 053; having Email: - anish.nanavaty.irp@gmail.com, having Registration No. IBBI/IPA-002/IP-N00272/2017-18/10830 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

15. Accordingly, this Petition is admitted.

16. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Suchitra Kanuparthi
Member (J)