

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

C.P. (IB) 1007/MB/2023

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.

In the matter of:

M/s. RMOL Engineering and Offshore Limited.

Having Registered Office at- Survey No. 658, Village Rampara – II, Taluka Rajula and Village Lunsapur, Taluka Jafraabad, Amreli, Gujarat 365560.

..... **Petitioner/ Financial Creditor**

Versus

M/s Slimline Realty Private Limited

Having Registered Office at- 507, 5th Floor, Vyapar Bhawan 49, PD' Mello Road Carnac Bunder, Mumbai 400009.

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

Order Delivered on :- 15/05/2024

Coram:-

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Ranveer Chapekar

For the Corporate Debtor : Adv. Mily Ghoshal a/w Adv. Sophia Hussain CP No.1007 of 2023

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Company Petition has been filed by the Liquidator of RMOL Engineering and Offshore Limited, a financial creditor on 30.09.2023 against Slimline Realty Private Limited ('the Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for default in repayment of amounts due and payable under 5300 -0% Non-Convertible Unsecured Bonds of Rs. 1,00,000/- each issued and allotted by the Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

Facts of the case as stated in the Petition

2. The Corporate Debtor, based on a resolution passed in the meeting of its Board of Directors held on 15.10.2013, issued and allotted 3500 Non-Convertible Unsecured Bonds ('NCUBs' or 'Bonds') of Rs.1,00,000/- each in favour of the Financial Creditor under a letter dated 16.10.2013 and Bond Certificate dated 15.10.2013 on the terms and conditions mentioned in Term Sheet. Subsequently, the Corporate Debtor issued and allotted 1800 Non-Convertible Unsecured Bonds of Rs.1,00,000/- each under the letter dated 28.07.2014. As per the terms, the said NCUBs of Rs.35 Cr. and 18 Cr aggregating Rs. 53 Cr. were redeemable at the end of 5 years from the date of allotment.
3. After the expiry of 5 years, the Financial Creditor vide its letter dated 06.07.2019 called upon the Corporate Debtor to redeem the said NCUBs falling due on 25.07.2019. Since the Corporate Debtor defaulted in redeeming the NCUBs, the Financial Creditor issued

another letter dated 02.08.2019. As per the Financial Creditor, the financial debt outstanding as of the due date ie., 25.07.2019 is Rs.74,20,20,000/- which attracts additional interest at 18% p.a from the due date and thus defaulted an amount is Rs.1,29,92,822/- as on 25.09.2023.

4. Soon after, the Financial Creditor was admitted to CIRP vide order dated 21.08.2019 passed by the Ahmedabad Bench of NCLT and the Resolution Professional appointed issued a fresh Demand Notice dated 31.10.2019. After passing of liquidation order on 06.12.2021, the Liquidator also issued another Demand Notice dated 10.02.2022 and in view of default committed by the Corporate Debtor, the Liquidator filed the present Petition.

Contentions of the Corporate Debtor

5. The Corporate Debtor filed its reply opposing admission of Section 7 Petition and denied every averment in the Petition.
6. The Corporate Debtor contended that the alleged debt is barred by limitation as the same is filed after more than four years from the alleged date of default. The balance sheet of the Corporate Debtor for the financial year ending 31.03.2022 states under notes to the Balance Sheet at note 4 that the said bonds are not redeemable and not payable. In light of the above qualification in the Audit report, the same can never be tantamount to any admission and thus the limitation cannot be stretched.
7. The Liquidator has no authority to initiate this Petition without authorisation by or consultation with the Stakeholders Consultation

Committee (SCC) as per Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Furthermore, the largest stakeholder in the SCC filed a Civil Application No.9747 of 2023 before the Hon'ble Gujarat High Court against the Liquidator and it is stated therein that the SCC disapproved the initiation of action against the Corporate Debtor and other four companies.

8. The transaction relied upon by the Financial Creditor was not intended to create any financial obligation between the parties but was for the purchase of land owned by the Corporate Debtor or taking over of the Corporate Debtor in a tax-efficient manner. This fact was very well stated in the reply dated November 11, 2019, issued by the Corporate Debtor to the Demand Notice.
9. As per the Corporate Debtor, the Corporate Debtor and another four companies owned land admeasuring 214 acres at Jhansi, Uttar Pradesh, the largest firing range of the Indian Army. The financial creditor, a wholly owned subsidiary of Reliance Naval & Engineering Ltd, approached the Companies to purchase the said land to enable it to undertake work for the Indian Army. It was agreed between the Financial Creditor and the Companies that the Financial Creditor would invest in the Companies in the form of Nonconvertible Cumulative Unsecured Bonds and thereafter finalise the structure of the transaction by either taking over Companies by acquiring 100% shareholding or by executing a sale deed in respect of the said land and paying the applicable stamp duty thereon. The Financial Creditor had procured a loan from IFCI Ltd to finance the above transaction. The

above arrangement is corroborated by the letter of intent dated 25.03.2013 issued by IFCI Ltd. Thus, it was the responsibility of the Financial Creditor to execute the arrangement and there was never any question of redemption of the Bonds.

