

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-V**

**CP (IB) No. 1154/MB-V/2020**

Under Section 7 of the I&B Code, 2016

In the matter of:

**J.C. Flowers Asset Reconstruction  
Private Limited**

...Financial Creditor/Applicant  
V/s

**Reliance Innoventures Private Limited**  
[CIN: U73100MH2005PTC158356]

...Corporate Debtor/Respondent

**Order Dated: 15.06.2023**

*Coram:*

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

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

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Soli Cooper, Senior Counsel,  
a/w Mr. Ameya Gokhale,  
Mr. Parth Gokhale, Ms. Kriti  
Kalyani, and Mr. Gaurav Karwa,  
i/b Shardul Amarchand  
Mangaldas & Co., Advocates.

For the Respondent(s) : Mr. Pratik Seksaria, Senior  
Counsel a/w Ms. Komal  
Khushalani, Ms. Prerana Wagh,  
and Mr. Shivam Bhagwati,  
i/b Crawford Bayley Co,  
Advocates.

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**ORDER**

*Per: Anuradha Sanjay Bhatia, Member (Technical)*

1. The Captioned Company Petition has been filed under Section 7 of the Insolvency & Bankruptcy Code 2016 (hereinafter “**Code**”) to initiate Corporate Insolvency Resolution Process (hereinafter “**CIRP**”) against Reliance Innoventures Private Limited, the **Corporate Debtor**, on account of default in the payment of an amount of Rs.101,03,64,982.62 (Rupees one hundred one crore three lakh sixty-four thousand nine hundred eighty-two and sixty-two paise only) as on 30.06.2020.
2. The captioned Company Petition, bearing C.P. (IB) No. 1154/MB-V/2020, was originally filed by YES Bank Limited (hereinafter “**Erstwhile Financial Creditor**”) under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter “**Code**”) seeking initiation of Corporate Insolvency Resolution Process against Reliance Innoventures Private Limited, the Corporate Debtor. The Erstwhile Financial Creditor, by a Registered Assignment Agreement, dated 16.12.2022, has assigned the Financial Assets of the Corporate Debtor along with its right, title interest in the financing documents and all the underlying interests, pledges, guarantees in respect of such loans, in favour of the J.C. Flowers Asset Reconstruction Private Limited, (acting in capacity as trustee of JCF YES Trust 2022-23/2) the **Financial Creditor/Applicant**. The Financial Creditor is an Asset Reconstruction Company under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter “the **SARFAESI Act**”) and registered with the Reserve Bank of India. The Financial Creditor was thereby

substituted in the captioned Petition by order dated 21.02.2023 passed by this Bench in IA No. 652 of 2023.

**FACTS OF THE CASE:**

3. The present Company Petition, bearing C.P. (IB) No. 1154/MB-V/2020 is filed on 18.07.2020 by the Financial Creditor against the Corporate Debtor claiming a default of debenture Trust Deed. The date on which the default occurred, as mentioned in Part-IV of the Petition, in connection with the various Facilities are as follows:

<b>Sr. No.</b>	<b>Name of the Facility</b>	<b>Date of Default</b>
1.	Term Loan 1	01.12.2019
2.	Term Loan 2	01.12.2019
3.	NCDs	13.01.2020

**SUBMISSIONS OF THE FINANCIAL CREDITOR:**

4. The case of the Financial Creditor is that
- 4.1. Pursuant to the debenture trust deed and the Information Memorandum dated 10.01.2015 wherein the Corporate Debtor had issued and, the Erstwhile Financial Creditor subscribed to 3,500 unlisted, rated, redeemable, secured non-convertible debentures with a face value of Rs.10,00,000 each, bearing an aggregate nominal value of Rs.350,00,00,000 (“NCDs”). The Corporate Debtor committed a default in payment as per the agreed schedule due to which the Financial Creditor has approached the Adjudicating Authority invoking Section 7 of the Code.

- 4.2. The NCDs were, inter alia, secured by:
- a) a first pari passu charge by way of Hypothecation over certain assets of the Corporate Debtor,
  - b) a first charge by way of hypothecation over the designated account of the Corporate Debtor and the amounts lying to the credit thereof, and
  - c) a first pari passu pledge over certain shares of Reliance Communications Limited and Reliance Infrastructures Limited held by the Corporate Debtor and Reliance Big Private Limited.
- 4.3. Subsequently, vide Loan Agreement dated 13.04.2015, the Corporate Debtor availed of Credit Facilities aggregating Rs.250,00,00,000 from the Erstwhile Financial Creditor ("**Term Loan 1**"), which was amended from time to time vide the Facility Letters executed by the Erstwhile Financial Creditor and the Corporate Debtor.
- 4.4. Further, vide Loan Agreement dated 17.10.2017, the Corporate Debtor availed of additional Credit Facilities for an amount aggregating to Rs.400,00,00,000 from the Erstwhile Financial Creditor ("**Term Loan 2**") which was amended from time to time vide the facility Letters executed by the Erstwhile Financial Creditor and the Corporate Debtor.
- 4.5. Pursuant to the above-mentioned Facilities, following documents were executed between the Financial Creditor and Corporate Debtor:

