IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

CP No. 624/(IB)-MB-V/2023

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

In the matter of

Edelweiss Asset Reconstruction Co. Limited

Having its registered office at Edelweiss House, Off. C.S.T Road Kalina, Mumbai MH 400098

… Petitioner/Financial Creditor

V/s

Meeti Developers Private Limited

Having its registered office at 1st Floor, MMC Centre, Vikas Park, Link Road, Malad West, Mumbai- 400064.

… Respondent/Corporate Debtor

Order Dated: 05.04.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances (PH):

For the Petitioner: Senior Adv. Mr. Gaurav Joshi

For the Corporate Debtor: Adv. Amir Arsiwala

ORDER

1. The Petitioner Viz. **Edelweiss Asset Reconstruction Co. Limited** (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against **Meeti Developers Private Limited** (hereinafter as **'Corporate Debtor**. This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of **Rs.179,12,69,934/-** ***(Rupees One Hundred and Seventy-Nine Crore, Twelve Lakhs Sixty- Nine Thousand, Nine Hundred and Thirty-four only)*** as on 15th May 2023 together inclusive of interest and other contractual charges till payment and/or realization.

2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:

    a. A copy of Sanction Letter dated 14.10.2016.
    b. A copy of Debenture Trustee Agreement dated 23.11.2016
    c. A copy of Certificate of Registration of charge dated 29.11.2016
    d. A copy of Debenture Trustee Agreement dated 23.11.2016
    e. A copy of Debenture Trust Deed dated 29.11.2016
    f. A copy of Assignment Agreement dated 21.05.2019
    g. A copy of Loan recall notice dated 01.01.2020

h. A copy of Transfer Agreement and Financial Undertaking dated 08.07.2022
i. A copy of record of default with NeSL.

Brief Facts

3. The petition reveals that on October 14, 2016, ECI Finance Limited, as the Original Lender, subscribed to Non-Convertible Debentures (NCDs) based on the terms outlined in the sanction letter.

4. It is further submitted by the Financial Creditor that on October 29, 2016, during a shareholders meeting, several resolutions were passed including:
   A. Authorization to borrow up to Rs.100 Crores under Section 180(1)(c) of the Companies Act, 2013.
   B. Authorization for certain representatives of the original lender to execute sale agreements related to certain properties.
   C. Approval for providing guarantees and/or security for the issuance of NCDs by the Corporate Debtor.
   D. Authorization for the issuance of secured, redeemable, non-convertible debentures.
   E. Approval for the issuance of secured, redeemable, non-convertible debentures amounting to Rs.55 Crores, along with the creation of necessary security.

5. Pursuant to the above, a Debenture Trustee Agreement was signed between the Corporate Debtor and Catalyst Trusteeship Limited on behalf of the Debenture Holders.

6. An Escrow Agreement was then executed for the management of project development expenses and costs, involving HDFC Bank Ltd., the Original Lender, and the Debenture Trustee.

7. Subsequently, a total debt of Rs.55 Crores was disbursed through the issuance and subscription of 1100 redeemable non-convertible debentures. The Corporate Debtor, Meeti Developers Pvt. Ltd., executed a Debenture Trust cum Mortgage deed along with a Demand Promissory Note promising repayment to the debenture holders with an interest rate of 17% per annum.

8. Furthermore, it is submitted that, agreements regarding the pledge of shares and guarantees were made between the Corporate Debtor, the Guarantors (Mr. Paresh Bhuta and Mrs. Harsha Bhuta) and the Debenture Trustee.

9. After three years, the Original Lender assigned its rights, title, interest, and benefits under the NCDs to the Petitioner through an Assignment Agreement. It is submitted that subsequent to the assignment, on January 1, 2020, the entire debt was recalled via a default notice, but the Corporate Debtor failed to repay it, leading the Financial Creditor to initiate Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC 2016.

10. The CIRP process commenced with the admission of the CP 783 of 2020 filed by the Applicant on March 5, 2021. The Corporate Debtor admitted liability to pay the outstanding debt of Rs.55 Crores but failed to do so.

11. Later, on July 8, 2022, the Applicant and Ajmera Realty & Infrastructure India Limited (ARIIL) executed a Transfer Agreement for the purchase of the NCDs from the Applicant for Rs. 31,66,00,000/- along with associated rights, interests, claims, and causes of action along with a Financial Undertaking to settle the outstanding amount of Rs.31,66,00,000/- by December 31, 2022.