10. The RP and Liquidator of the Financial Creditor issued the Demand Notice(s) without understanding the merits of the arrangement and the subscription in the Bonds was in no way or manner intended to vest a right of redemption in the Financial Creditor.

Rejoinder of Financial Creditor

11. The Financial Creditor filed its rejoinder on 19.01.2024 stating that the Liquidator in the first meeting of SCC held on 04.03.2022 proposed action under Section 7 of the Code against all five Companies including the Corporate Debtor, but IFCI Limited having 60.34% stake dissented the proposal without providing any reasons. Other stakeholders having an aggregate 38.76% supported the proposal. The Liquidator differed with the view of IFCI Ltd and recorded his reasons such as heavy investment of Rs.306.73 crore in five companies and the fact that the Corporate Debtor does not have any asset other than investments in the Bonds, for acting against the decision of SCC. SCC also passed a resolution for seeking an extension of the liquidation period either to initiate action under Section 7 of the Code or to explore for assignment of not readily realisable assets under Regulation 37 A of Liquidation Regulations or distribution of unsold assets to stakeholders under Regulation 38. Accordingly, NCLT, Ahmedabad vide its order dated 11.01.2023 and 16.01.2024 allowed an extension of the liquidation

period and the Liquidator has the authority to proceed with this Petition.

Analysis and finding

12. We have heard the Counsel for the Parties and perused the documents on record.
13. There is no dispute among Parties as regards the issue of Bonds to the Financial Creditor and the Bonds remaining unredeemed. However, the Corporate Debtor contended that since the date of redemption as per the Bond Certificate(s) is 5 years from the date of issue, the date of default for 3500 NCUBs is 15.10.2018, and 1800 NCUBs is 25.07.2019 and hence the present Petition is barred by limitation. On the contrary, the Financial Creditor tried to demonstrate the period of limitation as under:
 - (i) The Corporate Debtor has acknowledged the debt of the Financial Creditor in its Balance Sheet for the year ending 2022.
 - (ii) Section 60(6) of the Code provides that in computing the period of limitation specified for any application by corporate debtor for which an order of moratorium was made, the period during which such moratorium is in place shall be excluded. In support of the above, the Counsel also relied on the decision of this Tribunal in Piramal Capital & Housing Finance Limited Vs. Manpreet Developers Private Limited (CP (IB) No. 700/MB-IV/2022); and

14. As regards the reliance on the Balance Sheet for the year 2021-22 to extend the limitation period, the Ld. Counsel for the Corporate Debtor has contended that the reference to Long Term Borrowing of Rs.53 Cr in the Balance Sheet is caveated at Note 4 that the Corporate Debtor does not have to redeem the said Bonds issued to the Financial Creditor for the reasons stated therein. Per Contra, the Counsel for the Financial Creditor argued that any 'caveat' by itself is not sufficient to discredit the acknowledgement in the balance sheet. The Bond Certificates and terms and conditions annexed thereto are unqualified and not subjected to the fruition of any deal as claimed by the Corporate Debtor. In any event, no such land forms part of the asset of the Corporate Debtor and the caveat is untrue and will not come in the way of extending the limitation.

15. It is for consideration in this case as to whether the mere showing of debt due in a balance sheet would amount to acknowledgement when there is a note denying the liability attached to it. As per Sections 128 and 129 of the Companies Act, 2013 every company shall prepare and keep at its registered office, books of accounts and financial statements for every financial year. The financial statements prepared by the company shall also give a true and fair view of the state of affairs of the company and shall be prepared in accordance with the accounting standards. Thus, the entry of long term borrowing of Rs.53 crore in the balance sheet is more of a legal requirement on account of outstanding Bonds, but the insertion of a note is voluntary with the specific intention of explaining the nature or status of the debt. Thus, the note annexed to or forming part of such balance sheet must be read jointly to consider whether the entry in the balance sheet amounts to acknowledgement of

liability. The note forming part of the balance sheet elaborates on the arrangement and in unequivocal terms states that the Corporate Debtor does not have to redeem the said Bonds issued by the Corporate Debtor. It is not uncommon to have an entry in a balance sheet with notes annexed thereto or forming part of such balance sheet, for reading along with the balance sheet. Considering the above, the entry in the balance sheet relied on by the Financial Creditor, would not, in our view, amount to an acknowledgement of debt to extend the limitation.

