

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.P. 310 OF 2022

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

IDBI Trusteeship Services Limited

Brindavan, plot No. 177, C.S.T. Road, Kalina, Santacruz (East), Mumbai – 400 098

..... Financial Creditor

V/s

Reliance Broadcast Network Limited

Unit No. 503, 5th Floor, ARC Plaza Industrial Estate, 48 Oshiwara Village, Jogeshwari (West), Mumbai 400 102

.....Corporate Debtor

Order reserved on: 10.01.2023

Order Pronounced on: 24.02.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner: Mr. Divij Kumar a/w Mr. Varun Tandon, Advocates

For the Corporate Debtor/ Respondent: Mr. Pranav Desai a/w Mr. Kiran Padalkar, Advocates

Per: Shri Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by IDBI Trusteeship Services Limited, hereinafter called as “**Petitioner/Debenture Trustee**” on behalf of L & T Investment Management Limited “**Debenture Holder**” seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) against Reliance Broadcast Network Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**”)read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 174,84,21,640/-

Facts of the case

2. The Petitioner submits that the Corporate Debtor had executed a Debenture Trust Deed dated 10.08.2015, (“**DTD-1**”) (Annexure A-9) in favor of the Petitioner wherein 1500 Rated Unlisted Redeemable Non-Convertible Debentures (“**NCDs**”) were issued for a face value of Rs. 10,00,000/- each aggregating to Rs. 150 crores in Series A, B and C. The said issuance was in furtherance to the execution of the Disclosure Document dated 13.05.2015 by the Corporate Debtor.
3. The Petitioner submits that the Debenture Holder herein (i.e. L & T Investment Management Limited) had subscribed NCD worth Rs. 50 Crores in series C with a redemption date of 13.05.2020. The Corporate Debtor had also executed a Put Option Agreement dated 12.05.2015 along with Reliance Capital Limited (“**Corporate Guarantor**”) and the Petitioner, for the purpose of entitling the investors/debenture holder to exit their investments in the NCDs either in full or in part. Under the terms of the said agreement, Reliance Capital Limited (i.e. the purchaser) was under an obligation to purchase the NCDs from the investors on occurrence of Put Option Event. It is further stated that the Corporate Debtor had also executed an unattested deed of Hypothecation dated 10.08.2015 and by a virtue of the said hypothecation, a charge was created in favor of the Petitioner over the

secured assets and the current account/ designated account of the Corporate Debtor. The Corporate Debtor in addition to the said hypothecation deed had also executed an irrevocable power of attorney dated 17.08.2015 for the purpose of operating the designated account and for enforcing the security interest created over the secured assets.

4. The Petitioner further submits that the Corporate Debtor had executed another Debenture Trust Deed dated 06.01.2016 ("**DTD 2**") (Annexure-A-10) in favor of the Petitioner for the purpose of encapsulating the terms and conditions under which 1000 Rated Unlisted Redeemable NCDs were issued for a face value of Rs. 10,00,000/- each, aggregating to Rs. 100 Crores in Series A, B and C. By the virtue of the abovesaid DTD 2, the Financial Creditor had subscribed for NCDs worth Rs. 65 crores in Series B (Rs. 35 crores) and Series C (Rs. 30 crores) with a redemption date of 08.10.2019 and 08.10.2020, respectively. In addition to this, the Corporate Debtor had executed another unattested deed of hypothecation dated 06.01.2016 in favour of the Petitioner due to which a charge was created in favour of the Petitioner herein over the secured assets and the current account/ designated account. Subsequently, Reliance Capital Limited had executed a deed of guarantee dated 03.06.2019 in favour of the Petitioner resultantly, guaranteeing repayment all the outstanding amount becoming due and payable by the Respondent in respect of the NCDs along with any other monies due under the DTD 2.

5. The Petitioner submits that the Corporate Debtor had executed another Debenture Trust Deed dated 09.12.2016 ("**DTD 3**") (Annexure- A11) in favour of the Petitioner upon which 500 Rated Unlisted Redeemable NCDs were issued for a face value of Rs. 10,00,000/- each, aggregating to Rs. 50 crores. The Debenture Trustee had subscribed for NCDs worth Rs. 50 crores with a redemption date of 13.09.2019, which was later extended to 10.10.2019 in terms of letter dated 12.09.2019, addressed by the Debenture Holder to the Petitioner. Thereafter, second

amendment deed dated 19.09.2019 was executed between the Corporate Debtor and the Petitioner. The Respondent had also executed another unattested deed of hypothecation dated 09.12.2019 in favor of the Petitioner due to which a charge was created in favor of the Petitioner over the secured assets of the Respondent and the current account/ designated account.

