



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 428/MB/2024

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

In the matter of

M/s. Reliance Commercial Finance Ltd.

[CIN: U66010MH2000PLC128301]

...Financial Creditor

v/s.

M/s. Summit Ceminfra Private Ltd.

[CIN: U45201MH2008PTC217836]

...Corporate Debtor

Ordered pronounced on: 10.10.2024

Coram:

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

Mr. Kishore Vemulappalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Adv. Siddha Pamecha a/w Adv.
Vivek Singh i/b Thodur Law
Associates, Ld. Counsel.

For the Corporate Debtor:

Ms. Mansi M Patel, Ld. Counsel.

ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Reliance Commercial Finance Limited** (“Financial Creditor” ; previously known as “Reliance Gilts Limited”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Summit Ceminfra Private Limited**, the Corporate Debtor.

i. The captioned petition has been filed on 29.11.2023 and the total default as on 31.10.2023, per the Financial Creditor herein, amounts to INR 1004,07,82,466/- (Rupees One thousand four crores, seven lakhs, eighty-two thousand, four hundred and sixty-six only), which is further broken down as hereinunder:

Sr. No.	Particulars	Amount Disbursed (INR)
1.	Outstanding Principal Amount	419,00,00,000/-
2.	Outstanding Interest	311,52,41,096/-
3.	Penal Interest	273,55,41,369/-
	Total amount of Debt	1004,07,82,466/-

ii. The record demonstrates the Date of Default as established by the additional affidavit dated 20.09.2024 on behalf of the Financial Creditor is 01.04.2019.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Financial Creditor and Reliance Home Finance Limited (RHFL) disbursed loan amounts by four different sanction letters, which is as follows:



Sr. No.	Disbursed Amount (INR)	Dates of Sanction Letter	Date of Default
1.	3000,00,00,000/-	05.04.2018	01.04.2019
2.	51,00,00,000/-	31.06.2018	01.05.2019
3.	32,00,00,000/-	29.03.2019	01.03.2020
4.	36,00,00,000/-	15.04.2019	01.04.2020

3. The Financial Creditor submits that Reliance Home Finance Limited(RHFL) got into financial stress, the loan advanced by RHFL along with all rights and securities was assigned to the Financial Creditor by way of Assignment Deed dated 31.03.2023.
4. In relation to the afore-mentioned loan various securities were executed to secure its repayment. The list of securities are as follows:
- Corporate Debtor entered into Facility cum Hyothecation Agreement dated 05.04.2018 and executed other documents with the Financial Creditor with respect to the loan amount of INR 300,00,00,000/- (Rupees Three Hundred Crores only).
 - Corporate Debtor entered into Facility cum Hyothecation Agreement dated 31.05.2018, 29.03.2019, 15.04.2019 and executed other documents with RHFL with respect to the loan amount of INR 51,00,00,000/- (Rupees Fifty One Crores only), INR 32,00,00,000/- (Rupees Thirty Two Crores only), INR 36,00,00,000/- (Rupees Thirty Six Crores only).
5. The Financial Creditor submits that RHFL issued a Recall Notice to the Corporate Debtor dated 30.11.2021 for the loan amount of INR 32,00,00,000/- (Rupees Thirty Two Crores) and INR 36,00,00,000/- (Rupees Thirty Six Crores). The Corporate Debtor has not honoured the repayment schedule.
- Hence, the present petition.



Submissions of the Corporate Debtor

6. The Corporate Debtor submits that due to certain unforeseen and unexpected circumstances owing to the downturn in the business environment which was further compounded by the world wide Covid-19 Pandemic, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it was unable to repay the aforementioned working capital loan facilities extended by Financial Creditor. However there was no deliberate intention on the part of the Corporate Debtor to default on repayment and in fact Corporate Debtor made several efforts to negotiate a settlement with Financial Creditor but the same did not materialise.
7. That the said RHFL has executed an assignment deed dated 31.03.2023 pursuant to which the subject loan facilities extended by Reliance Home Finance Limited to Corporate Debtor alongwith all its rights and securities attached thereto was assigned to the Petitioner i.e. Financial Creditor. The consent of the Corporate Debtor in respect to the said assignment was not obtained and as such the Corporate Debtor has privity of Contract only with RHFL and not the present Financial Creditor.
8. That in respect of loan facilities advanced by the Financial Creditor to Corporate Debtor, the same is barred by limitation.

Findings

9. This bench has perused the documents and pleading available on record and considered the arguments of both the sides.
 - 9.1. In the present application, the date of default as specified in Part IV of the petition are as follows:



Sr. No.	Disbursed Loan Amount (INR)	Date of Default
1.	3000,00,00,000/-	01.04.2019
2.	51,00,00,000/-	01.05.2019
3.	32,00,00,000/-	01.03.2020
4.	36,00,00,000/-	01.04.2020

The default in the loan amount at Sr. No. 4 occurred during the period excluded by virtue of provisions of Section 10A of the Code is not maintainable. Hence, we proceed on the basis of defaults which have occurred in the other loans.


9.2 This bench sought clarification regarding the date of default for other loan amounts. Pursuant to which the Financial Creditor filed an additional affidavit to clarify the same. It was submitted that the date of default may be considered as 01.04.2019 for the following reasons:

a. The Working Capital Term Loan of INR 300,00,00,000/- was granted on and disbursed on 05.04.2018.

b. As per the terms of the said loan, the tenor of the facility was till 01.04.2019 and was to be repaid by Bullet Payment of Principal and Interest at the end of tenor.

Thus, in view of the terms of the said loan, the date of default will be 01.04.2019 as established by the additional affidavit of Financial Creditor dated 20.09.2024.

10. We take note of the Affidavit in reply. It is clearly evident that the Corporate Debtor acknowledged its liability in respect of dues payable to the Financial Creditor by stating “*due to certain unforeseen and unexpected circumstances owing to the downturn in the business environment which was further*



compounded by the world wide Covid-19 Pandemic, the Corporate Debtor faced severe financial stress and liquidity crunch due to which it was unable to repay the aforementioned working capital loan facilities”.

11. We observe that, the Corporate Debtor has raised objections on two grounds. The issue of the Privity of Contract between Corporate Debtor and Financial Creditor is untenable since there is clear assignment of loan advanced by RHFL along with all rights and securities attached thereto to the Financial Creditor by way of assignment deed.
12. We further note that on the issue of limitation, the Financial Creditor placed on record Financial Statement and Auditors' Report for the year ended 31.03.2022 of the Corporate Debtor which duly record outstanding loan payable to the Financial Creditor and accordingly a fresh period of limitation will be computed the limitation period stands extended.
13. We are of the considered view that the present Application under Section 7 of the Code is within the limitation and is maintainable as the debt is acknowledge by the Corporate Debtor. It is a settled law that the pre-requisites for an application under Section 7 of the Code are the existence of 'financial debt ' and a 'default'. The Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor. The petition is complete in all aspects. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under Section 7 of the Code.

ORDER

14. The Petition bearing CP (IB) No.428/MB-IV/2024 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Reliance Commercial Finance Limited ("Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Summit Ceminfra Private Limited ("Corporate Debtor") is Admitted.

a) 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.

(b) 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;

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.

(d) 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

(e) The bench hereby appoints **Mantrah Insolvency Professionals Private Limited**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPE-0040/IPA-2/2022-23/50021** and email- ipe@npvca.in. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(f) 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.



- (g) A copy of this Order be sent 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)**