

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

CP (IB) 3887/MB/C-I/2019

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Reliance Commercial Financial Limited

[CIN: U66010MH2000PLC128301]

Reliance Centre, 6th Floor, South Wing, Off Western
Express Highway, Santacruz(E), Mumbai-400055 .

... Financial Creditor /Petitioner

Versus

Usher Eco Power Limited

[CIN: U40102MH2007PLC172552]

Laxmi Plaza, New Link Road, Laxmi Industrial
Estate, Andheri(West), Mumbai-400053.

... Corporate Debtor /Respondent

Order Delivered on 27.06.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Kapal Kumar Vohra

Appearances:

For the Financial Creditor : Mr. Subir Kumar, Counsel.

For the Corporate Debtor : None Present

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Reliance Commercial Financial Limited** ("the Financial Creditors or FC"),

seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Usher Eco Power Limited** ("the Corporate Debtor or CD").

2. The present Petition was filed on 05.11.2019 before this Adjudicating Authority on the ground that Corporate Debtor has defaulted in repayment of Rupee Term Loan facility sanctioned by the Petitioner amounting to Rs. 7,50,00,000/- (Rupees Seven Crore and Fifty Lakh only) to the Corporate Debtor.
3. The total amount claimed to be in default by the Petitioner is Rs.10,41,74,783/- (Rupees Ten Crore Forty-One Lakh Seventy-Four Thousand and Seven Hundred and Eighty-Three Only). The date of default stated to be is 01.04.2017.
4. The Corporate Debtor is a public company limited by shares incorporated on 20.07.2007 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Laxmi Plaza, New Link Road, Laxmi Industrial Estate, Andheri (West), Mumbai-400053. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Ld. Counsel of the Financial Creditor

5. The Petitioner submits that Reliance Capital Limited sanctioned Rupee Term Loan Facility to the tune of Rs.7,50,00,000/- vide Rupee Term Loan Facility agreement dated 23.10.2013. The said facility was transferred to the Petitioner in accordance with scheme of arrangement between Reliance Capital Limited and

Reliance Commercial Finance Limited approved by the Hon'ble Bombay High Court vide its order dated 9.12.2016. (Annexure Q at Page 198- Page 238 of the Petition)

6. The Corporate Debtor passed Board Resolution dated 03.10.2013 for availing the said Term Loan from Reliance Capital Limited. Further, the Corporate Debtor issued Demand promissory note dated 23.10.2013 wherein the Corporate Debtor promised to pay on demand to the lender a sum of Rs.7,50,00,000/- together with an interest at compounding rate of 14.75% p.a. for the Rupee Term Loan Facility.
7. The Petitioner submits that Deed of Guarantees dated 23.10.2013 were executed by Mr. Vinod Kumar Chaturvedi and Mr. Manoj Pathak for the Rupee Term Loan facility. (Annexure C at pages 69-76 and Annexure D at pages 77-85 respectively). On 23.10.2013 the Corporate Debtor entered into a Deed of Hypothecation with Reliance Capital Limited and thereby created second pari- passu charge on movable fixed assets of the Corporate Debtor. (Annexure B at pages 18-68 of the Petition).
8. The Petitioner submits that Mr. Manoj Pathak and Mr. Vinod Kumar have given undertakings both dated 23.10.2013 to Reliance Capital Limited. (Annexure L at Pages 170-180 and Annexure M at Pages 181-190 respectively).
9. The Letter of Intent was issued by Reliance Capital Limited on 30.09.2013 detailing the terms and conditions and repayment

schedule of the amount disbursed. The said Letter of Intent was accepted by the Corporate Debtor and the same is evidenced by the stamp and signature of the authorized signatory of the Corporate Debtor (Annexure G at pages 90- 103).

10. The Petitioner submits that the Corporate Debtor has defaulted in repayment of the said facilities availed. The first default committed by the Corporate Debtor was on 01.04.2017. Accordingly, the Petitioner issued recall notice dated 05.07.2017 in respect of Rupee Term Loan.
11. In furtherance of his contention, the Corporate Debtor to establish the debt has placed on record the copy of Credit Information Bureau of India Limited (“CIBIL”) report dated 24.08.2017 and Account statement for the period upto 19.01.2018. (Annexure J at page 147-158 and Annexure K at page 159-171).
12. On several failed attempts of service by the Financial Creditor, this Adjudicating Authority vide order dated 16.12.2019, directed service on the Corporate Debtor by way of newspaper publication. Pursuant to which, the publications were made in ‘Financial Express’ and ‘Navrashtra’ on 28.12.2019, however, none appeared on behalf of the Corporate Debtor. Therefore, the Corporate Debtor is set ex-parte vide Order dated 14.03.2022.

Analysis and Findings

13. Heard the Ld. Counsel for the Financial Creditors and perused the records.

14. Upon perusal of the records and documents annexed with the Petition, it is observed that the amount was disbursed to the Corporate Debtor and the default subsists. Thus, the amount is legally due and payable to the Corporate Debtor.
15. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that as soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the Petition.
16. The Financial Creditor has proposed the name of **Mr. Manoj Kulshrestha**, Registration No. IBBI/IPA-003/IP-N0005/2016-2017/10024, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
17. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

18. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 3887/MB/C-I/2019** filed by **Reliance Commercial Finance Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Usher Eco Power Limited [CIN: U40102MH2007PLC172552]**, the Corporate Debtor, is **admitted**.
- (b) 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:-
 - (i) 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;
 - (ii) 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 Adjudicating Authority 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) **Mr. Manoj Kulshrestha**, Registration No. IBBI/IPA-003/IP-N0005/2016-2017/10024, having address at 4F-CS-14, Ansal Plaza Mall, Vaishali, Opp. Dabur, Ghazaibad, Uttar Pradesh-201010 [Email- costaadvisor@hotmail.com], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 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 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 Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Three Lakhs 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 Financial 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) IRP is directed to send a copy of this Order 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/-

KAPAL KUMAR VOHRA
Member (Technical)

27.06.2022
Priyal

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)