6. The Petitioner submits that since the redemption date of the NCDs subscribed under the DTD 1 Dated 10.08.2015 was 13.05.2020 and the Corporate Debtor was obligated to fund the designated account 3 days prior to the due date, the Debenture Holder vide email dated 08.05.2020 requested the Petitioner to confirm the status of funding of the designated account by the Corporate Debtor. The Petitioner vide email dated 08.05.2020 sought an update from the Corporate Debtor to which the Corporate Debtor vide email dated 08.05.2020 requested for a moratorium due to liquidity crunch being faced by the latter. Thereafter, the Debenture Holder exercised its put option under the said Put Option Agreement dated 12.05.2015, exercising its right to entire 500 NCDs aggregating to 50 crores for an exercise price of Rs. 512,069,672.13/-, including interest amount of Rs. 1,20,69,672.13/-. In view of the liquidity crunch expressed by the Corporate Debtor, the Debenture Holder had vide its email dated 08.10.2020 invoked the Deed of Guarantee dated 03.06.2019 wherein Reliance Capital Limited was called upon to make the payment towards the outstanding amount of Rs. 65 crores. Thereafter the Debenture Holder had issued a Notice of Default dated 12.10.2020 to the Corporate Debtor wherein the latter was called upon to repay the secured obligations under the DTD-2 dated 06.01.2016 by 4:00 PM on 13.10.2020. In view of the failure of the Corporate Debtor towards the outstanding dues, the Petitioner had also issued a letter dated 15.10.2020, thereby invoking the Deed of Guarantee dated 03.06.2019, and called upon Reliance Capital Limited to make the payment towards the outstanding due within 2 business days from the date of receipt of letter dated 15.10.2020.

7. The Petitioner submits that The Debenture Holder had issued a notice dated 14.07.2021, to Reliance Capital Limited to make payments of Rs. 172,61,94,200/- owed by the Corporate Debtor. The Debenture Holder again issued a notice Legal Notice dated 15.11.2021 to the Corporate Debtor and the Guarantor calling upon them to make payments towards the outstanding of Rs. 173,90,87,870/-.
8. The Petitioner submits that the Corporate Debtor has neither replied to the legal notice nor repaid the outstanding dues. Hence the Petition.

Reply by the Respondent

9. The Respondent has filed a reply controverting the allegations made against it. In the said reply the Respondent submits that the Board Resolution which is annexed to the Petition by the Applicant is defective and bad in law due to the fact that Mr. Deepak Kumar, Sr. Manager, IDBI Trusteeship Services Limited, Debenture Trustee for the Debenture Holder is not an authorized person to act on behalf of the Petitioner.
10. The Respondent also raised a contention that this Tribunal lacks the jurisdiction, due to the fact that the parties have conferred a non-exclusive jurisdiction to the Tribunals in New Delhi as regards to any dispute concerning the agreements pertaining to the present Petition.
11. The Respondent submits that that the total amount was granted to the tune of Rs. 300 cr. vide three debenture trust deeds dated 10.08.2015, 06.01.2016, 09.12.2019. The Respondent submits that it has repaid Rs. 135 crores against the Debenture Trust Deed dated 10.08.2015 (Series A – Rs. 50 crores & Series B- Rs. 50 crores) and against Debenture Trust Deed dated 06.01.2016 (Series A- Rs. 35 crores). The Respondent further submits that with regard to Debenture Trust Deed dated 06.01.2016, the date of default for Series C was 08.10.2020 and with respect to DTD-1 the date of default mentioned by the Petitioner was

13.05.2020. Therefore, the Respondent submits that the present debt falls within the four corners of Section 10A of the Code, and hence the present Petition is not maintainable and ought to be dismissed. In addition to this, the Petitioner had vide letter dated 12.10.2020 issued to the Respondent whereby the latter was asked to pay an amount arising out of DTD-2 dated 06.01.2016 of Rs. 67.8 crores, not later than 4:00 PM on 13.10.2020. Thus, the Respondent submits that the debt fell due on 13.10.2020 which falls under the period prescribed by Section 10A of the Code.