12. Subsequent to the above, on the payment of the first instalment i.e. an upfront payment of Rs.3,26,00,000/- was made to the Financial Creditor leading to the withdrawal of CP 783 of 2020 in IA No. 2159 of 2022 u/s 12A of IBC which was permitted by Hon'ble NCLT vide order dated 8th August 2022. The withdrawal was on the basis of settlement having been arrived at between the parties. The said fact of the settlement is reflected from the proceedings of the COC as well. The CP 783 of 2020 was withdrawn on the belief that the parties would comply with the agreed terms. However, the Petitioner realized that the Corporate Debtor and ARIIL had collusively induced the withdrawal of CP 783 of 2020 without any intention of complying with the terms of payment stipulated in the Agreement dated 8th July 2022. It is on the strength of this Agreement that CP 783 of 2020 was withdrawn as under the Transfer Agreement and Financial Undertaking, the NCDs were to be sold by the Petitioner to ARIIL on receipt of full consideration amount which faculty was never paid and hence the NCDs were never transferred to ARIIL.

13. The Financial Creditor submits that the Corporate Debtor remained obligated to redeem the Non-Convertible Debentures (NCDs) as on recall of debt on January 1st 2020, the Corporate Debtor failed to make the payment, thus the default of Corporate

Debtor stood established. It was agreed that Ajmera Realty and Infra India Limited (ARIIL) would purchase these NCDs from the Petitioner for a total consideration of Rs. 31,66,00,000/-. This arrangement involved an upfront payment of Rs. 3,26,00,000/- with the remaining Rs.28,40,00,000 to be settled by December 31st, 2022. To formalize this agreement, a Transfer Agreement and Financial Undertaking were signed on July 8th, 2022. These documents explicitly stated that the transfer of NCDs to ARIIL would only occur upon the complete payment of the purchase consideration. Notably, they affirmed that the Petitioner's rights under the debenture documents would persist until ARIIL fulfilled its obligations. Specific clauses within the Transfer Agreement, such as Clause 2 (v), (vii), and (ix), alongside Clause 6, underscored this provision. Additionally, a letter dated July 6th, 2022, by the Corporate Debtor further emphasized its obligation towards the Financial Creditor in case ARIIL defaulted on its payment commitments. The relevant part from the letter is reproduced as under-

> "*We agree that the rights of EARC shall continue as debenture-holder against MDPL and other security-providers, until the NCDs are transferred in favour of ARIIL or its nominated entity, after ARIL make the payment of entire purchase consideration to EARC. Once the debentures are transferred to ARIIL or its nominated entity, all rights, title and interest of EARC (as NCD-holder) shall stand vested in favor of ARIIL or its nominated entity as new debenture-holder*"

14. Hence it is submitted by the petitioner that they continue to hold and is entitled to claim under the NCDs and that the present CP 624 of 2023 is filed on the contention of invocation of guarantee. The Corporate Debtor has committed default in the repayment of the NCDs. It is impermissible for the Corporate Debtor to now contend that the Petitioner cannot maintain the Petition more so given the fact that there is no transfer of NCDs.

15. Thus, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

16. The Corporate Debtor argues that CP 624 of 2023, filed by a financial creditor, should not be allowed to proceed against them due to the withdrawal of a previous CP (783 of 2020) and a subsequent Transfer Agreement with ARIIL dated 05.07.2022. They contend that the financial creditor's withdrawal of CP 783 of 2020 without seeking permission to approach the tribunal again, along with the Transfer Agreement, renders CP 624 of 2023 not maintainable. The Corporate Debtor asserts that these actions and agreements fundamentally change the circumstances under which insolvency proceedings can be pursued against them.

17. The Corporate Debtor submits that during the proceedings, on November 2^{nd} 2023, the Corporate Debtor filed its reply to this present Company Petition. Soon after, on the following day, they were served with a copy of a Commercial Suit filed by the financial creditor against the Corporate Debtor. Upon reviewing the Commercial Suit No. 30916 of 2023, the Corporate Debtor realized

that the financial creditor had already initiated proceedings against ARIIL by filing a separate application under Section 7.

18. The Corporate Debtor further submits that the Financial Creditor has already initiated legal actions, including a Commercial Suit and an Interim Application before the Bombay High Court, and a Company Petition before the tribunal, all based on the same cause of action. They argue that because of these existing proceedings against other parties, the financial creditor should not be allowed to purse the current Company Petition against the Corporate Debtor, as it would amount to duplicating legal actions based on the same grounds.

