

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV

CP (IB) 1020/MB/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

M/s. RMOL Engineering and Offshore Limited
... Financial Creditor/Applicant

Versus

Replenish Realty Private Limited
... Corporate Debtor/Respondent

Order Delivered on: **17.04.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Siddha Pamecha i/b
Thodur Law Associates.

For the Corporate Debtor : Adv. Mili Ghoshal a/w Adv.
Ritika Vijan, Ld. Counsel
Present.

ORDER

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **M/s. RMOL Engineering and Offshore Limited** (“the Financial Creditor”) herein the “Applicant”, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Replenish Realty Private Limited** (“the Corporate Debtor”).


2. The Corporate Debtor is a private company limited by shares incorporated on 02.02.2007 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is 507,5th Floor, Vyapar Bhavan,49, P.D Mello Road Carnac Bunder, Mumbai- 400009. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present Petition was filed on 30.09.2023 before this Tribunal for claiming an Amount for a sum of Rs. 1,10,31,73,151/- (Rupees One Hundred and Ten Crores Thirty-One Lakhs Seventy-Three Thousand One Hundred and Fifty-One only) including the outstanding principal and interest against the Corporate Debtor (CD) for default in repayment of amounts due and payable under 4500-0% Non-Convertible Unsecured Bonds of INR 10,00,000/- each issued and allotted by Corporate Debtor to Financial Creditor. The NeSL report forms part of the petition and records the date of default as on 26.07.2019. The Corporate Debtor has defaulted on the following amounts:

1.	Principal Amount Invested for issuance of Non-Convertible Unsecured Bonds	INR. 45,00,00,000/-
2.	Unpaid Redemption Premium as on 25.07.2019	INR. 18,00,00,000/-
3.	Total Redemption Amount (1+2)	INR. 1,01,50,00,000/-
4.	Interest on (3) till 25.09.2023	INR. 47,31,73,150/-
5.	Total Claim Amount (3+4)	INR. 1,10,31,73,151/-

The Date of Default as specified in part IV is 26.07.2019.


Submissions made by the Financial Creditor:

4. The Financial Creditor submits that originally the Financial Creditor was incorporated with the name PIPVAV MARINE AND OFFSHORE LIMITED on June 04, 2012 with the Registrar of Companies (RoC), Gujarat, Dadra and Nagar Haveli and thereafter commenced its business operations on August 13, 2012. That subsequently the Financial Creditor underwent a name change and came to known as RELIANCE MARINE AND OFFSHORE LIMITED with effect from 11th March 2016. That thereafter the Financial Creditor underwent a further name change and came to be known by its current name i.e. RMOL ENGINEERING AND OFFSHORE LIMITED with effect from October 16, 2016.
5. It is submitted that pursuant to issuance and allotment of 4500 (Four Thousand Five Hundred) Non-Convertible Unsecured Bonds (NCUBs) of Rs. 1,00,000/- (Rupees One Lakh Only) each by Corporate Debtor to Financial Creditor vide letters dated 16th October 2013 and 28th July 2014 and Bond Certificates dated 15th October 2013 and 26th July 2014 respectively in accordance with terms and conditions stipulated in Term sheets issued by Corporate Debtor, subscribed to the said Non-Convertible Unsecured Bonds (NCUBs) by investing a consolidated sum of Rs. 45,00,00,000/- (Rupees Forty-Five Crores only) between 20th September 2013 and 27th June 2014. That 4500 (Four Thousand Five Hundred) Non-Convertible Unsecured Bonds (NCUBs) of Rs. 1,00,000/- (Rupees One Lakh Only) became due for redemption on July 25, 2019 but the Corporate Debtor failed to make payment of total redemption



amount and accordingly defaulted in payment of financial debt as on July 26, 2019.

6. It is submitted that accordingly the Financial Creditor addressed Letters dated 6th July 2019 and 2nd August 2019 respectively to Corporate Debtor and called upon the Corporate Debtor to redeem the 4500 0% Non-Convertible Unsecured Bonds which were matured on 25th July 2019 and initiate payment of Rs. 63,00,00,000/- (Rupees Sixty-Three crores only) being total redemption amount within three days of receipt of the letter dated 2nd August 2019. However, no response was received from the side of the Corporate Debtor.
7. The Financial Creditor submits that the Applicant faced certain financial constraints in accordance to which the Coordinate Bench vide order dated 21 August 2019 admitted Company Petition No. 171 of 2017 against Financial Creditor and initiated CIRP in respect of Financial Creditor. Thereafter, Resolution Professional appointed in respect of present Financial Creditor was also constrained to issue Demand Notice dated 31.10.2019 to the Corporate Debtor, calling upon Corporate Debtor to make payment of total redemption amount of Rs. 63,00,00,000/- (Rupees Sixty-Three Crores only) within 10 days from date of receipt of the notice dated 31.10.2019. Thereafter, the Coordinate Bench vide order dated 6th December 2021 was pleased to initiate Liquidation process and subsequently, liquidator of Financial Creditor addressed another Demand Notice dated 10.02.2022 to Corporate Debtor, calling upon Corporate Debtor to make payment of total redemption amount of Rs. 63,00,00,000/- (Rupees Sixty-Three




Crores only) within 10 days from date of receipt of the notice dated 10.02.2022.

