IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I

CP (IB) No.4097/MB/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Edelweiss Asset Reconstruction Company Limited.
U67100MH2007PLC174759
Edelweiss House, off C.S.T. Road, Kalina, Mumbai, Maharashtra-400098.

… Financial Creditor /Petitioner

Versus

Infra Dredge Services Private Limited
[CIN:U93090MH2006PTC164347]
Room No.1101, B-Wing, Mount Everest Building, Near IMAX Adlabs, 9 Bhakti Park, Wadala East, Mumbai-400037.

…Corporate Debtor / Respondent

Order Delivered on :19.12.2023

Coram:

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

Appearances:

For the Financial Creditor	:	Mr. Prakash Shinde, Advocate
For the Corporate Debtor	:	Mr. Gopal Machirajv a/w Ms. Simran, Advocate

ORDER

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

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by ("the Financial

Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Vilsons Roofing Product Private Limited ("the Corporate Debtor ").

2. The Corporate Debtor is company incorporated on 23.08.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Vilsons Tower, 1220/47, 'E' Ward, Opp. Popatrao Jagdale Hall, Rajarampuri 1st Lane, Kolhapur, Maharashtra-416008.

Facts:

3. The Financial Creditor is one of the private sector companies registered with Reserve Bank of India (RBI) as an Assets Reconstruction Company (ARC) under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The total amount claimed to be in default is Rs.170,38,65,543/- (Rupees One Hundred and Seventy Crore Thirty Eight Lakh Sixty Five Thousand Five Hundred and Forty Three only). The date of default stated to be in Part-IV of the Petition is 31.03.2011. The working computation of claim amount is placed on record as Exhibit 4 of the Petition.

4. The Original Lender i.e. Bank of India vide sanction letters dated 18.12.2008 and 12.08.2010 sanctioned a total amount of Rs.52.32 Crore.

5. The Petitioner submits that the loan availed from the Corporate Debtor has been reflected in the balance sheet of the Corporate Debtor dated 2019-2020 and the CIBIL Report.

6. It is submitted that since the Corporate Debtor's account was irregular and default had occurred in making repayments on 31st March, 2011 (date of default), the Corporate Debtor's account was declared as a Non-Performing Asset (NPA) on 30th June, 2011.

7. The Corporate Debtor committed default in repayment and as the account of the Corporate Debtor was declared NPA, a notice dated 6th August 2012, under Section 13(2) of the SARFAESI Act, 2002, was issued by the original lender Bank of India to the Corporate Debtor. Corporate Debtor on 13th August 2012 replied to the said 13(2) Notice and admitted the outstanding debt, due and payable to the original lender.

8. Immediately after issuance 13(2) Notice, the Corporate Debtor had filed Securitization Application under Section 17 of the SARFAESI Act, and Orders were passed from time to time and thereafter Writ Petitions were filed by the Corporate Debtor through its Directors, which were disposed of only in the year 2019 vide Order dated 04th December 2019. In the said proceedings the Corporate Debtor time to time admitted the outstanding debt before the Hon'ble High Court Bombay and Hon'ble DRT Mumbai.

9. The Corporate Debtor has also made part-payments in the year 2018 reflecting in the Statement of Account. The Corporate Debtor in the Financial Statement for the year 2017-2018 wherein the Corporate Debtor has admitted the outstanding debt due and payable to the Financial Creditor. Thus, it is submitted that the present Company Petition is not barred by the law of limitation as the Corporate Debtor has acknowledge the debt from time to time in the Court proceedings before High Court Bombay and DRT, further Corporate Debtor made part-payments in the year 2018 reflecting in the Statement of Account.

10. Since, the date of default is 31.03.2011 and the Petition was filed on 19.11.2019. The Petitioner in order to satisfy us on the limitation issue, has submitted the following chart of list of dates and events. The said chart is reproduced hereinbelow for reference:

DATES	**EVENTS**
31st March 2011	Date of Default
31st June 2011	Non-Performing Asset (NPA)
11th October 2010	Acknowledgement of Debt **(Exhibit-45, Page 423)**
5th April 2011	Acknowledgement of Debt **(Exhibit-47, Page 433)**

DATES	**EVENTS**
06th August 2012	Notice u/s 13(2) was issued to the Corporate Debtor (**Exhibit-42, Page 417)**
13th August 2012	Reply to 13(2) Notice by the Corporate Debtor - admitted liability (**Exhibit-43, Page 420)**
13th July 2013	Corporate Debtor filed Securitization Application u/s 17 of SARFAESI Act being SA No.60 of 2013.
02.05.2018	Order was passed by the DRT to pay a sum of Rs.2.5 Crores by 2 (two) instalments. **Reference at Para 9 of the Order dated 02nd May 2018 (Exhibit-28, Page 223)**
Orders dated 19th August 2013 and 16th August 2016	In compliance of the Orders dated 19th August 2013 and 16th August 2016, the Corporate Debtor has deposited a sum of Rs.1,00,00,000/- (Rupees One Crore).
02nd May 2018	DRT Order in SA No.60/2013, SA rejected and the amount of