**A. Term Loan 1**

- (i) First ranking exclusive charge by way of hypothecation over the current assets of the Corporate Debtor's stocks of raw material, semi- finished and finished goods and spares, including relating to plant and machinery (consumable stores and spares), bills receivables and book debts, and all other receivables, movables, both present and future, whether lying in or stored in or about or to be brought into or stored in or about the Corporate Debtor's factories, premises and godowns situated anywhere in terms of the Deed of Hypothecation dated 13<sup>th</sup> April, 2015. Date of creation is 13<sup>th</sup> April 2015.
- (ii) First ranking exclusive charge by way of hypothecation over the movable fixed assets of the Corporate Debtor, including the windmills and plant and machinery situated at Tamil Nadu, Maharashtra and other locations, both present and future in terms of the Deed of Hypothecation dated 13<sup>th</sup> April 2015. Date of creation is 13<sup>th</sup> April 2015.
- (iii) First ranking pari passu pledge over (i) 1,23,79,001 shares of Reliance Communications Limited and 8,64,675 shares of Reliance Infrastructure Limited held by the Corporate Debtor, and (ii) 55,00,000 shares of Reliance Infrastructure Limited held by Reliance Big Private Limited in terms of the Unattested Share Pledge Agreement dated 30<sup>th</sup> April 2015. Date of creation is 30<sup>th</sup> April 2015.
- (iv) First ranking pari passu charge by way of hypothecation over the plant and machinery, current assets, insurance, receivables, fixed deposits, etc. of Reliance Infradevelopment Private Limited, both present and future, in terms of the Deed

of Hypothecation dated 14<sup>th</sup> January 2019. Date of creation is 14<sup>th</sup> January 2019.

- (v) First ranking *pari passu* pledge over 75,00,000 shares of Reliance Capital Limited and 2,00,00,000 shares of Reliance Home Finance Limited held by Reliance Inceptum Private Limited, in terms of the Deed of Pledge dated 9<sup>th</sup> February 2019. Date of creation is 9<sup>th</sup> February 2019.
- (vi) First ranking *pari passu* pledge over 35,00,000 shares of Reliance Capital Limited held by Reliance Infrastructure Consulting and Engineers Private Limited, in terms of the Deed of Pledge dated 9<sup>th</sup> February 2019. Date of creation is 9<sup>th</sup> February 2019.
- (vii) First ranking *pari passu* pledge over 75,00,000 shares of Reliance Infrastructure Limited held by Reliance Project Ventures and Management Private Limited, in terms of the Deed of Pledge dated 9<sup>th</sup> February 2019. Date of creation is 9<sup>th</sup> February 2019.

**B. Term Loan 2:**

- (i) First ranking *pari passu* charge by way of hypothecation over the windmills, plant and machinery, current assets, insurance, receivables, fixed deposits, etc. of the Corporate Debtor, both present and future, in terms of the Deed of Hypothecation dated 17<sup>th</sup> October 2017. Date of creation is 17<sup>th</sup> October 2017.
- (ii) First ranking exclusive charge by way of hypothecation over the plant and machinery, current assets, insurance, receivables, fixed deposits, etc. of Reliance Business Machines Private

Limited, both present and future in terms of the Deed of Hypothecation dated 10<sup>th</sup> April, 2018. Date of creation is 10<sup>th</sup> April 2018.

- (iii) First ranking exclusive pledge over (i) 20,00,000 shares of Reliance Infrastructure Limited held by Reliance Big Private Limited, (ii) 55,00,000 shares of Reliance Capital Limited and 1,55,00,000 shares of Reliance Home Finance Limited held by Reliance Infrastructure Consulting and Engineers Private Limited, and (iii) 2,50,00,000 shares of Reliance Power Limited held by Reliance Wind Turbine Installators Industries Private Limited in terms of the Deed of Pledge dated 17<sup>th</sup> October 2017. Date of creation is 17<sup>th</sup> October 2017.
- (iv) A guarantee was also extended by Reliance Wind Turbine Installators Industries Private Limited, Reliance Infrastructure Consulting and Engineers Private Limited and Reliance Big Private Limited with respect to Term Loan 2 in terms of the Deed of Guarantee dated 24<sup>th</sup> October 2017.

**C. NCDs:**

- (i) First ranking pari passu pledge over (i) 1,23,79,001 shares of Reliance Communications Limited and 8,64,675 shares of Reliance Infrastructure Limited held by the Corporate Debtor, and (ii) 55,00,000 shares of Reliance Infrastructure Limited held by Reliance Big Private Limited in terms of the Unattested Share Pledge Agreement dated 30<sup>th</sup> April 2015. Date of creation is 30<sup>th</sup> April 2015.
- (ii) First ranking" charge by way of hypothecation over all the movable properties and fixed assets of the Corporate Debtor,

including the windmill assets, receivables, its account, and all amounts lying therein in terms of the Unattested Deed of Hypothecation dated 10<sup>th</sup> January 2015. Date of creation: 10<sup>th</sup> January 2015.

4.6. Subsequently, the Corporate Debtor failed to pay the interest accrued and payable in respect of Term Loan 1 and Term Loan 2 on 01.12.2019 and the interest due and payable in respect of the NCDs on 13.01.2020, (**The Term Loan 1, Term Loan 2 and the NCDs are collectively referred to as the “Facilities”**).

4.7. The aforesaid defaults under the Facilities were communicated by the Erstwhile Financial Creditor to the Corporate Debtor on several occasions from time to time (including as early as 03.12.2019). The Erstwhile Financial Creditor was also constrained to invoke the Shares Pledged in respect of the Facilities (other than the shares of Reliance Communications Limited, which were released by the Erstwhile Financial Creditor as security) and the amounts recovered from the sale of such Shares have been adjusted against the outstanding amounts in respect of the Facilities.

