

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 448 of 2023

[Arising out of order dated 31.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V in CP No. 979 of 2022]

IN THE MATTER OF:

Mr. Mayur Suchak

Suspended Promoter & Director of
Renaissance Indus Infra Pvt. Ltd.
Through his POA Hlder Mr. Parag Pawar
Having his office at 601, 6th Floor, Hubtown Solaris,
Saiwadi, N. S. Phadke Road, Near Gokhale
Bridge, Andheri (E)
Mumbai-400 069.

...Appellant

Vs.

1. Catalyst Trusteeship Limited

having its registered office at
GDA House, Plot No. 85,
Bhusari Colony, Paud Road,
Pune-411 038.

2. Renaissance Indus Infra Pvt. Ltd.

(through Interim Resolution Professional)
having its registered office at
601, 6th Floor, Hubtown Solaris,
Saiwadi, N. S. Phadke Road, Near Gokhale
Bridge, Andheri (E)
Mumbai-400 069.

...Respondent

Present:

For Appellant: Mr. Ashish Dholakia, Sr. Advocate with Mr. Shivek Trehan, Mr. Priyank A Daga, Mr. Rohan Chawla, Ms. Khusboo and Ms. Namami Jain, Advocates.

For Respondents: Mr. Abhijeet Sinha, Mr. Aayush Agarwal, and Mr. Saikat Sarkar, Advocates for R-1

Mr. Kunal Kanungo, Mr. Vishesh Kalra and Mr. Saurabh Tandon, Advocates for IRP.

Mr. Ritin Rai, Sr. Advocate with Ms. Ekta Bhasin and Ms. Aastha Trivedi for Intervener.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Promoter of the Corporate Debtor – M/s Renaissance Indus Infra Pvt. Ltd. challenging the order dated 31.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No. V admitting Section 7 application filed by the Financial Creditor – Catalyst Trusteeship Ltd. The Appellant, aggrieved by the order, has come up in this Appeal. Brief facts of the case necessary to be noticed for deciding this Appeal are:

- i. The Corporate Debtor and Altico entered and executed term sheet for a loan amount of Rs.650,00,00,000/- on 11.06.2018. On 21.06.2018, Debenture Trustee Appointment Agreement executed where Vistra ITCL was appointed as the Debenture Trustee. On 26.06.2018, a Debenture Trustee Document was executed between the Corporate Debtor, Promoters and Vistra ITCL under which 390 unlisted, secured, redeemable non-convertible debentures of aggregate value of Rs.390,00,00,000 were issued by the Corporate Debtor.
- ii. An Assignment Agreement dated 04.03.2021 was issued by Altico in favour of Respondent No.1 - Catalyst Trusteeship Ltd. and other.

- iii. Vide demand notice dated 13.07.2022, the Debenture Trustee called upon Respondent No.2 – Corporate Debtor to make outstanding payment due to Respondent No.1. The Corporate Debtor failed to make any payment of the outstanding amount.
 - iv. The Corporate Debtor having committed events of default as per Debenture Trustee Document, the Respondent No.1 issued an Acceleration and Enforcement Notice dated 26.07.2022. No response was given by the Corporate Debtor.
 - v. The Respondent No.1 filed Section 7 application against the Corporate Debtor on 29.07.2022. Notice was issued in the Company Petition.
 - vi. A reply was filed by the Corporate Debtor. An I.A. was also filed by the Corporate Debtor on 26.11.2022 challenging the maintainability of the Company Petition.
 - vii. The Adjudicating Authority vide order dated 21.03.2023 admitted Section 7 application. Aggrieved by which order, this Appeal has been filed.
2. We have heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent No.1.
3. Learned counsel for the Appellant challenging the order passed by the Adjudicating Authority submits that application filed by Respondent No.1,

Catalyst Trusteeship Limited under Section 7 was not maintainable and the application, if any, could have been filed only by the Debenture Trustee. Under the Debenture Trustee Document as well as the Enforcement Notice, proceedings against the Corporate Debtor can be initiated only by the Debenture Trustee. The Respondent No.1 in its reply suppressed various vital documents. The Debenture Trustee Document read with Inter-Creditor Agreement clearly provides that it is only the Debenture Trustee i.e. Vistra ITCL who is legally entitled to take any action or declare default against the Corporate Debtor either by itself or jointly with the Debenture Holder. The Respondent No.1 has invoked Enforcement Notice dated 26.07.2022 which notice is contrary to the terms of the Inter-Creditor Agreement. The Respondent No.1 has no locus to invoke proceedings under Section 7 without prior consent of other lenders. A perusal of Clause 9.2 of the Debenture Trustee Document and Clause 5.6 of the Inter-Creditor Agreement depicts that Respondent No.1 has no locus in initiating proceedings against the Respondent No.2, which Adjudicating Authority has failed to appreciate.

