SL. No.131

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Special Bench (Video Conference)

CORAM: HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA -MEMBER (J)
CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 14.07.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/250/2021
NAME OF THE COMPANY	Minerva Enterprises Pvt Ltd
NAME OF THE PETITIONER(S)	Edelweiss Assets Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Minerva Enterprises Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Learned Counsel for the Financial Creditor and Learned Counsel for the Corporate Debtor appeared via video conference.

CP(IB)/250/2021- Orders pronounced vide separate sheets. CP(IB)/250/2021 is hereby admitted.

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MEMBER (T)

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MEMBER (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.250/7/HDB/2021
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s. Minerva Enterprises Pvt. Ltd.

Between:

M/s/ Edelweiss Asset Reconstruction Company Ltd.
Acting in its capacity as Trustee of EARC Trust – SC- 184
An asset reconstruction Company,
Having its Head Office at Edelweiss House, Off. C.S.T. Road,
Kalina, Mumbai MH 400098 IN,
Represented by its Authorized Representative.

...Petitioner/
Financial Creditor

And

M/s. Minerva Enterprises Pvt Ltd,
A company incorporated under the Companies Act,
Having its registered office at, 3-6-199, Himayat Nagar,
Hyderabad, Telangana 000000 in,
Andhra Pradesh
Represented by its Authorized Personnel

...Respondent/
Corporate Debtor

Date of Order: 14.07.2022

Coram:
Dr. Venkata Ramakrishan Badarinath Nandula, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. V.V.S.N Raju, Advocate

For the Corporate Debtor: Mr. G. Bhupesh, Advocate

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Per: Bench

ORDER

1. Under consideration is an Application filed by Edelweiss Assets Reconstruction Company (in short *"Petitioner/Financial Creditor"*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Minerva Enterprises Limited. (in short, *"Respondent/ Corporate Debtor"*).

2. Brief facts of the case as stated by the Applicant are follows:

    a. That the Corporate Debtor had approached the consortium of banks led by Allahabad Bank in 2009 seeking Fund based Loan Facilities for a project of setting up a 5 star Hotel. The said Consortium Bank led by Allahabad Bank and its other members being Andhra Bank, United bank of India and Bank of India, sanctioned a Term Loan aggregating up to INR 313.28 Crore repayable with interest at Allahabad Bank BPLR (+) 1.25% Spread p.a. with monthly compounding as per the repayment schedule mentioned in the Loan Documents.

    b. That the total project cost of setting up the hotel was INR 447.54 Crores out of which the Consortium sanctioned 313.28 Crores, the remaining sum of INR 134.26 Crores being the margin money/ promoter's contribution which was to be brought by the Corporate Debtor. The Corporate Debtor failed to contribute the said margin money thus the project could not be completed.

    c. That in consideration of such sanction the Corporate Debtor executed necessary loan and security documents in favour of the Consortium Banks led by Allahabad Bank and availed the above said credit facilities.

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d. That after availing the financial assistance, the Corporate Debtor committed defaults in repaying the debt. It even failed to service the interest in the loan accounts. In the term loan account, the Corporate Debtor failed to pay the instalments as per repayment schedule. As result of loan accounts of the Corporate Debtor have become irregular. Despite repeated advice by the Consortium Banks the Corporate Debtor neglected and failed to regularize the accounts.

e. That In accordance to the non-compliance of payment by the Corporate Debtor, as a result, the accounts have been classified as Non-performing Assets (NPAs as per the guidelines issued by the RBI in this regard).

f. That after the declaration of the Corporate Debtor as NPA, the Financial Creditor namely Andhra Bank has assigned its debts to this Financial Creditor namely, M/s. Edelweiss Asset Reconstruction Company vide EARC trust SC 184 vide Assignment Agreement dated 30.12.2015. Other financial Creditors, namely Allahabad Bank and United Bank of India, have also assigned their debts to this Financial Creditor under separate trusts.

g. That the Financial Creditor O.A. No. 762/2015 before the Debt Recovery Tribunal-1, Hyderabad for recovery of monies due from this Corporate Debtor. That the Debt Recovery Tribunal-1 was pleased to pass decree dated 18.09.2018 in favour of the Financial Creditor for the recovery of the sum of INR 47,92,82,528.50/- plus interest thereon.

h. That the DRT issued a Recovery certificate dated 29.10.2018 for an amount of INR 47,94,82,528 with subsequent interest @ 15.50 p.a. with monthly rent + 2 % penal interest from 09.07.2015 to till the date of realization.

i. That an amount of Rs. 1,31,13,49,666.7 as on 31.08.2021 is due and payable by the Corporate Debtor. That in view of the non-payment of the due payable to the Financial Creditor and

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the defaults committed by the Corporate Debtor, cause of action for this application under Section 7 of the IBC 2016 read with Rule 20 of the Insolvency and Bankruptcy Rules, 2016 arose on 18.09.2018 when the DRT passed the Decree in favour of this Financial Creditor and again on 29.10.2018 when the DRT issued the Recovery Certificate and it is continuing. Hence this application is filed to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

j. That as on 31.08.2021, an amount of Rs. 1,31,13,49,666.7/- is due and payable by the Corporate Debtor and the date of default is 18.09.2018, when DRT – I passed decree in O.A. 762/2015 and on 29.10.2018 when the Recovery Certificate No. RC 837/18 was issued by DRT – I, Hyderabad.

