IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.541/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Edelweiss Asset Reconstruction Company Limited

[CIN: U67100MH2007PLC174759]

…Financial Creditor/Applicant

V/s

Champalalji Finance Private Limited

[CIN: U65923MH1995PTC092635]

...Corporate Debtor/Respondent

Order Dated: 17.03.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Rohit Gupta a/w Ms. Suchitra Valjee & Ms. Riya Kadar i/b Manilal Kher Ambalal and Co., Advocates.
For the Respondent(s)	:	Mr. Ankit Lohia a/w Mr. Digant Bhatt, Mr. Akshay Sawant & Ms. Shivani Lakhepatil i/b I.V. Merchant & Co., Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application being C.P. (IB) No. 541/NCLT/MB/C-IV/2021 filed by Edelweiss Asset Reconstruction Company Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Champalalji Finance Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Ms. Aayushi Chaudhary, Authorised Representative of Financial Creditor vide its Board Resolution dated 09.07.2020, claiming total default amount of Rs.1,06,28,22,398/- (Rupees one hundred six crore twenty-eight lakh twenty-two thousand three hundred ninety-eight only).

3. The date of Default is 28.07.2019.

4. The case of the Financial Creditor is as under:

   a) The Corporate Debtor in 2016 issued 6300 Secured Redeemable Non-Convertible Debentures bearing face value of Rs.1,00,000 (Rupees one lakh only) each for an aggregate amount of Rs.63,00,00,000/- (Rupees sixty-three crore only).

   b) Trustee Agreement dated 01.07.2016 was executed by the Corporate Debtor appointing IDBI Trusteeship Limited as the Debenture Trustee on behalf of Debenture Holders with respect to the issuance of the Debentures.

c) In order to secure the Debentures, various Project properties including the Development rights in respect thereof were mortgaged in favour of the Debenture Trustee vide Debenture Trust Deed, Indenture of Mortgage and the Debentures were further secured by Agreement for Pledge of Shares and Guarantee Agreements in accordance with the terms of the Debenture Trust Deed.

d) On 30.09.2019, an Assignment Agreement was executed by ECL Finance Limited in favour of the Applicant for Assignment of debt with respect to the Debentures along with all Securities or documents executed in respect thereof.

5. The Debenture Trustee has issued Recall Notice dated 28.02.2020 to the Corporate Debtor claiming a total sum of Rs.83,44,69,053/- (Rupees eighty-three crore forty-four lakh sixty-nine thousand fifty-three only)

6. The Debenture Trustee also issued Notice for Invocation of Guarantee dated 20.04.2020 to call upon the Corporate Debtor and the Corporate Guarantor Nos. 1 to 7 to pay the Debenture Trustee the total outstanding amount together with the further interest at the contractual rate with all other costs, penal interest, charges and incidental expenses due and payable under the Debenture Trust Deed and other Debenture Documents.

7. The Corporate Debtor has filed its Affidavit in Reply and submits as under:

a) The Financial Creditor has neither produced any documentary evidence recording the date of default nor explained in its Affidavit is support of the said Petition as to how the Financial Creditor determined the said date of default.

b) The Financial Creditor claiming to act in its capacity as a 'Trustee' of EARC Trust – SC 392 has failed to annex any such authority/copy of the Board Resolution passed by the Board of Trustees of EARC Trust-SC 392 thereby authorising/permitting acquisition of the Non-Performing Asset vide Assignment Agreement dated 30.09.2019. The Financial Creditor has miserably failed to annex any such documentary evidence whereby the EARC Trust – SC 392 has approved the Assignment Agreement prior to its execution.

c) The Monitoring Agent Agreement dated 22.07.2016 was executed at New Delhi. The duties of the Monitoring Agent are set out in Clause 5 of the said Agreement. As per Clause 5(j) (ii) (a) and (b) of the said Agreement, the Monitoring Agent shall have no duties or responsibilities or obligations to enforce or ensure performance of any person whatsoever or to enforce or ensure enforcement of any right, or privilege, or any person.

d) Further as per Clause 11 of the Agreement, the Monitoring Agent is expressly barred from assigning, transferring or novating any interest in its rights and/or obligations under the said Agreement. In contravention of the Clause 11 of the said Agreement, the Monitoring Agent by virtue of Assignment Agreement dated 30.09.2019 has purported to have assigned, transferred all its interest, rights and obligations under the said Monitoring Agent Agreement which is against the covenants as agreed by and between the Corporate Debtor, IDBI Trusteeship Services Limited and the Monitoring Agent.