4.8. Subsequently, the Erstwhile Financial Creditor issued **Recall Notices** in respect of Term Loan 1 and Term Loan 2 on **13.05.2020** and a **Mandatory Redemption Notice** in respect of the NCDs on **23.06.2020** to the Corporate Debtor.

4.9. The details of dates of disbursement in connection with Term Loans and NCDs are as follows:

**A. Terms Loan of Rs.250,00,00,000 granted pursuant to Facility Agreement dated 13.04.2015:**



<b>Sr. No.</b>	<b>Amount Sanctioned under the Facility</b>	<b>Amount disbursed under the Facility (in Rs.)</b>	<b>Date of Disbursement</b>
1.	250,00,00,000	175,00,00,000	13.04.2015
		175,00,00,000	09.07.2015

**B. Term Loan of Rs.400,00,000/- granted pursuant to Facility Agreement dated 17.10.2017:**

<b>Sr. No.</b>	<b>Amount Sanctioned under the Facility</b>	<b>Amount disbursed under the Facility (in Rs.)</b>	<b>Date of Disbursement</b>
1.	400,00,00,000	400,00,000	24.10.2017

**C. NCDs:**

<b>Sr. No.</b>	<b>Amount Sanctioned under the Facility</b>	<b>Amount disbursed under the Facility (in Rs.)</b>	<b>Date of Disbursement</b>
1.	350,00,00,000	350,00,00,000	12.01.2015

4.10. The aggregate amount of default in payment of interest in respect of the Facilities as on 30.06.2020 is as follows:

- (i) Term Loan 1: Rs.16,36,05,728.85;
- (ii) Term Loan 2: Rs.25,87,08,368.97; and
- (iii) NCDs: Rs.58,80,50,884.80.

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5. **The Erstwhile Financial Creditor has filed the Certificate dated 04.07.2020 under Section 2A (a) of the Banker's Books of Evidence Act, 1891 along with the Bank Statement for period from 01.01.2014 to 30.06.2020. The Erstwhile Financial Creditor has also filed the NeSL Report dated 15.07.2020.**

**SUBMISSIONS OF THE CORPORATE DEBTOR:**

6. The Corporate Debtor has filed its Affidavit-in-Reply dated 04.03.2021. The arguments of the Corporate Debtor are summarised as under:

**A. *There is no valid authorisation underlying the captioned Petition:***

- 6.1. There is no valid authorization underlying the captioned Petition. The Board Resolution, dated 26.03.2020, purportedly authorized Mr. Prashant Kumar (Managing Director & Chief Executive of the Erstwhile Financial Creditor) to file certain specific proceedings on behalf of the Erstwhile Financial Creditor. However, there is nothing in the resolution which specifically authorizes him to file a Petition before this Tribunal, especially under IBC. Further, this Board Resolution does not indicate any resolution / decision on the part of the Erstwhile Financial Creditor's Board to file proceedings against the Corporate Debtor whether under the IBC or otherwise.
- 6.2. The Erstwhile Financial Creditor has annexed a Power of Attorney dated 01.07.2020 from Mr. Prashant Kumar in favour of Mr. Rajat Lahoty, which cannot confer any power or authority upon Mr. Rajat Lahoty to file the present Petition because (i) Mr. Prashant Kumar did not in the first place have such authority and (ii) for the purpose of the IBC, a Power of Attorney holder is not competent to

initiate proceedings himself. Hence, the Power of Attorney is defective.

**B. The instruments on the basis of which the Petition is filed are insufficiently stamped and therefore cannot be acted upon by this Tribunal:**

6.3. The Erstwhile Financial Creditor has filed the Petition under Section 7 of the Code, solely on the basis of the Facility Agreements, being Loan Agreement dated 13<sup>th</sup> April, 2015; Deeds of Hypothecation dated 13<sup>th</sup> April, 2015 and 14<sup>th</sup> January, 2019; Unattested Share Pledge Agreement dated 30<sup>th</sup> April, 2015, Deeds of Pledge dated 9<sup>th</sup> February, 2019; Loan Agreement dated 27<sup>th</sup> October, 2017; Deeds of Hypothecation dated 17<sup>th</sup> October, 2017 and 10<sup>th</sup> April, 2018; Deed of Pledge dated 17<sup>th</sup> October, 2017, Supplemental Deed of Pledge dated 9<sup>th</sup> February, 2019; Deed of Guarantee dated 17<sup>th</sup> October, 2017; Debenture Trust Deed dated 10<sup>th</sup> January, 2015 and Deed of Hypothecation dated 10<sup>th</sup> January, 2015.

6.4. The Facility Agreements were executed in New Delhi. However, the Erstwhile Financial Creditor has brought the Facility Agreement into Maharashtra and is calling upon this Tribunal to grant relief on the basis thereof, as per the provisions of Maharashtra Stamp Act, they are liable to be stamped as per Article 5(h) (A) (iv) and the Erstwhile Financial Creditor is liable to pay the Stamp duty thereon.