3. Corporate Debtor filed counter, *inter-alia*, stated as follows:-

a. That the claim made hereunder is barred by limitation. That while the Financial Credit sanction was allegedly made on 18.03.2009 and while the account of the Corporate Debtor was allegedly declared NPA on 31.03.2013 by Andhra Bank, on 31.12.2012 by United Bank of India, on 30.06.2014 by Bank of India and on 27.10.2014 by Allahabad Bank, the present Application is filed on 04.09.2021.

b. That the above application is basically filed seeking Enforcement of a Recovery Certificated dated 29.10.2018 passed by the Debt Recovery Tribunal in O.A. No. 762/2015, vide RC. No. 837/18.

c. The Corporate Debtor decided to expand its business by developing a 5 star Hotel. In furtherance of the requirement towards finances for developing the said 5 star Hotel, Andhra Bank had offered a Term Loan of Rs. 7,50,00,000/- on 18.03.2009 while United Bank of India had offered a Term Loan of Rs. 75.00.00.000/- on 13.04.2009 while Bank of India had offered a Term Loan of Rs. 75,00,00,000/- on 10.02.2009

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Allahabad Bank had offered a Term Loan of Rs. 88 ,28,00,000/- on 25.05.2009.

d. The Corporate Debtor had identified a prime land to an extent of nearly 2.5Ac in Gachibowli, Hyderabad, along with another extend of land admeasuring 19.5Ac Gachibowli, Hyderabad, owned by A.P. Housing Board. The same was offered on a Sale-cum-Development basis through a transparent bidding process. Accordingly, one M/s. Universal Realtors Pvt. Ltd emerged as a successful bidder and the land was handed over to the said Company on the payment of entire sale consideration.

e. That by the year 2012, the Corporate Debtor had completed the construction works by 50% despite there being numerous hurdles from numerous angles and the project works came to a grinding halt in early 2012. Having completed the construction works by 50%, the Corporate Debtor was in requirement of further funds for completion of the remaining part of the construction works. The Corporate Debtor, in furtherance of the same, had approached multiple lenders and financiers, but all its efforts went in vain.

f. That in the year 2015, when the Corporate Debtor was finding ways and means to raise funds and restart the project works, The Financial Creditor herein along with Bank of India identified a 3rd party Company viz. AGR Constructions (P) Limited and persuaded the Corporate Debtor to hand over the project to AGR Constructions (P) Limited. Accordingly, in the year 2015, the project was handed over to AGR Constructions (P) Limited with whom Financial Creditor and Bank of India entered into a One-time Settlement and Recovered payments from AGR Constructions (P) Limited without the knowledge of the Corporate Debtor.

g. That having forced the Corporate Debtor to hand over the project to AGR Constructions (P) Limited and having entered into an OTS proposal with AGR constructions (P) Limited an

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having received payments under the OTS proposal from AGR Constructions (P) Limited, the Financial Creditor herein, has unlawfully filed the present Company Petition against the Corporate Debtor.

h. That Edelweiss Asset Reconstruction Company Ltd and Bank of India, after taking over the project from the Corporate Debtor herein and after handing it over to AGR Constructions (P) Limited, both Edelweiss Asset Reconstruction Company Ltd and Bank of India have received advance of Rs. 7,70,00,000 /- and Rs. 6,30,00,000/- respectively on various dates from 31.03.2018 to 24.02.2020. Apparently, this amount is part of the amount received by the said Banks as a part of OTS.

i. That towards the balance amounts, post-dated Cheques were received by Edelweiss Asset Reconstruction Company Ltd and Bank of India from AGR Constructions (P) Ltd. While the said post-dated Cheques were returned for insufficient funds, Bank of India had issued notices under Section 138 of the Negotiable Instruments Act, 1881, further issuing a notice on the Corporate Debtor herein. While so, the Corporate Debtor herein had issued a reply notice 11.02.2019 clearly stating that at the instance of Edelweiss Asset Reconstruction Company Ltd., the project was transferred to AGR Constructions (P) Limited to which a consent Letter was given and that the Bank of India had been dealing directly and recovering amounts from AGR Constructions (p) Ltd thereby requesting not to drag the Corporate Debtor into any litigation. While so, after receiving the said Reply Notice from the Corporate Debtor, Bank of India had dropped further action against the Corporate Debtor herein as it is acknowledging the fact that the Corporate Debtor is no longer connected to the project.

j. That the alleged assignment of debt from Allahabad Bank, Andhra Bank and United Bank of India to the Financial Creditor took place in the year 2015. In furtherance of the said alle