e) As per Section 56 of the Companies Act, 2013, a Company i.e. the Corporate Debtor in the present case shall not register a transfer of securities of the Company unless a proper instrument of transfer in such form as may be prescribed, duly stamped, dated and executed by or on behalf of transfer and the transferee. Until date the Corporate Debtor has not received any such request for transfer of Debentures in the name of the Financial Creditor for the reasons best known to the Financial Creditor.

f) The Financial Creditor has failed to produce following documents:

i. The Debenture Subscription Agreement executed by and between the Financial Creditor and/or the Debenture Holder and the Corporate Debtor proving that the Debentures have been issued in the name of the Financial Creditor and/or the Debenture Holder;

ii. Letter of Allotment indicating the allotment of Debentures issued to Debenture Holders as contemplated under Disclosure Documents dated 01.07.2016;

iii. Any such Authority or the Board Resolution passed by the Board of Directors of EARC Trust-SC 392 thereby authorising acquisition of the Non-Performing Asset of the Corporate Debtor;

iv. Trust Deed dated 25.03.2019, as amended on 23.09.2019 claimed to have been executed by the Financial Creditor;

v. Certificate/Letter/Corresponding evidencing declaration of Non-Performing Asset of the Corporate Debtor.

g) The Financial Creditor has not made the Corporate Debtor and the Debenture Trustee a party to the Assigned Agreement and neither the Corporate Debtor nor the Debenture Trustee are aware of the Assignment Agreement dated 30.09.2019.

h) The Financial Creditor has annexed the Balance Sheet of the Corporate Debtor where the Financial Creditor has failed to prove that the debentures were held in the name of ECL Finance Limited.

i) The Corporate Debtor was not aware of the Assignment Agreement dated 30.06.2019. The Debenture Trustee was not made a party to the said Assignment Agreement. In the Loan Recall Notice dated 28.02.2020 r/w Addendum Recall Notice dated 24.08.2020, there is no mentioning of the execution of the Assignment Agreement.

j) As per Clause 2.1.2 of the Assignment Agreement, the Assignor has claimed to have assigned in favour of the Assignee all its rights, title and interest in the 'Financial Documents' all agreements, deeds and documents as more particularly mentioned in the Assignment Agreement. The Assignor has claimed to have assigned rights, title and interest that of the Debenture Trust Agreement dated 01.07.2016, Indenture of mortgage dated 27.07.2016, Debenture Trust Deed dated 05.07.2016, Indenture of Mortgage dated 08.02.2017, all the Pledge Agreements to which ECL Finance Limited is not even a party. The Debenture Agreement dated 01.07.2016 was executed by and between the Corporate Debtor and the Debenture Trustee.

k) The Assignment Agreement is an unregistered document and shall not bind the Corporate Debtor or affect the immovable properties mentioned therein or confer any power to adopt or be received as evidence of any transaction affecting such property or conferring such power in terms of Section 49 of the Registration Act, 1908. The Financial Creditor failed to issue statutory Notice under section 2 (j) (ii) of the SARFAESI Act, 2002 which is pre-requisite before demanding or recalling any securities.

l) Under the Debenture Trust Deed. ECL Finance Limited was appointed to act only as a Monitoring Agent in order to monitor and verify the project works and various obligations of the Corporate Debtor. The obligations and responsibilities of the Monitoring Agent are enumerated in Monitoring Agent Agreement dated 22.07.2016.

m) The Credit Information Report only reflects that the account of the Corporate Debtor had been declared as SMA-1 on August, 2019. However, as per the RBI Guidelines dated 26.02.2014, the Debenture Trustee/Holder ought to have transferred the account of the Corporate Debtor to SMA-2 and thereafter declare the account as NPA as per the guidelines.

n) The date of default as mentioned in Form-1 is 28.07.2019 whereas the alleged date of declaration of the account of the Corporate Debtor as NPA is 16.09.2019. The total outstanding claimed by the Financial Creditor is Rs.1,06,28,22,398/- (Rupees one hundred six crore twenty-eight lakh twenty-two thousand three hundred ninety-eight only). The Financial Creditor has not specified the time period for which the claim has been filed.

