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BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 66/7/NCLT/AHM/2017

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.08.2017

Name of the Company: Reliance Commercial Finance Ltd
V/s.
Anil Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Raheel S. Patel	Adv.	Respondent	
2.	Jaimin R. Dave	Adv.	Petitioner	

ORDER

Learned Advocate Mr. Jaimin Dave present for Financial Creditor/ Applicant.
Learned Advocate Mr. Raheel Patel present for Respondent.

Common Order pronounced in open Court. Vide separate sheet.

23/8/17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 23rd day of August, 2017.

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No.(IB) 66/7/NCLT/AHM/2017

In the matter of:

M/s. Reliance Commercial Finance Ltd
Registered Office at
Reliance Centre, 6th Floor,
South Wing, Off:Western Express
Highway, Santacruz (East),
Mumbai 400055
Maharashtra : Applicant.
[Financial Creditor]

Versus

Anil Limited
Registered Office at
Anil Starch Premises,
Anil Road
Ahmedabad : Respondent.
[Corporate Debtor]

Order delivered on 23rd August, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Shri Jaimin Dave, learned Advocate for Applicant/Financial Creditor.
Shri Raheel Patel with Shri Nisarg Desai, learned Advocates on behalf of M/s. Nanavati Associates, for Respondent.

C.P. No.(IB) 69/7/NCLT/AHM/2017

M/s. Kunal Finance and Credit
Private Limited,
Registered Office at
34, Chittaranjan Avenue,
Kolkata-700012
West Bengal : Applicant.
[Financial Creditor]

Versus

Anil Limited
Registered Office at
Anil Starch Premises,
Anil Road
Ahmedabad : Respondent.
[Corporate Debtor]

Appearance:

Ms. Natasha Sutaria, learned Advocate for Applicant/Financial Creditor.
Shri Raheel Patel with Shri Nisarg Desai, learned Advocates on behalf of M/s. Nanavati Associates, for Respondent.

C.P. No.(IB) 70/7/NCLT/AHM/2017

M/s. Oarsman Credit Private Ltd.,
Registered Office at
34, Chittaranjan Avenue,
Kolkata-700012
West Bengal : Applicant.
[Financial Creditor]

Versus

Anil Limited
Registered Office at
Anil Starch Premises,
Anil Road
Ahmedabad : Respondent.
[Corporate Debtor]

Appearance:

Ms. Natasha Sutaria, learned Advocate for Applicant/Financial Creditor.
Shri Raheel Patel with Shri Nisarg Desai, learned Advocates on behalf of M/s. Nanavati Associates, for Respondent.

C.P. No.(IB) 71/7/NCLT/AHM/2017

M/s. Socrato Capital Private Ltd.,
Registered Office at
60D, Colotola Street,
Kolkata-700073
West Bengal : Applicant.
[Financial Creditor]

Versus

Anil Limited
Registered Office at
Anil Starch Premises,
Anil Road
Ahmedabad : Respondent.
[Corporate Debtor]

Appearance:

Ms. Natasha Sutaria, learned Advocate for Applicant/Financial Creditor.
Shri Raheel Patel, with Shri Nisarg Desai learned Advocates on behalf of M/s. Nanavati Associates, for Respondent.

COMMON ORDER

1. All these four Applications are filed by four different companies styling as Financial Creditors with a request to initiate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ["Adjudication Rules" for short] in Form-1 against one Company, M/s. Anil Limited. Hence, all the four Applications are being disposed of by this Common Order.

2. M/s. Reliance Commercial Finance Limited styled itself as 'Financial Creditor' in CP (IB) No. 66 of 2017.

3. The said Company gave General Power of Attorney to Shri Hitesh Joshi, as its lawful Attorney vide General Power of Attorney dated 1st April, 2017.

4. The case of M/s. Reliance Commercial Finance Limited, in brief, is as follows;

4.1. M/s. Anil Nutrients Limited had approached and applied to M/s. Reliance Capital Limited to avail Term Loan Facility for Working Capital and entered into a Loan Agreement dated 31.12.2014 with M/s. Reliance Capital Ltd. M/s. Reliance Capital Ltd., disbursed Rs. 10,00,00,000 to M/s. Anil Nutrients Ltd (Principal Borrower). M/s. Anil Nutrients Ltd executed various documents in favour of M/s. Reliance Capital Limited, which include Working Capital Agreement, Deed of Hypothecation, Demand Promissory Note, etc.

4.2. M/s. Anil Limited, Respondent herein stood as Corporate Guarantor to the Facility Agreement or the Working Capital Agreement dated 31.12.2014 made between M/s. Reliance Capital Ltd., and M/s. Anil Nutrients Ltd and thereby Respondent herein (Anil Ltd.) became a Guarantor to the loan borrowed by M/s. Anil Nutrients Ltd.

