

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

C.P.(IB)-800(MB)/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016)

IN THE MATTER OF,

Edelweiss Asset Reconstruction Company Limited.

(CIN: U67100MH2007PLC174759)

Registered Office at: Edelweiss House, Off CST Road, Kalina, Mumbai-400098.

.....Financial Creditor/Petitioner

Vs.

Neptune Ventures and Developers Private Limited.

(CIN: U45202MH2009PTC189590)

Registered Office at: 4th Floor, Eastern Business District, Near Mangatram Petrol Pump, L B S Road, Bhandup (West) Mumbai-400078.

.....Corporate Debtor/Respondent

Order Reserved On : 12.07.2023

Order Pronounced On : 17.07.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance:

For the Financial Creditor: Adv. Nishit Dhruva a/w Adv. Astha Ojha, Adv. Prakash Shinde & Adv. Meghna Arvind

For the Corporate Debtor: Adv. Akshay Patil a/w Adv. Devika Medhekar i/b Mr. Mayur Thorat

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. The above Company Petition is filed by **Edelweiss Asset Reconstruction Company Limited** hereinafter called as Financial Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **Neptune Ventures and Developers Private Limited** called as Corporate Debtor by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of total Financial Debt of Rs. 4,01,98,02,238/-.
2. The Corporate Debtor filed detailed affidavit in reply of Mr. Sachin Manohar Deshmukh, the Director of the Corporate Debtor opposing the admission of the above Company Petition solely on the ground of limitation. The important Paras of the affidavit in reply are extracted hereunder for ready reference:
Para-4. For considering the present petition it is important to state out certain relevant facts which are as under:
 - a. In the year 2012, the Respondent and Central Bank of India ("Original Lender") entered into a Term Loan Agreement dated 30th March 2012 whereby the original lender granted the Respondent sum of Rs. 200 Crores (160+40) as a loan which was in the form of Lease Rental Discounting Loan and Loan Against Property. (Exhibit P to the petition) for Respondent's business.
 - b. Several securities and financial instruments such as Letter of Undertaking, Corporate Guarantees by M/s. Neptune Developers Ltd, personal Guarantees of Mr. Nayan Bheda, Mr. Sachin Deshmukh and Mr. Nayan Shah, especially the charge over the Lease Rents receivable from the Neptune Magnet Mall, situated at Bhandup on land bearing CTS No. 372, 372/1-65,

Village Kanjur, Taluka Kurla, 'S' Ward, L.B.S. Marg, Near Mangatranam Petrol Pump, Bhandup (West), Mumbai 400078 (hereinafter referred to as "the said Mall") as has been already stated in the said Petition had been provided and executed by the Respondent to the Original Lender.

- c. The Respondent and the Original Lender also executed an Escrow Agreement dated 30th March 2012 (Exhibit Q of the Petition), whereby all the monies payable by the Respondent to the Original Lender towards repayment of the loan amounts would be deposited into an Escrow Account.
- d. Subsequently, in the year 2014, the Respondent and Original Lender entered into an Overdraft Agreement dated 18th March 2014 for sum of Rs. 10 Crores (Exhibit W).
- e. Thereafter, the Respondent and Original Lender entered into a Term Loan Agreement dated 18th March 2014 for additional credit facility of Rs. 71 Crores (Exhibit X to the Petition) and the same was *inter alia* secured by first charge over the Lease Receivables from the said Mall, and charge over the, unsold area of 5.21,040 sq. ft. in the said Mall.
- f. The Respondent and the original lender also executed an Escrow Agreement dated 18th March 2014 whereby it was agreed that the Escrow Account created vide the Escrow Agreement dated 30th March in relation to the Term Loan of Rs. 200 Crore, the same account would be continued for the Term Loan availed vide Term Loan dated 18th March 2014 of Rs. 71 Crores.
- g. Corporate Guarantee of M/s. Neptune Developers Pvt. Ltd, and personal Guarantees of Mr. Nayan Bheda, Mr. Sachin Deshmukh and Mr. Nayan Shah, were also provided to the Original Lender.
- h. The Respondent, the Original Lender and IDBI Trusteeship Services Ltd. also executed a security Trusteeship Agreement whereby IDBI Trusteeship Services Ltd was appointed as security trustee and all the securities created in favour of the

original lender as more particularly stated in the Term Loan Agreement, and the Overdraft Facility Agreement, were entrusted with the same. (Exhibit AA of the Petition).