8. The Financial Creditor has filed it's Re-joinder dated 09.02.2022 and submits as under;

a) The cause of action arose on 28.07.2019 when the Corporate Debtor committed default in repayment of Coupon payment and redeem debentures on respective due dates as provided in the Debenture Trust Deed dated 05.07.2016.

b) The Assignment Agreement was executed by the Financial Creditor acting in its capacity as a Trustee of EARC Trust – SC 392 and the same is on record to show the Assignment of the Debentures to the Financial Creditor. The original lender i.e. ECL Finance Limited addressed a letter to the Corporate Debtor dated 08.11.2019 intimating that the Debenture Holder has absolutely and irrevocably assigned all its rights, benefits and receivables under the Debenture Trust Deed and transaction documents to the Financial Creditor.

c) The Non-convertible Debenture amount of Rs.63,00,00,000/- (Rupees sixty-three crore only) was disbursed to the issuer on 29.07.2016. As per Debenture Trust Deed dated 05.07.2016, redemption dates of the said Non-Convertible Debenture are as follows:

Redemption Date from the Date of Subscription	Redemption Amount (Rs.)	Redeemed Amount (Rs.)	Payment Date
End of the 30^{th} Month i.e. 28.01.2019	207900000 (33%)	69200000	13.02.2019
		138700000	29.03.2019
End of the 36^{th} Month i.e. 28.07.2019	207900000 (33%)	Defaulted	Defaulted

End of the 40th Month i.e. 28.11.2019	214200000 (34%)	Defaulted	Defaulted

As second instalment of Rs.20,79,00,000/- was due on 28.07.2019 and same was defaulted, thus the Date of Default is 28.07.2019. The Financial Creditor is acting in its capacity as a Trustee of EARC Trust – SC 392 and is fully authorised.

d) The Monitoring Agent Agreement is only one of several financing documents referred to in the schedule of the Assignment Agreement. In any event, Clause 5 (j) (ii) (a) and (b) do not place a restrictive covenant on the Monitoring Agent utilising legal remedies, but only states that the Monitoring Agent will not be under an obligation, responsibility, or duty to enforce performance.

9. This Bench asked the counsel for Financial Creditor to clarify the queries regarding the following, vide order dated 17.02.2023 in view of specific grounds taken by the Corporate Debtor. The queries raised by the Bench were regarding :

a. In whose favour debt has been assigned ? whether in the favour of the Trust or in the favour of Edelweiss Asset Reconstruction Co. Ltd
b. How this debt is legally assigned in view of non-payment of stamp duty by EARC Trust, as the Certificate of stamp paper names Edelweiss Asset Reconstruction Co. Ltd
c. Whether Edelweiss Asset Reconstruction Co. Ltd is a sole Trustee of EARC Trust? If not, whether Edelweiss Asset Reconstruction Co. Ltd was authorized to take or intimate any proceeding or action by the Board of Trustee(s) of EARC Trust, as the petition or submissions do not indicate to the effect.

d. The Board Resolution has been passed by Board of Directors of Edelweiss Asset Reconstruction Co. Ltd authorizing one of its employees to file any petition under the IBC, but it nowhere mentions that this authority is delegated to them for initiating or taking any action/proceeding on behalf of or for the benefit of the Trust, of which Edelweiss Asset Reconstruction Co. Ltd is Trustee.

10. The Financial Creditor has filed Additional written submission dated 23.02.2023 stating that –

a. adequacy of stamp duty is to be considered at the time of adjudication of claims and not at the time of adjudication of petition and relied upon decision of Bombay High in the matter of *Classic Diamonds (India) Ltd. v. ICICI Bank Ltd. (2016 SCC Online BOM 15573)* wherein it was held that the issue of stamping cannot be raised in Company Petition filed for the purpose of winding up of the company. It was also submitted this law has been followed by NCLT and NCLAT in the matter of *Satra Properties (India) Ltd v. Vistra ITCL India Ltd 2022 SCC Online NCLT 23 and Company Appeal (AT) (CH) (Insolvency) No. 22 of 2021 in Ashique Poonamparambath v. The Federal Bank Limited. various judgments* respectively;

b. The assignment of debt is a permissible activity u/s 5 of SARFAESI Act, 2002 whereby any Asset Reconstruction Company ("ARC") may acquire any Financial asset of any bank or Financial institution by entering into an agreement with such bank or Financial Institution for transfer of such Financial asset of such Company on such terms and conditions as may be agreed upon between them;

c. SARFAESI Act, 2002 provides issuance of security/fund by the ARCs for the purpose of acquisition of these Financial assets as provided u/s 7 thereof which also provides, *interalia*, that ARC shall hold the assets so acquired in trust for the benefit for the Qualified buyers holding security receipts or from whom the funds are raised and makes provisions of Indian Trust Act applicable thereto;

d. Clause 2.1 of the assignment agreement provides that the assigned Financial Assets shall be held absolutely in trust for the benefit of holders of the security receipts issued by the assignee pursuant to the EARC Trust – SC 392, and the assignee shall hereafter be the full and absolute legal owner, and the only person legally entitled to such assets; and

e. Clause 4.1.2 of the Trust deed dated 25.03.2019 empowers Trustee to institute any legal or other proceeding for or on behalf of the Trust or in the name of Trust/ Trustee. Further clause 4.3 empowers the Trustee to delegate any of its power to any committee or person.