DATES	**EVENTS**
	Rs.1,00,00,000/- (Rupees One Crore) was directed to be released in favour of Financial Creditor i.e. Edelweiss Asset Reconstruction Company Limited through the Underlying Loan Borrower by the Borrower Company viz. Infra Dredge Services Pvt. Ltd. **Reference: Order dated 02nd May 2018 operative part of order Part (C) (Exhibit-28, Page 223 to 236)**.
07th September 2018	Order passed by the Hon'ble Bombay High Court in terms of Consent Minutes of the Order whereby the Corporate Debtor admitted the debt of the Financial Creditor, and offered to deposit with the Financial Creditor an amount of Rs.50,00,000/- (Rupees Fifty Lakhs) **(Reference: Exhibit-28 page 237-242**. The said Order was passed in Writ Petition (L) No.3081 of 2018.

DATES	**EVENTS**
10th October 2018	The Financial Creditor received Rs.50,00,000/- (Rupees Fifty Lakhs) **(Reference in Order dated 04th December 2019 para 7)**.
04th December 2019	Consent Order passed by the Hon'ble Bombay High Court whereby the Writ Petition was disposed of, whereby the Corporate Debtor undertook to pay to the Financial Creditor Rs.4,39,45,000/- (Rupees Four Crores Thirty-nine Lakhs Forty-five Thousand only) **(Reference page 41 TO 43 to the Convenience Compilation at Page 49)**.

11. In the present case, immediately after Section 13(2) Notice was issued in 2013 the Corporate Debtor had filed Securitization Application under Section 17 of the SARFAESI Act, and Orders were passed from time to time and thereafter Writ Petitions were filed by the Corporate Debtor through its Directors, which were disposed of only in the year 2019 vide Order dated 04th December 2019.

12. The Petitioner has relied on Financial Statement for the year 2017-2018 wherein the Corporate Debtor has admitted its liability of the Financial Creditor in the Financial Statement. It is also submitted that the present Company Petition is not barred by the law of limitation as the Corporate Debtor, after default and account being classified a Non-Performing Asset has made part-payments in the year 2018 reflecting in the Statement of Account.

13. The Petitioner has relied on the following judgments:

    i. Civil Appeal 9198 of 2019 **"Seshnath Singh V/s Baidyabati Sheoraphulli Co-operative Bank Ltd.**

    ii. Civil Appeal No. 7372 of 2021 in **"ARCE Polymers Private Limited v. M/s Aphine Pharmaceuticals Pvt Ltd and Ors".**

    iii. Company Appeal (AT) (Ins) No. 485 of 2018 in **"Lalan Kumar Singh v. Phoenix ARC & Anr".**

    iv. Company Appeal (AT) (Ins) No.32 OF 2019 **"T. Johnson Vs. Phoenix Arc Pvt. Ltd. & Anr."**

<u>Submissions advanced by the Respondent:</u>

14. The Respondent argues that, the plea taken by the Petitioner that the Petition is within Limitation is misconceived on the following grounds:

    a) The proceedings before DRT and Hon'ble Bombay High Court were prosecuted by Mr. Syed Kadri, who had mortgaged his personal property to secure the loans taken by the Respondent company. Hence, the argument canvassed is that the said proceedings were instituted by Mr. Kadri in his personal capacity and would not amount to acknowledgement of debt. It is not disputed that Mr. Kadri is the Managing Director of the Corporate Debtor.

b) Further, the Respondents have attributed the part payments made by Mr. Kadri in the proceedings before the Debt Recovery Tribunal and the Hon'ble Bombay High Court amounting to Rupees Fifty Lakh and Rupees One Crore respectively in discharge of his obligation as a mortgagor as opposed to him discharging the debt qua the Corporate Debtor company.

c) As far as acknowledgement of debt via books of accounts is concerned, it is submitted that the Petitioner has failed to point that the liability is recorded qua the Petitioner i.e. Edelweiss Asset Reconstruction Company.

d) The Petitioner during the course of his argument had relied on the Judgment of the Hon'ble Supreme Court in ***Sesh Nath Singh*** (supra), the Respondent in an attempt to distinguish the said judgment submits that, no sufficient cause is made out for condonation of delay in the present case. Further, the Petitioner cannot seek shelter under Section 14 of the Limitation Act as the proceedings before the Debt Recovery Tribunal and the Hon'ble Bombay High Court did not suffer from jurisdictional defect. It is not the pleaded the case of the Petitioner that the said proceedings lacked jurisdiction.