- i. Subsequently, for additional financial assistance, a consolidated agreement namely Term Loan Agreement dated 31st July 2014 was executed between the Respondent and the Original Lender for sum of Rs. 310 Crores for absorbing the outstanding Term Loans as on 30th June 2014 and balance remaining amount for meeting business needs including expansion of the Respondent's business (hereinafter referred to as "the said Term Loan") The said Term Loan was also a Loan against Lease Rental Discounting repayable in 9 years. (Exhibit FF).
- o. In the year 2015, Central Bank of India i.e. the Original Lender assigned the Respondent's loan to the Applicant vide Deed of Assignment dated 24th September 2015 and on terms and conditions more particularly stipulated in the Deed of Assignment (Exhibit KK, of the Petition). The securities created in favour of the Original Lender were also assigned to the Applicant on terms and conditions as stipulated in the said Deed of Assignment.
- q. The Applicant accepted the restructuring proposal of the Respondent vide its letter dated 20th September 2016. (Exhibit NN of the Petition). As per the restructured loan, the amount payable by the Respondent to the Applicant as on 30th September 2015 was Rs. 275 Crores along with interest and other charges. It was agreed that the said amount would be repaid by sale of area in the secured asset i.e. the said Mall.
- s. From the year 2016 to 2019, sum of Rs. 309 crores was deposited into the Escrow Account from sale of the saleable area in the said Mall. Out of the proceeds received from the sale of the saleable area in the said Mall, sum of Rs. 201 crore was paid towards repayment of the said Loans and management fees to the Applicant. Further with the approval of the Applicant,

approximately sum of Rs. 108 crore was utilized for refurbishment of the said Mall, property, tax payments, sales & marketing cost and other statutory liabilities pertaining to the mall. The said amounts were directly disbursed by the Applicant itself from the Escrow Account.

3. Therefore, in the light of the above pleadings, the only issue that needs to be decided in the above Company Petition is:

Whether the above Company Petition is barred by limitation?

4. Heard Mr. Nishit Dhruva, counsel appearing for the Financial Creditor and Mr. Akshay Patil, counsel appearing for the Corporate Debtor. The counsel appearing for the Corporate Debtor during the course of the final hearing raised the only point of limitation in the above Company Petition. It is the submission of the counsel appearing for the Corporate Debtor that the date of default was mentioned as 30.06.2015 even according to the own case of the Financial Creditor in Part-IV of the petition and the same date of default i.e. 30.06.2015 is also shown in the NESL Certificate relied upon by the Financial Creditor to prove the existence of “debt and default”. Thus, it is his submission that the above Company Petition being filed on 08.07.2022 is beyond 3 years from the date of default and therefore it is liable to be dismissed on the plea of limitation. Except the above plea of limitation, he did not raise any other substantial legal pleas.
5. Mr. Nishit Dhruva, counsel appearing for the Financial Creditor strongly objected the above argument of the counsel appearing for the Corporate Debtor contending that subsequent to the date of default, the loan facility was restructured on 20.09.2016 for which the Corporate Debtor executed the

necessary documents in favour of the Financial Creditor. The Financial Creditor invited the attention of this Bench to the board resolution of the Corporate Debtor dated 14.09.2016 authorizing its Directors to execute necessary documents for restructuring. Since the Corporate Debtor has committed default the said restructuring arrangement was cancelled vide letter dated 03.05.2019 by the Financial Creditor (date appears to be wrongly typed as it should be subsequent to September-2016).

6. He has also invited the attention of this Bench to the balance sheet of the Corporate Debtor as on 31.03.2019 whereunder the Corporate Debtor has acknowledged the receipt of the loan from the Financial Creditor in a sum of Rs. 275,00,00,000/- and also clearly mentioned about the restructuring of the loan and the said loan was declared as NPA by the original lender Central Bank of India. He has also invited the attention of this Bench to the confirmation letter dated 04.09.2020 executed by the Corporate Debtor confirming the outstanding liability at Rs. 3,58,36,56,903.41/- as on 31.08.2020. Thus, he has argued that all the above referred documents relied by the Financial Creditor would extend the period of limitation from 30.06.2015 as per the law laid down by the Hon'ble Supreme Court in *Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy* and therefore prayed for admission of the above Company Petition.

7. After hearing both sides and upon perusal of the above documents this Bench is in complete agreement with the submissions of the counsel appearing for the Financial Creditor and is of the opinion that there is no legal force in the above contention raised by the Corporate Debtor with regard

to the plea of limitation and the above Company Petition is well within limitation and liable to be admitted. The Financial Creditor also suggested the name of Mr. Sandeep Mahajan as the proposed IRP to be appointed and thus the above Company Petition meets all the legal requirements and deserves to be admitted.

Accordingly, the above Company Petition bearing no. C.P.(IB)-800(MB)/2022 is admitted by passing the following order:

ORDER

- i. The above Company Petition No. (IB) 800 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Neptune Ventures and Developers Private Limited.
- ii. This Bench hereby appoints Mr. Sandeep Mahajan (sandeep8mahajan@gmail.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00991/2017-2018/11631 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- iii. 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. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- iv. 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.

- v. 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.
- vi. 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.
- vii. 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.
- viii. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix. 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.

- x. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. Accordingly, this Petition is admitted.
- xii. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
Member (Technical)

Shubham

Sd/-
H.V. SUBBA RAO
Member (Judicial)