**C. No default on the part of the Corporate Debtor:**

6.5. The Corporate Debtor and other Reliance ADA Group entities had pledged shares held by them, in other Reliance ADA Group

entities. In November-December 2019, the Erstwhile Financial Creditor began selling the controlling stake of the Corporate Debtor's shareholding of Reliance ADA listed entities, in the open market, on a fire-sale basis, much below the intrinsic value of the shares. In fact, the Erstwhile Financial Creditor had a charge over a substantial portion of the shareholding, in various Reliance ADA Group entities, the strategic value of which was much more than the quoted price of the shares. Therefore, the sale of shares by the Erstwhile Financial Creditor, below the quoted price has caused immense loss to the Corporate Debtor, in particular, and the Reliance ADA Group, in general.

6.6. This fire-sale by the Erstwhile Financial Creditor and the consequent public dissemination of information regarding such sale resulted in wide scale panic that led to a further sudden sale of shares by the public, all of which reduced the value of the securities. At this reduced value, the Erstwhile Financial Creditor sold more shares – leading to further destruction of the value of assets (given as collateral to the Erstwhile Financial Creditor) of the Corporate Debtor. It is important in such cases for sales of major stakes in entities to be done in a controlled, systematic way. Unfortunately, the rash behavior of the Erstwhile Financial Creditor in effecting such sales has squandered not just its security, but also the assets of the Corporate Debtor and the Reliance ADA Group.

6.7. The impact of fire-sale is summarized as under:

<b>Collateral</b>	<b>Shares (in crores) (% of issued capital)</b>	<b>Amount recovered by the Erstwhile Financial</b>	<b>Value of the collateral when the facility was granted</b>	<b>Value of the collateral 12 months before the fire-sale (Rs. in crores)</b>

		<b>Creditor (Rs. in crores)</b>	<b>(Rs. in crores)</b>	
Reliance Infrastructure Limited	3.14 (11.94%)	72	1,469	1,107
Reliance Power Limited	5.00 (1.78%)	8	300	155
Reliance Capital Limited	4.40 (17.42%)	49	1,924	1,140
Reliance Home Finance Limited	7.05 (14.53%)	13	657	338
Total		142	4,350	2,740
<b>Value destruction →</b>			<b>4,208</b>	<b>2,598</b>

6.8. The Erstwhile Financial Creditor has disposed of the entire security collateral which was valued around the year 2017-18 at Rs.4,350 crore, at a meagre sum of Rs.142 crore only. This has resulted in a loss in excess of Rs.2598 crore towards value destruction as compared to only one year before. The value destruction done by the Erstwhile Financial Creditor is 2 to 4 times the purported loan obligation of the Corporate Debtor.

6.9. Further, out of the amount of Rs.142 crore recovered by the Erstwhile Financial Creditor, Rs.27 crore was adjusted towards the repayment of the facility availed by Reliance Power Limited and the balance towards the facilities availed by the Corporate Debtor and Reliance Big Entertainment Private Limited.

6.10. The Erstwhile Financial Creditor should have sold the shares at the fair market rates. Then the sale of shares would have fetched a much higher price and the purported outstanding of the Erstwhile Financial Creditor would have been substantially reduced. Instead, the Erstwhile Financial Creditor chose to unilaterally conduct a fire-sale of the shares and squander away the security furnished by

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the Corporate Debtor, which constituted the entire asset base of the Corporate Debtor.

**D. The claim in the Petition is only for interest and is therefore not maintainable:**

6.11. The claim in the Petition is only for interest and is therefore not maintainable. The amount claimed to in default, in the Petition, is the total interest amount as on 30.06.2020, aggregating to Rs.101,03,64,982.62. The Erstwhile Financial Creditor further claims that there have been alleged defaults in the repayment of the principal amounts, but these principal amounts do not form part of the Petition.

**E. The Erstwhile Financial Creditor has acted in violation of the extant RBI Guidelines:**

6.12. The Erstwhile Financial Creditor has acted in violation of the extant RBI Guidelines. The economic slump due to the global slowdown and general economic policy paralysis has affected the industry as a whole. The hardship caused due to the monetary and logistics uncertainty, emanating out of the unprecedented situation of the Covid-19 pandemic, has added to the woes of the corporate sector. In light of the same, the Reserve Bank of India announced a Regulatory Package dated 17.04.2020 in respect of asset classification and provisioning, aimed at alleviating the lingering impact of the pandemic on business and financial institutions in India, consistent with the globally coordinated action taken by the Basel Committee on Banking Supervision.

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- 6.13. In terms of the Regulatory Package, the lending institution were permitted to grant a moratorium of three months on payment of all term loan installments falling due between 01.03.2020 and 31.05.2020. The moratorium period was, further, extended by the RBI for another three months from 01.06.2020 to 31.08.2020 vide the Regulatory Package dated 23.05.2020, in view of the extension of the lockdown and continuing on account of the Covid-19 pandemic. The Regulatory Package clearly instructed the lending institution to not downgrade asset classification during the moratorium period.
- 6.14. The Erstwhile Financial Creditor has annexed the CRILC Report dated 25.06.2020 in respect of the Corporate Debtor. The reference date is 30.04.2020 as per the CRILC Main Report. The status of the Corporate Debtor, as shown in the Report, is SMA-2. In accordance with the RBI Guidelines on Prudential Framework for Resolution of Stressed Assets dated 07.06.2019, principal or interest payment or any other amount wholly or partly overdue between 61-90 days would be classified as SMA-2. Furthermore, the Report also states that the asset classification in respect of the Corporate Debtor was downgraded from SMA-2 to Non-Performing Asset on 31.05.2020. The Erstwhile Financial Creditor, therefore, acted in violation of the extent RBI Guidelines. The Erstwhile Financial Creditor has attempted to deprive the Corporate Debtor of the benefits provided by RBI in its Regulatory Package with a *mala fide* intent.
- 6.15. This Regulatory Package of RBI is in line with the decisions of various courts including the Hon'ble Delhi High Court and the Hon'ble Supreme Court where the Hon'ble Supreme Court has as

