

In the National Company Law Tribunal
Mumbai Bench.

C.P. (IB) 3601/(MB)/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

Edelweiss Asset Reconstruction Company Ltd. : Petitioner/ Financial Creditor

V/s

Aakash Tiles Private Limited : Respondent/ Corporate Debtor

Heard on 03.01.2019

Order delivered on: 04.01.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present:

For the Petitioner(s) : 1. Mr. Nishit Dhruva;
2. Mr. Prakash Shinde;
3. Mr. Darshit Dave;
4. Ms. M. Swati, i/b. MDP & Partners.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This is a Petition filed u/s.7 of the Insolvency Code on 12.09.2018 by a Financial Creditor M/s. Edelweiss Asset Reconstruction Company Ltd. against the Corporate Debtor M/s. Aakash Tiles Private Limited, Mumbai-400 099 in respect of a financial Debt of ₹20,58,86,599/-. Opportunities of Hearing granted to the Debtor Company; however, remained absent. The Bench has directed to intimate the date of hearing through advertisement as well. The Petitioner has placed on record an Affidavit of Service, annexed therein the evidence of Advertisement. It appears that in spite of several opportunities, defendant has nothing to say in its defence hence preferred not to represent his case. As a consequence, proceeded *ex-parte, qua* the Respondent after hearing the Learned Representative of the Petitioner.

2. The Learned Representative has informed that Oriental Bank of Commerce has assigned the Debt to the Petitioner. Assignment Agreement executed between Oriental Bank of Commerce (Assignor) and Edelweiss ARC Limited (Assignee) dated

22.05.2014 is on record. As per the “financing documents” the Debt assigned was ₹9,46,99,229/- (including Interest up to the date of filing of Suit i.e. 13.08.2013). It is further informed that a Suit was filed with DRT, Ahmedabad on 13.08.2013. As per the computation annexed the summary of the claimed amount is stated to be as under :-

Principal outstanding	:	₹6,40,86,636/-
Interest Overdue upto 12-Aug-2018 as given in Assignment Agreement	:	₹3,05,12,593/-
Further Interest from 12-Aug-2018 till 31-Jul-2018	:	11,12,87,370/-
Total Outstanding as on July 31, 2018		20,58,86,599/-

3. On examination of the documents annexed with the Petition it is noticed that following is the statement of account of the Corporate Debtor as per the Ledger Register of the Oriental Bank of Commerce, Ashram Road, Ahmedabad, reproduced below:-

"CERTIFIED THAT THE ABOVE STATEMENT OF ACCOUNTS M/S. AAKASH TILES PVT. LTD. IS A TRUE COPY OF ENTRIES OF THE LEDGER REGISTER, WHICH IS ONE OF THE ORDINARY BOOKS OF ORIENTAL BANK OF COMMERCE, ASHRAM ROAD, AHMEDABAD. THAT THE ENTRIES ARE MADE IN THE USUAL AND ORDINARY COURSE OF BUSINESS OF THE BANK AND THAT THIS BOOK IS STILL IN THE CUSTODY OF THE BANK.

Sr. No.	Nature of Facility	Principle amount outstanding as on the date of NPA i.e. 31.03.2012	Unapplied Interest at contractual rate @ 15.75% from 01.08.2013 till the date of filling suit i.e. 12.08.2013	Recorded Interest	Total
1	Cash Credit	2,00,00,000/-	3,13,605/-	61,84,016/-	2,64,97,621/-
2	Term Loan	4,40,86,636/-	1,52,800/-	2,38,62,172/-	6,81,01,608/-
TOTAL		6,40,86,636	4,66,405/-	3,00,46,188/-	9,45,99,229/-

CERTIFICATE FOR INTEREST CALCULATION

AS PER RBI GUIDELINES INTEREST ACCRUED AFTER THE DATE OF NPA BUT NOT APPLIED IN ACCOUNT FROM 01.04.2012 TO 12.08.2013 IS RS.3,00,46,188/-. THEREFORE THE TOTAL CLAIM FOR THE ACCOUNT IS RS.9,45,99,229/- (I.E. PRINCIPLE O/S OF RS.6,40,86,636/- + UNAPPLIED INTEREST OF RS.4,66,405/- +RECORDED INTEREST RS.3,00,46,188/-)"

4. Learned Representative has informed that the date of Default as per the records of the Bank was 31.12.2011 and the date of NPA was 31.03.2012. Following Security and collateral Securities were offered by the Debtor Company:-

"Security:

1. Non-Agricultural land situated at Plot No. 2, 3, 4, 17 & 18 having land admeasuring 218473.75 sq. metres. in Jhagdia Industrial Estate of Gujarat Industrial Development Corporation situated on the land bearing Survey/Block Nos. 156, 157, 158 & 159 of Village Limbhet without canal & cart track land (Plot

No. 2, 3, 4 & 18) and Revenue Survey No. 87, 88 & 89 of Village Randeri Taluka Jhagadia in the registration district Bharuch and Sub-District Jhagadia

Fair Market Value – Rs 25 Crores (See Valuation Report dated 28th July, 2014 at Exhibit F-1 @ Page 204).

2. *Plant and Machinery situated on the aforementioned land.*

3. *Fair Market Value – Rs 11.95 Crores (See Valuation Report dated 28th July, 2014 at Exhibit F-2 @ Page 225).*

Collateral Security:

1. *Hypothecation of the whole of the Current Assets, Bills Receivable and Book Debts and all other movable properties of the Corporate Debtor both present and future.*

2. *Personal Guarantee of Mr. Piyush Mathur, Mrs. Shalini Mathur, Mr. Ashok Jain, Mrs. Ashadevi Jain, Mr. Babulal Jajodia, Mr. Suresh Asrani and Mr. Suresh Nagori, Mr. Ganpat K. Gaikwad and Mr. Dharmesh Mehta.”*

FINDINGS

5. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as “Financial Debt” as defined under section 5(8) of Insolvency & Bankruptcy Code, 2016. As a result, the Financial Creditor has filed this Application for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

6. Since this is a Petition of “Financial Creditor”, therefore, the Insolvency Process shall commence as prescribed under Section 7 of IBC, 2016. The occurrence of “default” is established. The Financial Debtor has not raised any “dispute” nor attended the hearing to represent his side. It appears that the Respondent Debtor has nothing to say in its defence.

7. Having considered the totality of the facts and circumstances mentioned above that the Debt in question is a ‘Financial Debt’ and that the occurrence of ‘default’ is recognized, hence considering the state of affairs mentioned *supra* the Petition under consideration deserves to be “Admitted”.

8. The Petitioner / Financial Creditor has proposed the name of the IRP Mr. Garav Ashok Adukia, Registration No. IBBI/IPA-002/IP-N00457/2017-18/11293, Address: Anand Bhavan, Jamnadas Adukia Road, Kandivli West, Mumbai-400067, Email: ga@sumedhamanagement.com. The proposed IRP has furnished the requisite Certificate

on Form No.2 that no Disciplinary Proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

9. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

10. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

11. Accordingly, this **C.P.(IB)-3601/(MB)/2018** stood "Admitted".

12. The Corporate Insolvency Resolution Process is hereby declared commenced from the date of this Order.

Sd/-
M.K. SHRAWAT
Member (Judicial)

Date : 04.01.2019
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