12. The Respondent further submits that there is no crystallisation of the alleged debt. The Petitioner has not provided any particulars of claim of Rs. 174,84,21,640/-. It is also stated that the alleged amount in default is in the nature of damages and penal interest which is impermissible under the Code.

13. The Respondent submits that the Debenture Trust Deeds, upon which the Petitioner has placed its reliance upon, are not sufficiently stamped. Therefore, the same cannot be acted upon in view of provisions of Maharashtra Stamp Act, 1958. The Debenture Trust Deeds were executed in Delhi and are allegedly stamped as per the law of that particular State. It is further stated that once the Debenture Trust Deeds were received in the state of Maharashtra, the difference in the stamp duty had to be paid within three months from the receipt of the Debenture Trust Deed in state of Maharashtra, but the same has not been paid. Therefore, the Respondent states that the Debenture Trust Deeds ought to be impounded by this Tribunal or a necessary direction should be issued in this regard to make good the shortfall in the stamp duty.

14. The Respondent submits that the as per Section 3 of the Information Memorandum, which provides for various risks factors, the investors

understood before subscribing to the debentures. On account of the unprecedented conditions of COVID-19, the Corporate Debtor's financial health has deteriorated. Therefore, the rating agencies have downgraded the rating of the debentures.

15. The Respondent submits that the Petitioner had already exercised its right to recover the monies by invoking the Put Option Agreement dated 12.05.2015, both the deeds of guarantees dated 03.06.2019, against Reliance Capital Limited. Thereafter the Reserve Bank of India superseded the Board of Directors of Reliance Capital Limited and Mr. Nageswara Rao Y was appointed as the administrator of Reliance Capital Limited and vide Order dated 06.12.2021 of this Tribunal, the CIRP proceedings were initiated against Reliance Capital Limited. The Respondent submits that the Petitioner had filed its claim before the Ld. Administrator to recover the monies under the Put Option Agreement and under the said Deeds of Guarantee. In this regard, the Respondent has stated that the Petitioner is not entitled to file its claim before two different authorities regarding the claim arising out of same transaction documents and, therefore, the present Petition warrants dismissal.

16. The Respondent has stated that the financial health of the Corporate Debtor is recovering. The Respondent has also projected that they are likely to generate substantial cashflow during the Financial Year 2022-2023. Apart from that, the Respondent is also making efforts to find an appropriate buyer for the purpose of taking over their business. In the event of revival of the Respondent, it will be in a position to fulfil its obligation under the Transaction Documents.

17. The Respondent submits that the present Petition is filed without any valid authorization and the same is not maintainable in law. Therefore, the same should be dismissed.

Rejoinder by the Petitioner

18. The Petitioner in its rejoinder has responded to the contentions raised by the Respondent Company.
19. With regard to the contention raised by the Respondent that Mr. Deepak Kumar is not an authorized person to file the Petition. The Petitioner has annexed a General Power of Attorney dated 30.05.2018 (Annexure R-1 to the Rejoinder), wherein clause 9 specifically authorizes Mr. Deepak Kumar to file the present Petition and the same is maintainable under the eyes of law.
20. With regard to the contention raised by the Respondent that this Tribunal of Mumbai does not have jurisdiction over the subject matter, the Petitioner submits that, Section 238 of the Code provides for an overriding effect to any other law or any instrument having effect by virtue of any such laws. Moreover, by the virtue of Section 60 (1) of the Code, this Tribunal has the territorial jurisdiction as the registered office of the Respondent is situated in Mumbai.
21. As regards the averment that the date of default falls within Section 10A period, the Petitioner submits that the Corporate Debtor has not disputed the existence of debt with regard to DTD-3 dated 09.12.2016. The Petitioner submits that the first date of default with respect to payment of Rs. 36,15,29,454/- occurred on 08.10.2019, and as per the DTD-2 dated 06.01.2016. the second date of default occurred on 10.10.2019, for the payment of Rs. 52,15,28,219/- as per the said DTD, and the date of notice does not change the date of default. Moreover, the Respondent vide letter dated 04.10.2019 itself admitted that the amount due as per the said DTDs are payable by 08.10.2019 and 10.10.2019. Besides, the Corporate Debtor in its Annual Report 2019-2020 had admitted having defaulted repaying instalment due on 10.10.2019.