4. The submissions made by learned counsel for the Appellant has been refuted by learned counsel for Respondent No.1. It is submitted that the Corporate Debtor – Appellant has not disputed the debt and default committed by the Corporate Debtor. In the reply filed before the Adjudicating Authority, debt and default is not disputed. Corporate Debtor did not issue any reply to Demand Notice dated 13.07.2022 or the Acceleration and Enforcement Notice dated 26.07.2022. The appointment of Debenture

Trustee – Vistra ITCL (India) Ltd. does not detract or in any manner prejudice the rights of the Debenture Holders to take legal action. Clause 9.8 has been relied by learned counsel for the Respondent. Notice of payment default dated 13.07.2022 had been issued by Debenture Trustee on the instructions of Financial Creditors. Hence, the Corporate Debtor cannot raise any grievance regarding the locus standi of the Financial Creditor. The Corporate Debtor has no privity to Inter-Creditor Agreement. Only other creditor is Clearwater Capital Singapore Fund V Pvt. which has already filed its own Section 7 application against the Corporate Debtor. Under Clause 5.6 of the Inter-Creditor Agreement, rights of each Creditor to avail necessary legal proceedings had been preserved. Assignment Agreement dated 04.03.2021 categorically records that all rights, entitlements, and claims of the original Debenture Holder have been transferred to the Assignment Holder. In this Appeal, the Appellant also made statement, on 13.04.2023, that Appellant proposes to give a fresh offer to the Respondent No.1 for settlement but no steps were taken by the Appellant in that regard. Debt and default being admitted; the Adjudicating Authority has rightly admitted the Section 7 application.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. This Appeal was heard by this Tribunal on 13.04.2023 on which date recording the submission of the Appellant following order was passed:

“O R D E R

13.04.2023: *Learned Counsel for the Appellant submits that after admission of the Section 7 Application, a substantial offer has been given earlier in January, 2023 and Appellant proposes to give a fresh offer to the Respondent No. 1 for Settlement. He prays for three weeks' time to do the needful.*

*2. Let the Appellant give a substantial offer as submitted above within one week from today. List this Appeal on **04th May, 2023**. We make it clear that in event of no settlement is made, the Appeal shall be heard on merit.*

3. Issue notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within two days. Reply Affidavits may be filed within two weeks.

In the meantime, in pursuance of the Order impugned, Committee of Creditors shall not be constituted.”

7. After the aforesaid date, the Appellant neither submitted any proposal nor took any steps. The present is a case where in the reply filed before the Adjudicating Authority, the Corporate Debtor did not dispute the debt and default. In the reply filed by the Corporate Debtor, it was mentioned that due to COVID-19 there was standstill in the business activities of the Corporate Debtor. The debt and default was an admitted position in the reply filed by the Corporate Debtor. The submission which is much pressed by learned counsel for the Appellant is that the Respondent No.1 had no locus

to issue Acceleration Notice dated 26.07.2022. It is submitted that it was only Debenture Trustee who could have taken action in event of default, as per the Debenture Trustee Document. In the facts of the present case, there is no dispute that event of default took place. Learned counsel for the Appellant relying on Clause 9.2 of the Debenture Trustee Document submits that in event of occurrence of default it is the Debenture Trustee who is entitled to take action. Learned counsel for the Respondent No.1 in response to the submission of the Appellant has relied on Para 9.8, according to which the Financial Creditor, the lender which are entitled to take such remedy as are available to the Debenture Holder. Para 9.2 and Para 9.8 are as follows:

“9.2 Consequences of Default

On and at any time after the occurrence of a Default, in addition to the levy of Default Interest in accordance with Clause 9.5 (Default Interest), the Debenture Trustee may, upon the delivery of 1 (one) Business Day's notice, which notice the Issuer acknowledges herein as being reasonable, take any or all of the following actions:

- (a) declare that: (i) the Debentures shall automatically and without any further action, become due for redemption at the outstanding Redemption Amount and the accrued Interest; and (ii) all other Secured Obligations under the Debenture Document to be immediately due and payable, whereupon they shall become immediately due and payable; and/or*
- (b) enforce all or any Security; and/or*

