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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 14224 OF 2021
IN
COMMERCIAL SUIT (L) NO. 14223 OF 2021**

Rajkumar Nagpal & Ors ...Plaintiffs
Versus
Reliance Commercial Finance Ltd & Ors ...Defendants

Mr Mayur Khandeparkar, *with Rohan Mathur, i/b Anoma Law Grp LLP, for the Plaintiffs.*
Mr Prateek Seksaria, *with Subir Kumar, Disha Shah, Salonee Patil, & Syed Ahmed, i/b SDS Advocates, for Defendant No. 1.*
Mr Ravi Kadam, Senior Advocate, *with Rohit Lalwani, Varghese Thomas, Yohaann Limathwalla, i/b J Sagar Associates, for Defendant No. 2-Bank of Baroda.*
Mr Gautam Ankhad, *with Nirav Shah, & Falguni Thakkar, i/b DSK Legal, for Defendant No. 3.*
Mr V Dhond, Senior Advocate, *with Mr Prasad Shenoy, Aditi Phatak, & Kirti Ojha, i/b Udwardia & Co., for Defendant No. 4-RBI.*
Mr Rafique Dada, Senior Advocate, *with Abhuraj Arora, Rashi Dalmia & Karthik Narayan, for Defendant No. 12-SEBI.*

CORAM: G.S. PATEL, J
DATED: 28th October 2021

PC:-

1. It is agreed that the following order will suffice to dispose of the IA and the Suit itself.
2. The resolution plan approved by the Inter Creditor Agreement (“ICA”) Lenders presently proposes to pay to all secured debenture holders as on cut-off date of 15th July 2021 an amount equivalent to 24.96% of the total principal outstanding (including all amounts already paid) to secured creditors.
3. In terms of the ICA-lenders’ approved resolution plan, the Plaintiffs would be entitled to receive an aggregate sum of Rs.1,34,78,400/- being 24.96% of the total principal outstanding.
4. Of the aforesaid sum of Rs.1,34,78,400/- (24.96% of the total principal outstanding), the Plaintiffs have already received a sum of Rs.72,36,000/- leaving thereby Rs.62,42,400/- as the balance amount in terms of the ICA-lenders’ approved resolution plan.
5. In view of the negotiations between the Plaintiffs, debenture holders, the company and the resolution applicant/their advisors, the resolution applicant has agreed, as an exception and without setting any precedent, that in addition to the sum of Rs.62,42,400/-, the resolution applicant shall pay to the Plaintiffs as debenture holders an additional sum equivalent to 5% of the total principal, outstanding sum as additional settlement amount. (**“Additional Settlement Amount”**). Thus, the aggregate pay-out to the Plaintiffs shall be 29.96% of the total principal outstanding (including all amounts paid).

6. Accordingly, the Plaintiffs shall now be entitled to receive an aggregate sum of Rs.91,00,000/- (a sum of Rs.1,63,46,800/-, i.e. 29.96% less the amount of Rs.72,46,000/- already paid) as full and final settlement, and shall thereupon be required to transfer the debentures in favour of the resolution applicant or its nominee.

7. The Plaintiffs agree and undertakes that upon payment of the amount of Rs.91,00,000/-, each of the Plaintiffs shall forthwith transfer or assign their debentures and all rights therein in favour of the Resolution Applicant/its nominee, and shall execute all such forms and documents as may be necessary for an effective transfer.

8. In view of the above, the Plaintiffs accept that the present terms are in full and final satisfaction of all their claims against the parties hereto and the Resolution Applicant, and they shall not raise any further claims or dispute or any legal proceedings directly or indirectly.

9. The Plaintiffs unconditionally withdraw all objections, complaints or any grievances made before this Court or any other authority against the Company, Debenture Trustee, Lenders and the Resolution Applicant.

10. The Company, the lenders, and the Resolution Applicant and their advisors have agreed that in view of the Plaintiffs (individual non-ICA lenders having principal value of more than Rs.10,00,000/-) having been offered a compromise or settlement and thus an exit at a value which is 5% higher than the amount proposed under the resolution plan, the same terms of settlement

and compromise should be offered to similarly placed individual Debenture Holders.

11. For placing such terms of settlement, compromise or arrangement before the Debenture Holders seeking their assent in terms of the respective Debenture Trust Deeds, the Debenture Trustee (Defendant No.3) is directed to call and conduct a meeting in the manner specified in the respective Debenture Trust Deeds.

12. Mr Ankhad for the 3rd Defendant, the Debenture Trustee, points out that the Debenture Trust Deeds require a meeting to be called in a certain manner. On Affidavit, SEBI has taken a different position. SEBI's submission has been that it is the very latest or most recent of the SEBI resolutions that will govern such meetings, irrespective of what a Debenture Trust Deed says in regard to the holding of a meeting. Prima facie, I do not think this is a submission that I can accept. The Debenture Trust Deed is a contract between the parties to it. They must know the terms of the contract at the time when they execute it. Those terms cannot be later altered except with their consent. The submission by SEBI would amount to saying that a critical term of the contract is always unknown and always liable to change or modification at any given time, conceivably upsetting the entire structure. Further, SEBI's regulations all say that they are with effect from a particular date. It is not possible to read them as operating retrospectively. Correctly read, SEBI's submission is to be understood as meaning that it is the latest of the SEBI resolutions as amended at the time of the Debenture Trust Deed's execution that must compulsorily be incorporated in the

Debenture Trust Deed. This is unexceptionable. But this cannot and does not mean that a later regulation after the Debenture Trust Deed can be retrospectively made to govern the Trust Deed. Between the parties the calling and conduct of a meeting and the voting at it are all governed by the terms of Debenture Trust Deed. There is simply no other way of looking at it.

13. In view of this, the 3rd Defendant is directed to call and conduct meeting of all the Debenture Holders under all three Debenture Trust Deeds within 30 days of this order ensuring that the calling and conduct of the meeting/s and the voting at such meetings conforms to the terms of the respective Debenture Trust Deeds. At such meeting/s, the 3rd Defendant will place for consideration and approval of the beneficial owners or debenture holders the settlement offer/compromise/arrangement as envisaged in the approved resolution plan and as modified to the extent provided herein above.

14. If there is any further or later or supplementary trust deed, then the provisions of that supplementary trust deed will also be taken into account.

15. All parties agree and undertake to maintain confidentiality of the settlement and/or compromise and/or arrangement arrived hereto.

16. In view of the above compromise arrived at between the parties, the suit stands disposed off in these terms.

17. It is made clear that the aforesaid order is passed considering the peculiar facts and circumstances of the present case. It also has consent of all the parties.

18. As regards SEBI, I am making it clear that this order will constitute no precedent against SEBI nor will SEBI be held to the terms of this order for other cases. This order is made on the peculiar facts and circumstances of this case.

19. The demand drafts in question are handed over to the Advocates for the Plaintiffs.

20. Mr Khandeparkar for the Plaintiffs says this order is sufficient to dispose of the Suit itself with all undertakings given to the Court being accepted. So ordered. The suit is disposed of in these terms.

21. Court fees are to be refunded in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

22. The IA is infructuous and disposed of accordingly.

23. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)