



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/684 (MB)/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

**Edelweiss Asset Reconstruction
Company Limited**

[CIN:U67100MH2007PLC174759]

...Financial Creditor/Applicant

Versus

**Villbery Healthcare Private
Limited**

[CIN:U85100MH2008PTC184527]

...Corporate Debtor/Respondent

Order Pronounced on 16.07.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Bhanu Chopra a/w Mr. Sagar Parab, Advocates
For the Corporate Debtor : Mr. O. P. Soni, Advocate.

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Edelweiss Asset Reconstruction Company Limited** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Villbery Healthcare Private Limited** ("hereinafter referred to as the Corporate Debtor/Respondent/VHPL").
2. The Applicant is a body corporate having CIN U67100MH2007PLC174759 with its registered office at Edelweiss House, Off. C.S.T Road, Kalina, Mumbai - 400098.
3. The Respondent is constituted under the Companies Act, 1956 incorporated on 10.07.2008 having Company Identification no. U85100MH2008PTC184527 with its registered office at 130, Shanta Industrial Estate, 1st Floor, I. B. Patel Road, Goregaon (East), Mumbai-400063. Its nominal share capital is Rs. 5,00,00,000/- and Paid up share Capital is Rs. 4,00,00,000/-. It is engaged in the business of manufacturing pharmaceutical products.

Submissions of the Applicant:

4. The Corporate Debtor approached the Original Lender for Cash Credit ("CC") facility and Working Capital Term Loan ("WCTL") facility aggregating to Rs.7,50,00,000/- (Rupees Seven Crores Fifty Lakhs Only) for the purpose of meeting its working capital requirements. Pursuant to the request of Corporate Debtor, IndusInd Bank Limited (hereinafter referred to as the "Original Lender") issued a Sanction Letter dated 11.11.2016.
5. The Corporate Debtor addressed a letter dated 02.07.2018 to the Original Lender whereby the Corporate Debtor requested that a part of the

sanctioned limits under the Original CC Facility be converted into the WCTL Facility.

6. The Original Lender in respect of the aforesaid renewal request issued a Renewal Letter dated 07.07.2018 thereby sanctioning the limits for CC Facility and WCTL Facility. Pursuant thereto, the Original Lender and the Corporate Debtor entered into Agreement for Conversion of Working Capital into Term Loan dated 19.09.2018 to convert part of the Original CC Facility into the WCTL Facility as per the Renewal Letter.
7. On 28.03.2022, the Original Lender irrevocably assigned the said CC Facility and WCTL Facility along-with underlying security and financial documents together with all its rights, title and interests, pledges and/ or guarantees in respect of such facilities to the Financial Creditor herein.
8. The Corporate Debtor defaulted on the payments to be made in respect of the CC Facility and the WCTL Facility, and failed to regularize the same. Consequently, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 29.07.2021.
9. Pursuant to taking over of the said CC Facility and the WCTL Facility, the Financial Creditor issued a Demand Notice dated 30.01.2023 under Section 13(2) of the SARFAESI Act to the Corporate Debtor. Thereafter, the Financial Creditor also issued a Loan Recall Notice dated 08.02.2023 to the Corporate Debtor/Personal Guarantors/Mortgagors recalling and directing to pay the outstanding amount. Despite various requests, the Corporate Debtor/Personal Guarantors have failed to make payment of the Outstanding amount of Rs. 6,16,01,300/- (Rupees Six Crores Sixteen Lakh O-ne Thousand Three Hundred Only) as on 09.11.2022.

Submissions of the Respondent:

10. The Respondent has contested the present Petition on the grounds that the Corporate Debtor was not taken into confidence nor was consent or

concurrence was obtained before assignment of credit facilities by the Original Lender to the Financial Creditor.

11. Further, after the present petition was filed, the Personal Guarantors who are directors of the Corporate Debtor have, in consultation with the Applicant made an application for release of the properties which was accepted by the Applicant and agreed to release the said 3 properties on payment of Rs.7.25 Crores. In compliance thereto, the Personal Guarantors have paid Rs. 2.75 Crores to the Applicant. Hence, out of the claimed amount of Rs. 6.16 Crores, Rs. 2.75 Crores have been paid by the Personal Guarantors towards payment of dues.
12. The Respondent has further contented that no notice was issued to the Corporate debtor before filing of the present petition. Moreover, it is likely that the Corporate Debtor will be revived and will make profit in the near future, hence 1 or 2 years be granted to the Corporate Debtor to revive and to negotiate and settle the amount due to the Financial Creditor to initiate a limit of Working Capital to the Corporate debtor.
13. The respondent has placed on record its audited Balance Sheets for the Financial Years 2020-21, 2021-22 and 2022-23.

Findings-

14. Heard learned counsel for both the parties and perused the material produced on record.
15. There is no dispute that there exists a financial debt and the same is in default. Further, debtor has clearly admitted the liability vide its reply. The same is evident upon perusal of other documents produced on record by the Applicant. Accordingly, we hold that this application is within limitation period and there exists a financial debt and default in repayment thereof.
16. The contention of the respondent is that the Corporate Debtor was not taken into confidence nor consent or concurrence was obtained before assignment of credit facilities by the Original Lender to the Financial Creditor does not have any merit since Clause 28.2 of the Master General Terms Agreement states as under:

“The Borrower agrees that notwithstanding anything to the contrary contained in any documents executed under / in relation to this Agreement/the Facilities, the Bank shall have the right to assign and / or transfer and / or novate and / or otherwise securitize its rights or obligations or any part thereof under this Agreement, the Facility Documents and/or the Outstanding Amounts and/or enter into indemnity or other arrangements for risk sharing, whether with or without recourse to the Bank, to one or more scheduled commercial banks or any other entity, trust, any association whether located I placed in India or outside India, without any reference or notice to the Borrower or any third party security provider or guarantor. The Borrower shall not, however, claim any privity of contract with any such entity to whom the Outstanding Amounts and/or the rights or obligations under this Agreement have been assigned / transferred / securitised or the Bank has entered into indemnity or arrangements for risk sharing.”

17. Further, part payment of Rs. 2.75 Crores made by the Personal Guarantors establishes the existence of a Financial debt.
18. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. The application made by the Financial Creditor is complete in all respects as required by law. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
19. The Financial Creditor has proposed the name of **Mr. Gaurang C. Shah**, Registration No. **IBBI/IPA-002/IPN00947/2019-2020/13002**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
20. It is, accordingly, hereby ordered as follows: -
21. The Petition bearing **CP (IB)/684(MB)/2023** filed by **Edelweiss Asset Reconstruction Company Limited** [U67100MH2007PLC174759], the



Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Villbery Healthcare Private Limited** [CIN: U85100MH2008PTC184527], the Corporate Debtor, is **admitted**.

22. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

23. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

24. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the

resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

25. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
26. **Mr. Gaurang C. Shah**, Registration No. **IBBI/IPA-002/IPN00947/2019-2020/13002**, having registered address at Flat No. 204, A Wing, Raj Vaibhav 1, CHS, Dahanukar Wadi, Mahavir Nagar, Kandivali (W), Mumbai - 400 067. **Email ID: fcsgaurang.shah@gmail.com, Mobile: 9821154387** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
27. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
28. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
29. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email

immediately, and in any case, not later than two days from the date of this Order.

30. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Prabhat Kumar
Member (Technical)
MK

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)