- (c) *enforce all rights of the Debenture Trustee under the Debenture Documents; and/or*
- (d) *invoke the Guarantee; and/or*
- (e) *notwithstanding any other provision of any Debenture Document, the Debenture Trustee shall be entitled to enforce/ present/ endorse and demand payment under the Demand Promissory Note; and/or*
- (f) *encash any and all instruments which are in the favour of or in the custody of the Debenture Trustee, and/or*
- (g) *convert, at the option of each Debenture Holder, all or part of the Secured Obligations (proportional to the Debentures held by such Debenture Holder) into fully paid-up equity shares of the Issuer in accordance with Clause 9.7 (Conversion of outstanding debentures into shares) below and the Issuer shall forthwith take all necessary action to ensure that such conversion is in compliance with the Applicable Law; and/or*
- (h) *stipulate such other conditions or amend any terms of the Transaction Documents as the Debenture Trustee considers necessary, and/or*
- (i) *appoint such number of Nominee Director(s) as deemed necessary on the board of directors of any Obligor, at the Debenture Trustee's sole and absolute discretion; and/or*
- (j) *the Debenture Trustee may (but shall not be obliged to), at its sole discretion and option enter into, on behalf of the Obligors such third party*

arrangements with such parties as the Debenture Trustee deems fit, for the purposes including but not limited to: (i) completing the construction and development of the Projects; (ii) sale/disposal of units or plots in the Projects; or (iii) any other measures to ensure the servicing and repayment of the Secured Obligations. and/or

- (k) exercise such other rights as may be available to the Debenture Trustee and/or the Debenture Holders under the Debenture Documents or under Applicable Law.”*

“9.8 Other Remedies under Applicable Law

Notwithstanding anything to the contrary contained in this Deed, the Issuer acknowledges the Debenture Trustee's and Debenture Holders' unqualified right, to take all such actions as may be available to them under various policies and schemes promulgated by the RBI from time to time (including but not limited to such actions in accordance with the RBI's Stressed Assets Framework to convert the Secured Obligations into paid-up equity share capital of the Issuer and other measures available therein) and other remedies available to lenders in general in accordance with the provisions of the Applicable Laws, at any time until the Final Settlement Date.”

8. We may also notice certain clauses of Inter-Creditor Agreement dated 26.06.2018 on which also reliance has been placed by learned counsel

for the Appellant. The Inter-Creditor Agreement defines ‘finance parties’ in following words:

“Finance Parties” shall mean collectively:

- (a) The Debenture Trustees;
- (b) The Debenture Holders; and
- (c) Any agent of any Debenture Trustee as may be appointed by the relevant Debenture Trustee from time to time.”

9. Inter-Creditor Agreement contemplated ‘enforcement action’, which is to the following effect:

“Enforcement Action” shall mean any action taken or proposed to be seen by any of the Finance Parties under the Debenture Documents or any other Finance Documents (including, without limitation, the acceleration of any Secured Obligations or the making of any declaration that any of the Secured Obligations are due and payable prior to their stated maturity) or any other action or proceeding taken or proposed to be taken by any of the Finance Parties against all or any of the Obligors, the Projects or all or any part of the Security, pursuant to any of the Finance Documents and this Agreement, for the purpose of:

- (a) enforcing or exercising all or any of the rights or remedies of any Finance Party under or in respect of the Security created under the Finance Documents, including without limitation, the initiation of any non-judicial action, any action under SARFAESI Act.

2002 or any action in any court or tribunal or before any administrative agency or governmental authority to enforce such rights and remedies. including any action initiated under or pursuant to any Applicable Law, any action to appoint a receiver or liquidator and any action to exercise any rights provided in the Debenture Documents or any other Finance Documents;

- (b) enforcing or exercising any right all or any of the rights or remedies of any Finance Party under or in respect of the Security created under the Finance Documents upon initiation or commencement of any insolvency process or proceeding (howsoever described) under any applicable law (including the Insolvency and Bankruptcy Code, 2016) in respect of any Obligor. exercising any right of set-off*
- (c) combination of accounts or payment netting against any Obligor in respect of any Secured Obligations; and/or*
- (d) adjudicating or seeking a judgment on a claim in respect of any Secured Obligations.”*

10. Inter-Creditor Agreement Clause 5.1.3 provides for ‘consequences of events of default’, which is to the following effect:

“5.1.3 Consequences of Events of Default

- (a) Fundamental Default*

In the event that a Fundamental Default has occurred, any Finance Party may, subject to the provisions of Section 52 (Enforcement), exercise sy rights or remedies in relation thereto without presentment, demand, protest or notice of any kind whatsoever after 1 (one) day of such occurrence.