4.3. M/s. Reliance Capital Limited, was demerged into M/s. Reliance Commercial Finance Ltd., as per the order of the Hon'ble High Court of Bombay. As per the said Demerger Scheme all the debts of M/s. Reliance Capital Ltd., were transferred to the Applicant herein, i.e., M/s. Reliance Commercial Finance Ltd., and that is how the present Applicant has become Financial Creditor of M/s. Anil Nutrients Ltd, and M/s. Anil Limited, i.e., Respondent herein is the

Corporate Guarantor for the loan borrowed by M/s. Anil Nutrients Ltd, from M/s. Reliance Capital Limited.

4.4. M/s. Anil Nutrients Ltd and M/s. Anil Limited did not care to make repayment of the loan amount as per the agreed terms and conditions inspite of repeated requests and reminders made by M/s. Reliance Capital Ltd., and as well as by the present Applicant. M/s. Anil Nutrients Ltd and M/s. Anil Limited have failed and neglected to pay the outstanding amount. Applicant got issued a legal notice dated 28.9.2016 to M/s. Anil Nutrients Ltd and called upon the Respondent M/s. Anil Limited to repay the loan amount in its capacity as 'Corporate Guarantor'.

4.5. M/s. Reliance Capital Limited maintained the account of M/s. Anil Nutrients Ltd. As per the said account, M/s. Anil Nutrients Ltd, is due to pay Rs. 8,87,94,014/- as on 12.10.2016. The amount due from M/s. Anil Nutrients Ltd, is liable to be paid by M/s. Anil Limited as 'Guarantor' and the debt is a 'financial debt' within the definition of 'Financial Debt' as provided under Clause (i) of sub-section (8) of Section 5 of the IB Code.

4.6. Applicant issued statutory notice dated 31.12.2016 to M/s. Anil Nutrients Ltd, and M/s. Anil Limited, Respondent herein, calling upon them to pay the outstanding amount of Rs. 8,87,94,014/- within 21 days. Respondents received the said notice but did not choose to pay the amount. Applicant came to know that Respondent Company owes huge amount of monies not only to the Applicant but to various Financial and Operational Creditors. Applicant states that the Respondent Company has been making huge losses and is not in position to clear its debts and liabilities. The Registered Office of the Respondent Company is situated at Ahmedabad.

5. Applicant filed copies of all Agreements executed by M/s. Anil Nutrients Ltd, in favour of M/s. Reliance Capital Limited.

Applicant filed copy of Deed of Guarantee executed by Respondent Company. Applicant filed Bank Statements. Applicant in Form-1 Part III mentioned Shri Subodhkumar Bajranglal Kedia as 'Interim Resolution Professional' but filed Written Communication of Shri Pramod Bajranglal Kedia, as Interim Resolution Professional. Applicant filed proof of despatch of the Application to the Respondent by Speed Post. This Adjudicating Authority directed the Applicant to issue notice of date of hearing and file proof of service. Accordingly, Applicant issued notice of date of hearing and filed proof of service on Respondent. Respondent appeared through Advocate, Mr. Raheel Patel. Respondent not filed any objections. Learned Counsel appearing for both parties submitted their arguments. Learned Counsel appearing for the Applicant contended that the liability of the Respondent as 'Guarantor' is co-extensive with that of the Principal Borrower. In support of his contention, he relied upon the decision in ***State Bank of India Vs. Messrs Indexport Registered and others***, reported in ***AIR 1992 SC Page 1740***. A perusal of the documents clearly goes to show that M/s. Anil Limited (Respondent herein) stood as a 'Guarantor' for the loan availed by M/s. Anil Nutrients Ltd, from M/s. Reliance Capital Limited, as a result of Scheme of Demerger by which one financial unit was merged with M/s. Reliance Commercial Finance Ltd, vide Guarantee Agreement dated 31st December, 2014.

6. In an application under Section 7 of the Code, this Adjudicating Authority is required to ascertain existence of default from the records of information utility or on the basis of other evidence furnished by the Financial Creditor, as laid down in the decision of the Hon'ble National Company Law Appellate Tribunal, on 17th January, 2017, in ***Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017*** in the matter of ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr,*** in the following paragraphs;

> *"82. As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-*

section (4) of Section 7 of the Code, 2016, the 'adjudicating authority' on receipt of application under sub-section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). Under Section 5 of Section 7, the 'adjudicating authority' is required to satisfy –

(a) Whether a default has occurred;

(b) Whether an application is complete; and

(c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.

83. Once it is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected."

7. 'Financial Debt' is defined in Section 5, sub-section (8). Clause (i) of sub-section (8) of Section 5 says that the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of sub-section (8) is a 'financial debt'. Therefore, the debt due from M/s. Anil Nutrients Limited to the Applicant is a 'financial debt' within the meaning of Clause (i) of sub-section (8) of Section 5. Respondent, being a Corporate Guarantor, is liable to pay the outstanding loan amount to the Financial Creditor, the present Applicant.