8. It is submitted that the Corporate Debtor vide its reply dated 16.03.2022, called upon Liquidator to withdraw Demand Notice dated 10.02.2022 and disputed the payment of redemption amount and also the redemption of the 4500 0% Non-Convertible Unsecured Bonds which were matured on 25th July 2019, by contending 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. However, the Corporate Debtor neither produced a valid agreement evidencing acceptance of such land in lieu of redemption of bonds by Financial Creditor, nor any land transfer documents in favour of Financial Creditor was produced by Corporate Debtor to substantiate the said contention. Hence, there is due, owing and payable which the Corporate Debtor has defaulted to pay despite demands for payment by the Financial Creditor.
9. It is submitted that the Applicant further claims premium on redemption on the outstanding Principal/investment amount calculated, as per the terms and conditions stipulated overleaf of the Bond Certificates dated 15th October 2013 and 26th July 2014 issued and allotted by Corporate Debtor to Financial Creditor and also in accordance with the term's sheets issued by Corporate Debtor to Financial Creditors with letters dated 16th October 2013 and 28th July 2014.

Submissions made by the Corporate Debtor:



10. The Corporate Debtor submits that the Bond certificate for 2,500 NCUBS and 2,000 NCUBs was issued on 15.10.2013 and 26.07.2014 and that the date of redemption being 5 years makes the alleged date of default 15.10.2018 and 25.07.2019. The Petition u/s 7 was filed by the Financial Creditor on 30.09.2023, i.e. four years after the alleged date of default. Thus, the Petition is barred by limitation.
11. The Corporate Debtor submits that in order to save the limitation period the Financial Creditor has relied upon the balance sheet of the Corporate Debtor for the financial year 31st March 2022. However, under notes to the Balance sheet at note 4-Long term borrowings it is sated that the said bonds are not redeemable and not payable. Therefore, the Corporate Debtor states that the amount mentioned in the balance sheet is not acknowledgement of debt as per the settled law.
12. The Corporate Debtor submits that the present Petition is filed by the Liquidator of the Petitioner Company, that for a Liquidator to initiate action against other Company, the Liquidator is required to be authorised by the Stakeholders Consultation Committee ("SCC"). However, the SCC in the present proceedings have denied the Liquidator to proceed against the Corporate Debtor. The same can be demonstrated from the 2nd minutes of the meeting held on 29.11.2022 produced by the Petitioner by way of his additional affidavit. Furthermore, in event of a different opinion adopted by the Liquidator, the IBC mandates the liquidator to procure a permission from the Adjudicating authority u/s 33(5) of the Code. The present liquidator at the time of filing




of the present petition had no such authority and has belatedly on 07.02.2024 procured an impugned order from the Hon'ble NCLT, Ahmedabad mentioning post facto approval. In such a scenario it is pertinent to mention herein that section 33(5) of the code has no such proviso for a post facto approval.

13. It is submitted that the Corporate Debtor along with other companies owned land admeasuring 214 acres at Jhansi, Uttar Pradesh. That the loans procured by the Pipavav Defence & Offshore Engineering Company Ltd and RMOL (Now the Financial Creditor) were procured in order to finance the purchase of the said land. It was agreed between the Financial Creditor and the Companies that the Financial Creditor would invest in the Companies in the form of NCUBs and thereafter finalize the structure of the transaction by either (a) taking over the control and management of the Companies by acquiring 100% shareholding of the Corporate Debtor alongwith the other companies; or (b) by executing a sale deed in respect of the said land and paying the applicable stamp duty thereon. The fact that the said investment by way of NCUBs was a structured transaction is corroborated by the Letter of Intent dated 26.03.2013 issued by IFCI Ltd.


Findings:

14. We have gone through the pleadings available on record and observed as under:
15. Admittedly, the Corporate Debtor has issued 4500 (Four Thousand Five Hundred) Non-Convertible Unsecured Bonds



(NCUBs) of Rs. 1,00,000/- (Rupees One Lakh Only) each for an aggregate consolidated sum of Rs. 45,00,00,000/- (Rupees Forty-Five Crores only) to the Financial Creditor which were due for redemption on expiry of 5 years. The Financial Creditor addressed letters to the Corporate Debtor on 06.07.2019 and 02.08.2019 calling upon it to redeem the NCUB. Subsequently, on 31.10.2019 the Resolution Professional of the Financial Creditor also issued a demand notice followed by a demand notice of the Liquidator (Financial Creditor) on 10.02.2022.