Findings:

11. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

12. It is observed that, the said Application is filed within Limitation and thus, this Bench has jurisdiction to adjudicate on the matter.

13. We have prudently gone through the pleadings available on record. Corporate Debtor issued 6300 Secured Redeemable Non-Convertible Debentures bearing face value of Rs.1,00,000 (Rupees one lakh only) each for an aggregate amount of Rs.63,00,00,000/- (Rupees sixty-three crore only) securing the Debentures, various Project properties including the Development rights.

  a. There is no dispute that the Corporate Debtor has defaulted in repayment of amounts due on Secured Redeemable Non-Convertible

Debentures and the interest thereon upon default of Principal Obligor i.e. the issuer of debentures. It is settled law that in case of default in payment money due on debentures either of debenture holder or debenture Trustee can proceed against the defaulting party.

b. The defence of Corporate Debtor as to validity of assignment deed between ECL Finance Limited and the Financial Creditor is not tenable in view of provisions contained in section 5(1)(b) of SARFAESI Act, 2002. Further there is no obligation on the assignor either to intimate the borrower/its guarantors or to make them a party to the assignment deed.

c. The contention as to the insufficiency of stamp duty paid on assignment agreement, we find that the Applicant has paid stamp duty of Rs. 1,00,000/- + 15,000/- towards assignment of deed and it is immaterial whether the trustee pays stamp duty or the trust. Nonetheless assignment document executed by Bank or Financial Institution under the provisions of SARFAESI Act, 2002 is specifically exempted from Stamp duty in accordance with Section 8F of Indian Stamp Act 1899.

d. The contention as to lack of authority to file present Application also does not have any merit. In terms of section 7 of SARFAESI Act, 2002 ARC can either hold the assigned debt in a trust or have a separate account. In the present case, the Applicant has created a specific trust for holding the debt in question and it is the sole trustee thereof. The Trust deed empowers the Applicant to institute any legal proceeding for or on behalf of Trust and also to delegate such power of institution of proceeding. From the perusal of documents appended to the Application, the Applicant has annexed one Board

Resolution authorizing the signatory to the Application to sign the Application u/s 7 of the Code on its behalf. Since the Trustee is a corporate person, its powers can be exercised through a Natural person, hence, we do not find any infirmity in the authority to file present Application.

e. The money owed on the debentures is recoverable by the assignee and said assignee steps into the shoes of debenture holder on record of Corporate Debtor. Mere fact that its name is not recorded cannot disentitle the assignee to claim the amount in default. Further, the assignee is not under obligation to issue a notice calling upon the defaulting party to pay after assignment has taken place in case such party is already in default prior to such assignment.

f. The date of default is clearly stated in part IV as 28.07.2019. The Applicant has submitted that the Principal borrower failed to make coupon payments and redeem debentures on their respective due dates, in accordance with the terms of the Debenture Trust Deed and has determined date of default accordingly. There is no dispute that the Principal borrower has committed default in payment of debt. On perusal of document annexed to the Application, it is seen that the Corporate Debtor was issued a notice 28.02.2020 recalling all loan facility extended to it and asking it to pay a total sum of Rs. 83,44,69,053/- outstanding as of 31.01.2020 together with further interest within 7 days from the date of said recall notice.

14. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt

amount and such date of default does not fall between the period stated in section 10A of the Code. The application has been filed within the Limitation period and is complete in all respects. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor.

15. The Applicant has proposed the name of Mr. Anand Sonbhadra, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00739/2017-2018/11771] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him

ORDER

This Application being C.P. (IB) No. 541/NCLT/MB/C-IV/2021 filed by Edelweiss Asset Reconstruction Company Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Champalalji Finance Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest 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.

II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Anand Sonbhadra, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00739/2017-2018/11771] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Prabhat Kumar
Member (Technical)
17/03/2023

Sd/-

Kishore Vemulapalli
Member (Judicial)