

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

C.P.(IB)-1019(MB)/C-III/2023

(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

M/s. RMOL Engineering and Offshore Limited

Having Registered Office at: Survey No. 658, Village Rampara-II, Taluka Rajula and Village Lunsapur, Taluka Jafrabad, Amreli, Gujarat-365560.

.....Financial Creditor/Applicant

Vs

Avocado Realty Private Limited

Having Registered Office at: 507, 5th Floor, Vyapar Bhavan 49, P D'Mello Road Carnac Bunder, Mumbai-400009.

.....Corporate Debtor/Respondent

Order Delivered on: 29.04.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Akhil Sarathy (VC) i/b Thudur Law

For the Corporate Debtor: Adv. Mily Ghoshal a/w Adv. Sophia Hussain

Per: Smt. Lakshmi Gurung, Member Judicial

ORDER

1. The Present **Company Petition (IB)-1019(MB)/2023** is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. RMOL Engineering and Offshore Limited**, (“Financial Creditor”) through its Liquidator, *Mr. Jigar Bhatt* for initiating Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Avocado Realty Private Limited** (“Corporate Debtor”) for default in redemption of 6173 Non-Convertible Unsecured Bonds (“NCUBs”) of Rs. 1,00,000/- each which matured on 25.07.2019 amounting to Principal amount of **Rs. 61,73,00,000/-** (Indian Rupees Sixty-One Crores and Seventy-Three Lakhs only).

Relevant Facts:

2. The Financial Creditor was originally incorporated with the name PIPVAV MARINE AND OFFSHORE LIMITED on 04.06.2012 and came to be known by its current name i.e. RMOL ENGINEERING AND OFFSHORE LIMITED with effect from 16.10.2016.
3. The Corporate Debtor issued following NCUBs, copies of which along with covering letter are annexed to the Petition:

Sr. No.	Date of the Bonds	Date of Letter	No. of NCUBs	Amount (in Rs)
1.	15.10.2013	16.10.2023	3500	35,00,00,000
2.	26.07.2014	28.07.2014	2673	26,73,00,000
		Total	6173	61,73,00,000

4. Upon maturity of Bonds, the Financial Creditor sent Letters dated 06.07.2019 and 02.08.2019 and called upon the Corporate Debtor to redeem the 6173 the NCUBs with redemption premium totalling to Rs. 86,42,20,000/- (Rupees Eighty-Six Crores Forty-Two Lakhs and Twenty

Thousand only). However, no response was received from the side of the Corporate Debtor.

5. The Financial Creditor was admitted to CIRP vide order dated 21.08.2019 passed by NCLT, Ahmedabad Bench in Company Petition No. 171/7/NCLT/AHM/2017.
6. The Resolution Professional issued yet another Demand Notice dated 31.10.2019 to the Corporate Debtor, calling upon Corporate Debtor to make payment of total redemption amount of Rs. 86,42,20,000/- within 10 days from date of receipt of the notice.
7. Thereafter NCLT Ahmedabad Bench vide order dated 06.12.2021 initiated Liquidation process of Financial Creditor and appointed Mr. Jigar Bhatt as Liquidator.
8. The Liquidator has also sent a Demand Notice dated 10.02.2022 to Corporate Debtor, calling upon Corporate Debtor to make payment of total redemption amount of Rs. 86,42,20,000/- within 10 days from date of receipt of the notice.
9. The Corporate Debtor vide its reply dated 16.03.2022, called upon Liquidator to withdraw Demand Notice dated 10.02.2022 and disputed the redemption of the 6173 NCUBs by claiming that Corporate Debtor has handed over control and possession of certain area of land registered in the name of Corporate Debtor to the Financial Creditor.

Reply by the Corporate Debtor:

10. In response to this, the Corporate Debtor has filed a detailed reply and raised few preliminary objections as follows:
 - a. **BARRED BY LIMITATION:** -
The Corporate Debtor has submitted that the present Petition is barred by limitation. The alleged date of default as stated in Part IV of the Petition is 25.07.2019. However, the present Petition was filed only in

2023 i.e after more than four years from alleged date of default if any and thus the same is required to be dismissed being hopelessly barred by limitation.

b. NCUBs ARE NOT REDEEMABLE

The Balance sheet of the Corporate Debtor for the financial year 31.03.2022 referred by the Financial Creditor in order to further the limitation period categorically states under notes to the Balance sheet at note 4 - Long term borrowings that the said NCUBs are not redeemable and not payable. The relevant extract from the Auditors report as follows:

“The Company has issued a total of 6,173 Redeemable Non-Convertible Non-interest bearing unsecured bonds of RS. 1,00,000/- each amounting to Rs. 61,73,00,000/- to Reliance Marine and Offshore Ltd., a part of ADAG company, promoted, owned and controlled by Shri Anil Dhirubhai Ambani are not redeemable and payable as the Company has already transferred possession and control of the 43.255 acres of land at Jhansi, Uttar Pradesh shown under the head Fixed Asset. The title deeds of the land have also been handed over to RMOL. These transaction is also disclosed by SKIL Infrastructure Ltd. as part of the Purchase Agreement dated March 04, 2015 for purchase of Reliance Naval and Engineering Ltd. (earlier known as Pipavav Defense, the holding company of RMOL by Reliance Defence Systems Pvt. Ltd and Reliance Infrastructure Ltd. a part of ADAG company, promoted, owned and controlled by Shri Anil Dhirubhai Ambani. The said land has also been mortgaged with IFCI ltd. towards the loan facility obtained by Reliance Naval and Engineering Ltd. (Holding Company of RMOL). Further RMOL in accordance with the purchase agreement is yet to fulfil its obligation of finalizing structure of these transactions. It’s a part of composite transaction emanating from and in connection with the sale of Pipavav Defense project to ADAG group in accordance with the said purchase agreement and also based on the facts, circumstances and

documents available on record. In view of the above the company does not have to redeem the said Redeemable Non-Convertible Non-interest bearing unsecured bonds issued to RMOL.”

Therefore, the Corporate Debtor states that the amount mentioned in the balance sheet is not acknowledgement of debt as per the settled law.

c. THE ACT OF THE LIQUIDATOR IS ULTRA VIRES: -

The Liquidator is bound by Regulation 31A of the Insolvency and Bankruptcy Board of India Liquidation Process Regulations, 2016 which categorically states that the Stakeholders' Consultation Committee (SCC) shall advise the liquidator with a vote of not less than 66% of the representatives of the SCC. However, no resolution empowering the liquidator to file the present Petition has been brought on record by the liquidator. On this ground alone the present Petition deserves to be dismissed this illegal act of the liquidator is void ab initio.

d. NO AUTHORITY TO THE LIQUIDATOR: -

The present Petition presents an alleged authorization in favour of the liquidator which is annexed as Exhibit A to the Petition. Surprisingly the same shows that one Mr. Jigar Bhatt has authorized himself on the letter head of M/s RMOL Engineering and Offshore Ltd. In fact, the liquidator has no resolution passed in his favour by the SCC to file the present Petition.

Further submitted that on bare perusal of the Minutes of the First Meeting of the SCC wherein the liquidator of the Financial Creditor briefed the SCC about the alleged NCUBs issued by the Corporate Debtor along with the other 04 Companies, the said proposed resolution to initiate action against the said companies was dissented with vote share of 60.34%. The said Minutes can be seen at Annexure P3 to the “SCA”. The said agenda was once again put to vote in the

second SCC meeting and once again the same was dissented by the SCC with vote share of 60.34%. The said Minutes can be seen at Annexure P5 to the "SCA". From the same it can be seen that the act of the liquidator in initiating the present Petition is bad in law, ultra vires and deserves to be curbed.

e. **NO RIGHT OF REDEMPTION WITH THE FINANCIAL CREDITOR: -**

At the further outset, the Financial Creditor is guilty of suggestio falsi suppressio veri since the liquidator with malicious intentions deliberately suppressed various vital facts and has approached this Tribunal with unclean hands intending not only to coerce the Corporate Debtor into paying an amount which is not legitimately due and payable by the Corporate Debtor but also to mislead this Hon'ble Tribunal with false and fictitious story for the reasons best known to the liquidator. As liquidator of the Financial Creditor, the liquidator ought to be aware that the purported transaction pertaining to the issuance of 6,173 NCUBs having face value of Rs. 1,00,000/-each in favour of the Financial Creditor was only as and by way of a structured transaction and was in no manner intended to vest a right of redemption Financial Creditor.