8. A perusal of the legal notice got issued by the Applicant and the statutory notice issued by Applicant clearly goes to show that Applicant recalled the entire loan amount both from the Principal Borrower and the Guarantor and both of them failed to repay the loan amount. The liability of the Respondent being a Guarantor is co-extensive with the liability of the Principal Borrower. The debt due

to the Applicant Financial Creditor from the Respondent is a financial debt. There is material on record to show that there is occurrence of default in repayment of the financial debt by the Respondent herein, being the Guarantor.

9. The Application filed by M/s. Reliance Commercial Finance Limited is complete in all respects and no defect is pointed out.

10. In this Application filed by M/s. Reliance Commercial Finance Ltd., Respondent did not choose to file any objections. Learned Counsel appearing for the Respondent stated that they are making every effort to settle with all the creditors by making payments in due course of time. In view of the above discussion, the Application filed by the Applicant, M/s. Reliance Commercial Finance Ltd., i.e., CP (IB) No. 66 of 2017 deserves to be admitted, and it is accordingly admitted under Section 7(5) of the Code.

C.P. No.(IB) 69/7/NCLT/AHM/2017:

11. Applicant in CP (IB) No. 69 of 2017 is M/s. Kunal Finance and Credit Private Limited. Respondent Corporate Debtor is M/s. Anil Limited.

12. Respondent Company authorised Shri Jay Prakash Yadav, as an Authorised Representative to file this Application by way of a Board Resolution.

13. Applicant herein had earlier filed Company Petition (IB) No.26/7/NCLT/AHM/2017 against the Corporate Debtor under Section 7 of the IB Code. The said Application came to be withdrawn by the Applicant on the ground that there was a settlement between the Financial Creditor and the Corporate Debtor, as can be seen from the Affidavit at Page No.13 which is filed in CP (IB) No.26 of 2017. It appears that the Respondent Company issued cheques to the Applicant Company towards full and final settlement of all dues.

Applicant filed copy of Written Memo issued by Axis Bank to show that the cheques issued by the Corporate Debtor were dishonoured on the ground "Exceeds Arrangements". Applicant also filed copy of Bank Statement of Account of the Applicant for the period from 26.5.2017 to 06.7.2017 in order to show that Corporate Debtor has not paid the debt as agreed upon by him as per the settlement terms by honouring the cheques. It is the case of the Applicant that Corporate Debtor took a loan of Rs. 42 lakhs and failed to repay the said amount and the amount claimed in default is Rs. 42,00,000/-. Applicant filed Computation Table of outstanding amount along with interest.

14. In this Application, Applicant despatched copy of the Application to the Corporate Debtor and filed proof of despatch and as well as proof of service. This Adjudicating Authority directed the Applicant to issue notice to the Corporate Debtor informing the date of hearing. Corporate Debtor appeared through Counsel. Although Respondent's learned Counsel took time to file objections, no objections were filed.

15. Heard the arguments of both sides' learned Counsel. The documents places on record by the Applicant clearly establish that 'financial debt' is due from the Corporate Debtor and Corporate Debtor has committed default in repayment of the same. In fact, learned Counsel appearing for the Respondent did not dispute the default in payment of debt due to the Applicant. The Application is complete in all respects. Applicant proposed the name of Mr. Umesh Ved as 'Interim Resolution Professional' and filed his Written Communication. Hence, the Application deserves admission under Section 7(5) of the IB Code. Accordingly, it is admitted.

C.P. No.(IB) 70/7/NCLT/AHM/2017:

16. M/s. Oarsman Credit Private Ltd., filed CP (IB) No. 70 of 2017 through Authorised Person, Mr. Jay Prakash Yadav who is authorised by the Board of Directors of the Applicant Company by way of Resolution dated 18th May, 2017. It is the case of the Applicant Financial Creditor that Corporate Debtor borrowed Rs. 40 lakhs, which amount was transferred through 'RTGS' from the Applicant to the Corporate Debtor. According to the Applicant, the amount in default is Rs. 45,04,986/- as on 23rd November, 2016. Applicant filed computation of interest amount due and not paid and particulars of principal amount due but not paid in a tabular form. Applicant filed Bank Statement of Account of Applicant Company for the period from 12.01.2017 to 06.6.2017 along with Certificate of the Banker under Bankers' Books Evidence Act. Applicant also filed a letter dated 10.5.2016 addressed by the Corporate Debtor to the Applicant enclosing two post-dated cheques by way of security towards repayment of deposit accepted from Applicant Company. Applicant/Financial Creditor also filed Promissory Note dated 10.5.2016 executed by the Corporate Debtor in favour of the Applicant.