recently as 3<sup>rd</sup> September 2020 stated that accounts which have not been declared NPA till 31<sup>st</sup> August 2020 cannot be declared NPA till further orders. Hence, the Ld. Counsel of the Corporate Debtor pleaded that the Company Petition filed under Section 7 of the Code be dismissed.

**RE-JOINDER FILED BY THE FINANCIAL CREDITOR:**

7. The Erstwhile Financial Creditor has filed its Affidavit-in-Rejoinder dated 21.09.2021 and submits as under:

**A. Issue pertaining to authorization in relation to filing of the Petition:**

- 7.1. The Board of Directors of the Erstwhile Financial Creditor during a meeting held on 26.03.2020, authorized Mr. Prashant Kumar, the Managing Director & Chief Executive Officer of the Erstwhile Financial Creditor, YES Bank Limited, to make, sign, verify, affirm, swear and file any petition or any proceedings as the representative of the Erstwhile Financial Creditor. By way of Power of Attorney dated 15.07.2020, Mr. Rajat Lahoty was authorized to deal with the matters relating to IBC.
- 7.2. The Code provides the Form in which an application to the Adjudicating Authority, under Section 7 of the Code shall be made. The Form requires an "Authorised Representative" of the Erstwhile Financial Creditor to file the application on its behalf. It is submitted that the present Petition is filed by an Authorised Representative of the Erstwhile Financial Creditor and is, therefore, fit to be admitted by this Tribunal. It is submitted that the Power of Attorney in favour of the authorised signatory is pursuant to a



Board Resolution in this regard, and therefore, both documents ought to be read together.

7.3. Therefore, the contention of the Corporate Debtor that the Power of Attorney is defective and cannot be the basis on which a Petition under Section 7 of the IBC can be filed, is wholly unsustainable and without any legal basis.

**B. Issue pertaining to insufficient stamping of the Facility Documents and related security documents:**

7.4. The Financial Creditor in its Re-joinder submitted that, the Corporate Debtor has not disputed the fact that:

- (i) The debt availed by the Corporate Debtor from Erstwhile Financial Creditor,
- (ii) Term Loan vide Loan Agreement dated 13.04.2015 aggregating to Rs.250,00,00,000/-,
- (iii) Term Loan vide Loan Agreement dated 17.10.2017 aggregating to Rs.400,00,00,000/- from the Erstwhile Financial Creditor, and
- (iv) The Corporate Debtor has issued non-convertible debentures amounting to Rs.350,00,00,000/- to the Erstwhile Financial Creditor in terms of the Debenture Trust Deed dated 10.01.2015.

7.5. The Corporate Debtor has not denied that the Corporate Debtor has defaulted in payment of interest accrued and payable in respect of Term Loan 1 & 2 on 01.12.2019 and in respect of the non-convertible debentures issued under the DTD on 13.01.2020.

7.6. The debt and default, as committed by the Corporate Debtor is evident from the following documents:

- (i) Statement of Accounts of the Corporate Debtor maintained by the Erstwhile Financial Creditor; and
- (ii) Record of default with the NeSL Rrport.

In view of the aforementioned, the contention of the Corporate Debtor as regards the insufficiency of the stamp duty paid on the facility agreement is irrelevant.

**C. Issue pertaining to invocation and sale of pledged shares:**

7.7. It is the admitted position of the Erstwhile Financial Creditor that Equity Shares of various entities of the ADA had been pledged in its favour by the Corporate Debtor, and certain other related entities, to secure the facilities extended to the Corporate Debtor in terms of the Term Loan 1, Term Loan 2 and DTD. (hereinafter collectively referred as “**RIPL Facilities**”).

7.8. RIPL Facilities were inter alia secured by way of pledge shares, under various Deeds of Pledge. The three Deeds of Pledge dated 09.02.2019, the Unattested Share Pledge Agreement dated 30.04.2015, Deed of Pledge dated 17.10.2017 and the Supplemental Deed of Pledge dated 09.02.2019 (hereinafter collectively referred as “**Pledged Shares**”).

7.9. It is clear from the Clause 8 and Clause 11 of the Pledge Documents that, in case of a default, the Erstwhile Financial Creditor had the power to invoke and sell the Pledge Shares and appropriate the realized monies towards payment, repayment or

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reimbursement of the principal amounts under the RIPL Facilities and the interest thereon.

