

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) No. 187(PB)/2023

In the matter of

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Ligare Aviation Ltd.

Registered Office :

G-16, Marina Arcade, Connaught Circus,
New Delhi-110001

...Financial Creditor

Versus

Religare Enterprises Ltd.

Registered Office at :

1407, 14th Floor, Chiranjiv Tower,
43, Nehru Place,
New Delhi-110019

.....Corporate Debtor

Order pronounced on: 11.07.2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President
Shri Atul Chaturvedi : Hon'ble Member
(Technical)

Appearances :

For the Financial Creditor : Mr. Sudhir K. Makkar, Sr. Adv.
Mr. Zeyaul Haque, Adv
Ms. Sweta Singh, Adv.

For the Corporate Debtor : Mr. Sunil Fernandis, Adv
Mr. Siddharth Sharma, Adv
Mr. Varun Chopra, Adv
Ms. Diksha Dadu, Adv

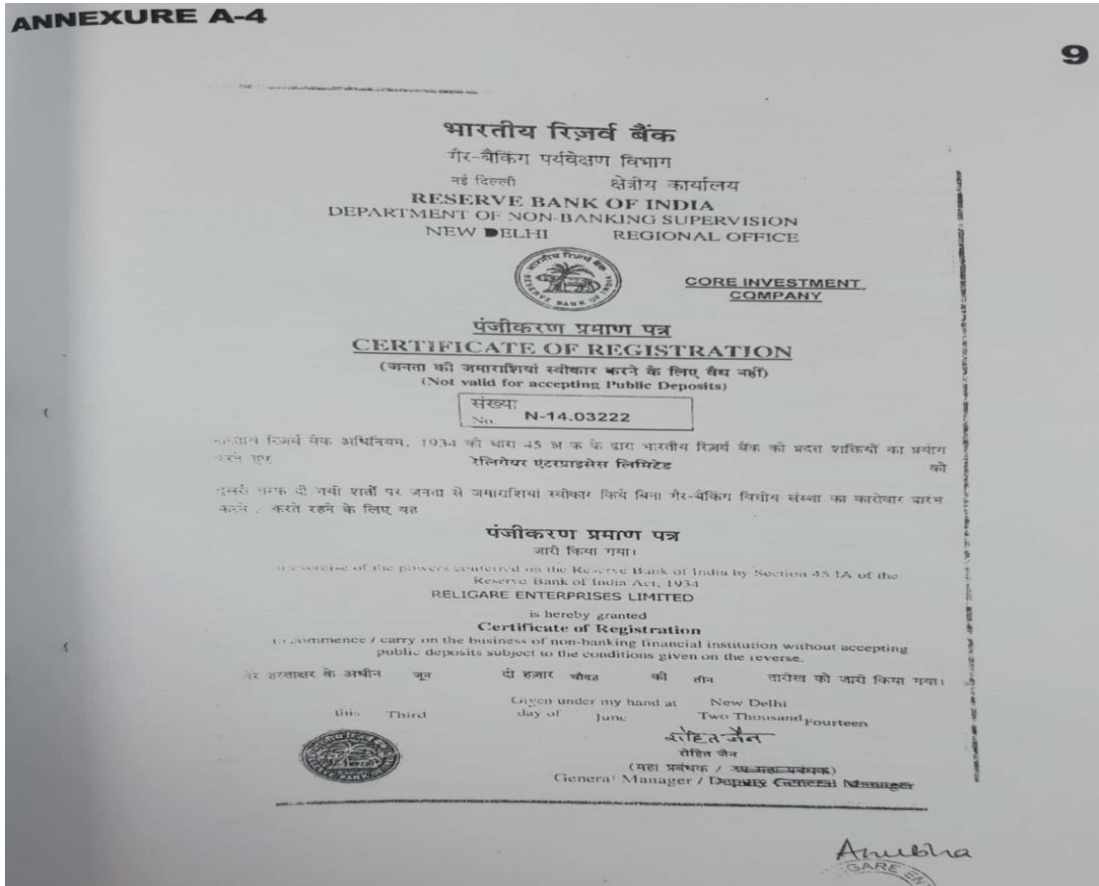
ORDER

Per: Atul Chaturvedi, Member (Technical)

1. This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by **Ligare Aviation Ltd.**, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Religare Enterprises** who is the corporate guarantor of the principal borrower Auriga Marketing Services Private limited.
2. The present petition was filed on 21.03.2023 before this Adjudicating Authority on the ground that the principal borrower has defaulted to make a payment of a sum of Rs.35,55,00,000 (Rupees Thirty Five Crores Fifty Five Lakhs Only) at an interest of 14.25% p.a. totaling to Rs. 74,20,31,453/-(Seventy Four Crores Twenty Lakhs Thirty One Thousand Four Hundred and Fifty Three Only) as on 27.01.2023 and the corporate debtor being the corporate guarantor of the principal borrower, thus the financial creditor is invoking insolvency against the corporate guarantor.
3. The Learned Senior Counsel for the financial Creditor submitted that a Memorandum of undertaking dated 22.09.2011 was entered into

between the principal borrower and the financial creditor for an unsecured demand loan of Rs. 50 crores (Rupees Fifty Crores Only) at an interest rate of 14.25%p.a and this MOU was signed upon the instruction of the corporate debtor.

4. Before proceeding into the merit of the case, the learned counsel for the corporate debtor took a plea that prima facie the petition filed by the petitioner is not maintainable under Section 7 of IBC, 2016 as it is contended that the corporate debtor is a financial service provider and is excluded from the definition of Corporate person as defined Section 3(7) of IBC, 2016, thus insolvency proceeding cannot be initiated against the corporate debtor.
5. To support its contention the counsel has placed before this Adjudicating Authority the Certificate of Registration under Reserve Bank of India, Act, 1934 which has been granted to the corporate debtor giving it the status of “Non Banking Financial Institution”. For reference the certificate has been reproduced below:



6. It is further stated that RBI alone is entitled to initiate CIRP against all NBFCs that have an asset size of more than 500 crores and no other entity/ company is legally or statutorily competent to institute any petition against NBFCs. Further by way of certificate, RBI recognizes the respondent company as an NBFC, thereby permitting to commence business of an NBFC without accepting deposits subject to the conditions. It is further stated that the perusal of above certificate also reveal that RBI has itself registered the respondent company as Core Investment Company.

7. In rebuttal, the Learned Senior Counsel for the applicant submitted that the corporate debtor is not a financial service provider and had not furnished any document to prove that it falls under the exclusion clause of Section 3(7) of IBC, 2016.
8. It is further stated that the Annual Report of the corporate debtor for the financial year ended March 31, 2015 shows that the corporate debtor's status has changed in the year 2014 from 'NBFC to Core Investment Company.
9. It is further argued that the relevant direction issued by RBI by which the corporate debtor changed its status from NBFC to CIC cogently states that CIC justifiably deserve a differential treatment in the regulatory prescription applicable to Non Banking Financial Companies and further CIC are those companies which have their assets as investment in shares for holding stake in group companies but not trading and they do not carry on any other financial activity.
10. On perusal of the documents referred to supra, we observe that the Reserve Bank of India by exercising its power under Section 45 IA of the Reserve Bank of India Act, 1934 has granted a certificate to the Corporate Debtor Company to carry on business of non-banking financial institution subject to the condition given on the reverse.

11. Now we consider this aspect whether on the basis of the certificate, the Respondent/Corporate Debtor can claim exemption. At this juncture, we would like to refer to Section 3(7) of IBC,2016 and the same is reproduced below:-

"Corporate Person" means

(a) a company as defined in clause (20) of section 2 of the Companies Act, 2013,

(b) a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or

(c) any other person incorporated with limited liability under any law for the time being in force

but shall not include any financial service provider,

12. Sec 3(8) defines a "Corporate Debtor" as meaning a corporate person who owes a debt to any person. Section 7 speaks of initiation of CIRP against a corporate debtor by a financial creditor.

13. Reading the provisions together, it is clear that a section 7 petition may be initiated against any corporate debtor who is a corporate person within the meaning of Section 3(7) of the Code and the financial service provider is excluded from the definition of the Corporate Person, thus the corporate debtor herein is not

covered within the definition of Section 3(7) of the Code, since it is admittedly NBFC.

14. In this regard, we would also like to refer to the decisions of Hon'ble NCLAT in the matter of ***Housing Development Finance Corporation Ltd v. RHC Holding Private Ltd in Com. Appeal (AT) (Ins) no. 26/2019*** in which it was held that:

19. Therefore, it is clear that the Respondent, a non-banking financial institution is carrying on business of financial institution and thereby it being financial service provider do not come within the meaning of Corporate Person/Corporate Debtor .

15. Further in the case of ***Randhiraj Thakur v. M/S Jindal Saxena Financial Services in Company Appeal (AT)(Ins)No. 32 and 50 of 2018*** it has been held that :

*10. If the entire scheme of the I&B Code is seen, it will be evident that the Code is to consolidate and amend the laws relating to reorganisation and insolvency resolution of 'corporate persons', 'partnership firms' and 'individual' in a time bound manner. It is a self-contained Code which is exhaustive in nature when it comes to reorganisation and insolvency resolution. **However, an exception had been carved out while enacting the Code that the 'financial***

service providers' have been kept outside the purview of the Code. Being a consolidating legislation only those acts are permitted which are mentioned in the Code and it cannot be made applicable to 'financial service providers' including 'non-banking financial institutions' and MFI's banks, which have been kept outside the purview of the Code.

16. As a sequel to the above, we are of the considered view that the corporate debtor as alleged do not come within the meaning of corporate person and therefore, we are unable to accept the prayer of the Applicant to initiate the CIRP against the Corporate Debtor.
17. In these circumstances, the present petition bearing CP (IB) No. 187(PB)/2023 is not maintainable and is accordingly dismissed.
18. We make it clear that the dismissal of the petition is not on merit, but only because the section 7 application is not maintainable against the corporate debtor. This order shall, therefore, not prejudice the right of the Financial Creditor to initiate appropriate steps under any other law and before appropriate forum.
19. The registry is further directed to send the copy of the order to the IBBI also for their record.

20. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
21. File be consigned to the records.

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RAMALINGAM SUDHAKAR
PRESIDENT

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ATUL CHATURVEDI
MEMBER (TECHNICAL)