FINDINGS:

19. We have heard the Counsel appearing for the Petitioner and Respondent and perused the material available on record.

20. It is apparent that the petitioner, EARC, initially filed CP No. 783 of 2020 under the Insolvency and Bankruptcy Code (IBC) 2016 against Respondent, which was admitted via order dated 5th March 2021. Following the admission, no resolution plan was received. The Committee of Creditors (COC) proceedings clearly indicate that due to prolonged litigation, escalating Corporate Insolvency Resolution Process (CIRP) costs, and the absence of a resolution plan, the petitioner had no alternative but to negotiate a settlement with the promoters of the Corporate Debtor (CD). The settlement with the CD's promoters is documented in the 16th COC meeting, wherein it is stated as follows:

> *"2. In view of the prolonged litigation, receipt of no resolution plan despite multiple processes were*

conducted, increasing CIRP cost, ***a settlement has been agreed with the Promoter/ Director of the Corporate Debtor. Therefore, I hereby withdraw the application bearing C.P. (IB)-783/2020 filed by me before the Adjudicating Authority under section 7 of the Insolvency and Bankruptcy Code, 2016."***

21. Following the aforementioned developments, the Hon'ble National Company Law Tribunal (NCLT), through an order dated 8th August 2022, granted permission for the withdrawal of CP 783 of 2020 in IA No. 2159 of 2022 under Section 12A of the Insolvency and Bankruptcy Code (IBC). The pertinent excerpt from the order is outlined below:

> *"IA 2159 of 2022- This is an application filed seeking withdrawal of the CP 783 of 2020 filed by the Petitioner against the Corporate Debtor. Counsel for the RP submits that Form-FA was given, and the withdrawal was approved by 96% of the COC. Accordingly, the above IA is allowed and the CIRP order passed against the Corporate Debtor is withdrawn by releasing the Corporate Debtor from all rigours of moratorium. In view of the order passed in the above IA 2159 of 2022,* ***all the IAs become infructuous and stand disposed of granting liberty to the Petitioners to agitate their legal remedies before"***

This bench should also acknowledge that 96% of the voting share in the Committee of Creditors (COC) belonged to the petitioner itself. Furthermore, the bench's reliance is grounded on observations made by the Hon'ble Supreme Court in several cases where it permitted the filing of a petition subsequent to the withdrawal of a previous petition due to the non-fulfillment of settlements between the parties. In this regard's reliance can be placed upon the judgement of the **Hon'ble NCLAT in the matter of *Priyal Kantilal Patel v. IREP Credit Capital Private Limited & Anr.*** wherein a Petition under Section 7 of the Code was admitted, subsequently withdrawn and a fresh petition was filed on default of settlement terms. The Hon'ble NCLAT held as under:

> *"……The mere fact that in earlier company petition, consent terms were arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms."*

22. Further reliance can also be placed on paragraph No. 7 of the judgement in the matter of ***Vinay Gupta v. Ashika Credit Capital Private Limited & Anr.*** wherein the Hon'ble NCLAT has held that a default under a settlement does not in any manner affect the claim of the original applicant. The relevant part is reproduced as under:

"…. Default in settlement agreement is only a by-product which has permitted revival of Section 7 application but in no manner affect the claim in the original application which is financial debt under Section 7 application"

23. It is pertinent to notice that the present petition and that of CP 783 of 2023 was filled by the petitioner because of default on the part of the Corporate Debtor who failed to repay the loan amount on the recall. The Debt and default against the Corporate Debtor stood established at the time of the previous petition and also at the time of the present petition. As far as the Agreement dated 8th July 2022 of the petitioner with ARIIL is concerned, the outcome of which was that the NCDs of the petitioner were to be taken over by ARIIL on payment of due consideration, but it never saw the light of the day as the consideration amount was not paid by ARIIL, hence NCDs remained with petitioner. The petition filled by Edelweiss against ARIIL has no relevance with the cause of action in the present petition. Both the issues are independent of each other and thus the petitioner independently has initiated appropriate proceedings against the Corporate Debtor and that of ARIIL. It is pertinent to take notice that otherwise also, ARIIL is not a stranger but the promoter of Corporate Debtor who have been brought on record by the Corporate Debtor himself.

24. The Corporate Debtor, in its response, has argued that the current petition is barred by the principle of Res judicata. However, the bench notes that the petition is not precluded by the principle of Res judicata. Res judicata applies only when a decision is made on the merits and does not apply in situations where proceedings are withdrawn with liberty. The present case falls under the latter category, where the initial petition was

withdrawn due to the settlement reached between the parties. The bench's reasoning is supported by precedent, including the judgment of ***Honb'le Supreme Court in Baldevdas Shivlal & Anr. V. Filmistan Distributors (India) Pvt. Ltd***. The relevant extract is as under-

> *"……A consent decree, according to the decisions of this Court, does not operate as res judicata because a consent decree is merely the record of a contract between the parties to a suit, to which is superadded the seal of the Court"*