- 7.10. Pursuant to the defaults on part of the Corporate Debtor under the RIPL Facilities, the Erstwhile Financial Creditor vide Notices dated 20.12.2019 and 24.12.2019 informed the defaults, to the Corporate Debtor. In the said Notices, the term “Facility” was defined to mean the Term Loans aggregating to Rs.250,00,00,000/- and Rs.400,00,00,000/- respectively, while overdue amounting to Rs.2,17,15,730/- and Rs.3,27,49,565/- respectively as on 19.12.2019 were included as one of the Defaults as stated under the Notices.
- 7.11. Despite repeated reminders, the Corporate Debtor did not cure the Default as contained in the Pledge Invocation Notices. Consequently, the Erstwhile Financial Creditor was constrained to invoke its lawful rights under the Pledge Documents and undertook the sale of the Pledged Shares in the market. After communicating by way of its Notice dated 15.06.2020 to the Corporate Debtor, the Erstwhile Financial Creditor realized an amount of Rs.35,70,93,210/- from the sale of the Equity Shares pledged against Term Loan 1 and an amount of Rs.27,93,30,613/- against Term Loan 2. Accordingly, an aggregate amount of Rs.63,64,23,823/- was realized by the Erstwhile Financial Creditor from the sale of sale of the Pledged Shares. Out of aggregate amount realized, an amount of Rs.2,43,602/- was retained by Axis Trustee Services Ltd. for security enforcement charges from the proceeds of sale of shares, accordingly, an amount of Rs.63,61,80,221/- was available to the Erstwhile Financial Creditor for appropriation against the Term Loans. The said sum has been

appropriated towards repayment from Rs.250,00,00,000/- and Rs.400,00,00,000/- to Rs.214,29,06,790/- and Rs.372,06,69,386/-. The said appropriation had been communicated to the Corporate Debtor vide emails dated 20.01.2020 and 21.01.2020.

7.12. It is further submitted that, while the sale proceeds have been correctly adjusted against the principal amount in accordance with the Pledge Agreements and Pledge Invocation Notice, even assuming, and without prejudice to the aforesaid, that the sale proceeds of Rs.63,61,80,221/- were adjusted in their entirety against the interest components under the RIPL Facilities, the outstanding default interest components under the RIPL Facilities as on 24.03.2020 would be Rs.2,52,37,242/- which is without doubt above Rs.1,00,00,000/-, the threshold for admitting the Petition under Section 7 of the Code.

7.13. The Erstwhile Financial Creditor has acted in accordance with the contractual arrangement between the parties, various applicable RBI Guidelines and the provisions under the Code. Further, any RBI Guidelines such as RBI Guidelines on Prudential Framework for Resolution of Stressed Assets dated 07.06.2019, issued with regards to stressed assets are directory to the financial institutions and not mandatory, and do not take away the rights of the Erstwhile Financial Creditor provided under a statute.

**Issue pertaining to default interest:**

7.14. It is submitted by the Erstwhile Financial Creditor that since the loan issued to the Corporate Debtor, which are squarely classifiable as financial debt, include repayment of both the principal sum as well as interest, default in repayment of any component of a

financial debt would amount to default under the Code, for the purpose of the initiating a Petition under Section 7 of the Code.

**FINDINGS:**

8. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor on various dates and perused the records.

8.1. On perusal of the documents submitted by the Financial Creditor, it is observed that, by way of Assignment Agreement dated 16<sup>th</sup> December, 2022, the loans disbursed to Corporate Debtor under the financing documents together with all its rights, title and interest in the financing documents and any underlying interests, pledges, guarantees in respect of such loans were assigned by Yes Bank Limited i.e. Erstwhile Financial Creditor to J.C. Flowers Asset Reconstruction Private Limited acting in its capacity as trustee of JCF YES Trust 2022-23/2 Financial Creditor. This Tribunal *vide* order dated 21<sup>st</sup> February 2023 in Interlocutory Application No. 652 of 2023 was pleased to allow the substitution of the Erstwhile Financial Creditor with the Financial Creditor.

8.2. The Erstwhile Financial Creditor has filed the present Petition under Section 7 of the Code against the Corporate Debtor towards an interest default of Rs.101,03,64, 982.62. The following Facilities (“**Debts**”) were extended by the Erstwhile Financial Creditor to the Corporate Debtor, against various Pledges and Hypothecation of Movable and Immovable Properties:

- a. Non – Convertible Debentures (NCDs) – Rs. 350 crores;
- b. Term Loan 1 – Rs. 250 crores; and

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- c. Term Loan 2 – Rs. 400 crores.
- 8.3. As per the submissions of the Financial Creditor, the Corporate Debtor defaulted against the interest liability in relation to the aforesaid Facilities on the below dates:
- a. NCD – 13<sup>th</sup> January 2020
  - b. Term Loan 1 – 1<sup>st</sup> December 2019
  - c. Term Loan 2 – 1<sup>st</sup> December 2019
- 8.4. The present Petition was filed on 18<sup>th</sup> July 2020, on account of the default against the interest amounts under the aforementioned Facilities. It is undisputed fact that the Corporate Debtor has availed Loan Facility from the Financial Creditor. The Corporate Debtor raised following contentions in its Reply:
- i. The Financial Creditor has not filed a valid Authorisation;
  - ii. The documents filed by the Financial Creditor are insufficiently stamped; and
  - iii. No default on the part of the Corporate Debtor, as the Financial Creditor has already sold out the shares of the Corporate Debtor.
- 8.5. With respect the first issue, the Corporate Debtor contended that the Financial Creditor has not filed a valid Authorisation. This Bench is of the view that the Code provides the Form in which an application under Section 7 of the Code shall be made. The Form requires an “Authorised Representative” of the Financial Creditor to file the application on its behalf. The present Petition is filed by an authorised representative of the Erstwhile Financial Creditor. The Power of Attorney was given in favour of the Authorised Signatory

which is pursuant to a Board Resolution. In view of this, both the documents have to be read together. Further, in the present case, the Board Resolution was passed following which the Power of Attorney was executed in favour of Mr. Rajat Lahoty. On the basis of General Authorisation, Petition under Section 7 of the Code can be filed. In this regard, reference can be given to the Hon'ble Supreme Court Judgement in *Rajendra Narottamdas Sheth v. Chandra Prakash Jain, [2021] 131 taxmann.com 2 (SC)*, wherein it was held as below:

*“11. ... The NCLAT was of the opinion that general authorization given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under section 7 of the Code, merely because the authorisation was granted through a power of attorney. ...”*

8.6. In the present case a general Power of Attorney dated 01.07.2020 has been executed from Mr. Prashant Kumar in favour of Mr. Rajat Lahoty. The said Power of Attorney is filed pursuant to the Board Resolution dated 26.03.2020. The relevant part of the Board Resolution dated 26.03.2020 is being reproduced as under:

*“12. To sign, execute and deliver any deeds, documents, affidavits, undertakings, documents and writings as may be necessary or expedient or considered necessary by the MD&CEO in his absolute discretion and manner/and to make, sign, verify, affirm, swear and file any petition, affidavit, declaration, application or other proceedings, pleadings, vakalatnamas, appeal, review or other claim or applications or acknowledgements in proof of any debt due to claimed to be due to the Bank and to attend and vote or to give proxy to authorise any other employee or official or staff of the shareholders or debenture holders or otherwise and to act subject to the provisions of the Companies Act, 2013 (as amended or re-enacted from time to time) as the representative of the Bank;*

*19. For the better and more effectually doing, effecting and performing the several matters and things aforesaid to appoint from time to time or generally such person or persons as the MD & CEO may think fit as his substitute or substitutes, to do execute and perform all or any such matters and things as aforesaid and any such substitute or substitutes at pleasure to remove and to appoint another or others in his or their place and the Bank hereby agree at all times to ratify and confirm whatsoever the MD&CEO or his delegate or any such substitute or substitutes shall lawfully do or cause to be done in or about the premises.”*

8.7. In view of the aforesaid, the signatory to the Petition is the Authorised Representative of the Erstwhile Financial Creditor and has the requisite Authority to initiate proceedings against the Corporate Debtor under Section 7 of the Code. Hence, the issue contentions of the Corporate Debtor regarding the Invalid Authorisation have no merit and cannot be considered.

8.8. With respect to the second issue, the Corporate Debtor contended that Loan Documents filed by the Financial Creditor are insufficiently stamped. The Judicial Member of the Co-ordinating Bench of NCLT Mumbai in the case of *Satra Properties (India) Limited v. Vistra ITCL India Limited (Order dated 10<sup>th</sup> February 2022 in M.A. No.180 of 2020 in C.P. (IB) No. 1632 of 2019, Reference to a Third Member)* has held as follows:

*“8. In this scenario it is appropriate to mention here that a Section 7 application under the IBC can be filed in a simple form prescribed in the Code even without any pleadings. Similarly, the ‘debt’ and ‘default’ can be proved through the records of ‘debt’ and ‘default’ maintained by the “information utility” even without filing any documents by the party. When once the Adjudicating Authority is satisfied with these two legal requirements and if the application is complete in accordance with the code, the Adjudicating Authority has no option except to admit the Company Petition without going*



*into any other trivial technical issues raised by the Corporate Debtor as held by Hon'ble Supreme Court in various rulings. Therefore, in view of the above, I am of the opinion that the above plea of Stamp Duty is not available to the Corporate Debtor in the present case when once the debt and default are proved without looking into the above documents and accordingly the first issue is answered in negative. It is also pertinent to mention here that as per the terms and conditions of the NCD Subscription Agreement it is the Petitioner/Corporate Debtor that shall bear all documentation charges (including stamp duty) legal and valuation charges. Therefore, the Petitioner shall not be permitted to take advantage of his own wrong. It is also important to mention here that it is the very case of the petitioner in para 2 of the above M.A that the above documents upon which the Financial Creditors are relying in the present proceedings have been novated and the respondent stood discharged of the liability thereunder in view of the larger understanding and overall settlement. Therefore, the petitioner having taken the above stand has no legal right to insist for impounding of the above document."*

- 8.9. The above decision of the Co-ordinating has been upheld by the Hon'ble NCLAT in ***Company Appeal (AT) (Ins.) No. 713 of 2020, dated 02.08.2022***. Hon'ble NCLAT held as follows:

*"28. We also consider the judgment in the matter of Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407, wherein Hon'ble Supreme Court has held as follows :-*

*"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating*

*authority that the adjudicating authority may reject an application and not otherwise.”*

*We note that that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which can be cured.”*

*“29. Therefore, on the basis of detailed discussion in the aforesaid paragraphs, we are of the view that the Non-Convertible Debentures are clearly outside the purported “Settlement” arrived in the meeting held on 31.3.2018. Therefore, the Non-Convertible Debentures Subscription Agreement and the Debenture Trust Deed are not novated as a result of the “Settlement” and are relevant in establishing the debt of the corporate debtor as claimed in section 7 application, whose repayment is in default as per clause 11 of the Debenture Trust Deed. We, therefore, come to the conclusion that the section 7 application was admitted correctly by the Adjudicating Authority. We do not find merit in the appeal and accordingly dismiss it.”*

- 8.10. It is the trite law that for the admission of a petition under Section 7 of the Code what is necessarily required to be proven is the existence of debt and default in respect of such debt in terms of the Code. After, observations of the above-mentioned discussion, this Bench is of the considered view that the Adjudicating Authority can only decide whether the Corporate Debtor has defaulted in payment of its debts, and therefore, whether the Corporate Insolvency Resolution Process should be directed to be initiated against the Corporate Debtor. Even assuming that the document is not adequately stamped, this aspect is not relevant for the admission of the Petition for Insolvency under the Code. Hence, the contention of the Corporate Debtor regarding the insufficiently stamped documents has no merit and the same cannot be considered.