16. The Corporate Debtor has raised issues on following points:
 - a. That the debt is time barred.
 - b. That Financial Creditor at the time of filing the present petition was not authorized.
 - c. That there is no right of redemption with the Financial Creditor.
17. Regarding the submission of the Corporate Debtor that the debt is barred by limitation the Bench notes that the NCUBs matured in 2018 and 2019 and petition was filed on 30.09.2023. The Financial Creditor has submitted the financial statements of the Corporate Debtor as on 31.03.2022 which record the said liability of the Corporate Debtor as on 31.03.2021 as long term borrowing (NCUB's) and also as on 31.03.2022. The Bench is of the view that as on 31.03.2022 the financial statement of the Corporate Debtor clearly reflects a liability towards the Financial Creditor under the head "*Long term borrowing*" and this by itself is sufficient to provide fresh threshold for the purposes of computing the limitation



period. Hence, this Bench holds that the Petition is filed within limitation.


18. Regarding the issue of authorisation with reference to filing of this petition, the Bench takes note of two orders of the Coordinate Bench, NCLT Ahmedabad Bench

18.1 Vide order dated 11.01.2023, the Ahmedabad Bench of NCLT has recorded *“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.”*

18.2 Subsequently, the Liquidator of the Financial Creditor filed another IA with the NCLT Bench and vide order dated 11.03.2023, has recorded *“the only asset of the Corporate Debtor is the bond issued by the five entities as mentioned above. The Liquidator has initiated Section 7 proceedings against the five entities. In terms of Section 33(5) of IBC, 2016 no prior permission was taken from this Tribunal before initiation of such proceedings.*

By this application the Liquidator seeks post facto approval of the action already initiated by the Liquidator.

As the only assets of the Corporate Debtor is bond held by the five entities, in the interest of the Corporate Debtor and in order to maximise the value during the liquidation process, this




Adjudicating Authority hereby allows prayer (b) and (c). In view of the above, this application i.e. IA/189(AHM)2024 is allowed and accordingly disposed of.”

In view of the said orders of NCLT, Ahmedabad Bench, this Bench is of the view that the Corporate Debtor’s objection that the petition is without authorisation is devoid of merits

19. The Corporate Debtor claims that there is no right of redemption and that the purported transaction pertaining to of NCUB’s was by way of a structured transaction and was in no manner intended to vest the right of redemption in the Financial Creditor. That the alleged amount invested by the Financial Creditor in the Corporate Debtor by way of NCUB was towards purchase of land owned by the Corporate Debtor. It is also submitted that the fact that it was a structured transaction is corroborated by a letter of intent dated 26.03.2013 issued by IFCI Limited.


19.1 This Bench has perused the said letter issued by IFCI Limited in 2013 and find that apart from stating that it is an in-principle sanction of Corporate Loan to the Financial Creditor, there is no mention about any agreement with respect to NCUB between the Financial Creditor and the Corporate Debtor. The Letter simply states in-principle approval of loan to Financial Creditor does not establish any link between issue of NCUB’s to Financial Creditor and the proposed loan to Financial Creditor.

19.2 Though the Corporate Debtor claims that there was an understanding between them and the Financial Creditor regarding a structured transaction, no documentary



evidence/agreement has been produced by the Corporate Debtor to support the claim. On the Contrary the Corporate Debtor has been consistently showing the said amount (NCUB) under the head “*Long Term Loan*” in its balance sheet as on 31.03.2021 & 31.03.2022. The Bench is of the view that if at all there was an agreement between the Financial Creditor and the Corporate Debtor in 2013 when the NCUB was issued ; or when the loan was approved by IFCI Limited; or as claimed by the Corporate Debtor when possession & Title deeds of the land was handed over to the Financial Creditor in 2015, then the redeemable NCUB’s would not have reflected as liability in the Balance sheet of the Corporate Debtor on 31.03.2021. In view of the recordings in the Financial statement as on 31.03.2021 and in the absence of any documentary evidence to the contrary, the Corporate Debtor’s contention on this account deserves to be rejected.

20. In view of the reasons stated supra, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor and there is a default on the part of Corporate Debtor.
21. The Financial Creditor has proposed the name of **Mr. Shubham Agarwal Goyal**, Registration No: IBBI/IPA-002/IP-N01000/2020-2021/13229, 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.


22. 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.

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

- (a) The petition bearing **CP (IB) 1020/MB/2023** filed by **M/s RMOL Engineering and Offshore 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 **M/s Replenish Realty Private Limited [CIN: U45200MH2007PTC167457]**, the Corporate Debtor, is **Admitted**. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
- (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;

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- (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. Shubham Agarwal Goyal, Registration No: IBBI/IPA-002/IP-N01000/2020-2021/13229**, having address at Rosewood Estate, B-404, Satellite- 380015, Prernatirth Derasar Road, Ahmedabad, Gujarat-380015, 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/- 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/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)