17. Applicant filed proof of despatch and proof of service of the Application on the Corporate Debtor. This Adjudicating Authority directed the Applicant to issue notice of date of hearing to the Corporate Debtor. Applicant also issued notice of date of hearing and filed proof of service. Respondent appeared through learned Advocate and requested time to file objections, but Respondent did not choose to file objections even after time is granted.

18. Heard the arguments of the learned counsel appearing for the Applicant and the learned counsel appearing for the Respondent. The documents filed by the Applicant clearly establish that the financial debt is due from the Corporate Debtor to the Applicant/Financial Creditor. The documents filed by the Applicant

also show that the Corporate Debtor committed default in repayment of the financial debt due to the Financial Creditor. The Application is complete in all respects and no defect has been pointed out. In fact, Respondent did not dispute the default committed in repayment of the financial debt. Applicant proposed the name of Shri Umesh Ved as 'Interim Resolution Professional' and filed his Written Communication. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7(5) of the IB Code.

C.P. No.(IB) 71/7/NCLT/AHM/2017:

19. M/s. Socrato Capital Private Ltd., filed CP (IB) No. 71 of 2017 through its Authorised Representative, Mr. Jay Prakash Yadav, under Section 7 of the IB Code read with Rule 4 of the Adjudication Rules for initiating Corporation Insolvency Resolution Process against the Corporate Debtor, Anil Limited. It is the case of the Applicant that Corporate Debtor borrowed an amount of Rs. 35 lakhs on 10.5.2016 and it was renewed for the period from 09.8.2016to 16.11.2016. It is also the case of the Applicant that Applicant transferred the amount through 'RTGS' to the Corporate Debtor. Applicant stated that the amount in default is Rs. 39,41,863/- as on 17th November, 2016. Applicant filed letter dated 09.8.2016 addressed by Anil Ltd., to the Applicant enclosing two post-dated cheques dated 17.11.2016 along with inter Corporate Deposit Receipt dated 09.8.2016 issued by M/s. Anil Limited for a sum of Rs. 35,00,000/- to the Applicant. Applicant also filed a Certificate of the banker stating that the amount was paid by the Applicant to M/s. Anil Limited. Applicant also filed Statement of Account of the Applicant Company. A perusal of the above documents show that the financial debt is due from the Corporate Debtor to the Applicant and the Corporate Debtor has committed default in repayment of the said financial debt.

20. Learned Counsel appearing for the Respondent did not dispute the default committed in repayment of financial debt due to the Applicant/Financial Creditor. Applicant/Financial Creditor proposed the name of Mr. Umesh Ved as 'Interim Resolution Professional'. The Application filed by the Applicant is complete in all respect and no defect has been pointed out. Hence, the Application, CP (IB) No. 71 of 2017 deserves to be admitted and it is accordingly admitted under Section 7(5) of the IB Code.

21. By virtue of this order, all the four Applications filed by all the four Financial Creditors under Section 7 of the Code are admitted. Applicant/Financial Creditor in CP (IB) No. 66 of 2017 proposed the name of 'Pramod Bajranglal Kedia as 'Interim Resolution Professional'. The financial debt due to the Applicant in CP (IB) No. 66 of 2017 is Rs. 8,87,94,014/-, which is far higher than the total financial debt due to all the three other Applicants/Financial Creditors.

22. Therefore, in the given facts and circumstances of the case, and considering the fact that the financial debt due to the Financial Creditor, M/s. Reliance Commercial Finance Limited is higher than the debts together due to other Applicant Financial Creditors, this Adjudicating Authority is of the considered view that the Interim Resolution Professional proposed by M/s. Reliance Commercial Finance Limited should be appointed as 'Interim Resolution Professional'. Therefore, this Adjudicating Authority appoints Shri Pramod Bajranglal Kedia, C/o. Kedia & Kedia Associates, Chartered Accountants, 205, Kaling, Near Mount Carmel School, Behind Bata Show Room, Ashram Road, Ahmedabad-380009, having Registration No. IBBI/IPA-001/IP-P00091/2017-2018/10191, as 'Interim Resolution Professional', because his Written Communication is available.

23. This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) of the Code prohibiting the following as laid down in Section 14 of the Code;

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

24. The Interim Resolution Professional appointed shall also make public announcement about initiation of 'Corporate Insolvency Resolution Process', as required by Section 13(1)(b) of the Code.

25. All the four applicants/ Financial creditors can file their claims before the Interim Resolution Professional appointed.

26. However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

27. 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.

28. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

29. All the four Applications are disposed of accordingly. No order as to costs.

30. Communicate a copy of this Common Order to all the four Applicant Financial Creditors, and to the Respondent Corporate Debtor, and to the Interim Insolvency Resolution Professional appointed.

Signature: 23.8.17

Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.