Findings

1. We have heard the Counsel for the parties and have gone through the record.
2. During the course of argument, the Counsel for the Petitioner has referred to the Debenture Trust Deed dated 06.01.2016 and has pointed out that as per the said Debenture Trust Deed, the maturity date of the three series of the Debentures i.e. series-A, series-B and series-C was 08.10.2018, 08.10.2019 and 08.10.2020 respectively. In this very debenture deed, the maturity date of Series-A and B for the debentures is mentioned as 08.10.2018 and 2019 respectively. The Counsel for the Petitioner has further referred to the annual report of the Corporate Debtor and the financial statement for the year ended 31.03.2020 which is part of the annual audit report. On page 56 of the said report in Part (d), it is clearly acknowledged that the debentures were redeemable in three equal instalments at the end of 3rd year, 4th year and 5th year from the date of allotment and further that the company had defaulted in repayment of principle instalment due on 08.10.2019 of ₹3,500 lakhs with delayed interest to the extent of Rs 199.53 lakhs payable as on 31.03.2020. According to the Counsel for the Petitioner, it is admitted that the case of the Corporate Debtor that the first date of default is 08.10.2019.
3. The Counsel for the Financial Creditor has further referred to the letter dated 04.10.2019 (Annexure R2) addressed by the Corporate Debtor to the Debenture Holder i.e. L & T Investment Management Limited whereby also it stands admitted that the date of maturity of the bond of the debenture was 08.10.2019.
4. The Counsel for the Financial Creditor has further referred to Debenture Trust Deed dated 09.12.2016 wherein as per Clause (eee), the date of maturity of the debenture is mentioned as 13.09.2019. The Counsel for the Petitioner has further referred to the Second Amendment Deed to the Debenture Trust Deed dated 09.12.2016

wherein the date of maturity is mentioned as 10.10.2019. According to the Counsel for the Petitioner, the date of maturity provided in Series B Debenture Trust Deed dated 06.01.2016 and 10.08.2015 is 08.10.2019 and 10.10.2019 respectively which are not covered in the period provided under Section 10A of the Code. Therefore, the Counsel for the Petitioner requested that the petition deserves to be admitted.

5. On the other hand, the Counsel for the Corporate Debtor has vehemently argued that the present Petition is hit by the Section 10A of the Code. According to the Counsel for the Corporate Debtor, the payment in respect of Debenture Deed dated 09.12.2016 and 06.01.2016 was never invoked. Therefore, the maturity date mentioned in the said Debenture Deed cannot be taken as the date of default. The Counsel for the Corporate Debtor further contended that so far as the Debenture Trust Deed dated 06.01.2016 and 10.08.2015 are concerned, the maturity date in the said deeds are 08.10.2020 and 13.05.2020 which clearly falls within the ambit of Section 10A of the Code. As such, the petition is liable to be dismissed on this score only.
6. The Counsel for the Corporate Debtor has further pointed that present Petition has not been filed by a duly authorised person and Mr. Deepak Kumar through whom the present petition has been filed cannot be considered as competent authority to file the Petition on behalf of the company. In this regard, it has been pointed out by the Counsel for the Corporate Debtor that in the Board Resolution (Annexure A2), it is simply mentioned that a general power of attorney be given to Mr. Deepak Kumar, Senior Manager and for other verifications of the document including security document on behalf of the company and there is no specific mention in power of attorney or authorization have not been given with regard to filing of the instant Petition. Therefore, the present petition has been filed without any authority and deserves to be dismissed on this ground alone.

7. The Counsel for the Corporate Debtor has further argued that as per the notice dated 12.10.2020, the Petitioner/ Financial Creditor extended the time for payment till 13.10.2020. Therefore, for all intent and purposes, the date of default comes to be 13.10.2020 which clearly falls within the period referred under Section 10A.
8. We have thoughtfully considered the contention raised by the parties and gone through the records.
9. It is not disputed that the Corporate Debtor issued debentures in favour of the L & T Investment Management Limited by way of three different instruments i.e. Debenture Trust Deeds 10.08.2015 (Rs. 150 crores, Series A, B and C), Debenture Trust Deed dated 06.01.2016 (Rs. 100 Crores, Series A, B and C) and Debenture Trust Deed 09.12.2016 (For Rs. 50 crores). The maturity date provided in Debenture Trust Deed dated 06.01.2016 for Series B was 08.10.2019 while that of Debenture Trust Deed dated 09.12.2016 was 10.10.2019. It is also not disputed that no payment was made by the Corporate Debtor either on 08.10.2019 or on 10.10.2019 when the payment in respect of debenture series became due. Therefore, for all intent and purposes, the date of default in this case is 08.10.2019. Any other event of non-payment of the dues on maturity date by the Corporate Debtor would constitute only a subsequent date of default. It is now a well settled proposition of law and has also been held by Hon'ble Supreme Court **Laxmi Pat Surana Vs. Union of India & anr. CIVIL APPEAL NO. 2734 OF 2020** that the trigger for initiation of CIRP by Financial Creditor is default on part of Corporate Debtor is the date when default occurs. Since it is not disputed that the maturity date in respect of Debenture Trust Deed dated 06.01.2016 (Series-B) was 08.10.2019 and the payment was not made on the date of maturity, the date of default in this case undisputedly is 08.10.2019. In the light of this fact, it cannot be said that the Petition is hit by Section 10A of the Code. The argument advanced by the Corporate Debtor that as two Debenture Trust Deeds,

the payments were not invoked by the Financial Creditor in respect of Debenture Trust Deeds dated 09.12.2016 and 10.08.2015 and, therefore, it did not result in default, is a specious argument and deserves to be outrightly rejected considering the fact that on the date of maturity, the payment became instantly payable and the factum of non-payment or delayed payment even by one day after the date of maturity constitutes default in unequivocal terms. Besides, it has been admitted by the Corporate Debtor in Annual Report for the year ended 31.03.2020 that the Company had committed default in payment of instrument deed on 08.10.2019.

10. So far as the contentions raised on behalf of the Corporate Debtor that the present application has not been filed by duly authorised person is concerned, the same is also not tenable considering the fact that as per General Power of Attorney (Annexure R1) dated 30th May 2018 executed by IDBI Trusteeship Services Limited in favour of Mr Deepak Kumar, he has been clearly authorized as per Para No. 19 of the general power of attorney to commence, prosecute and enforce any suit or proceeding before the DRT under SARFAESI Act and initiate action under Insolvency and Bankruptcy Code 2016, and under any other acts and constituents thereto. Therefore, it cannot be said that the present Petition has been filed by a person who was not competent or authorised to file the same.
11. As regards the contention that the Petitioner is not entitled to seek remedy against the Principal borrower as well as the guarantors simultaneously, it is well settled and has been held by the Hon'ble NCLAT in **State Bank of India Vs. Athena Energy Ventures Private Limited [Company Appeal (AT) (Insolvency) no. 633 of 2020]** that the Financial Creditor can proceed against the Principal Borrower as well as Corporate Guarantors.

12. So far as the objection with regard to the loan documents not been sufficiently stamped, it is notable that the question of insufficiently stamped loan documents is not relevant while adjudicating upon the admissibility of a Petition under Section 7 of the code. This position is also settled in **SpiceJet Limited v/s Credit Suisse AG 2022 SCC OnLine Mad 112**, wherein the Hon'ble Madras High Court has held as under:

“... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence can not be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.”

13. With regard to the objection that this Tribunal has no jurisdiction in the present subject matter, we are of the considered view that since the Registered office of the Corporate Debtor is in Mumbai this Tribunal has territorial jurisdiction over the present subject matter by the virtue of Section 60(1) of the Code. A reference can be made in **Excel Metal Processors Limited Vs. Benteler Trading international GMBH and anr. (2019 SCC OnLine NCLAT 1037)** wherein the Hon'ble NCLAT held that, the Adjudicating Authority has a territorial jurisdiction over the place where the registered office of the Corporate person is located.
14. As a result of the ongoing discussion, we are of the considered view that in this case, the Petitioner has been able to establish the necessary ingredient of there being a financial debt and default having

been committed by the Corporate Debtor. Accordingly, the Petition under Section 7 of the Code is hereby admitted in the following terms:

ORDER

- a. The above Company Petition No. 310 OF 2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Reliance Broadcast Network Limited**
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Rohit Ramesh Mehra**, having Address – Tower A 3403, Oberoi Woods, Oberoi Garden City, Goregaon East, Mumbai 400 063 and having registration No. IBBI/IPA-001/IP-P00799/2017-2018/11374, and having email ID as rohitmehra@hotmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P (IB) NO. 310 OF 2022 is **admitted**.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)