(b) Payment Default

In the event that a Payment Default has occurred, any Finance Party may, subject to the provisions of Section 5.2 (Enforcement), exercise any rights or remedies in relation thereto (including initiation of any Enforcement Action) after expiry of 60 (sixty) days from the date of such Payment Default ("Standstill Period"). For the avoidance of doubt, it is clarified that the Standstill Period shall immediately cease, if a Fundamental Default occurs during such period.

(c) Other Default

Unless otherwise waived in accordance with this Agreement, if any Other Default shall have occurred, each Finance Party may exercise any rights or remedies in relation thereto, without prejudice to the rights of any other Finance Party, subject to such Finance Party giving not less than 5 (five) Business Days' notice of its intention to exercise such rights or

remedies, to the other Finance Parties including the Debenture Trustees. Provided however, subject to Section 5.2 (Enforcement), any Finance Party may exercise any rights or remedies it may have in relation to any Other Default upon the expiry of the 5 (five) Business Days' notice only if Majority Creditors have approved of such course of action."

11. Clause 5.1.4 reads 'actions under the finance documents', which is to the following effect:

"5.1.4 Actions under the Finance Documents

All items/actions which require an approval/instructions from the Majority Creditor as per any of the Debenture Documents shall be undertaken only after the relevant Debenture Trustee receives written instructions from such number of Debenture Holders as are required to qualify as Majority Creditors in accordance with this Agreement."

12. The present is a case where after event of default as per Debenture Trustee Document, Notice of Demand dated 13.07.2022 was issued by the Debenture Trustee himself. Demand Notice having been issued by the Debenture Trustee on 13.07.2022, the Corporate Debtor become fully liable to comply such notice. Admittedly, the notice was not replied by the Corporate Debtor and thereafter Acceleration Notice was issued on

26.07.2022 by the Financial Creditor. The notice dated 13.07.2022 had been issued by the Debenture Trustee on the instructions of the Financial Creditor regarding default of approx. Rs.215 Crore, due to above, the Corporate Debtor cannot have any grievance regarding locus standi of the Financial Creditor and the Acceleration and Enforcement Notice was also not replied by the Corporate Debtor raising any grievance.

13. It is further submitted by learned counsel for the Respondent No.1 that only other creditor of the Corporate Debtor is Clearwater Capital Singapore Fund V Pvt. which has already initiated its own proceeding under Section 7 against the Corporate Debtor and also filed an Intervention Application. Learned counsel for the Respondent No.1 has also referred to Clause 5.6 of the Inter-Creditor Agreement, which is to the following effect:

“5.6 Suits against Issuers

Subject to the provisions of this Agreement, all or any one of the Finance Parties shall be entitled to bring a suit or other legal proceeding, or take or to instruct the Debenture Trustee(s) to take any steps for enforcement of the Security created in its or their respective favour or otherwise for realisation of its respective Security Interests created under the Debenture Documents or in respect of the Secured Obligations owed to the Finance Parties by the relevant Obligors and in the event of the institution of any such suit or other legal proceeding, other Finance Parties shall also act

in good faith and join the Enforcement Action and forthwith initiate all other Enforcement Action, both judicial and non-judicial, including under SARFAESI etc. for expeditious recovery of the dues of the Finance Parties.”

14. After looking into the different clauses of the Debenture Trust Document and Inter-Creditor Agreement, it is clear that the Financial Creditor was fully entitled to issue Acceleration Notice issued on 26.07.2022. The Debenture Trustee having already issued Notice of Demand on 13.07.2022, the argument of the Appellant that action has to be taken by Debenture Trustee loses its significance. As noted above, other creditor i.e. Clearwater Capital Singapore Fund V Pvt. having already initiated action under Section 7, both the creditors are unanimous in taking action against the Corporate Debtor. The submission of the Appellant that there is no majority opinion of the Financial Creditor to take action under Debenture Trust Document against the Corporate Debtor loses its significance. Furthermore, Clause 9.8 begins with the words “*Notwithstanding anything to the contrary contained in this Deed....*”. Clause 9.8, thus has overriding effect which reserves rights in lender to take all action and seek remedy as available. We, thus, do not find any substance in submission of learned counsel for the Appellant that the Financial Creditor was not entitled to issue Acceleration Notice dated 26.07.2022. We do not find any infirmity in the initiating proceeding against the Corporate Debtor under Section 7, there being debt and default undisputed and clearly proved by the fact as noted above. The Financial

Creditor stepped in the shoes of the Debenture Holder on the basis of Assignment Deed dated 04.03.2021. In view of the foregoing consideration, we do not find any substance in grounds raised by the Appellant to interfere with the impugned order. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

23rd May, 2023

Archana