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assignment of debt, in a hurried manner, invoking the provisions of the SARFAESI Act, 2002, the Financial Creditor herein had approached the Debt Recovery Tribunal vide an O.A. No. 762/2015 filed in the year 2015. Accordingly, a Recovery Certificate was issued on 29.10.18 vide RC. No. 837/2018.

k. While the Corporate Debtor had been taking steps to challenge the said Recovery Certificate dated 29.10.2018, the present company petition is filed by the Financial Creditor basically seeking enforcement of the Recovery Certificate passed by the DRT.

l. The financial creditor is now attempting to execute the Recovery Certificate passed thereunder, under the guise of the provisions of the Insolvency and Bankruptcy Code, 2016.

m. The term loan was sanctioned by Allahabad Bank in the year 2009 and by Andhra Bank in the year 2009 and by United Bank of India in the year 2009. Further, the proceeding before DRT were initiated in the year 2015 and the Recovery Certificate was issued on 29.10.2018. Whereas, the present Company Petition is filed on 04.09.2021. There is no continuous cause of limitation for the Financial Creditor herein to maintain the present Company Petition. The same is barred by limitation as it is filed beyond the requisite period of 3 years.

n. That the Corporate Debtor had never admitted or agreed or confirmed to the debt and the alleged outstanding to be due under the company petition is not crystalized. The liability exists on the part of the AGR Constructions (P) Limited and not the Corporate Debtor. The Financial Creditor ought to have initiated action against AGR Constructions (P) Ltd and not against the Corporate Debtor.

4. Heard. Perused the record.

5. It is the case of the Financial Creditor that consortium of banks have accorded financial assistance to the Corporate Debtor herein and subsequently the said debts were transferred to the Financial

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Creditor herein by way Assignment Agreement dated 30.12.2015. Per contra the Corporate Debtor has contended the instant Application on grounds on limitation and also on ground that the said project was already taken over from Corporate Debtor and handed over to one M/s. AGR Constructions (P) Limited, thus there exist no liability upon the Corporate Debtor.

6. The contention in relation to the limitation cannot be acceded to in view of the following factual and legal positions:

   i. Although the Corporate Debtor's account was declared NPA on 31.03.2013 by Andhra Bank, on 31.12.2012 by United Bank of India, on 30.06.2014 by Bank of India and on 27.10.2014 by Allahabad Bank, in 2012, SARFAESI proceedings were initiated in 2015, which culminated in 2018 in favour of the Applicant herein by an order of Hon'ble DRT dated 18.09.2018 followed by issue of a recovery certificate by Hon'ble DRT on 29.10.2018, which gave a fresh cause of action against the Corporate Debtor for filing application under section 7, if the certified amount remained unpaid on demand. This principle has been reiterated by the Hon'ble Supreme Court in their recent judgment in *Dena Bank vs. C. Shivakumar Reddy*, (Civil Appeal No.1650 of 2020) wherein it has been laid down as under:

> *"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.*
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> *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*

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Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

ii. Since fresh cause of action started with the issue of recovery certificate by Hon. DRT, the period of limitation in the instant case will run up to 28.10.2021 and the instant application is filed on 21.09.2021. Thus, we are of the opinion that the instant Application is well within limitation.

7. Further in relation to the contention of the Corporate Debtor that in view of handing of hotel project to M/s. AGR Construction (P) Ltd, there exists no liability on the Corporate Debtor, the said contention does not form any valid ground for rejection of the instant Application, as the debt claimed in the instant Application is crystalized by way of Order and Recovery Certificate issued by Hon'ble DRT. Further, the Corporate Debtor has not placed any document on record to show that the said order of Hon'ble DRT is under challenge before any forum. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

> "..............*The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*"

8. In view of the above findings and keeping in view the Hon'ble DRT's Order dated 18.09.2018 and Recovery Certificate dated 29.10.2018, we are of the view that in the instant case there is a 'financial debt' and there has been a 'default' in repayment of the same and the amount of the said default is far more than Rs. 1

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Crore. Thus, this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Hence, the contentions of the Corporate Debtor are overruled.

9. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

10. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

11. The Financial Creditor proposed the name of Mr. Chanchal Dua, Interim Resolution Professional and he has given here written consent in Form 2. Accordingly, this Tribunal hereby appoints Mr. Chanchal Dua,, having Registration No. IBBI/IPA-003/IP-N0083/2017-18/10821 e-mail id: chanchalduaco@gmail.com as Interim Resolution Professional. He is directed to file Authorization for Assignment within three days from the date of this order.

12. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

13. We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

14. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purpos

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referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
iv. *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. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

15. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or ot'

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-Sdarrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

16. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

17. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

18. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

19. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

20. Accordingly, this Petition is admitted.

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Dr. Binod Kumar Sinha
Member Technical

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Venkata Ramakrishna Badarinath Nandula
Member Judicial

Ajay/SKRathi