8.11. The third issue raised by the Corporate Debtor is that the Financial Creditor has sold the Pledged Shares and hence there is no default on the part of the Corporate Debtor. The Bench observed that the Erstwhile Financial Creditor had all the rights to appropriate the sale proceeds towards the outstanding principal component of the loan, basis the clauses of agreements pertaining to the Facilities. Relevant clauses of the Agreements entered into between the parties are as below:

***The Unattested Share Pledge Agreement (Term Loan-1)***

*“12. APPLICATION OF PAYMENTS (Pg 135, Rejoinder)*

*(a) Any monies received or recovered by the Security Agent towards any amount of the Obligations shall be appropriated as follows:*

*(i) First, it shall be paid out of such moneys or provisions made thereof for the costs, charges, expenses, incurred by the Security Agent for and incidental to the enforcement of the pledge created hereunder and/or realisation or receipt of such moneys;*

*(ii) Thereafter, the balance of such moneys shall be distributed to the Lender towards repayment of the Amounts Outstanding in relation to the Facility and in the event that the Facility is fully repaid, the Debenture Holders shall be entitled to all the proceeds of enforcement, without any preference or priority whatsoever, towards repayment of the Amounts Outstanding in relation to the Debentures.*

*(b) Any surplus of such monies following payment of the Obligations in full, shall be paid to the Pledgors or whosoever may be lawfully entitled to receive such surplus.”*

***Unattested Deed of Pledge (Term Loan-2)***

*“11. APPLICATION OF PROCEEDS (Pg 164 rejoinder)*

*All moneys received by the Pledgee, or any one of them, in respect of the Security Assets shall, subject to applicable insolvency laws, be*

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*applied towards payment, repayment or reimbursement, as the case may be, of the Secured Obligations in the manner prescribed in the other Transaction Documents, and then any surplus shall be paid to the Pledgor(s) unless the Pledgee shall have been instructed by order of a court of competent jurisdiction to deliver such surplus to any other Person.”*

- 8.12. After perusal of the above-mentioned clauses of the Facility Documents / Agreements, it can be said that, the Erstwhile Financial Creditor was entitled to appropriate monies towards all amounts outstanding, including both the principal and interest. Therefore, the Erstwhile Financial Creditor has appropriated the sale proceeds correctly, and in accordance with the Facility Documents / Agreements entered into between the parties.
- 8.13. On perusal of the record and the submissions made, we find that, there was a clear affirmation of the existence of loan and acceptance of the same by the Corporate Debtor. Reference to a settlement and partial payment towards the settlement entered into between the parties, clearly stipulates that the Ld. Counsel for the Corporate Debtor accepted the existence of outstanding debt.
- 8.14. The Corporate Debtor further contented that the shares were sold by the Erstwhile Financial Creditor as a fire-sale, much below the intrinsic value of the shares, and thereby causing a loss to the Corporate Debtor. It is observed by the Bench that the Financial Creditor has intimated to the Corporate Debtor with respect to the sale of the Pledge Shares, however, the default against the Facilities has not been challenged by the Corporate Debtor; and the issuance of a prior pledge invocation notice prior to the sale of shares has also not been challenged by the Corporate Debtor. Hence, the contention of the Corporate Debtor has no merit.

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- 8.15. It is a settled position of law that while admitting the Petition under Section 7 of the Code, the Adjudicating Authority has to look at the debt and default. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As far as a 'debt' and 'default' is proved, the Adjudicating Authority is bound to admit the petition.
- 8.16. Considering the above facts, we come to the conclusion that the nature of Debt is "**Financial Debt**" as defined under Section 5 (8) of the Code. It has also been established that there is a "**Default**" as defined under section 3 (12) of the Code on the part of the Corporate Debtor. The two essential qualifications, i.e., existence of "**Debt and Default**" for admission of a Petition under Section 7 of the Code, have been met in this case.
- 8.17. Hence, in view of the above discussion, this Bench finds no reason to not to admit the claim of the Financial Creditor and we finds the Petition filed by the Financial Creditor under Section 7 of the Code is liable to be admitted.
9. The Applicant has proposed vide its Additional Affidavit dated 03.03.2021, the name of Mr. Bhrugesh Amin, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.
10. Resultantly, the Petition is admitted in the following terms:

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**ORDER**

- a. The Application bearing C.P. (IB) No. 1154/MB-V/2020 filed by **J.C. Flowers Asset Reconstruction Private Limited**, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Reliance Innoventures Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against Evenness **Reliance Innoventures Private Limited**.
- b. This Bench hereby appoints **Mr. Bhrugesh Amin**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00353/2017-2018/11003 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor 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.
- 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. 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)**