25. Following the withdrawal of CP 783 of 2020, ARIIL consistently sought extensions to meet its payment obligations under the transfer agreement. However, ARIIL failed to fulfil the agreed-upon payment amount in its entirety, leading to the Non-Convertible Debentures (NCDs) remaining with the petitioner. It's essential to highlight that ARIIL had committed to purchasing the NCDs for Rs.31,66,00,000, with only Rs.3,26,00,000 paid up front. The outstanding balance of Rs.28,40,00,000 scheduled for payment before December 31, 2022, was never honored by ARIIL. The Transfer Agreement dated July 8, 2022, explicitly stated that the transfer of NCDs to ARIIL would only occur upon the full payment of the purchase consideration. A review of the agreement's terms clearly indicates that the rights of the Corporate Debtor under the documents were to be retained until ARIIL fulfilled its obligations. The relevant clauses of the agreement are provided below:

TERMS PERTAINING TO TRANSFER OF DEBENTURES:

"(v.) The balance amount of INR 28,40,00,00/- (Indian Rupees Twenty-Eight Crore Forty Lakhs Only) (hereinafter referred to as the "Balance Purchase Price") shall be paid by the Transferee to the Transferor in the EARC Bank Account on or before December 31, 2022 ("Final Payment Date")."

(vii.) Immediately on receipt of the Balance Purchase Price in the EARC Bank Account by the Final Payment Date, the, Transferor intimate the Depository by filing the Delivery Instruction Slip (hereinafter referred to as "DIS") for transferring the Debentures from the account of the Transferor to the Transferee.

(ix) Unless and until the. transfer of Debentures is not completed in accordance with this Agreement, but subject to Clause 8(e) of this Agreement, the Transferor shall continue to hold/ exercise all the rights, title, interest, liabilities, obligations and any other security interest as mentioned under the Debenture Documents. The rights of the Transferor under the Debenture Documents in relation to the Debentures shall not be impacted whatsoever by virtue of execution of this Agreement till the Debentures are not transferred to the Transferee as per this Agreement."

6. CONSEQUENCES OF EVENT OF DEFAULT:

"Upon occurrence of any Event of Default, the following consequences shall follow:

(i) The Transferor shall have the rights to pursue any of its rights and remedies available to it against the Transferee

under this Agreement or under the Financial Undertaking or under Applicable Law.

(ii)The Upfront Amount shall stand forfeited and the Transferor shall be under no obligation to whatsoever to refund the Upfront Amount to the Transferee., It is further clarified that forfeiture of the Upfront Amount by the Transferor shall not release the Transferee from fulfilment of its obligations under this Agreement or the Financial Undertaking and shall not affect the rights of the Transferor under the Debenture Documents."

Moreover, apart from the clauses outlined in the Transfer Agreement, it is pertinent to highlight that through a letter dated 6th July 2022, the Corporate Debtor itself introduced ARIIL to the Petitioner (EARC) and explicitly stated that the transfer of NCDs to ARIIL would not take place until ARIIL made the full payment. The relevant excerpt from the letter dated 6th July 2022 is provided below:

> *"We agree that the rights of EARC shall continue as debenture holder against MDPL and other security providers, until the NCDs are transferred in favor of ARIIL or its nominated entity, after ARIIL make the payment of entire purchase consideration to EARC."*

26. Hence, the transfer Agreement Between ARIIL and Petitioner (EARC) would not absolve the Corporate Debtor from its default under NCDs. It doesn't discharge the liability of Corporate Debtor in any manner, thus this bench is of the considered view that the Corporate Debtor deserves to be admitted for CIRP

27. From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.

28. Considering the above discussion, we come to conclusion that the petitioner has been able to establish that there is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of **'debt'** and **'default'** for admission of a petition under section 7 of the I&B Code, have been, therefore, met in this case. Besides, the Company Petition is well within the period of limitation.

29. Consequently, the petition is ordered to be admitted in the following terms:

ORDER

a. The above Company Petition No. 624/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Meeti Developers Private Limited.**

b. **MR. ASHOK KUMAR GOLECHHA**, having registration No. IP-IBBI/IPA-002/ IP- N000932/2019-2020/12973, email address- akgolecha9@gmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016. (Though the name of Mr. Prashant Jain was suggested in the petition but the perusal of the letter dated

04.11.2022 shows that the Authorization by the petitioner in favor of the said IRP was valid only for a period from 04.10.22 to 03.10.2023)

c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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.

e. 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.

f. 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.

g. 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.

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

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, C.P. No. 624/IBC/MB/2023 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-	**SD/-**
MADHU SINHA	**REETA KOHLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

/Aakansha/