The Corporate Debtor states that the very purpose of subscribing to the said NCUBs by the Financial Creditor was to acquire the land owned by the Corporate Debtor either by way of transfer of 100% shareholding of the Corporate Debtor or outright transfer of the land owned by the Corporate Debtor. Since the parties were contemplating a tax efficient manner for the said take-over of the Corporate Debtor or acquisition of the land belonging to the Corporate Debtor, the parties mutually decided that for the time being the Financial Creditor shall subscribe to the alleged NCUBs and thereafter the parties shall conclude the option for the said transaction. In furtherance, the Corporate Debtor states that the Financial Creditor approached the IFCI Ltd for the procurement of the loan for the purpose of acquiring the Corporate Debtor along with the other companies owning the said

land and out of the said loan proceeds, the Financial Creditor subscribed to the said NCUBs. It is pertinent to note that the said loan was sanctioned by the IFCI for the exclusive purpose of the acquiring the land belonging to the Corporate Debtor along with the other companies and or by taking control of the Corporate Debtor along with the other companies and which is in fact evident from the Corporate Loan Agreement dated 30.03.2013. Thus, there was no intention of creating any financial obligation between the parties which is a mandatory requirement of section 7 of the Code. In nutshell the transaction relied upon by the Financial Creditor which is in the form of the purported NCUBs was in actual towards the purchase of the land admeasuring 43.255 acres approximately owned by the Corporate Debtor.

f. **NOT MAINTENABLE: -**

A bare perusal of the present Petition shows that it is filed by M/s RMOL Engineering and Offshore Ltd, whereas, the said M/s RMOL Engineering and Offshore Ltd is under liquidation vide order dated 06.12.2021. The present Petition is thus hit by section 11 of the Code which categorically bars any entity under liquidation to file for CIRP against any other corporate debtor. In fact, the present Petition could be filed by the liquidator only if authorized by the SCC but the same is filed by M/s RMOL Engineering and Offshore Ltd. and any proceeding by a company under liquidation is not maintainable.

Findings and observations:

11. Heard the Ld. Counsel for the Parties and also perused the petition along with the Annexures attached to the Petition and reply.
12. The present application was filed on 30.09.2023 by the Financial Creditor upon failure on the part of the Corporate Debtor to redeem 6173 NCUBs along with redemption premium. In response to this the Corporate

Debtor has raised preliminary objections to the said petition which we propose to deal first.

13. Regarding the contention that the Petition is barred by limitation, we have observed that the date of default as per part IV is 25.07.2019 (date on which the 6173 NCUB were matured, as per bond certificates) and the NCLT, Ahmedabad Bench vide order dated 21.08.2019 admitted Company Petition No. 171/7/NCLT/AHM/2017 against Financial Creditor and initiated CIRP in respect of Financial Creditor. In this context, we refer Section 60(6):

Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

14. In the present case, the moratorium began on the date of initiation of CIRP, which is 21.08.2019, and the liquidation order was subsequently passed on 06.12.2021. As per Section 60(6) of the IBC, 2016, the period during which the moratorium is in effect is excluded from the computation of the limitation period for any suit or application by or against the Corporate Debtor (Financial Creditor/Petitioner herein). Therefore, the petition is well within the limitation period.
15. Even if we look at it from another aspect, we find that as the maturity date of NCUBs is 25.07.2019 and after excluding the period excluded by Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 i.e. 15.03.2020 to 28.02.2022, the petition is well within limitation.
16. In relation to the contention that the act of liquidator is ultra vires and without Authority, order of NCLT, Ahmedabad Bench dated 11.01.2023 has been brought to our notice. We note that the Liquidator had filed an IA/29/2023 in CP/171/2017 seeking extension of liquidation period in respect of Petitioner for the specific purpose of initiating CIRP against the

5 bond issuer companies including the present Corporate Debtor and same was allowed by the NCLT, Ahmedabad with following observations:

“This application is filed by the Liquidator for extension of liquidation period on the ground that he wanted to recover some money from the borrowers of the Corporate Debtor. SCC in its meeting has approved for the same. Since, there are chances of recovery of some amount of the Corporate Debtor thereby enhancing its assets, we allow extension of one year from today.

In view of the above, IA/29(AHM)2023 stands allowed and disposed of.”

17. It can be clearly ascertained from a bare perusal of contents of IA/29/2023 and order dated 11.01.2023 that the liquidation proceedings were extended on the ground to initiate appropriate proceedings against the bond issuing companies including the present Corporate Debtor. Therefore, the contention that the act of liquidator is ultra vires and have no authority to file the present petition cannot sustain.

18. Further, in relation to the contention that the purported transaction pertaining to the issuance of 6,173 NCUBs having face value of Rs. 1,00,000/- each in favour of the Financial Creditor was only as and by way of a structured transaction and was in no manner intended to vest a right of redemption, we are of the considered opinion that NCUBs have a clear clause stating that-

“Redemption

NCUB’s shall be redeemed at the end of 5 years from the Date of Allotment at the face value of Rs. 1,00,000/- (Rupees One Lakh Only).