16. The next argument was that Section 60 (6) of the Code provides that in computing the period of limitation specified for any application by the corporate debtor for which an order of moratorium was made, the period during which such moratorium remained in place shall be excluded. It is noticed that Section 60(6) of the Code reads as under:

“Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which moratorium is in place shall be excluded.”

The Hon’ble Supreme Court in *New Delhi Municipal Council vs. Minosha India Ltd.*, (2022) 8 SCC 384 also affirmed that Section 60(6) of the Code does contemplate exclusion of the entire period during which the moratorium was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor. In the present case, it is observed that the Financial creditor was under moratorium from 21.08.2019 to 06.12.2021 (839 days) and if we exclude the above period from the period of limitation,

the Petition is filed well within the period of three years from the due date/date of default. Hence, we hold that the captioned Petition is within the limitation.

17. We may now turn to the next contention of the Corporate Debtor that no prior permission of Tribunal was taken by the Liquidator of the Financial Creditor before the initiation of Section 7 proceedings against the Corporate Debtor. It is submitted that a bare perusal of Section 33(5) of the Code demonstrates that the said section has no provision for a post facto approval and relied on the decision of the Hon'ble High Court of Kolkata in *Cygnus Investments and Finance Pvt Ltd & Anr. Vs. Union of India* (WP. No. 5861(W) of 2020 with CAN 3937 of 2020). However, the Ld. Counsel for the Financial Creditor submits that although no prior permission of the Tribunal was obtained, the Liquidator had filed an application IA. No.794 of 2020 before NCLT, Ahmedabad and obtained post facto approval to pursue the present Petition in order to maximise the value of the Financial Creditor during the liquidation process. It is noticed that the judgement in *Cygnus Investments* (supra) has no application to the facts of the present case. Furthermore, when the Adjudicating Authority for the Financial Creditor (NCLT, Ahmedabad) had considered it appropriate to grant post facto approval to the Liquidator and condone the defect, this Tribunal has no authority to go into the correctness of the said decision. It is also noticed that there is a catena of orders passed by NCLT and NCLAT granting post facto approval under Section 33(5) of the Code. In the circumstances, we hold that the flaw of non-obtaining prior approval of Adjudicating Authority no longer survives.

18. The next question that this Tribunal must address is as to whether debt under the Bonds could be considered outstanding given the contention that the investment by way of NCUBs was a structured transaction as corroborated by the note in the Balance Sheet. The Counsel for the Corporate Debtor vehemently contended that NCUBs were not intended to be redeemed as per the arrangement agreed between the Financial Creditor and the Corporate Debtor/other companies. The parties were to 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 along with the other companies; or (b) by executing a sale deed in respect of the said land and paying the applicable stamp duty thereon.
19. On the Contrary, the Counsel for the Financial Creditor contended that as per records, no such arrangement materialized and the Corporate Debtor neither produced any valid agreement evidencing acceptance of such land in lieu of redemption of bonds by the Financial Creditor nor any land transfer documents in favour of Financial Creditor was produced by Corporate Debtor to substantiate the said contention of Corporate Debtor. It is observed that even if there was an arrangement between the parties as claimed by the Corporate Debtor, no document or evidence has been placed on record to establish that the arrangement has been performed. Receipt of consideration or issue of NCUBs is not denied by the Corporate Debtor. As per Section 71 of the Companies Act, 2013, the company which issued the debentures, is bound to pay interest and redeem the debentures in accordance with the terms and conditions of issue and in case the company fails to redeem the debentures on the date of maturity or fails to pay interest on the

debentures when it is due, the Tribunal may, on the application of any or all the debenture holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. It is, thus, evident that neither the arrangement as claimed by the Corporate Debtor has been implemented nor the NCUBs are redeemed as per the terms of issue. Thus, the debt under the NCUBs is still outstanding.

20. As a result of the above discussion, we hold that the Financial Creditor has been able to establish the existence of debt and its default having been committed by the Corporate Debtor and the default is more than the minimum amount stipulated under Section 4(1) of the Code. The application made by the Financial Creditor is complete in all respects as required by law and within the period of limitation. Therefore, 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 in the following terms.

ORDER

- (a) The above Company Petition No. (IB) 1007/(MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Slimline Realty Private Limited.
- (b) This Bench hereby appoints **Mr. Shubham Agarwal Goyal** having Registration No: IBBI/IPA-002/IP-N01000/2020-2021/13229 as the Interim Resolution Professional having his address at CASA VYOMA, I-601, 6th Floor, Sarkari Vasahat Road, Opp. Auda Garden, Vastrapur, Ahmedabad, Gujarat, 380052 ; Email id:

fcs.shubhamgoyal@gmail.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- (c) The Financial Creditor shall deposit an amount of Rs. 3,00,000/- (Rupees Three Lakhs Only) 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.
- (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 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor. 23. Accordingly, this Petition is admitted. 24. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)