15. The Respondent submits that the Petitioner is not a Financial Creditor qua the Corporate Debtor. The Corporate Debtor disputes the assignment of debt to the Financial Creditor vide Assignment Agreement dated 22.07.2015. In furtherance of the contention, the Respondent has taken us through clause 7 of the loan agreement dated 30.12.2016.

"Clause 7. *It is hereby expressly agreed* ***that the Bank shall be at liberty to assign the debt and the benefit of these presents and the security for the advance and the security documents to the Industrial Development Bank of India, as security for any refinance*** *obtained by the Bank from the Industrial Development Bank in respect of the loan agreed to be advanced by the Bank to the Borrower and the Borrower shall if and whenever required by the Bank to do so at Borrower's own expense do and execute and join doing and executing all such acts, things, deeds, documents and assurances as the Bank may require for the effectuation of such assignment.*"

16. The case of the Respondent is that it is stipulated in the loan agreement that the debt if at all was to be assigned to Industrial Development Bank of India. The Respondent submits that no debt is owed by the Respondent to the Petitioner. It is not in dispute that the facilities were

obtained by the Respondent from the Bank of India. The Respondent disputes and does not acknowledge the assignment by Bank of India to the Petitioner for want of its consent.

Findings:

17. Heard Learned Counsel for the Financial Creditors and Learned Counsel for the Corporate Debtor. Perused the record.

18. Before we proceed to determine the existence of debt and default, it is important to decide the Limitation aspect. The date of default stated in Part IV of the Petition is 31.03.2011 and the captioned Petition was filed on 19.11.2019. The Corporate Debtor has acknowledged that the debt is due vide reply to the Section 13(2) notice under SARFAESI Act, 2002. Further, the proceedings before DRT were instituted in the year 2013, which culminated into a Final Order dated 02.05.2018 wherein the Corporate Debtor was directed to pay an amount of Rs.1 Crore. Moreover, part payments were made in the year 2018. At this juncture, it is useful to refer to the judgment of the Hon'ble Supreme Court in case of ***Dena Bank vs C. Shivakumar Reddy and Anr. Civil Appeal no.1650 of 2020*** has held as follows :

"138.A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to

recover the amount of the final judgment and/or order/decree and/or the amount specified in the Recovery Certificate.

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

The Corporate Debtor has time and again acknowledged the debt, thereby extending the Limitation period. Accordingly, we hold that the Petition is within Limitation.

19. The second defense raised by the Corporate Debtor that the assignment is invalid as the debt in terms clause 7 of the loan agreement could only be assigned to IDBI cannot be sustained. The Assignment Agreement was executed on 30.10.2013, the said assignment was not disputed by the Corporate Debtor in the proceedings before the Debt Recovery Tribunal and Hon'ble Bombay High Court. This contention of the Corporate Debtor is an afterthought only to derail the admission in CIRP.

20. This Bench is of the considered opinion that Learned Counsel for Petitioner through his arguments articulated the existence of debt and default which are corroborated from the records annexed to the Petition. It is not disputed that the amount was disbursed to the Corporate Debtor and the Corporate Debtor has defaulted in repaying the amount.

21. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands 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.

22. The Financial Creditor has proposed the name of **Mr. Prashant Jain**, having registration number IBBI/IPA-001/IP-P01368/2018-2019/12131 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.

23. It is, accordingly, hereby ordered as follows: -

    a) The Petition bearing **CP (IB) 4097/MB/2019** filed by **Edelweiss Asset Reconstruction Company Limited** 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 **InfraDredge Services Private Limited [CIN: U93090MH2006PTC164347],** the Corporate Debtor, is **admitted**.

    b) There shall be a moratorium under section 14 of the IBC, regarding the following:

    c) There shall be a moratorium under section 14 of the IBC, regarding the following:

        a. 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;

   b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
   c. 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;
   d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d) Notwithstanding the above, during the period of moratorium:-
   a. 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;
   b. 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;

e) 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 IB Code.

f) 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.

g) **Mr. Prashant Jain,** having address at A 501, Shanti Heights, Plot No. 2, 3 9b/10, Sector 11, Koparkharaine, Thane, Navi Mumbai, Maharashtra, 400709. Email: ipprashantjain@gmail.com, 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.

h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or 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.

i) The Financial Creditor shall deposit a sum of Rs.5,00,000/- 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).

j) 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.

k) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Pune, 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/-	**Sd/-**
PRABHAT KUMAR **Member (Technical)**	**JUSTICE V.G. BISHT** **Member (Judicial)**

19.12.2023
Priyal