Redemption Premium

40% payable at the time of redemption of NCUBs”

19. It is clear from the aforementioned clauses that NCUBs were issued at above terms and conditions. The treatment given in balance sheet of the Corporate Debtor cannot be considered for this petition. The financial creditor has the right to redeem the NCUBs. Additionally, it states that the

NCUBs shall be redeemed at the face value of Rs. 1,00,000/- (Rupees One Lakh only) at the end of 5 years from the Date of Allotment, with a redemption premium of 40% payable at the time of redemption. Issue of Bond is specifically mentioned as financial debt under section 5(8) of IBC, 2016.

20. According to Section 5(8), the “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a)....

(b)....

(c) any amount raised pursuant to any note purchase facility or the **issue of bonds**, notes, debentures, loan stock or any similar instrument;

21. In so far as the contents of Note 4 to the Balance Sheet for F.Y. 31.03.2022 are concerned (which are not being reproduced again here for the sake of brevity), Ld. Counsel for Petitioner has submitted that the Corporate Debtor has failed to produce any valid agreement or any document evidencing acceptance of such land in lieu of redemption of bonds by Financial Creditor, or any land transfer documents in favour of Financial Creditor by Corporate Debtor to substantiate the said statements made in the Balance Sheet.

22. In relation to this, a clarification was scheduled on 15.04.2024. The parties undertook to file clarifications within a week. The Financial Creditor filed an additional affidavit dated 22.04.2024 and stating that-

“

- a. That **no land has been transferred by the Corporate Debtor in favour of the Petitioner/Financial Creditor** as is being alleged by Corporate Debtor.
- b. The **only asset of the Financial Creditor is Redeemable Non-convertible unsecured bonds issued by 5 entities including the Corporate Debtor in favour of the Petitioner.**

- c. **Bond Certificate issued by the corporate debtor clearly states it as unsecured bond, and redeemable at the end of 5 years from the date of allotment payable with premium of 40%.**
- d. Further, there is no stipulation regarding non-redemption of the bonds as stated by the respondent referring to the alleged land transaction.
- e. The purchase agreement dated 04.03.2015 as relied upon by the Corporate Debtor is nowhere related to the transaction of subscribing to the unsecured bonds.
- f. Further, there is **no agreement or contract in place wherein Petitioner/Financial Creditor has acknowledged acceptance of land in lieu of redemption of the unsecured bonds** as referred by the petitioner.
- g. Therefore, the case of the Corporate Debtor is not substantiated and cannot be relied on as Financial Creditor is not concerned with the alleged land transaction and Corporate Debtor fails to make out any case to link repayment of debts due to the Financial Creditor with the alleged land transaction.”

23. Further, the Corporate Debtor in its additional affidavit has nowhere mentioned that the land is transferred or the Financial Creditor is in possession of the said land. Moreover, the Ld. Counsel for the Corporate Debtor submitted that the structured transaction was failed.

24. Based on the additional affidavit, the Corporate Debtor has not provided any valid agreement or documentation to support the claim that the land was transferred in lieu of redeemable bonds to the Financial Creditor. The Financial Creditor, in their additional affidavit dated 22.04.2024, clarified that no land was transferred to them by the Corporate Debtor, nor are they in possession of aforementioned land. Further, the Financial statements of any company are prepared without the consent/approval/acceptance of the third party and the said note have to be carefully read with the evidence on record. There is no evidence on record to show that 6173 Bonds were redeemed by transfer of 43.255 acres of land at Jhansi, Uttar Pradesh.

25. In view of the facts and relevant documents, we have no hesitation in arriving at a conclusion that the Bonds issued by the Corporate Debtor are redeemable on maturity date. Since, the bonds have not been redeemed on

the maturity date and despite various notices by the Financial Creditor, Resolution Professional and the Liquidator of the Financial Creditor, default has been committed by Corporate Debtor.

26. We rely on the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was held that-

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

(Emphasis Provided)

27. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.

28. We are of the considered view that the Financial Creditors have proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation. Therefore, we hereby admit this

company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Subham Agrawal Goyal** as an IRP, with a direction to the Financial Creditors to pay remuneration to the IRP and his expenses until the constitution of CoC.

29. Accordingly, this Company Petition is **admitted** with the following directions:

- a. **The above Company Petition (IB) 1019(MB)/2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Avocado Realty Private Limited**.
- b. This Bench appoints **Mr. Subham Agrawal Goyal**, having Registration No: **IBBI/IPA-002/IP-N01000/2020-2021/13229**, email: shubhamgoyal@gmail.com; Address: **CASA VYOMA, I-601, 6th Floor, Sarkari Vasahat Road, Opp. Auda Garden, Vastrapur, Ahmedabad, Gujarat, 380052** 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 Lakh towards the initial CIRP cost 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 directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - 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.
- 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.

30. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
31. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA