

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP(IB)No. 113/MB/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Reliance Commercial Finance Limited

The Ruby, 11th Floor, North-West Wing,

Plot No.29, Senapati Bapat Marg

Dadar (West), Mumbai, Maharashtra -400028

..... **Financial Creditor/ Applicant**

Versus

M/s Twink Big Content Private Limited

[CIN: U74993MH2018PTC308308]

Manek Mahal, 6th Floor,

90, Veer Nariman Road, Churchgate.

Mumbai, Maharashtra-400020.

.....**Corporate Debtor/Respondent**

Order Delivered on : 26.07.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

:

Ms.Siddha Pamecha, Advocate

For the Corporate Debtor

:

Joshva D'souza, Advocate

ORDER

Per: Virendrasingh Gyansingh Bisht, Member (Judicial)

1. This Company Petition has been filed by **Reliance Commercial Finance Limited** ("**Financial Creditor**"), is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **M/s Twink Big Content Private Limited**. ("**Corporate Debtor**") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding up to 31.08.2023 of INR 12,633,156,876/- (Rupees One Thousand Two Hundred Sixty-Three Crore Thirty One Lakh Fifty Six Thousand Eight Hundred and Seventy Six Only) including penal interest.
2. According to the Information Utility the date of default is **01.02.2020**.
3. There is an assignment deed executed on 31.03.2023 by and between Reliance Home Financial Limited and Reliance Commercial Financial Limited.
4. The Corporate Debtor's audited Financial Statements for the year ended March 31, 2022, records a financial debt owed to the Financial Creditor, which amounts to an acknowledgment of debt by the Corporate Debtor.

Submissions made by the Financial Creditor:

5. The Financial Creditor formerly known as Reliance Gilts Limited, was incorporated on August 17, 2000 with the Registrar of Companies (RoC), Maharashtra, Mumbai. Subsequently, on May 21, 2009, the Financial Creditor was registered as a Non-Banking Financial Institution with Reserve Bank of India, as defined under Section 45-IA of the Reserve Bank of India Act, 1934 vide Certificate of Registration No. N-13 .01933

6. That the Financial Creditor advanced loan for working capital facility to the Corporate Debtor vide Sanction letter dated 19.11.2018 for an amount of Rs. 350,00,00,000/- (Rupees Three Hundred and Fifty Crore Only) at an interest rate of @13.50% per annum. In view of the same, the Corporate Debtor entered into Facility cum Hypothecation Agreement dated on 07.11.2018 and executed other documents with Financial Creditor. On 29.10.2018 the Reliance home Financial Limited (RHFL) sanctioned and disbursed an amount of Rs.65,77,60,000/ (Rupees Sixty-Five Crore Seventy-Seven Lakh and Sixty Thousand Only) to the Corporate Debtor. On 05.11.2018 RHFL sanctioned and disbursed an amount of Rs.141,67,00,000/- (Rupees One Hundred Forty-One Crore and Sixty-Seven Latch Only) to the Corporate Debtor. On 19.11.2018 the Financial Creditor sanctioned and disbursed an amount of Rs.350,00,00,000/- (Rupees Three Hundred and Fifty Crore Only) to the Corporate Debtor.
7. That Reliance Home Finance Limited ("RHFL") was incorporated on June 5, 2008 and is registered with National Housing Bank as Housing Finance Institution RHFL advanced loan for working capital facility to the Corporate.
8. That later on, RHFL got into a financial stress and pursuant to the Resolution Plan implemented in terms of the RBI Circular No. RBI/2018-19/203, DBR.No.BP.BC.45/21.04.048/2018-19 dated 07.06. 2019 on Prudential Framework for Resolution of Stressed Assets and the order of Hon'ble Supreme Court of India dated 03.03.2023 the Financial Creditor acquired the Business Undertaking of RHFL on a slump sale and going concern basis. The loan advanced by RHFL along with all rights and securities attached thereto was assigned to the Financial Creditor by a way of assignment deed dated March 31.03.2023.
9. The Corporate Debtor acknowledged the debt owed to Financial Creditor by giving Balance Confirmation dated 30.09.2021 for an amount of Rs. 3,76,25,15,999/ (Rupees Three Hundred Seventy-Six Crore Twenty-

Five Lakh Fifteen Thousand Nine Hundred Ninety-Nine Only), including interest. Hence, the Corporate debtor has acknowledged the total amount of Principal debt and Interest debt of Rs.5,69,32,05,479/- ((Rupees Five Hundred Sixty-Nine Crore Thirty-Two Lakh Five Thousand Four Hundred and Seventy-Nine Only)

10. RHFL sent Loan Recall Notice/Termination of Agreement Notice via Registered Post-dated 30.11.2021 and requested the Corporate Debtor to make the outstanding payment. However, no response was received from the side of the Corporate Debtor.
11. The Financial Creditor has repeatedly requested repayment of the outstanding dues from the Corporate Debtor. While the Corporate Debtor has acknowledged the debt on various occasions, they are currently unable to fulfill their obligation to the Financial Creditor. Till date, however, the Corporate Debtor has not made repayment towards the outstanding dues as per the agreed schedule and terms outlined in the in the agreement.
12. It is submitted by the Financial Creditor that Corporate Debtor has not paid a single penny to the Financial Creditor or RHFL, for the amount of loan disbursed. However, the Corporate Debtor has been acknowledging its liability to pay the debt amount in its Financial Statement for the FY2021-22 and by giving balance confirmation.
13. However, despite various repeated reminders, it appeared that no serious attempts were made by the Corporate Debtor to repay the balance outstanding dues, resultantly defaulting in repayment of its debt and hence, failed to repay the amounts disbursed to the Financial Creditor.

Submissions made by the Corporate Debtor:

14. The Corporate Debtor submits that they have approached the Financial Creditor for financial assistance in order to carry on business operation.

15. The Corporate Debtor admits that the Financial Creditor (formerly known as Reliance Gilts Ltd.) has advanced Financial Debt of Principal Amount aggregating to Rs. 350,00,00,000/- (Rupees Three Hundred Fifty Crore only) respectively at an interest of 13.50 % per annum arising out of working loan facilities extended/disbursed by Financial Creditor, vide Sanction Letters and Facility cum Hypothecation Agreement dated 19.11.2019.
16. The Corporate Debtor submits that out of total mentioned Financial Debt, one entity viz. Reliance Home Finance Limited, has advanced Financial Debt of Principal Amount aggregating to Rs. 207,44,60,000/- (Rupees Two Hundred Seven Crore Forty-Four Lakh and Sixty Thousand Only) arising out of working loan facilities extended/disbursed by Financial Creditor, vide Sanction Letters and Facility cum Hypothecation Agreement in following manner: -
 - a) Rs. 65,77,60,000/- (Rupees Sixty-Five Crore Seventy-Seven Lakhs and Sixty Thousand Only) at an interest of 13.50% per annum on 29.10.2018,
 - b) Rs. 141,67,00,000/- (Rupees One Forty Crore and Sixty-Seven Lakhs Only at an interest of 12.50% per annum as on 05.11.2018.
17. The Corporate Debtor submits that due to certain unforeseen and unexpected circumstances owing to the downturn in the print and media business space 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 and Reliance Home Finance Limited (RHFL). 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 and Reliance Home Finance Limited but the same did not materialise.
18. The Corporate Debtor emphasize on the fact that despite the advanced level negotiations between Corporate Debtor and Financial Creditor, the

Reliance Home Finance Limited (RHFL) issued various notices dated 30.11.2021 calling upon the Corporate Debtor to pay the outstanding financial debt in respect of Rs. 376,25,15,99/- (Rupees Three Hundred Seventy-Six Crore Twenty-Five Lakhs Fifteen Thousand Nine Hundred Ninety-Nine Only).

19. Further while Reliance Home Finance Limited has issued recall notices on 30.11.2021 to the Corporate Debtor, but it is pertinent to note that the present Petition has in fact has been filed by Reliance Commercial Finance Limited and there is nothing on record before this Hon'ble Tribunal to substantiate that the said Reliance Commercial Finance Limited has issued any recall notice to the present Corporate Debtor in respect of the Rs. 350,00,00,000/- crores advanced by Reliance Commercial Finance Limited to Corporate Debtor.
20. In view of what is stated hereinabove it is submitted that there is no Privity of Contract between the Corporate Debtor and Petitioner/ Financial Creditor insofar as the loans advanced by Reliance Home Finance Limited to Corporate Debtor is concerned for the following reasons:
 - a) That the Petitioner in present case seeks to initiate CIRP against the Corporate Debtor in respect of the Loans advanced by Reliance Home Finance Limited to Corporate Debtor on the ground that Reliance Home Finance Limited 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 along with all its rights and securities attached thereto was assigned to the Petitioner i.e. Financial Creditor
 - b) However, it is pertinent to note that the consent of the Corporate Debtor in respect of the said assignment was not obtained and as such the Corporate Debtor has privity of contract only with Reliance Home Finance Limited and not the present Financial Creditor who claims to have acquired the said Reliance Home Finance Limited in

respect of the Financial Debt of Principal Amount aggregating to Rs. 207,44,60,000/- (Rupees Two Hundred Seven Crore Forty-Four Lakh and Sixty Thousand Only), and as such the Corporate Debtor is not liable to pay the subject financial debt to the present Petitioner.

- c) Furthermore, it is pertinent to note that in respect of the Financial Debt of Principal Amount aggregating to Rs. 350,00,00,000/- (Rupees Three Hundred and Fifty Crores Only), advanced by the Financial Creditor to Corporate Debtor, there is nothing placed on record by the Financial Creditor to show that they have terminated or recalled the said loan facility and resultantly it cannot be claimed that there is any debt or default in respect of the Financial Debt of Principal Amount advanced by the Financial Creditor to Corporate Debtor.

21. Loan Advanced by Reliance Commercial Finance Ltd:

Sr.	Loan Amount in Rs.	Date of Default
01.	Rs. 350,00,00,000/-	01.11.2019

Loan Advanced by Reliance Home Finance Ltd:

02.	Rs. 65,77,60,000/-	01.11.2019
03.	Rs. 141,67,00,000/-	01.11.2019

22. Whereas the present Petition has been filed by the present Financial Creditor in respect of the all these loan facilities only on 09.01.2024 which will show that the present petition is clearly time barred and therefore not maintainable.
23. It is further submitted that as far as the purported balance confirmation dated 30th September 2021 annexed in Petition, the same cannot be relied upon by the present Financial Creditor for the following reasons:
- a) That as far as balance confirmation dated 30.09.2021 acknowledged by the Corporate Debtor in favour of Financial Creditor at page 317 of the Petition is concerned, it is pertinent to note that the Financial Creditor has never terminated or issued any recall notice in respect of the said loan facilities and therefore there is no default to justify initiation of CIRP in respect of the said loan facilities.
 - b) That as far as Balance confirmation dated 30.09.2021 acknowledged by Corporate Debtor in favour of Reliance Home Finance Ltd at Page 316 of the Petition is concerned, it is pertinent to note that the Corporate Debtor has no privity of contract with Financial Creditor in respect of the said loan facilities and the same are concerned with Reliance Home Finance Limited and assignment deed executed between Reliance Home Finance and present Financial Creditor, if any, was not executed with the consent of the Corporate Debtor.
24. The aforementioned factors have significantly contributed to the unprecedented loss and impairment of the business continuity and financial liquidity of the Corporate Debtor. Delays in client payments, combined with various other occupational factors and pre-existing financial challenges, have further exacerbated the financial strain on the Corporate Debtor.

Decision:

25. Heard learned counsel for both the parties and perused documents on record.

26. We find that the Corporate Debtor has defaulted on several terms and has also failed to repay the outstanding amount of INR 12,633,156,876/- (Rupees One Thousand Two Hundred Sixty-Three Crore Thirty-One Lakh Fifty-Six Thousand Eight Hundred and Seventy-Six Only) including penal interest.
27. According to the Information Utility the date of default is **01.02.2020**
28. The Corporate Debtor acknowledged the debt owed to Financial Creditor (RCFL) by giving Balance Confirmation dated **30.09.2021** for an amount of Rs. 3,76,25,15,999/- (Rupees Three Hundred Seventy-Six Crore Twenty-Five Lakh Fifteen Thousand Nine Hundred Ninety-Nine Only), including interest. Hence, the Corporate debtor has acknowledged the total amount of Principal debt and Interest debt of Rs.5,69,32,05,479/- (Rupees Five Hundred Sixty-Nine Crore Thirty-Two Lakh Five Thousand Four Hundred and Seventy-Nine Only).
29. RHFL sent Loan Recall Notice/Termination of Agreement Notice via Registered Post-dated **30.11.2021** and requested the Corporate Debtor to make the outstanding payment. However, no response was received from the side of the Corporate Debtor.
30. We note that the debt came to financial creditor as part of acquisition of Reliance Home Financial Limited (earlier known as Reliance Gilts Ltd.) as a going concern by the Financial Creditor. It is an undisputed fact the loan was disbursed by Reliance Home Financial Limited and the Corporate Debtor has not objected to this fact as well as the status of the Reliance Home Financial Limited as financial creditor. We note that the Petitioner herein is an assignee of loan consequent to the acquisition of the Business Undertaking of RHFL on a slump sale and going concern basis of section 5 and 7 of this Code defines the Financial Creditor to include illegal assignee or the transferee as well. Accordingly, we do not find any merit in the contention that there is no privity of contract between the Petitioner and the Corporate debtor.

31. We take a note from the Corporate Debtor's submission that the unexpected challenges in the print and media industry, worsened by the global Covid-19 pandemic, led to severe financial difficulties and a lack of cash flow. Because of this, the company couldn't repay the working capital loans it had received from the Financial Creditor and Reliance Home Finance Limited (RHFL). The company emphasizes that it did not intend to deliberately miss repayments. It tried several times to reach a settlement with the Financial Creditor and RHFL, but those attempts were unsuccessful. unexpected challenges in the print and media industry, worsened by the global Covid-19 pandemic, led to severe financial difficulties and a lack of cash flow.
32. We find from the Corporate Debtor's submission that they are combating with a financial exigency within the business operations, compounded by the prevailing downtrend observable within the market. This has resulted in the Borrower encountering unavoidable challenges and intricate complexity that hinder the ability to adhere to the terms of repayment agreed by both the parties.
33. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The petition bearing CP (IB) 113/MB/C-I/2024 filed by **Reliance Commercial Finance Limited**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Thwink Big Content Private Limited**, the Corporate Debtor, is **admitted**.
- b. This Bench hereby **appoints Truee IPE Private Limited, Registration No: IBBI/IPE-0151/IPA-1/2023-24/50052 as the Interim Resolution Professional** having email: - jain_cp@yahoo.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. 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.

- d. 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 Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** 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.
- h. 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 Code. 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.
- 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/-

PRABHAT KUMAR
Member (Technical)

Shivang

LRA

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)